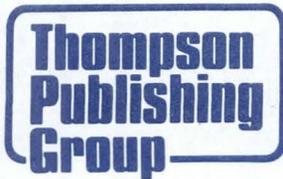

Stormwater Permit Manual

Bulletins

**THOMPSON
PUBLISHING
GROUP**



LIBRARY

Account No 028223315
Catesby Moore

1725 K Street, NW Suite 200 Washington, DC 20006

Corporate & Editorial: (202) 872-4000
Customer Service: (800) 424-2959

Dear Subscriber,

Welcome to the *Stormwater Permit Manual*. I am sure that you will find it a useful guide for seeking National Pollutant Discharge Elimination System permit coverage for stormwater discharges associated with industry activity. Beyond permitting, the *Manual* will bring you the information that you need to make sound and cost-effective decisions for long-term stormwater control and compliance with the NPDES stormwater program.

The place to start is with Tab 100, which will help you decide whether your facility is required to seek coverage under this program. Tab 200 and 300 will help you decide what kind of permit coverage to seek and how to apply for a permit. Tab 800 will provide you with important information about how the stormwater program is being implemented in your state.

Our monthly newsletters and updates will also assist you in selecting and applying for your permit as we track the progress of EPA and the states in developing general permits as alternatives to the cumbersome application process for individual and group permits.

EPA regulations governing stormwater associated with industrial activity are complex. They are also still evolving, as new regulations continue to appear, as regulations already promulgated are scrutinized in federal courts, and as states put their individual imprint upon this program. Throughout this period of regulatory change we will keep you informed of important developments at both the national and state levels.

And the *Stormwater Permit Manual* will continue to grow. Through updates to the *Manual* we will bring you information about stormwater control techniques, permit compliance issues, and regulatory enforcement actions.

I am dedicated to following the latest developments in stormwater regulations and control and committed to passing that information to you quickly and in plain English. If you have any questions about your subscription, please call our customer service hotline toll-free at (800) 424-2959. If you have comments or questions about the content of the *Stormwater Permit Manual*, please call me in Washington at (202) 872-4000, extension 318.

Sincerely,

Jill S. Talbot, Esq.
Senior Editor

LIBRARY

Property of
Flood Control District of MC Libran
Please Return to
2801 W. Durango
Phoenix, AZ 85009

Stormwater Permit Manual

Volume 1



Publishers of environmental and safety compliance information

1725 K Street, NW; Suite 200; Washington, D.C. 20006

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought."

From a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Copyright ©1991, 1992 by Thompson Publishing Group
1725 K Street, N.W., Suite 200
Washington, D.C. 20006

Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal use provided that the base fee of U.S. \$5.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801.

Multiple subscription discounts are available. For information, call customer service: 1-800-879-3169.

Copyright is not claimed as to any part of the original work prepared by a United States Government officer or employee as part of that person's official duties. *Stormwater Permit Manual* is the exclusive trademark of the Thompson Publishing Group.

January 1993

Dear Subscriber:

This month's update contains a revised Tab 600 on stormwater permit compliance, stormwater management and pollution prevention. This Tab incorporates, and includes excerpts from, EPA's recently developed guidance document: *Stormwater Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices*. If you would like to acquire the entire, 350-page guidance document, which includes detailed technical specifications, we are offering copies at a minimal cost of \$25 dollars each. To order, complete the form below and mail it to us along with a check for \$25. We will send you the document upon receipt of your order and check

Please send me a copy of EPA's guidance document: *Stormwater Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices*. I have enclosed a check for \$25 for each copy I am ordering.

Name: _____

Company: _____

Street Address: _____

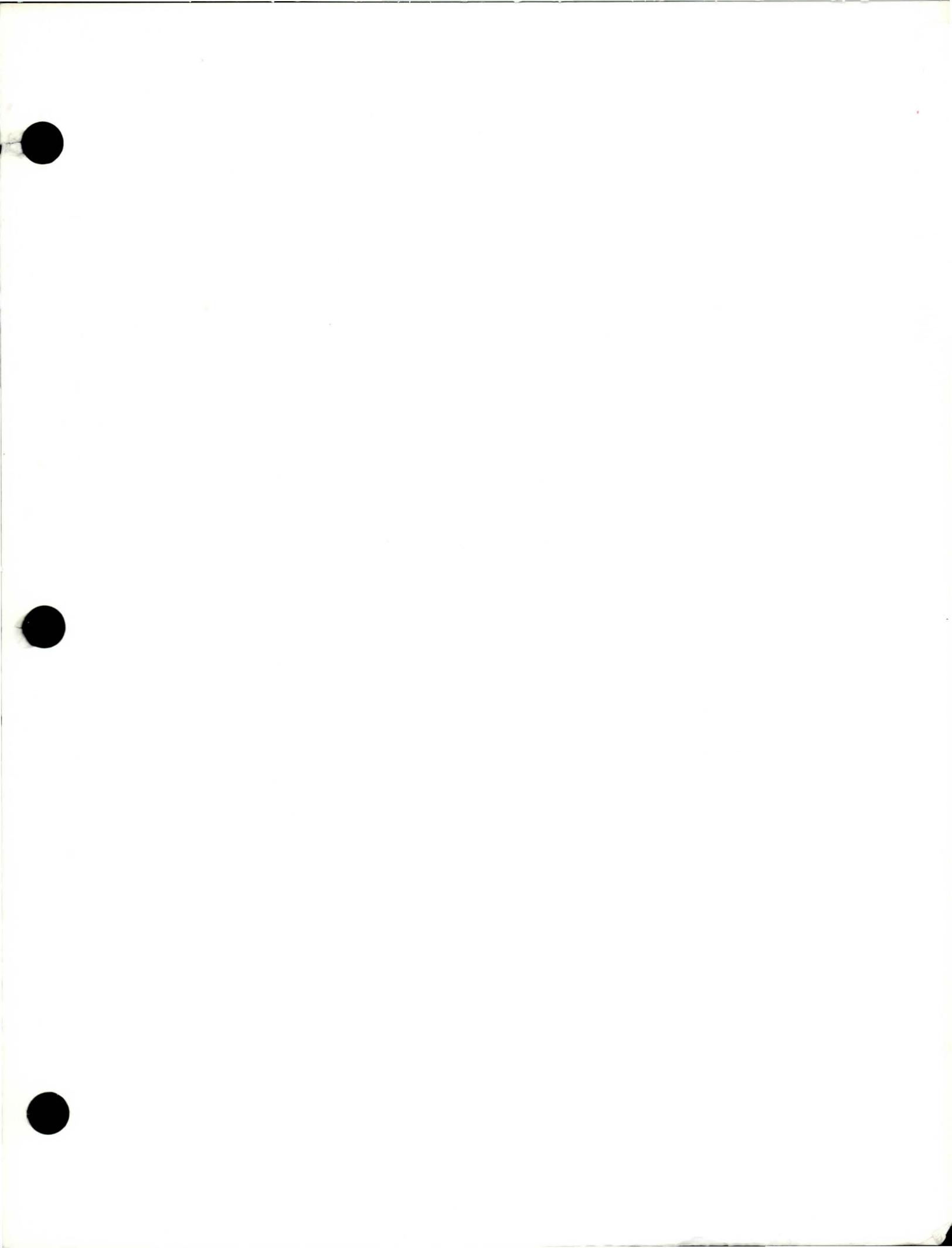
City/State/Zip: _____

(if accurate, please use the name and address that appears on your mailing label)

Telephone: _____

Complete and mail to:

Thompson Publishing Group
1725 K Street, N.W., Suite 200
Washington, D.C. 20006
Attn: TM



Stormwater Permit Manual

Bulletin

Volume 11, Number 6

January 2002

EPA-Sponsored TMDL Listening Session Raises Many Questions, Provides Few Answers for Panelists and Attendees

At the fifth and final listening session on the U.S. Environmental Protection Agency's (EPA) Total Maximum Daily Load (TMDL) program, participants and panelists had many questions, but received few answers about the best way to design and implement TMDLs for the nation's impaired waters.

The meeting, held Dec. 11, 2001, in Washington, featured a panel of EPA and state regulators, industry representatives and environmental organization representatives who participated in a lively roundtable discussion. The meeting continued in small groups that offered comments and questions to the approximately 300 audience members.

"The TMDL program should work within and with other successful [water] programs; it shouldn't be the [only] program," said panelist Thomas Morrissey, president of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA)

and director of the Planning and Standards Division of the Connecticut Department of Environmental Protection. This opinion reflects the concerns of many states and industry members that EPA has become too focused on TMDLs, rather than water quality as a whole.

"TMDLs are an important piece of water quality, but are not the only focus," Robert H. Wayland III, director of EPA's Office of Wetlands, Oceans and Watersheds, later countered.

Another concern was a provision of the current TMDL rule that would require states, and other TMDL-writing authorities, to promote public involvement in the process of listing impaired waters, developing and setting TMDLs, and implementing TMDLs.

(Continued on page 2)

EPA To Finalize CAFO Rule, Propose TMDL And Effluent Guideline Rules This Year

During 2002, the U.S. Environmental Protection Agency (EPA) expects to publish a proposed rule concerning the Total Maximum Daily Load (TMDL) program, a final rule concerning regulation of concentrated animal feeding operations (CAFOs) and proposed effluent guidelines and standards for the construction and development industry, according to EPA's regulatory plan and agenda (66 FR 62239, Dec. 3, 2001).

The effluent guidelines and standards for the construction and development industry will apply to construction associated with new development activities and will address stormwater runoff from construction sites during the active phase of construction, as well as post-construction runoff. A consent decree requires EPA to publish a notice of public rulemaking by March 31 and a final rule by March 31, 2004.

According to its agenda, EPA will develop design criteria for erosion and sediment controls and stormwater best management practices (BMPs), and

(Continued on page 3)

Inside This Issue ...

Storm Warnings	3
Updated Permit Requirements For Construction Activity	Tab 300
Updated Phase II Deadlines for Small MS4s	Tab 400
Updated State Information for New Jersey and Washington	Tab 800

TMDL Meeting

(Continued from page 1)

"Outside of this room, we don't get it. What's a TMDL?" said Howard Neukrug, director of watersheds for the Philadelphia Water Department, commenting on the need to educate the general public about TMDLs.

Richard A. Parrish, senior attorney at the Southern Environmental Law Center, questioned the validity of some of the participants' concerns, saying that many were already addressed in July 2000, when a final TMDL rule was published. In October 2001, EPA delayed the effective date of the rule from Oct. 1, 2001, to April 30, 2003.

Wayland emphasized the need for all the groups to work together. "We need to form partnerships among EPA, states, agriculture, timber and aquaculture to design and implement the TMDL program," he said. "The Clean Water Act didn't give states god-like authority nor god-like [funding] to implement this on their own." A recent EPA report estimated that the cost of implementing the TMDL program may be as high as \$4.3 billion per year (see *Bulletin*, September 2001, p. 1).

However, many environmentalists have criticized suggested low-cost solutions as being too lax. "Relying on voluntary action by industry is not going to solve anything," said Parrish.

The panel also discussed the adequacy of water quality standards, which TMDLs are meant to reflect. "It is important to have valid water quality standards in the first place," said Richard F. Schwer, senior environmental engineering consultant at Dupont. He questioned the validity of water quality standards that are unattainable with current technology.

"There are waters which have been impaired for many years, where there is no TMDL necessary," said Wayland. "We should first attain water quality standards before implementing TMDLs."

Several attendees echoed this concern saying relying on inaccurate, outdated or incomplete data to design TMDLs would cause further problems and unnecessary costs.

"The TMDL program should be based on good data," said David Salmonsens, legislative counsel for the American Farm Bureau Federation.

However, some environmentalists were concerned about more delays. "Re-reviewing water quality standards and data should not delay the TMDL program," said Joan Mulhern, senior legislative counsel for EarthJustice.

Some attendees suggested that a heavier reliance on "self-sampling" by industry could solve the incomplete data problem; others suggested using the U.S. Geological Survey's data more uniformly throughout the states.

The issue of the new TMDL rule potentially being attacked by numerous lawsuits, as its predecessor was, also was raised.

"We're forgetting this is not about lawsuits, it's about clean water," said Mulhern of EarthJustice, itself a plaintiff in several water quality lawsuits.

Nonpoint source pollution and stormwater were repeatedly mentioned as causes of water impairment, but few suggestions were offered on what, if any, changes should be made to the National Pollutant Discharge Elimination System program to correct this. ■

STORMWATER PERMIT MANUAL (USPS #0008-384) is published monthly by Thompson Publishing Group, Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. Periodicals Postage is Paid at Washington, D.C., and at additional mailing offices.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, William Stewart; Managing Editor, Luis Hernandez; **Editor, Kelly Gordon**. Annual subscription rate is \$524. Discounts for multiple subscriptions to this publication are available.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longsworth, Esq., Kelley, Drye & Warren, L.L.P.; Scott I. McClelland, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Kelly Gordon at (202) 739-9553; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2002 by Thompson Publishing Group, Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789. This newsletter for the *Stormwater Permit Manual* comes with a looseleaf update to existing pages of the *Manual*.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Iowa Company, CEO Plead Guilty to CWA Violations. Rockingham-Lunex Co., a metal fabrication plant in Pleasant Valley, Iowa, and the company's president and CEO, William T. Schmidt, pleaded guilty Oct. 25 to violating the Clean Water Act (CWA). Schmidt and his company were charged with discharging a toxic solvent into a storm drain that empties into marsh waters that flow into the Mississippi River, according to the U.S. Environmental Protection Agency (EPA). The plea agreement calls for Schmidt to serve eight months home confinement and pay a \$5,000 fine. The company will pay a \$10,000 fine and will be placed on probation for three years, during which it must develop and implement an environmental compliance plan.

Proposed NPDES Permit for Construction Activities on Indian Lands in Wisconsin. EPA Region 5 issued a draft National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges associated with construction activities on Indian lands in Wisconsin (66 FR 65957, Dec. 21, 2001). The proposed permit will address both Phase I and Phase II of the stormwater regulations, or construction sites of more than one acre. However, requirements for small sites of one to five acres will not take effect until March 10, 2003. Areas affected by the proposed permit will be: Bad River, Forest

County Potawatomi, Ho-Chunk Nation, Lac Courte Oreilles, Lac du Flambeau, Menominee, Oneida, Red Cliff, Sokaogon (Mole Lake), St. Croix and Stockbridge-Munsee Indian Reservations.

Several public hearings will be held to discuss the permit and receive comments, see Region 5's Web site for details www.epa.gov/r5water/npdestek/ndstma.htm. For more information on the draft permit, and to see a copy, go to www.epa.gov/r5water/npdestek/npdcfrp.htm. Comments will be accepted until Feb. 5. Send comments to: Brian Bell, NPDES Program Branch (WN-16J), EPA Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604; e-mail: bell.brianc@epa.gov.

EPA Budget Signed into Law. President George W. Bush signed into law Nov. 26, 2001, legislation (PL 107-73) that provides EPA with more than \$7.9 billion for fiscal year (FY) 2002. The agency's budget request was for \$7.3 billion, a \$56 million increase over FY 2001's request. However, the law provides EPA with \$75 million more than it was allotted last year. Nearly \$3.7 billion will go to states, tribes and EPA partners for implementation and enforcement of environmental programs, almost \$500 million more than last year. FY 2002 began Oct. 1, 2001. Several appropriations bills for other agencies and departments are awaiting enactment. ■

EPA Agenda

(Continued from page 1)

will implement the new requirements into the National Pollutant Discharge Elimination System (NPDES) stormwater permits for construction site owners and operators.

"EPA expects effluent reduction benefits from more than 20,000 construction projects each year," according to the agenda. EPA is considering construction site size exemptions to reduce the rule's impact on small dischargers.

"Construction and development projects contribute to stream impairment, because erosion and sediment controls (ESC) are not properly designed for active construction projects. The frequency of performance failure for ESCs is high due to inappropriate application, improper sizing and lack of maintenance," according to the agenda. "The guidelines [also] will contribute to a reduction in stream bank erosion, the source of significant downstream sedimentation, flooding and habitat destruction."

For more information on EPA's development of effluent guidelines and standards for construction and development activities see www.epa.gov/ost/guide/construction.

TMDL Program

A notice of proposed rulemaking for the TMDL program is scheduled to be published in June, according to the agenda. The rule's effective date was delayed in October 2001 to allow EPA to re-evaluate the proposal. EPA will develop the new rule using a consensus-building process, including listening sessions, to ensure the rule is well-supported and to consider new information, such as a recent National Academy of Sciences report (see related story, p. 1). According to the agenda, final action on the rule is expected in April 2003.

NPDES Regulation

EPA must finalize its revision of effluent limitations and NPDES permit regulation for CAFOs by Dec. 15, as required by a court order. EPA asserts that even with existing regulation of CAFOs, "feedlot operations are substantial contributors of nutrients in surface waters that have severe anoxia (low levels of dissolved oxygen) and problem algae blooms."

EPA's agenda also includes a plan for streamlining the NPDES program. EPA would issue several

(Continued on page 4)

EPA Agenda

(Continued from page 3)

rulemaking packages to revise Clean Water Act (CWA) parts 122, 123 and 124 to eliminate redundant regulations, provide clarification and remove or streamline unnecessary procedures. Although minor, the changes would affect both NPDES authorities and permittees. A proposal is not expected until November 2006, with final action due in August 2007.

EPA also will publish its biennial effluent guidelines plan by Aug. 28, as required by CWA and agreed to under a consent decree. The plan will discuss the status of ongoing rulemakings, development of additional rules and preliminary studies. A proposed plan is expected in February.

In 2002, EPA plans to finalize revisions to effluent guidelines and standards for the following point source categories:

- iron and steel manufacturing;
- the bleached papergrade kraft subcategory of the pulp, paper and paperboard category; and
- coal mining.

Also this year, EPA plans to publish proposals to revise effluent guidelines and standards in the aquatic animal production category and the meat products point source category. No deadlines have been set for final action on effluent guidelines and standards for the pulp, paper and paperboard category and the dissolving kraft and dissolving sulfite subcategories of the pulp, paper and paperboard point source category.

Also in its agenda, EPA noted that it withdrew, effective October 2001, its plans to revise the NPDES industrial permit application requirements and form 2C.

Within the year, EPA plans to conduct a joint rulemaking with the Department of the Army to revise the regulatory definition of "waters of the United States" to clarify the jurisdictional status of so-called isolated intrastate waters and wetlands under CWA. EPA expects the notice of proposed rulemaking to be completed in December 2002, with final action on the proposal by December 2003. EPA also will revise the definition of "fill material" under Section 404 of CWA to make the U.S. Army Corps of Engineers' and EPA's definitions more consistent with one another. The change was to have been finalized by December 2001. ■

Clear away the confusion of EPCRA compliance with the . . .

COMMUNITY RIGHT-TO-KNOW MANUAL

This two-volume, looseleaf handbook provides all the help you need to comply with the Emergency Planning and Community Right-To-Know Act.

The Manual includes:

- ▲ Straightforward explanations of all EPCRA regulations.
- ▲ Management checklists and flowcharts, sample forms with clear-cut directions, and contacts for getting state forms and information.
- ▲ Monthly news bulletins and update pages so you're always abreast of the latest decisions, changes and developments.

TRIAL SUBSCRIPTION CERTIFICATE

COMMUNITY RIGHT-TO-KNOW MANUAL

YES! Please enter my one-year subscription and send me the *COMMUNITY RIGHT-TO-KNOW MANUAL* to use and evaluate risk-free for 30 days.

Within that time, I'll either return the materials and owe nothing . . . or honor your invoice for \$398. I understand my subscription includes the *MANUAL*, monthly updates and newsletters, and that I will be billed annually until I decide to cancel my subscription.

Name _____

Title _____

Organization _____

Address _____

City _____ State _____ Zip _____

Signature _____

(REQUIRED ON ALL ORDERS.)

BL190172

Bill me. (\$398 plus \$19.50 postage and handling.)

Payment enclosed. (\$398)

Please make check payable to Thompson Publishing Group, Inc. Residents of DC, FL and MD, please add appropriate sales tax.

SARA

CALL
1-800-677-3789

MAIL TO:
Thompson Publishing Group, Inc. • Subscription Service Center
P.O. Box 26185 • Tampa, FL 33623-6185

Stormwater Permit Manual

Bulletin

Volume 11, Number 5

December 2001

Guidance on Designing and Implementing Measurable Goals for Phase II Small MS4s Released by Office of Water

The U.S. Environmental Protection Agency's (EPA) Office of Water has released guidance information for designing measurable goals for Phase II small municipal separate storm sewer systems (MS4s).

The guidance documents, which currently are only available online, will assist small MS4 operators in developing and integrating measurable goals within their stormwater management programs (SWMPs)—a Phase II requirement.

National Pollutant Discharge Elimination System (NPDES) permitting authorities must issue general permits for small MS4s by Dec. 9, 2002. MS4s must submit their notice of intent for permit coverage within 90 days of the permit's issuance, or by March 10, 2003, whichever is earlier.

The Phase II rule requires measurable goals to quantify the progress of program implementation

and the performance of MS4s' best management practices (BMPs). EPA recommends that MS4s develop a stormwater program with a variety of short- and long-term goals, the guidance states.

"Measurable goals allow permitting authorities to assess the effectiveness of stormwater controls known as BMPs," according to the guidance. BMPs and measurable goals should be key components of an MS4's SWMP, the guidance states. Part 2 of the guidance is a step-by-step guide on how to design and select measurable goals.

"At a minimum, [MS4] measurable goals should contain descriptions of actions [the MS4] will take to implement each BMP, what [the MS4] anticipate[s] to be achieved by each goal, and the frequency and dates for such actions to be taken," the guidance states.

(Continued on page 5)

Watershed Forum Calls for Integrated Approach to TMDL Development

Total maximum daily load (TMDL) standards have greatly contributed to improved water quality, but future standards must address nonpoint sources, such as urban runoff, farms and ranches, according to a National Watershed Management Forum report.

The forum—which included federal, state, local, tribal and nongovernment entities—was held June 27-July 1, 2001, in Arlington, Va., to discuss current watershed protection efforts and make recommendations for future efforts. More than 480 people from around the country participated to develop a more coordinated approach to watershed protection. The *Final Report of the National Watershed Forum: Building Partnerships for Healthy Watersheds* summarizes the final recommendations developed by the group.

One of the discussion groups focused on the role TMDLs play in watershed protection efforts. The group noted that TMDLs have greatly contributed to

(Continued on page 2)

Inside This Issue ...

EPA Announces Additional Data, Requests Further Comment Regarding Proposed CAFO Regulation	3
Storm Warnings	4
Updated State Information For Ohio and Virginia	Tab 900

Watershed Forum

(Continued from page 1)

improving water quality, particularly through the reduction of point source discharges. In the future, however, more watershed protection efforts must focus on nonpoint sources of pollution. For TMDLs to continue to be an effective tool in watershed protection, they must address more nonpoint sources of pollution, the report says.

The discussion group also believes that TMDLs are sometimes being implemented in ways that are counter-productive to watershed management. Changing the approach to TMDLs to one of more effective watershed management is an important factor for the future of TMDLs.

Federal and state governments, and watershed protection groups, should focus their efforts on developing priority strategies for achieving continued success and clear improvement in implementation and regulation of TMDLs, the report says.

Part of this challenge, according to the report, is the inconsistent interpretation and implementation of such standards among the states—and, to a lesser degree, regions and federal agencies—including issues associated with inconsistent standard-setting, regulation interpretation and implementation, and listing of impaired water bodies.

“There are also inconsistencies within the states associated with the lack of integration between water quality standard setting and TMDLs,” the report states.

The TMDL discussion group highlighted the development of the U.S. Environmental Protection

Agency’s Draft 2002 Consolidated Listing Guidance as a unique opportunity to work with stakeholders to improve the process of listing impaired water bodies.

In addition, the group noted that more proactive alternatives must be developed to address impaired water quality. Better efforts to protect water bodies should be developed so TMDLs are not needed to help bring them back.

The group listed recommendations for government and environmental groups to improve the use of TMDLs in watershed management. The key recommendations on the federal level include:

- Develop criteria, protocols and methodologies to create a consistent/compatible scientific approach to listing and de-listing among states. Develop consensus around criteria for prioritizing water bodies to include on impaired waters lists.
- Establish minimum levels of information needed to list and de-list impaired waterbodies. Include explicit plans for obtaining data for watersheds for which there is insufficient information.
- Develop agreements and methods to deliver a unified (one source) message to the public, grass roots watershed groups and landowners regarding TMDLs.

The forum’s recommendations for states include:

- Incorporate the TMDL development and implementation process with overall watershed management approaches, farm plans, monitoring and other state-led activities. Coordinate watershed

STORMWATER PERMIT MANUAL (USPS #0008-384) is published monthly by Thompson Publishing Group, Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. Periodicals Postage is Paid at Washington, D.C., and at additional mailing offices.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

For subscription questions, call (800) 677-3789. Editorial Director, Kathy Duntzen; Executive Editor, William Stewart; Managing Editor, Luis Hernandez; **Editor, Kelly Gordon**. Annual subscription rate is \$524. Discounts for multiple subscriptions to this publication are available.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Kelly Gordon at (202) 739-9553; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group, Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789. This newsletter for the *Stormwater Permit Manual* comes with a looseleaf update to existing pages of the *Manual*.

“This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.” —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

management activities using a rotating watershed approach and emphasize adaptive management approaches and require agencies to actively seek local stakeholder input early and often in the TMDL development and implementation process.

- Focus on strategically addressing water quality problems and provide early warning systems to identify water bodies that are deteriorating so that preventive actions can be taken prior to listing.
- Consider third-party TMDLs as an innovative alternative to help address the current backlog of TMDLs and decrease the potential for lawsuits. Promote third-party TMDL development through flexible funding mechanisms.
- Strengthen water quality standards to help improve the TMDL process.

Finally, the report also had recommendations for watershed groups:

- Foster collaborative partnership approaches from the outset of TMDL development to

improve the outcome. For example, implement collaborative team approaches among federal, state and local agencies that coordinate TMDL development and implementation.

- When communicating to the general public, articulate information about TMDLs in terms of "clean water." Many people are confused about TMDLs, their purpose and their role in restoring impaired waters. The public, however, understands "clean water."
- Provide a clearinghouse and communications network for stakeholders interested in information relevant to TMDL development and implementation.

The report's authors recognize that not all these recommendations will be relevant for every situation. However, it is critical that watershed partnerships understand the range of alternatives available to them and that information regarding successful strategies be shared, the report states.

A copy of the report can be downloaded from the EPA Office of Water Web site, www.epa.gov/ow/waternews/2001/110801.html. ■

EPA Announces Additional Data, Requests Further Comment Regarding Proposed CAFO Regulation

The U.S. Environmental Protection Agency (EPA) Assistant Administrator for the Office of Water, G. Tracy Mehan III, signed a notice of data availability Nov. 9 regarding the proposed regulations for concentrated animal feeding operations (CAFO).

EPA published the proposed rule on Jan. 12, 2001 (66 FR 2959) that would revise and update two regulations that ensure manure, wastewater and other process water generated by CAFOs do not impair water quality. These two regulations include the National Pollutant Discharge Elimination System (NPDES) provisions that define which operations are CAFOs and establish permit requirements and effluent limitations guidelines (ELG), for feedlots, which establish the technology-based effluent discharge standards for CAFOs. In the proposal, EPA specifically solicited comment on 28 issues in addition to a solicitation for general comments.

The notice makes available for public review new data and information submitted to EPA during the public comment period on the proposal, including new data received from industry groups, the general public and the U.S. Department of Agriculture.

According to the notice, EPA is considering changes to certain aspects of the proposed rule, including changes to the technology options considered for regulations, as well as changes to the underlying data and methodology that EPA uses to estimate costs and financial impacts associated with the regulation.

The notice presents a discussion of the new data and the changes EPA is considering to refine its cost and economics model, its nutrient loading and benefits analysis, the proposed NPDES permit program regulations, and the proposed ELG regulations.

The notice seeks further public comment on any and all aspects of the specific data and issues identified in the notice. EPA emphasizes that it is seeking comment only on these specific issues and is not reopening any other issues identified in the CAFO proposal. Comments must be submitted by Jan. 15, 2002.

At press time, the notice was not available in the *Federal Register*, but it was expected to be published in late November. The rule also can be downloaded from EPA's Web site, at www.cfpub.epa.gov/npdes/afo/nodsa.cfm?program_id=7. ■

Storm Warnings

Stormwater-Related News in Capsule Format

Draft NPDES Construction Dewatering Permit Available. The U.S. Environmental Protection Agency (EPA) Region 1 issued a notice of availability Oct. 29 of the draft National Pollutant Discharge Elimination System (NPDES) general permit for construction dewatering discharges to certain Massachusetts and New Hampshire waters (66 FR 54526). The existing general permit expired May 1. Construction dewatering activity is defined as pumped or drained discharges of groundwater and/or stormwater from excavations or other accumulation points associated with construction activity. The reissued draft permit establishes notice of intent requirements, effluent limitations, standards, prohibitions and management practices for construction dewatering activity discharges. The comment period on the draft ended Nov. 28. The draft permit is available at www.epa.gov/region01/npdes/index.html.

NPS, Wetlands Draft Guidance Released. EPA announced Nov. 6 the availability of draft technical guidance for protecting and restoring wetlands and riparian areas from nonpoint source pollution (66 FR 56106). The guidance is intended to provide technical assistance to state program managers and others on the best available, economically achievable means of protecting and restoring wetlands and riparian areas from nonpoint source (NPS) pollution. The guidance also provides assistance on the use of vegetated treatment systems to control NPS pollution. The draft document enhances, but does not replace, the technical information contained in EPA's 1993 *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Water*, according to EPA.

Comments on the draft *National Management Measures to Protect and Restore Wetlands and Riparian Areas for the Abatement of Nonpoint Source Pollution* will be accepted until Feb. 4, 2002, and should be sent to Chris Solloway, Assessment and Watershed Protection Division (4503-F), EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460; (202) 260-3008; fax (202) 260-7024; e-mail solloway.chris@epa.gov. The guidance is available at www.epa.gov/owow/nps/wetmeasures, or by contacting Solloway.

EPA Issues Revised Impaired Waters List for Hawaii. EPA Region 9 announced Nov. 19 it is soliciting comment on its Nov. 15 decision revising Hawaii's 1998 impaired waters list. EPA's reconsideration of Hawaii's list was ordered Sept. 5 by the Hawaii District Court. EPA's revised list adds 92 impaired waterbodies and additional pollutants for 15 waters already listed on the state's Clean Water Act (CWA) Section 303(d) list. The revision will require Hawaii to prepare total maximum daily loads (TMDLs) for the additional waterbodies and pollutants.

Written comments on the revised list will be accepted until Dec. 31, and should be sent to David W. Smith, TMDL Leader, Water Division, EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105; (415) 972-3416; fax (415) 947-3537.

EPA, Standard Steel Reach Agreement on CWA Violations. EPA announced a proposed consent agreement with Standard Steel, a division of Freedom Forge Corp., to resolve violations of the CWA and other environmental laws (66 FR 49379, Sept. 27, 2001; 66 FR 51667, Oct. 10, 2001). Standard Steel voluntarily disclosed violations of the company's NPDES permit, Spill Prevention Control and Countermeasure (SPCC) plan, Clean Air Act Title V Operating Permit and Resource Conservation and Recovery Act (RCRA) hazardous waste violations under EPA's audit policy.

The iron and steel mill with facilities in Burnham and Latrobe, Pa., failed to meet all the requirements of its NPDES general permit. Specifically, the facilities failed to conduct an annual site stormwater compliance evaluation, update documents relating to the facility's method to control stormwater discharges, update the emergency coordinator list and maintain a discharge certification and authorization to commit resources. EPA waived the gravity-based penalty amount of \$275,136. The proposed settlement is \$14,350, which is the amount of economic benefit EPA estimates the company gained by delaying its NPDES, SPCC, Title V and RCRA compliance.

EPA Extends Louisiana TMDL Comment Period. EPA announced Nov. 15 that it would extend the comment period on TMDLs for 45 impaired Louisiana waterways from Nov. 14 to Nov. 30 (66 FR 57465). EPA was required by a court order to timely add or delete waters to the state's CWA 303(d) list (see *Bulletin*, November 2001, p. 5).

Montana DEQ Assesses Stormwater Penalty. The Montana Department of Transportation (MDT) and Riverside Contracting Inc. paid a \$2,200 penalty to the Montana Department of Environmental Quality (DEQ) in settlement of MDT's and Riverside Contracting's stormwater violations, which occurred on the Helena, Interstate 15 project in Lewis and Clark County, Mont. MDT and Riverside failed to maintain best management practices, which violated their stormwater permit.

LGEAN Offers Consultant Database. The Local Government Environmental Assistance Network (LGEAN) now offers a searchable database on its Web site at www.lgean.org/consultants that lists environmental consultants and firms. The free database is searchable by service area, location, keyword or company name. ■

Measurable Goals

(Continued from page 1)

One of the primary purposes of measurable goals is to evaluate whether the SWMP is reducing the discharge of pollutants to the maximum extent practical (MEP). According to the guidance, permitted MS4s will determine what the MEP is on a site-by-site basis, considering factors such as conditions of receiving waters and specific local concerns (e.g., protection of a significant water resource, population density, soil type or land use). EPA chose this flexible regulatory approach because the nature of discharges from MS4s varies from region to region, the guidance stated.

"The definition of MEP should adapt continually to both current conditions and BMP effectiveness, but ultimately, successive iterations of the mix of BMPs and measurable goals should be made to achieve the objective of meeting water quality standards," the guidance stated.

Phase II of the municipal stormwater permitting program requires MS4s to develop and implement SWMPs that include six minimum control measures: public education and outreach on stormwater impacts; public involvement/participation; illicit discharge detection and elimination; construction site runoff control; post-construction stormwater management in new development and redevelopment; and pollution prevention/good housekeeping for municipal operations.

For each minimum control measure, MS4s must select and implement BMPs and measurable goals that effectively address stormwater. EPA earlier released a menu of BMPs that may be used by MS4s in developing their SWMPs (see *Bulletin*, September 2001, p. 1). Part 3 of the guidance provides examples of BMPs for each of the minimum control measures and their corresponding measurable goals.

NPDES permitting authorities will review identified BMPs and measurable goals and determine if they are likely to reduce pollutants to the MEP, protect water quality and fulfill the Clean Water Act's requirements, according to the guidance. If the permitting authority does not think that the MS4 operator is reducing pollutants to the MEP, the authority can request that the MS4 revise its mix of BMPs and measurable goals, the guidance said.

"EPA recommends that [MS4s] use [their] BMPs and measurable goals to help establish a baseline against which future progress at reducing pollutants to the MEP can be measured," the guidance said. "For example, information on current water quality conditions, numbers of BMPs already implemented and the public's current knowledge/awareness of stormwater management would be useful in setting this baseline."

EPA "strongly recommends" that measurable goals include:

- the activity, or BMP, to be completed;
- a schedule or date of completion; and
- a quantifiable target to measure progress toward achieving the activity or BMP.

The guidance emphasizes the importance of developing appropriate BMPs for municipalities' SWMPs. Some questions MS4s should consider when prioritizing the development of their SWMP are:

- Can existing municipal functions be modified to address water quality concerns and are municipal lands or rights-of-way available for retrofits?
- What are the pollutant loadings from the sources that the program addresses, and can the program reduce the pollutants?
- What are the physical characteristics of the watershed and receiving waters?
- What are the climatic conditions, soil types and watershed delineation criteria?
- What is the current population of the municipality, and what is known about development patterns, projected growth rates and demographics?

Other sections of the guidance address conducting self-audits, developing an implementation plan for all Phase II requirements, and using environmental indicators to document the effectiveness of BMPs and the SWMP as a whole.

The guidance is divided into five parts: (1) background and regulatory context; (2) process for developing measurable goals; (3) examples of BMPs and associated measurable goals; (4) process for developing a stormwater management program; and (5) environmental indicators. It currently is not downloadable, but each part may be printed from EPA's Web site at www.epa.gov/npdes/stormwater/measurablegoals/index.htm. ■

Questions?

Customer Care: (800) 677-3789

E-mail the editor: STRM@thompson.com

Web site: www.thompson.com

Save \$ and time while improving safety with the single most effective PSM compliance resource available anywhere . . .

CHEMICAL PROCESS SAFETY REPORT

The information, guidance and ready-to-use materials to:

- ▶ Understand all of OSHA's chemical process safety requirements
- ▶ Coordinate your efforts to comply with OSHA's PSM standard and EPA's Risk Management Program regulations
- ▶ Manage your PSM program with advice from industry experts
- ▶ Maintain your program as interpretations and consensus standards evolve
- ▶ Avoid the most frequent flaws found in PSM programs with guidance from top industry experts

CALL 1-800-677-3789 or FAX this page to 1-800-999-5661 to begin your risk-free trial subscription.

✂

TRIAL SUBSCRIPTION CERTIFICATE

CHEMICAL PROCESS SAFETY REPORT

YES! Please enter my one-year subscription to *CHEMICAL PROCESS SAFETY REPORT* to use and evaluate risk free for 30 days. Within that time, I'll either return the materials and owe nothing . . . or honor your invoice for \$481. I understand my subscription includes the looseleaf manual, monthly newsletters, update pages and access to the Editorial Hotline. I'll be billed annually until I wish to cancel my subscription.

Bill me. (\$481 plus \$19.50 postage and handling)

Payment enclosed. (\$481)

Please make checks payable to Thompson Publishing Group, Inc.
Residents of D.C., FL and MD, please add appropriate sales tax.

Charge my credit card: (\$481)

VISA MasterCard American Express

Card # _____ Exp. ____/____

Complete and mail to:

Thompson Publishing Group, Inc. • Subscription Service Center
P.O. Box 26185 • Tampa, FL 33623-6185

Prices are subject to change.

Name
Title
Organization
Address
City/State/Zip
Telephone
E-mail address
Signature (REQUIRED ON ALL ORDERS)

CHEM

BL190172

Stormwater Permit Manual

Bulletin

Volume 11, Number 4

November 2001

Alabama Supreme Court Upholds State Stormwater Law From Landowners' Challenge, Chief Justice Dissents

The Alabama Supreme Court, in a 6-2 vote with one recusal, upheld the state's stormwater law from a challenge by landowners who alleged that the law violated the state's constitution (*Densmore v. Jefferson County*, No. 1000264 (Sept. 21, 2001)).

The landowners argued that the law was not enacted properly and that the fees charged by the county amounted to an unconstitutional levy.

Specifically, the landowners charged that the Alabama Storm Water Act was a "local" law and not a "general" law. A "general" law applies either to the whole state, or to one or more municipalities of the state. According to Amendment 397 of the Alabama constitution, no law that applies to only one municipality is a general law, "unless notice of the intention to apply therefor shall have been given and shown as provided in Section 106 of the Constitution for

special, private or local law." Plaintiffs argued that no such notice was provided.

The trial court did not address the notice issue, but instead held that any unconstitutional infirmities in the adoption of the act would have been cured by its codification as part of the Code of Alabama. The Supreme Court cited past precedent that stated that courts should defer to the legislature "unless it is clear beyond a reasonable doubt that it is violative of the fundamental law." The Supreme Court upheld this assessment, citing precedents which held that legislative procedures are cured when that act is incorporated into a state code.

The plaintiffs also argued that the stormwater fee is an illegal, unconstitutional tax because the primary purpose of the fee is to raise revenue and there is no

* Problem w/ fees

(Continued on page 3)

Texas Issues Final Industrial MSGP, Warns of Incomplete NOI Forms

The Texas Pollutant Discharge Elimination System (TPDES) multi-sector general permit (MSGP) for industrial activities was issued and took effect Aug. 20. The permit replaces the U.S. Environmental Protection Agency's 1995 National Pollutant Discharge Elimination System (NPDES) MSGP. Facilities covered under the 1995 NPDES permit have until Nov. 19 to submit their notice of intent (NOI) for permit coverage (see *Bulletin*, July 2001, p. 3).

The permit, No. TXR050000, was approved by the Texas Natural Resource Conservation Commission (TNRCC) May 23, but was not signed by the executive director until Aug. 20. The permit covers stormwater discharges from industrial activities in 30 sectors just as the federal MSGP issued October 2000 does (see Appendix 1(e) of the *Manual*). Certain facilities not regulated by the 1995 NPDES MSGP may be covered by the TPDES MSGP depending on whether the industrial activity is regulated under the permit,

(Continued on page 6)

Inside This Issue ...

General Permit Proposed for N.M., Okla. Egg Producers	2
Storm Warnings	4
Updated General Permitting Information	Tab 300
Updated State Information For New Mexico	Tab 800

General Permit Proposed for N.M., Okla. Egg Producers

The U.S. Environmental Protection Agency (EPA) proposed a National Pollutant Discharge Elimination System (NPDES) general permit for discharges from egg production facilities in New Mexico, Oklahoma and Indian lands in the two states (66 FR 50646, Oct. 4, 2001).

The proposed permit is part of a "Project XL" agreement between EPA and the United Egg Producers, a farm cooperative that represents egg producers nationwide. Project XL (eXcellence and Leadership) is an EPA initiative intended to develop innovative and cost-effective methods of achieving environmental protection. This project will allow eligible egg producers to obtain NPDES permit coverage under a less costly and complex general permit that is tailored to their industry.

The Project XL agreement would require participating facilities to comply with the NPDES permit terms, as well as implement a multimedia environmental management system (EMS). An EMS manages numerous environmental impacts, including those not regulated by the Clean Water Act, such as odor or pest control. Each facility's EMS would be required to pass an independent third-party audit before its operators could apply for permit coverage. Information on audit results will be provided to regulatory authorities and made available to local stakeholders. Ongoing audits will be conducted, and the results made publicly available.

Owners or operators of egg production operations (EPOs) seeking permit coverage would be required to submit a notice of intent; evidence that an EMS has been developed and implemented; results of a successful third-party audit; and evidence that public notice has been given indicating that the EPO has

passed the audit, intends to submit an NOI, has sent notice directly to local stakeholders and established a point of contact for public inquiries.

Existing facilities wishing to be covered under the proposed permit would be required to develop and implement a site-specific comprehensive nutrient management plan (CNMP) within two years of the effective date of the permit. CNMPs would need to include animal outputs; manure handling and storage; land application of manure and wastewater; site management; and recordkeeping. New EPOs would be required to submit an NOI and have in place a CNMP and an EMS 180 days before beginning operations.

Several categories of EPOs are ineligible for coverage under the proposed permit, including those that have failed a third-party audit or been notified by EPA of ineligibility due to a history of noncompliance.

The proposed permit includes nine minimum standards to protect water quality, including providing and maintaining buffer strips that are sufficient to minimize pollutant discharges to waterways near animal confinement, manure storage and land application areas. These practices may include residue management, conservation crop rotation, grassed waterways, strip cropping, vegetative buffers, terracing and diversion.

The other minimum standards concern diverting clean water, preventing direct contact of animals with waters, animal mortality, chemical disposal, proper operation and maintenance, recordkeeping and testing, maintaining proper storage capacity, and

(Continued on page 5)

STORMWATER PERMIT MANUAL (USPS #0008-384) is published monthly by Thompson Publishing Group, Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. Periodicals Postage is Paid at Washington, D.C., and at additional mailing offices.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, William Stewart; Managing Editor, Luis Hernandez; **Editor, Kelly Gordon**. Annual subscription rate is \$439. Discounts for multiple subscriptions to this publication are available.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Kelly Gordon at (202) 739-9553; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group, Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789. This newsletter for the *Stormwater Permit Manual* comes with a looseleaf update to existing pages of the *Manual*.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Alabama Stormwater

(Continued from page 1)

relationship between the amount of the fee and the benefit each property owner receives from the Storm Water Management Authority.

The Supreme Court held that the stormwater "tax" is really a "fee." Jefferson County argued that the federal Clean Water Act requires the county to control stormwater and that all of the stormwater fees collected must be used exclusively to fund the stormwater program mandated by state and federal law. The court concluded that the fee was adopted as a result of state and federal mandates, and, as such, is more of a fee than a tax for the purpose of raising general revenue.

The plaintiffs also argued that there is no relationship between the amount of the stormwater fee imposed on a parcel of property and the amount of benefit the property owner receives. Jefferson County argued that Alabama law does not require that fees comport precisely with the benefits provided to property owners. The state Supreme Court agreed with the defendants, citing case precedent that the benefit conferred on a property owner need not relate directly to the exact amount paid.

Chief Judge Dissents

The Chief Justice of the Alabama Supreme Court, Roy Moore, wrote the dissenting opinion. He stated that Jefferson County's stipulation that it did not

provide notice of the law shows a direct violation of the amendment requiring notification of a local law.

In addition, the codification of the law, Moore argued, could not cure the constitutional defect embedded in the Storm Water Act. He stated that the Alabama Supreme Court, in at least eight cases over the past 51 years, has held such laws invalid, despite their designation as general laws. He also cited the U.S. Supreme Court's decision in *Marbury v. Madison* that held that when a conflict arises between a statute and a provision of the U.S. constitution, the law of the constitution takes precedent.

Finally, Moore raised an issue not addressed by the plaintiffs in the case—the issue of whether any municipalities in Alabama can be classified as Class I municipalities. The state law authorizes creation of a "storm water management authority in municipalities within the state and the county governing bodies in which the Class I municipalities are located." A Class I municipality is defined as any city "with a population of 300,000 inhabitants or more."

The Supreme Court established a precedent that the population of cities for the purposes of legislation be determined by the most recent decennial census. However, the population of Alabama's largest city, Birmingham, as determined by the 1990 federal census, was 265,965 people. The preliminary count from the 2000 census is 242,820.

"Because no city in Alabama has met the criteria for being a Class I municipality, the Act does not apply anywhere in Alabama," Moore wrote. ■

Statement of Ownership, Management and Circulation		
1. Title of Publication: Stormwater Permit Manual	2. Publication No. 008-384	3. Filing Date: October 28, 2001
4. Frequency of Issue: Monthly	5. No. of Issues Published Annually: 12	6. Annual Subscription Price: \$439.00
7. Complete Mailing Address of Known Office of Publication: 1725 K St. N.W., Suite 700, Washington, D.C. 20006		
8. Complete Mailing Address of Headquarters of General Business Offices of the Publisher: 1725 K St. N.W., Suite 700, Washington, D.C. 20006		
9. Name and Address of Publisher, Editor: (a) Daphne Musselwhite, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (c) Kelly Gordon, 1725 K St., N.W., Suite 700, Washington, D.C. 20006		
10. Owner: Thompson Publishing Group, Richard E. Thompson, 1725 K St. N.W., Suite 700, Washington, D.C. 20006		
11. Known Bondholders, Mortgages, and other Security Holders: None		
12. Tax Status (For completion by nonprofit organizations authorized to mail at special rates): None		
13. Publication Title: Stormwater Permit Manual		
14. Issue Date for Circulation Data Below: September 2001		
15. Extent and Nature of Circulation	Average No. Copies Each Issue During Preceding 12 Months	Actual No. Copies of Single Issue Published Nearest to Filing Date
A. Total No. of Copies Printed (Net press run)	958	900
B. Paid and/or Requested Circulation:		
(1) Paid/Requested Outside-County Mail Subscriptions	611	555
(2) Paid In-County Subscriptions	0	0
(3) Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Non-USPS Paid Distribution	0	0
(4) Other Classes Mailed Through the USPS	0	0
C. Total Paid and/or Requested Circulation (Sum of 15b(1), (2), (3) and (4))	611	555
D. Free Distribution by Mail (Samples, complimentary, and other free)		
(1) Outside-County	14	14
(2) In-County	0	0
(3) Other Classes Mailed Through the USPS	0	0
E. Free Distribution Outside the Mail (Carriers or other means)	0	0
F. Total Free Distribution (Sum of 15d and 15e)	14	14
G. Total Distribution (Sum of 15c and 15f)	625	569
H. Copies not Distributed	333	331
I. Total (Sum of 15g and h)	958	900
Percent Paid and/or Requested Circulation (15c/15g x 100)	98%	98%
16. Publication of Statement of Ownership. Publication required. Will be printed in the November 2001 issue of this publication.		
17. I certify that the statements made by me above are correct and complete. Kelly Gordon, Editor		

Storm Warnings

Stormwater-Related News in Capsule Format

TMDL Deadline Extension Finalized, EPA Announces Listening Sessions. The U.S. Environmental Protection Agency (EPA) has finalized the extension of the effective date of the total maximum daily load (TMDL) rule from Oct. 1, 2001, to April 30, 2003 (66 FR 53044, Oct. 18, 2001). The agency announced its intent July 16 to extend the rule's deadline (see *Bulletin*, August 2001, p. 1). The majority of the approximately 100 comments that EPA received about its decision supported the rule's postponement. EPA also extended the deadline by which states are required to submit the next list of impaired waters from April 1, 2002, to Oct. 1, 2002.

For more information, contact Françoise M. Brasier, EPA Office of Wetlands, Oceans and Watersheds (4503F), 1200 Pennsylvania Ave., N.W., Washington, DC 20460, (202) 401-4078, or see www.epa.gov/owow/tmdl/defer.

EPA also announced a series of listening sessions for the general public and TMDL stakeholders (66 FR 51429, Oct. 9, 2001). Four of the sessions will focus on specific issues including: National Pollutant Discharge Elimination System (NPDES) permitting pre- and post-TMDL, implementation of TMDLs addressing nonpoint sources, scope and content of TMDLs, and EPA's role and schedule for TMDL development. The four sessions will be held Oct. 22-23 in Chicago, Nov. 1-2 in Sacramento, Calif., Nov. 7-8 in Atlanta, and Nov. 15-16 in Oklahoma City. The fifth session, summarizing the initial meetings, will be held Dec. 11 in Washington. For more information or to register, see www.epa.gov/owow/tmdl/meetings, fax (703) 934-1057, or contact Anne C. Weinberg, at the above address and phone number.

EPA, California DOT Settle NPDES Violations. Under a proposed consent agreement, the California Department of Transportation would pay a civil penalty of \$137,500 to EPA for various discharges from its "Route 56 construction project" near Poway, Calif. (66 FR 49382, Sept. 27, 2001). The discharges to Deer Creek and Los Penasquitos Creek in San Diego County were in violation of the project's NPDES permit. Further information is available from Danielle Carr, Regional Hearing Clerk, EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105; (415) 744-1391.

EPA, Montana Order Developers to Stop CWA Violations. EPA and the Montana Department of Environmental Quality (DEQ) issued a compliance order requiring developers and landowners of a large, residential development in Big Sky, Mont., to stop releasing sediment into tributaries of the Gallatin River, to stop filling nearby wetlands and to fully

implement required stormwater controls, according to EPA Region 8.

Repeated inspections of the development by EPA, DEQ and the U.S. Army Corps of Engineers resulted in citations for several violations of the Clean Water Act (CWA) related to the construction of a golf course, ski runs and roads. The order, which does not seek civil penalties, was issued to Tim Blixseth, Yellowstone Mountain Club, Yellowstone Development LLC; Blixseth Group Inc.; The Ranches at Yellowstone Club LLC; and Boyne USA Inc. To correct the violations, the respondents must implement erosion control measures; delineate wetlands; submit a long-term site restoration and monitoring plan; obtain written authorization from the Corps for any Corps-permitted activity; and comply with all requirements of the site's stormwater general permit.

CEO of Ohio Company Pleads Guilty to Stormwater Violation. Ernest Fisco of Beachwood, Ohio, the chief executive officer of AAA Pipe Cleaning Corp., pleaded guilty Sept. 28 to ordering employees to dump waste into a storm drain through an illegal pipe. The storm drain empties into Kingsbury Run, a tributary of the Cuyahoga River. Samples of the illegal discharge were found to contain industrial zinc and copper wastes. As part of the plea agreement, Fisco will spend five months in prison, pay a \$55,000 fine and pay \$50,000 in restitution.

Indiana Man Sentenced For Dumping Gasoline into City's Sewer System. Daniel W. Axe of Dugger, Ind., was sentenced Sept. 14 to five months imprisonment, five months home confinement, \$38,000 in restitution and a \$5,000 fine for pumping gasoline from a gasoline station's underground storage tanks into a city stormwater drain, which created a fire and explosion hazard in the sewer system and caused damage to the city's water treatment plant. Axe purchased the gasoline station after it had been closed for five years.

Washington Releases Stormwater Management Manual. The Washington Department of Ecology (Ecology) announced Sept. 27 the release of the *Stormwater Management Manual for Western Washington*. The manual will help local governments, industries and construction companies better manage stormwater and prevent stormwater pollution.

"The manual offers tools and choices, from low-tech to high-tech, to manage stormwater runoff at industries, construction sites and in urban areas," said Tom Fitzsimmons, Ecology director, in a press release. Ecology expects to publish a manual for eastern Washington in December 2002. To download a copy

of the manual, or for more information, see www.ecy.wa.gov/programs/wq/stormwater.

OW Assistant Administrator Sworn In. G. Tracy Mehan has been sworn in as assistant administrator for EPA's Office of Water (OW), according to an Oct. 11 EPA statement. The Senate issued its advice and consent of Mehan's nomination Aug. 3. Mehan, a former EPA official, has served as director of Michigan's Office of the Great Lakes and as director of Missouri's Department of Natural Resources.

EPA Announces Addition of Waterways to New Jersey TMDL List. EPA reached a final decision to disapprove New Jersey's omission of five waterways from the state's 1998 CWA Section 303(d) list for impaired waters (66 FR 51430, Oct. 9, 2001). EPA added the five waterways, Ackerman's Creek, Berry's Creek, Birch Swamp Brook, Capoolony Creek and Edmund's Creek, to New Jersey's impaired waters list. A December 2000 court order directed EPA to add the five waterways to the state's list. The five impaired waters had been inadvertently omitted from the list, according to EPA.

EPA Announces Availability for Comment of 45 Louisiana TMDLs. EPA announced TMDLs for 45 impaired waterways in Louisiana's Mermentau and Vermilion/Teche river basins, and determinations that TMDLs were not needed for six waterways in the basins because new information showed that water quality standards were being met (66 FR 52403, Oct. 15, 2001). The TMDLs were completed in response to a court order requiring EPA to timely add or delete waters to Louisiana's 1998 CWA Section 303(d) list as new data confirms that waters are or are not meeting water quality standards.

Comments are due Nov. 14, and should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, EPA Region 6, 1445 Ross Ave., Dallas, TX 75202-2733; telephone (214) 665-7513. For a complete list of the TMDLs, and for more information see www.epa.gov/region6/water/tmdl.htm.

EPA Proposes to Approve Several WET Testing Methods. EPA has proposed to ratify its approval of several analytic testing methods for whole effluent toxicity (WET) (66 FR 49793, Sept. 28, 2001). The proposal would make a number of revisions to currently approved WET test methods, and would potentially affect all NPDES-authorized states, territories and tribes. The revisions include updates to the methods, minor corrections and clarifications, and modifications to address stakeholder concerns. A copy of the *Federal Register* notice and other information is available at www.epa.gov/waterscience/WET.

Comments on the proposal must be submitted by Nov. 27. Commenters should submit four copies of

their comments to Whole Effluent Toxicity Test Method Changes Comment Clerk (WETEU-IX), Water Docket (4101), EPA, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, DC 20460. Hand deliveries should be made to EPA Water Docket, 401 M St., S.W., Room EB57, Washington, DC 20460. E-mail copies will be accepted as a Word Perfect 5/6/7/8 file or an ASCII text file at OW-Docket@epa.gov.

EPA Releases Final CSO Guidance. EPA has released a final version of its guidance on coordinating combined sewer overflow (CSO) planning with water quality reviews (66 FR 42226, Aug. 10, 2001). Amendments to the CWA in December 2000 required EPA to issue final guidance on the issue by July 31, 2001. A copy of *Guidance: Coordinating CSO Long-Term Planning with Water Quality Standards Reviews* (EPA-833-R-01-002) may be obtained from EPA, Office of Water Resources Center (RC-4100), 1200 Pennsylvania Ave., N.W., Washington, DC 20460; (202) 260-7786; e-mail center.water-resource@epa.gov.

EPA Releases Nutrient Criteria Guidance Manual. EPA recently released a technical guidance manual aimed at assisting state and tribal water quality managers to develop numeric nutrient criteria for estuaries and coastal marine waters (66 FR 51665, Oct. 10, 2001). The manual does not contain site-specific numeric nutrient criteria for any estuary or coastal marine water. Copies of the *Nutrient Criteria Technical Guidance Manual: Estuarine and Coastal Marine Waters* may be obtained from EPA's National Service Center for Environmental Publications, 11029 Kenwood Road, Cincinnati, OH 45242; telephone (513) 489-8190 or (800) 490-9198; e-mail: ncepiwo@one.net; or www.epa.gov/ost/standards/nutrients/marine.

The agency is accepting comments concerning scientific views on the manual until Dec. 10. Send three copies of written significant scientific information to Robert Cantilli (MC-4304), EPA, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, DC 20460. ■

Egg Permit

(Continued from page 2)

rates and timing of land application of manure and wastewater.

Comments should be submitted by Dec. 3 to the Regional Administrator, EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202-2733. No public hearings on the proposed permit have been scheduled. However, public meetings will be held Nov. 1 in Albuquerque, N.M., and Nov. 7 in Oklahoma City. For more information, contact Diane Smith at the address above, or at (214) 665-2145. Copies of the fact sheet and proposed permit may be obtained from Smith, or from www.epa.gov/earth1r6/6wq/6wq.htm. ■

Texas Permit

(Continued from page 1)

and if runoff is discharged to "waters in the state" or into a municipal separate storm sewer system (MS4).

If the facility is regulated by the TPDES MSGP the owner and operator must complete one of the following options immediately:

- prepare and implement a stormwater pollution prevention plan (SWP3) and apply for coverage under the general permit;
- prepare and implement an SWP3 and apply for an individual stormwater permit; or
- apply for a no-exposure exclusion.

Facilities applying for TPDES MSGP coverage need to submit an NOI, a core data form for the owner/operator (two core data forms if the owner and operator are not the same) and a \$100 application fee. If the facility discharges to an MS4, a signed copy of the NOI must be submitted to the MS4 operator.

Facilities applying for a no-exposure certification (NEC) must submit all the above information except for the \$100 fee.

TNRCC Warns Applicants

In a notice posted on TNRCC's Web site, the agency warned applicants to be sure they complete NOI and NEC forms in full. TNRCC has noticed the following mistakes on the forms:

- not filling in all fields;
- no latitude or longitude listed for the site;
- county in which facility is located is not named;
- no core data forms;
- core data forms for only the owner *or* operator, instead of both; and
- information on core data form does not match information on NOI or NEC.

For questions about the permit, contact the TNRCC Stormwater Permit Team at (512) 239-4433, e-mail: wpermit@tnrcc.state.tx.us or see www.tnrcc.state.tx.us/permitting/waterperm/wwperm/industry.html. For more information about Texas's stormwater program, see ¶890.44 of the *Manual*. ■

Keep your environmental compliance program running effectively and efficiently . . .

Environmental Compliance Tool Kit

With over 200 ready-to-use tools, your subscription provides:

- ▶ Easy-to-use charts, checklists, forms, sample letters and plans, worksheets, lists of state contacts and compliance calendars
- ▶ Internet access to all the compliance tools
- ▶ Monthly newsletters and update pages
- ▶ And more!

CALL
1-800-677-3789

TRIAL SUBSCRIPTION CERTIFICATE

Environmental Compliance Tool Kit

YES! Please enter my one-year subscription and send me the *Environmental Compliance Tool Kit* to use and evaluate risk free for 30 days. Within that time, I'll either return the materials and owe nothing... or honor your invoice for \$416. I understand my subscription includes the *Tool Kit*, monthly newsletters and update pages, and that I will be billed annually until I decide to cancel my subscription.

Name _____

Title _____

Organization _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

E-mail Address _____

Signature _____

(REQUIRED ON ALL ORDERS.)

BL190172

Payment enclosed. (\$416) **Bill me.** (\$416 plus \$19.50 postage and handling.)

Please make check payable to Thompson Publishing Group, Inc. Residents of DC, FL and MD, please add appropriate sales tax.

MAIL TO: Thompson Publishing Group, Inc. • Subscription Service Center • PO Box 26185 • Tampa, FL 33623-6185

TOOL

Stormwater Permit Manual

Bulletin

Volume 11, Number 3

October 2001

EPA Audit Faults OECA, States, Permit Compliance System For Ineffective Enforcement of Water Quality Programs

The U.S. Environmental Protection Agency's (EPA) national Permit Compliance System (PCS) computer program is incomplete, inaccurate and obsolete, preventing states from effectively implementing water quality programs, according to an audit by EPA's Office of the Inspector General (OIG).

OIG's report, *Water Enforcement: State Enforcement of Clean Water Act Dischargers Can Be More Effective*, cites a litany of deficiencies in both federal and state enforcement of the Clean Water Act (CWA).

For example, OIG said that the core CWA program and monitoring systems overseen by EPA's Office of Enforcement and Compliance Assistance (OECA) overemphasize major industrial facilities and larger sewer treatment plants, instead of pollutant sources such as stormwater dischargers, sewer overflows, concentrated animal feeding operations (CAFOs), and urban and agricultural runoff. State enforcement

strategies are inhibited by such a focus, OIG said, and also by inadequate water quality data, incomplete permit data, ineffective relationships between EPA and states, and state concerns about regulating small but economically vital businesses and industries.

OIG's audit included national data from OECA; EPA Regions 4, 8 and 9; California; North Carolina; and Utah. All three states have National Pollutant Discharge Elimination System (NPDES) approval. OIG also evaluated information from recent state audits in Arkansas, Colorado, Louisiana, Maryland and Oregon.

OIG conducted the audit because of concerns about the effectiveness of state enforcement programs. The audit focuses on the CWA discharge program because of a lack of recent audit coverage.

(Continued on page 2)

Appeals Court Upholds EPA Approval Of Montana Water Quality Standards

A federal appeals court affirmed that the U.S. Environmental Protection Agency (EPA) did not violate the Clean Water Act (CWA) when it approved Montana's lowering of state water quality standards (*American Wildlands v. Browner*, No. 00-1224 (10th Cir. Aug. 8, 2001)).

American Wildlands, an environmental organization, alleged that EPA improperly approved Montana's actions that lowered its water quality standards in the areas of nonpoint sources and mixing zones—Montana's standards were still at least as stringent as the federal government's.

According to the court, Montana's legislature exempted "existing activities that are nonpoint sources of pollution as of April 29, 1993, from antidegradation review with respect to Tier II waters," and exempted "nonpoint sources initiated after April 29, 1993, ... from antidegradation review with respect to Tier II waters when reasonable land, soil, and water

(Continued on page 5)

Inside This Issue ...

Storm Warnings 4

EPA Seeks Comments on Proposal for Electronic Reporting 6

Revised NPDES State Information
Tab 200, Tab 800

Revised State Information for Louisiana
Tab 800

CWA Audit

(Continued from page 1)

According to the report, California, North Carolina and Utah are not effectively monitoring compliance by stormwater dischargers, resulting in violations going undetected and unaddressed.

"Deficiencies in the state stormwater programs occurred primarily because of incomplete and inconsistent data systems for tracking stormwater activities and inadequate resources," the report said.

The states need strategies to identify the substantial number of unpermitted stormwater facilities, or non-filers. Although some non-filers were identified through citizen complaints, states did not have a systematic approach for finding non-filers, according to the report.

Utah estimated it had about 500 unpermitted facilities subject to stormwater regulations, nearly the same amount of facilities permitted by the state. California estimated that at least 19,000 facilities may be operating without proper stormwater permits, 3,000 more than the number permitted by the state.

Another problem, according to OIG, is that state-reported inspection statistics were generally overstated or unsubstantiated. California estimated it inspected 12 percent of stormwater facilities annually. Utah estimated it inspected 2 percent. North Carolina reported it inspected 100 percent of its construction stormwater facilities annually and an unknown percentage of other facilities. Louisiana's recent state audit found that most uninspected facilities were stormwater dischargers, OIG said.

"We recognize that it is not realistic to inspect hundreds or thousands of stormwater dischargers

every year with limited resources," OIG said. "Therefore, states should develop risk-based strategies to target inspections that provide maximum benefit to improving total water quality."

None of the states reviewed had risk-based inspection programs in place, although the Los Angeles region is developing one that will target high risk dischargers, such as those in high-risk industries, at large construction sites and those with administrative or technical noncompliance.

In the agency's response to the audit findings, OECA agreed that "states need to implement risk-based approaches to water enforcement."

OIG also found that the three states studied were not consistently tracking or following up on inspection results, or reviewing self-monitoring reports for compliance.

"Facilities with major violations, such as failure to prepare a stormwater pollution [prevention] plan or implement stormwater best management practices, did not come into compliance promptly, if at all," the report said. "And there was no evidence to determine if or when compliance was achieved."

PCS "was not designed to track stormwater compliance data," OIG said. "State data systems did not fill this gap, either." Such stormwater data is critical for determining compliance, as well as evaluating the effectiveness of the program.

According to OIG, EPA's PCS included only about 16,500 of an estimated 400,000 stormwater permits, did not require states to enter stormwater permit data due to concerns over the increased state and federal data entry workload, and was not designed to track

STORMWATER PERMIT MANUAL (USPS #0008-384) is published monthly by Thompson Publishing Group, Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. Periodicals Postage is Paid at Washington, D.C., and at additional mailing offices.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, William Stewart; Managing Editor, Luis Hernandez; Editor, Kelly Gordon, Contributing Editor Eileen Smith. Annual subscription rate is \$439. Discounts for multiple subscriptions to this publication are available.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Kelly Gordon at (202) 739-9553; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group, Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789. This newsletter for the *Stormwater Permit Manual* comes with a looseleaf update to existing pages of the *Manual*.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

stormwater compliance data. All three state data systems examined by OIG were not tracking at least one piece of critical stormwater data. OIG noted that resources and permit fees were “generally inadequate” for stormwater programs.

According to the report, state enforcement programs also were deficient in the following areas:

- Compliance systems lacked data for hundreds of thousands of smaller dischargers.
- Serious toxicity violations and other violations were not reported.
- Strategies for identifying unpermitted stormwater dischargers were incomplete.
- Enforcement actions were issued a year or more after the violation.
- Penalties failed to recover economic benefit of noncompliance.
- Proactive strategies to avoid serious violations needed further development.

State Enforcement

“We believe that state enforcement programs could be much more effective in deterring noncompliance with discharge permits and, ultimately, improving the quality of the nation’s water,” OIG said. “Despite tremendous progress, nearly 40 percent of the nation’s assessed waters are not meeting the standards states have set for them.”

OIG recommended that enforcement strategies be environmentally risk-based and better address the relative risks presented by contaminated runoff, from stormwater and CAFOs; a rapidly growing number of smaller dischargers; and unique problems causing impairments in individual watersheds.

“The state programs we reviewed did not have the resources and information systems to permit, monitor and fully enforce regulated runoff, such as stormwater,” OIG said.

All three states reviewed have general and individual NPDES permitting approval from EPA. State enforcement of CWA is extremely important, because the majority of enforcement actions and program implementation are performed by states; 44 states have NPDES approval and operate in lieu of EPA to issue and enforce such permits (see ¶810 of this month’s update for a list of states with NPDES approval).

“Most of the enforcement actions we reviewed did not meet EPA’s criteria for timeliness and often did not recover the economic benefit gained by violators,” the report said. “EPA regions need to improve

their in-depth program evaluations and annual performance evaluations of state performance.”

OIG notes two important issues that impact the effectiveness of permit enforcement: the backlog of expired discharge permits and the implementation of the total maximum daily load program. In fiscal year 2000, about 25 percent of discharger permits for major facilities nationwide were expired, OIG said.

PCS and Other Information Systems

OIG recommended that the modernization of the permit compliance and tracking computer system be a top agency priority.

“The growth, variety and complexity of the regulated community has greatly outstripped the [PCS] capabilities,” OIG said. “States also had weaknesses in their compliance monitoring and enforcement systems, including not reporting serious, significant violations. ... Moreover, states needed to improve their enforcement response to significant violations to prevent further violations.”

Part of the problem with PCS is that EPA does not require stormwater general permit data to be entered into the system. OECA notes, “Ultimately, it is up to the states to commit the resources needed to keep up with their responsibility to input data into PCS and to report on the noncompliance status of” smaller dischargers. In OECA’s response, the office said that “modernization of the PCS has been an OECA priority for the last four years.”

OIG also made the following recommendations:

- OECA, with the Office of Water (OW) and EPA Regions, should collaborate with states to develop risk-based enforcement priorities.
- EPA should make modernizing its PCS a high priority by working in conjunction with OW, OECA and the states to make sure the system meets both federal and state needs.
- OECA should revise its enforcement guidance to better define significant violations for toxicity test failures, minor failures and stormwater dischargers.
- OECA should routinely determine whether states are fulfilling their obligations to monitor and enforce discharge programs by developing consistent criteria for in-depth program evaluations of state programs.
- Evaluations and state performance measures should be made public.

OIG’s audit, *Water Enforcement: State Enforcement of Clean Water Act Dischargers Can Be More Effective*, No. 2001-P-00013, is available on OIG’s Web site at www.epa.gov/oigearth/list901.htm. ■

Storm Warnings

Stormwater-Related News in Capsule Format

EPA, Delaware Settle Storm Sewer Lawsuit. The U.S. Environmental Protection Agency (EPA), the Delaware Department of Transportation (DelDOT) and New Castle County have agreed to settle a lawsuit brought by the United States, which alleged DelDOT and New Castle failed to obtain permits for their storm sewer systems. The county and DelDOT have agreed to pay a \$275,000 penalty and comply with a permit issued May 1 by the Delaware Department of Natural Resources and Environmental Control. The permit requires the county and department to carry out a stormwater management program to reduce contaminated runoff.

The two parties also will complete two environmental projects costing about \$500,000 each, which will reduce polluted stormwater runoff along portions of Interstate 95 and connect failing septic systems to the county's sanitary sewer system. The proposed consent decree is subject to a 30-day public comment period and final court approval. By agreeing to the settlement, New Castle County and DelDOT neither admitted nor denied liability for the alleged violations.

Michigan Company and Officials Sentenced for CWA, RICO Violations. Two officials of Hi-Po in Northfield, Mich., were sentenced Aug. 9 to more than two years imprisonment each and \$1 million in fines and restitution for committing environmental offenses under the Racketeering Influenced and Corrupt Organizations (RICO) Act, according to EPA. Aaron Smith, Hi-Po's former president and owner, was sentenced to 33 months imprisonment, must pay \$500,000 in restitution to victims and must forfeit \$500,000 in funds obtained through illegal activity. Steven Carbeck, Hi-Po's former operations manager, was sentenced to 27 months imprisonment and must pay \$430,000 in restitution. The company will pay a \$50,000 fine and another \$75,000 in restitution.

In guilty pleas filed in February, Hi-Po admitted intentionally releasing diesel fuel into a storm sewer and a pond in Ann Arbor, Mich., in order to make a fraudulent claim and receive payment from the University of Michigan and the Michigan Department of Environmental Quality for cleaning up the releases. Smith's RICO plea included illegal money laundering, mail fraud and bribery of a public official. Carbeck's plea included admission of money laundering and mail fraud.

APWA Will Hold Phase II Workshops. The American Public Works Association (APWA) will hold a series of nationwide one-day workshops on the implementation of Phase II of the National Pollutant Discharge Elimination System program. The work-

shops build upon previous APWA workshops by providing examples and specific resources to aid Phase II cities in the program's implementation. Workshops will be held on the following dates: Oct. 4, Albany, N.Y.; Oct. 17, Seattle; Oct. 30, Waterbury, Conn.; Nov. 14, Chicago; and Dec. 6, Baltimore. For a complete list and details on how to register see www.apwa.net/education/workshops.

Center for Watershed Protection Launches New Web Site. EPA's Center for Watershed Protection has designed a Web site specifically for stormwater government officials and any others who need technical assistance on stormwater management issues. The Stormwater Manager's Resource Center is available at www.stormwatercenter.net.

EPA Releases Updated Version of BASINS software. EPA released version 3.0 of the Better Assessment Science Integrating Point and Nonpoint Sources (BASINS) software system. The software allows environmental professionals to use geographic information system tools to examine environmental information, analyze environmental systems and examine management alternatives. The latest version includes many additional functional capabilities as well as an updated and expanded set of national data. Information about the software is available at www.epa.gov/ost/basins. The software may be downloaded for free from the Web site, or ordered on CD-ROM.

LGEAN Offers Free Environmental Liability Publication. The Local Government Environmental Assistance Network (LGEAN) has published a primer on environmental liability intended for local governments. The publication covers categories of environmental liability, local operations that may cause environmental liability, strategies for mitigating and minimizing environmental liability exposure, and federal environmental statutes that affect local governments. Free copies of *A Primer for Local Government on Environmental Liability* are available while supplies last by calling LGEAN at (877) 865-4326.

EPA, ECOS Launch New Web Site. EPA and the Environmental Council of States (ECOS), an association of state and territory environmental commissioners, have created a new Web site, www.epa.gov/ipbpages. The site, the Information Products Bulletin, will serve as a central resource for private and non-profit organizations and state, local and territorial environmental agencies to access important EPA documents and products, such as complex computer modeling tools, large databases and major reports. The site will be updated every four months, according to EPA. ■

Montana Water Quality

(Continued from page 1)

conservation practices are applied and existing and anticipated beneficial uses will be fully protected.”

Antidegradation, or anti-backsliding, generally provides that approved permit requirements cannot be deleted. This prevents a degradation in water quality. In this case, the antidegradation refers to Montana’s National Pollutant Discharge Elimination System (NPDES) permit. The state has NPDES approval, as well as general permitting authority.

“Montana’s antidegradation rules provide that, where degradation to a water body at the edge of a mixing zone is not significant, no antidegradation review of the mixing zone itself is required,” the court explained. “Montana requires that mixing zones have ‘(a) the smallest practicable size, (b) a minimum practicable effect on water uses, and (c) definable boundaries.’”

“Whenever a state revises or adopts a water quality standard, the state must submit the standard to EPA’s regional administrator for a determination as to whether the new standard is consistent with the [CWA],” the court explained.

American Wildlands had sued EPA and then-administrator Carol Browner and EPA Region 8 and its former head, Bill Yellowtail, in 1998, alleging that EPA had failed to take timely action under Section 303(c) of the CWA to approve or disapprove Montana’s new and revised water quality standards. The case was delayed when the parties agreed to wait for EPA to complete its review of Montana’s water quality standards. After EPA approved parts of Montana’s revised standards in early 1999, American Wildlands amended its complaint to challenge EPA’s decision. The district court had earlier affirmed each of EPA’s actions; the appeals court then upheld the two appeal points on nonpoint sources and mixing zones.

Nonpoint Sources

During the appeal proceedings, EPA argued that CWA does not grant it authority to regulate nonpoint sources of pollution. Therefore, it is powerless to disapprove state antidegradation review policies concerning nonpoint source pollution, according to court documents.

The district and appeals courts held that “nothing in the CWA demands that a state adopt a regulatory system for nonpoint sources.”

“Rather than vest EPA with authority to control nonpoint source discharges through a permitting process, Congress required states to develop water quality standards for intrastate waters,” the court said.

“Because the [CWA] nowhere gives EPA the authority to regulate nonpoint source discharges, the EPA’s determination—that Montana’s water quality standards exempting nonpoint source discharges from antidegradation review are consistent with the [CWA]—is a permissible construction” of the law, the appeals court wrote.

“It is true that states are required to ‘assure that there shall be achieved ... cost-effective and reasonable best management practices for nonpoint source control.’ However, this does not mean, as American Wildlands argues, that states are required to regulate nonpoint sources at the antidegradation stage,” the court said.

Mixing Zone

In its appeal, American Wildlands argued that “Montana’s mixing zone policy allowing point source discharges to degrade water quality within the mixing zone so long as the discharge does not degrade the water quality outside the zone is inconsistent with the [CWA] because it allows point source pollution to escape antidegradation requirements that apply to the water body as a whole, not specifically to the mixing zone.”

“Mixing zones are ‘areas where an effluent discharge undergoes initial dilution and are extended to cover the secondary mixing in the ambient water body,’” the court said in citing EPA’s *Water Quality Standards Handbook*. “Mixing zones are allowable as a practical necessity because ‘it is not always necessary to meet all water quality criteria within the discharge pipe to protect the integrity of the water body as a whole.’”

Again, the court found that EPA’s interpretation of the CWA was “permissible.” Citing another case, the court said, “By definition, the effluent itself, within the mixing zone, does not meet water quality standards. It necessarily follows, then, that the edge or outer circumference of the mixing zone is defined as the boundary at which water quality standards are first met.”

American Wildlands had argued that because of the unique approval role played by EPA in water quality, any approval decision by EPA should be reviewed with no deference given to the agency. The court disagreed. Generally, courts give deference to administrative decisions by federal and state agencies that play direct roles in administering programs established by statute, unless it can be proven that the agency’s decision was arbitrary and capricious, or in clear contradiction to the statutory language.

“It is clear that Congress delegated authority to the EPA to make determinations as to when water quality standards are consistent with the [CWA],” the court said. “Further, it is clear that the EPA’s action in this case was taken in the exercise of that authority.” ■

EPA Seeks Comments on Proposal for Electronic Reporting

The U.S. Environmental Protection Agency (EPA) on Aug. 31 proposed to establish an electronic document receiving system within the agency (66 FR 46161). According to EPA, electronic reporting is now possible because of recent technological advances that allow the agency to transfer data electronically and ensure its authenticity. In addition, the Government Paperwork Elimination Act (P.L. 105-227) requires federal agencies to institute electronic reporting and recordkeeping capabilities by Oct. 21, 2003.

According to the proposal, EPA will make electronic submission an option for specific environmental reports, including stormwater permits, as each program office in the agency is ready to accept them. EPA intends to announce in the *Federal Register* when particular program offices are prepared to receive electronic reports.

EPA's proposed rule would authorize the agency to establish a centralized, agencywide document receiving system called "central data exchange" (CDX) to which facilities would submit their annual or periodic environmental reports. The proposed rule also would allow facilities to maintain records electronically to satisfy EPA's environmental recordkeeping requirements.

EPA's new proposal would continue to permit paper submissions, but also would allow regulated facilities

to submit reports electronically over the Internet. Under the proposed rule, facilities would be able to use "smart" electronic forms that could be filled out online or downloaded for completion off-line. Completed forms then would be submitted over the Internet to EPA's CDX.

EPA's proposal also would allow tribal, state and local entities to accept electronic filings if their systems meet certain minimum requirements related to system security, electronic signatures and certifications, chain-of-custody and archiving.

Specifically, EPA is seeking public comments on how the proposal and CDX infrastructure would fulfill the agency's goals of reducing costs, improving data quality and increasing access to data, as well as whether the rule would make electronic reporting and recordkeeping a practical option for small entities, including small businesses. EPA also would like to know how the system might affect other data users, including state and local agencies and members of the public who need to access the information.

Written comments on EPA's proposal must be submitted, in triplicate, by Nov. 29, 2001, to: U.S. EPA, Enforcement and Compliance Docket and Information Center (Mail Code 2201A), Attn: Docket No. EC-2000-007, 1200 Pennsylvania Ave. N.W., Washington, D.C. 20460. Comments also may be e-mailed to docket.oeca@epa.gov. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
 • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$498
- Environmental Compliance Tool Kit \$416
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act \$327
- Chemical Process Safety Report \$481
- Risk Management Program Handbook \$439
- Aboveground Storage Tank Guide \$437
- Underground Storage Tank Guide \$307
- Community Right-To-Know Manual \$384
- Ozone Depleter Compliance Guide..... \$548

- Check enclosed (payable to Thompson Publishing Group Inc.)
- Please bill me (add \$19.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

BJ86040

Call Us Toll-Free At 1-800-677-3789 or visit our website: www.thompson.com

Complete and Mail to:

Thompson Publishing Group Inc., Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33633-6185

Stormwater Permit Manual

Bulletin

Volume 11, Number 2

September 2001

EPA Redesigns NPDES Web Site and Adds Phase II BMPs, Model State Permits To Assist Regulated MS4s

The U.S. Environmental Protection Agency (EPA) recently unveiled its redesigned National Pollutant Discharge Elimination System (NPDES) Web site, which features new information about best management practices (BMPs) and model state permits for implementation of Phase II. The redesigned site also features topic-grouped information for construction, industrial and municipal permits.

The menu of BMP factsheets is intended to help regulated small municipal separate storm sewer systems (MS4s) choose appropriate BMPs for their Phase II stormwater management programs. The information has been available since October 2000 on a contractor's Web site, but was only made available to the general public on the NPDES site in July. Following their October release, EPA solicited comments from regional and state stormwater contacts and then made revisions, according to an EPA stormwater official.

The 112 BMPs are grouped under six "minimum control measures" that must be implemented by most MS4s by December 2002. The BMP factsheets are meant to help MS4s choose structural and nonstructural management practices that may be used to fulfill the six measures. The six measures, which were outlined in the Phase II rule, are: public education and outreach on stormwater impacts; public involvement/participation; illicit discharge detection and elimination; construction site stormwater runoff control; post-construction stormwater management in new development and redevelopment; and pollution prevention/good housekeeping for municipal operations (see box, p. 4).

The site offers broad guidance on each minimum measure and the 112 BMPs are grouped within each measure. Additional factsheets are available under some of the measures.

(Continued on page 4)

Costs for TMDL Program Could Be as High As \$4.3 Billion, According to EPA Report

The costs to pollutant sources for implementing the total maximum daily load (TMDL) program are expected to be between \$1 billion and \$4.3 billion per year, according to a report prepared by the U.S. Environmental Protection Agency (EPA) (66 FR 41875).

The National Costs of the Total Maximum Daily Load Program (Draft Report) responds to a congressional request for information on the costs of developing and implementing TMDLs. A TMDL specifies the amount of a particular pollutant that may be introduced into a water body and allocates the total allowable pollutant loads among area sources.

The report notes that its cost estimates may fluctuate depending on whether states choose to allocate more of the pollutant reductions to sources with lower control costs versus allocating reductions equally to sources regardless of costs.

(Continued on page 2)

Inside This Issue ...

Storm Warnings	3
Examples of BMPs	4
Added BMP Information	Tab 600

TMDL Cost Report

(Continued from page 1)

For example, assuming the implementation of TMDLs using cost-effective reductions among all sources of impairments—including trading among point and nonpoint sources, both of which can include stormwater runoff—the costs to implement approximately 36,000 TMDLs for approximately 20,000 impaired waters identified by states in 1998 are estimated to be between \$900 million and \$3.2 billion per year.

If states decided to address these impaired waters by requiring all sources to adopt additional pollution controls, costs might rise to as high as \$1.9 billion to \$4.3 billion per year, according to the report.

Although this scenario is seen as unlikely, it could occur if states simply tighten discharge permits and other requirements through a uniform and inflexible approach regardless of the individual contributions of different sources or the relative costs of control among sources. This scenario also could result in pollution reductions greater than those needed to bring the waterbody into attainment with standards, the report adds.

Development Costs

The total average annual costs of developing TMDLs, primarily by states, over the next 15 years, are estimated to be between \$63 million and \$69 million per year, nationwide, according to the report. Developing the 36,000 TMDLs for the approximately 20,000 waterbodies known to be impaired will cost approximately \$1 billion over the next 10 to 15 years, depending on the price of TMDL approaches adopted by states.

The average cost of developing the TMDLs for each waterbody will range from \$26,000 to more than \$500,000. EPA expects that states will increase the number of TMDLs developed each year, spending about \$30 million this year, \$43 million to \$48 million in 2002 and about \$68 million to \$75 million starting in 2005 and each year thereafter until 2015.

The costs of TMDL development cited in the report are based on requirements of the existing TMDL program as well as new provisions added in July 2000, but not yet implemented. The costs of the additional requirements associated with the July 2000 regulations represent less than 10 percent of the total costs estimated in this report.

Congress precluded EPA from implementing the July 2000 rule before October 2001. EPA has announced it intends to further delay implementation by 18 months to consider changes to the July 2000 rule (see *Monthly Bulletin*, August 2001, p. 1).

The cost of water quality monitoring to support the development of TMDLs is expected to be approximately \$17 million per year, according to the report. This figure is based on a preliminary estimate of additional monitoring needed for detailed TMDL assessments from a limited survey of state experiences to date.

This figure should be revised as states gain more experience with TMDL development, the report states. Clustering TMDLs through a watershed approach can significantly reduce the costs of developing TMDLs, the report notes.

EPA estimates that 80 percent of TMDLs occur within a watershed containing other TMDLs

(Continued on page 4)

STORMWATER PERMIT MANUAL (USPS #0008-384) is published monthly by Thompson Publishing Group, Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. Periodicals Postage is Paid at Washington, D.C., and at additional mailing offices.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, William Stewart; Managing Editor, Luis Hernandez; Editor, Kelly Gordon. Annual subscription rate is \$439. Discounts for multiple subscriptions to this publication are available.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Kelly Gordon at (202) 739-9553; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group, Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789. This newsletter for the *Stormwater Permit Manual* comes with a looseleaf update to existing pages of the *Manual*.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

TMDL Rule Postponed, EPA Asks Court to Delay Lawsuits. As expected, the U.S. Environmental Protection Agency (EPA) has proposed to postpone the effective date of the total maximum daily load (TMDL) rule by 18 months (66 FR 41817, Aug. 9, 2001). EPA had announced its decision to delay the rule July 16 (see *Bulletin*, August 2001, page 1). The controversial rule was scheduled to take effect Oct. 30, 2001; EPA's proposal delays the date to April 30, 2003.

According to the *Federal Register* notice, "EPA believes that it is important ... to reconsider some of the choices made in the July 2000 rule." The delay will allow EPA to "solicit and carefully consider suggestions on how to structure the TMDL program to be effective and flexible." EPA believes the effective date delay "may result in revisions to the rule that would resolve at least some of the issues raised in pending litigation in the D.C. Circuit Court of Appeals." EPA filed a motion with the court to postpone the litigation until it completes its review of the rule.

According to the notice, EPA intends to use the 18-month delay to: fully analyze findings and recommendations from a June National Research Council report; discuss better ways to construct the TMDL program with a broad array of interested parties; and revise the TMDL rules through a notice and comment process.

EPA also proposed delaying the date by which states must submit lists of impaired waters from April 1, 2002, to Oct. 1, 2002. After receiving and evaluating comments, EPA will decide by Sept. 30 whether to issue a final delay of the effective date for the TMDL rule and the due date for the state impaired waters list.

Comments must be submitted by Sept. 10 to: W-98-31-III TMDL Comments Clerk, Water Docket (MC-4101), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. N.W., Washington, D.C. 20460; e-mail ow-docket@epa.gov. For more information contact Francoise M. Brasier, EPA Office of Wetlands, Oceans and Watersheds, (202) 401-4078. The proposed rule and supporting documents may be found at: www.epa.gov/owow/tmdl/delay.

EPA Issues NPDES Permit to Arizona CAFOs. EPA Region 9 issued the final National Pollutant Discharge Elimination System (NPDES) general permit for discharges from concentrated animal feeding operations (CAFOs) in Arizona July 23 (66 FR 38266). The permit will apply to

approximately 100 CAFOs, most of which are dairies located in Maricopa, Pinal and Yuma counties, according to EPA.

The permit prohibits direct discharges of stored manure and waste into waterways, with exceptions during major storms that cause overflow. The permit requires farmers to develop best management practices to control and retain wastewater. The permit also includes discharge monitoring, inspection, recordkeeping and notification requirements. Violations of the permit can result in a maximum administrative penalty of \$11,000 per day per violation.

Existing CAFOs must submit a notice of intent (NOI) and other information to EPA and the Arizona Department of Environmental Quality within 180 days of the permit's effective date for coverage under the general permit, or facilities may apply for an individual permit. Owners or operators of CAFO facilities that begin operation after Aug. 27 (new facilities) must submit an NOI and other information at least 90 days before becoming a CAFO. Arizona does not have EPA approval to issue NPDES permits (see ¶890.3 of the *Guide* for more information). The permit took effect Aug. 27. For more information contact Jacques Landy, EPA Region 9 at (415) 744-1922, or Shirin Tolle at (415) 744-1898. Copies of the permit and related documents are available at www.epa.gov/region09/water/npdes/azcafo.html.

EPA and Five Hog Farms Settle Clean Water Act Violations. EPA Region 4, Murphy Farms and D.M. Farms reached an agreement July 10 concerning alleged illegal discharges to the Cape Fear River Basin from five hog farms in Magnolia, N.C. The companies will pay a \$72,000 fine, and make improvements such as personnel training, stream buffers, inspections, recordkeeping and substantial measures to prevent discharges under their NPDES permits.

An earlier decision by the U.S. District Court in Wilmington, N.C., resulted in D.M. Farms being issued the state's first NPDES permit to a CAFO, according to EPA. Due to the concentration of large hog farms in eastern North Carolina, EPA has been working with the state to ensure development of an effective NPDES CAFO permitting program.

The settlement is the result of civil lawsuits by EPA and three citizen organizations: the American Canoe Association, the Professional Paddlesports Association and the Conservation Council of North Carolina. ■

TMDL Cost Report

(Continued from page 2)

for the same pollutant and could be developed jointly. Several states are currently clustering or bundling TMDLs on a watershed basis and realizing efficiencies, the report notes.

EPA provides substantial funding to the states for management of the full range of Clean Water Act programs.

Using the high end of the range of costs for core TMDL development and related monitoring, and assuming a 10- to 20-percent increase to account for high-cost TMDLs, the total TMDL development costs are expected to be as much as \$65 million to \$74 million in 2002, rising to about \$92 million to \$107 million in 2005 and on out to 2015, with some variation in costs among states.

In FY 2001, EPA expects to invest about \$21.7 million in management of the current

TMDL program. About \$10 million of this funding is available to EPA regions in the form of contract funds to support development of TMDLs at the request of a state for which EPA is required to develop a TMDL to "backstop" the state.

"Today's draft report gives us important new information to use in determining the most effective course in restoring America's waters," said EPA Administrator Christie Todd Whitman in an press release.

"Our review will help improve our existing TMDL program and will not interfere with ongoing activities, such as development of water quality standards, issuance of permits to control discharges or enforcement against violators," she added.

EPA is taking public comments on the draft report until Dec. 7. A copy of the report and additional information is available at www.epa.gov/owow/tmdl. ■

New Web Site

(Continued from page 1)

Another Office of Water department, EPA's Office of Wetlands, Oceans and Watersheds redesigned its air pollution and water quality page at www.epa.gov/owow/oceans/airdep.

Also, the Association of State and Interstate Water Pollution Control Administrators and America's Clean Water Foundation have established a new Web site at www.tmdls.net, which includes a variety of materials regarding EPA's Total Maximum Daily Load (TMDL) Program as well as examples of TMDLs.

The site was supported by grants from EPA to enhance state and local capacity to develop and implement TMDLs and other watershed-based approaches to water quality. Its aim is to educate TMDL stakeholders; share useful information and effective approaches among the states; and promote involvement by local stakeholders.

The stormwater program's new Web site is: cfpub1.epa.gov/npdes/home.cfm?program_id=6. It can also be reached at: www.epa.gov/npdes/stormwater.

Information and links are still being added to the Web site. The menu of BMPs may be found directly at www.epa.gov/npdes/menuofbmps/index.htm. Questions or comments about the BMPs may be sent to: sw2@epa.gov. For more information about Phase II see ¶140 of the *Guide*. ■

The new Web site groups the 112 BMPs by the six minimum control measures. Examples include:

Public education and outreach on stormwater impacts:

- public outreach/education for homeowners, e.g. proper disposal of household hazardous wastes.

Public involvement/participation:

- activities/public participation, e.g. Adopt-A-Stream programs.

Illicit discharge detection and elimination is not grouped by category. Examples include: recreational sewage and illegal dumping.

Construction site stormwater runoff control:

- runoff control, e.g. land grading and check dams;
- public outreach programs for new development, e.g. low impact development.

Post construction stormwater management in new development and redevelopment:

- structural BMPs, e.g. wet ponds, infiltration basins, bioretention, grassed swales and catch basins.

Pollution prevention/good housekeeping for municipal operations:

- source controls, e.g. vehicle washing; and
- materials management, e.g. used oil recycling. ■

Stormwater Permit Manual

Bulletin

Volume 11, Number 1

August 2001

EPA to Review, Revise TMDL Rule; Implementation Delayed Due to Widespread Criticism, Unfavorable Reports

The U.S. Environmental Protection Agency (EPA) announced July 16 that it plans to "review and revise" the July 13, 2000, final rule (65 FR 43585) implementing the total maximum daily load (TMDL) program. The agency will push back the Oct. 1 effective date for the rule by 18 months to allow time for the review, according to EPA Administrator Christine Todd Whitman.

In a related development, EPA and the U.S. Department of Justice filed a motion asking the U.S. Circuit Court of Appeals for the District of Columbia to delay action on legal challenges to the TMDL rule while the agency completes its review. More than two-dozen legal challenges filed by utilities, manufacturers and farm groups in August 2000 are pending. The controversial TMDL rule implements Clean Water Act provisions requiring states to establish quality standards for water bodies, develop

lists of polluted waters that do not meet those standards, determine the sources of the pollution and design effective cleanup plans.

Whitman said that the agency's decision to review the rule was motivated in part by a June 15 report to the U.S. Congress by the National Academy of Sciences (NAS), which said that significant changes are needed in the TMDL program if it is going to be effective.

The NAS report was the latest in a series of criticisms of the TMDL program. In March 2000, the U.S. General Accounting Office (GAO) issued a report indicating that there was a pervasive lack of data available at the state level to set water quality standards, determine what waters are impaired and develop cleanup plans.

(Continued on page 4)

Draft Management Measures Would Control Forestry Nonpoint Source Pollution

The U.S. Environmental Protection Agency (EPA) has issued draft guidance containing national management measures to control nonpoint source pollution from forestry activities. The measures are intended to provide technical assistance to state program managers and others on the best available, most economically achievable, means of reducing the nonpoint source pollution of surface and ground waters that can result from forestry activities.

In 1993, EPA published a guidance document, *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*, to address growing concerns about the impact of nonpoint sources of pollution on U.S. coastal waters, according to Chris Solloway of EPA's nonpoint source control branch. The 1993 guidance addressed nonpoint source pollution from forestry, agriculture, urban areas, marinas and recreational boating, and hydromodification, which includes channelization and channel modification. States, territories and tribes were required to adopt management measures in

(Continued on page 2)

Inside This Issue ...

Urban Stormwater Program Needs Procedures for Evaluating Program Effectiveness and Costs, GAO Report Says 3

Amtrak Agrees to EPA Penalty Over Multi-State Violations 4

Added BMP Information
Tab 600

Updated State Contacts
Tab 800

Forestry NPS Measures

(Continued from page 1)

conformity with the coastal management measures guidance for their Coastal Nonpoint Pollution Control Programs, he said.

In issuing the draft guidance, EPA has revised the forestry chapter of the 1993 guidance into a stand-alone document that addresses forestry or silvicultural nonpoint source pollution nationwide, Solloway explained. The original management measures have not been changed or replaced since 1993. In fact the draft guidance contains EPA recommendations only and is not a regulatory document, he said.

"EPA believes that proper implementation of the management measures, as appropriate given the region of the country where the forestry activities occur and site-specific considerations, will help minimize the impacts of forestry on water quality and aquatic ecosystems and preserve soil productivity and fertility," according to Solloway.

The 1993 guidance focused on conditions and examples of management measure implementation, he said. "To date, technical guidance on the best available, economically achievable measures for controlling nonpoint sources with a national focus has not been released. The draft national management measures guidance for forestry is intended to partially address this gap," Solloway noted.

The draft guidance provides background information about silvicultural nonpoint source pollution, including where it comes from and how it enters our waters. It explains that "the primary silvicultural nonpoint source pollutants are sediments, nutrients, chemicals (herbicides, insecticides and fungicides—

collectively referred to as pesticides), organic debris, temperature and streamflow," and provides a brief analysis of each pollutant.

The draft guidance identifies management measures for ten forestry activities:

- preharvest planning;
- streamside management areas;
- road construction and reconstruction;
- road management;
- timber harvesting;
- site preparation and forest regeneration;
- fire management;
- revegetation of disturbed areas;
- forest chemical management; and
- wetlands forest management.

The draft includes a detailed description of each forestry management measure; the benefits of the measure and best management practices.

In addition, the draft guidance addresses how to use management measures to prevent and solve nonpoint source pollution problems in watersheds. "The watershed perspective enables the practitioner to go beyond the effects of a single harvest area or individual road to consider all activities occurring within the watershed that could affect water resources," according to EPA's draft guidance. Comments on EPA's proposal are due Sept. 25, 2001, to: Chris Solloway, Assessment and Watershed Division (4503-F), EPA, 1200 Pennsylvania Ave. N.W., Washington, D.C. 20460. The text of the draft guidance is online at: www.epa.gov/owow/nps. ■

STORMWATER PERMIT MANUAL (USPS #0008-384) is published monthly by Thompson Publishing Group, Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. Periodicals Postage is Paid at Washington, D.C., and at additional mailing offices.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, William Stewart; Managing Editor, Elizabeth Sherfy; Contributing Editor, Tim O'Neill. Annual subscription rate is \$439. Discounts for multiple subscriptions to this publication are available.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Elizabeth Sherfy at (202) 739-9719; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group, Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789. This newsletter for the *Stormwater Permit Manual* comes with a looseleaf update to existing pages of the *Manual*.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Urban Stormwater Program Needs Procedures for Evaluating Program Effectiveness and Costs, GAO Report Says

The U.S. Environmental Protection Agency (EPA) needs to develop better procedures for evaluating the overall costs and effectiveness of the National Pollutant Discharge Elimination System (NPDES) urban stormwater runoff program, according to a June General Accounting Office (GAO) report.

EPA identified nonpoint source pollution from urban stormwater runoff as one of the leading causes of water quality problems in the United States. Runoff from impervious surfaces can carry pollutants such as nutrients, solids, pathogens, metals, hydrocarbons, organics, salt and trash, the report explains.

To comply with federal and state permitting requirements under the NPDES program, permitted municipalities must create and implement stormwater management programs.

The program requires permittees to characterize stormwater runoff; develop best management practices aimed at reducing pollutants in stormwater runoff to the maximum extent practicable; and report program activities, monitoring results and the costs of implementing the program.

NPDES Program Effectiveness, Costs Uncertain

Although more than 1,000 cities are participating in the NPDES program, GAO reported that "information on the overall costs of managing urban runoff and the effectiveness of the actions taken is limited."

"Although EPA and state agencies believe that the program will be effective in improving water quality, EPA has not made a systematic effort to evaluate the program. Without such an effort, EPA cannot tell what effect the program is having on water quality nationally," according to GAO's report.

In preparing the report, GAO visited five cities (Baltimore; Boston; Los Angeles; Milwaukee; and Worcester, Mass.) to obtain site-specific information about urban runoff problems, efforts to implement the federal NPDES requirements and the cost and effectiveness of such efforts.

"Each city we visited was regularly monitoring its stormwater to establish baseline information on pollutant levels and was reporting this information to EPA or the regulatory state agency each year," the report states.

"Although cities with Phase I permits are required to report on their stormwater monitoring results and changes in water quality, overall, EPA and the states have not successfully developed measurable goals for the program or demonstrated its effectiveness through the review of municipal reports," it said.

The report notes that "[t]o evaluate the entire program, EPA would have to establish goals for the program that are based on its mission; obtain information about the program's results; compare the results with the goals; and make changes to the program, if warranted, to get closer to achieving the agency's goals."

In addition to having insufficient information to evaluate the program's effectiveness, "good information about the cost of implementing federal stormwater requirements is limited," GAO found.

Although the costs to local governments of complying with the Phase I program have generally been portrayed as high, because of inconsistencies in cost accounting and reporting practices, GAO could not determine the cost of the program to several of the cities it visited.

GAO Recommendations

To determine the extent to which activities undertaken through the NPDES stormwater program are reducing pollutants in urban runoff and improving water quality, and to measure the costs of this program to local governments, GAO recommends that EPA:

- establish measurable goals for the program;
- establish guidelines for obtaining consistent and reliable data from local governments with Phase I permits, including data on both the effects and costs to the government permittees;
- review the data submitted by these permittees to determine whether program goals are being met and to identify the costs of the program; and
- assess whether the agency has allocated sufficient resources to oversee and monitor the program.

EPA agreed with GAO that it should establish guidelines for obtaining consistent and reliable data from local governments about their programs.

A copy of GAO's report, *Water Quality: Better Data and Evaluation of Urban Runoff Programs Needed to Assess Effectiveness* (GAO-01-679) (June 29, 2001) is available online at www.gao.gov. ■

TMDL Delay

(Continued from page 1)

Many states also have expressed concerns about the costs of implementing the program, and farm groups have criticized the rule, which emphasizes reducing runoff of agricultural waste, fertilizer and sediment.

In response to the GAO report and the concerns expressed by the states and agricultural groups, the U.S. Congress passed a law last year prohibiting EPA from spending any funds to implement the new rule during fiscal years 2000 and 2001 and asked NAS to review the scientific basis for the TMDL program.

It makes sense, in the face of this widespread criticism, for the agency to take another look at the rule and solicit more input, Whitman said. "In order to ensure that this nation's bodies of water are cleaned up, we need an effective national program that involves the active participation and support of all levels of government and local communities," Whitman said.

"Unfortunately, many have said the rule designed to implement the TMDL program falls short of achieving the goals," she said. "I am asking for this additional time to listen carefully to all parties with a stake in restoring America's waters, to find a better way to finish the important job of cleaning our rivers, lakes and streams."

Amtrak Agrees to EPA Penalty Over Multi-State Violations

Amtrak, the nation's largest passenger rail operator, has agreed to pay a \$500,000 civil penalty and spend \$900,000 on environmental projects to resolve charges that it violated numerous requirements of the Clean Water Act (CWA), including the stormwater provisions, at nine sites in three states, according to the U.S. Environmental Protection Agency (EPA).

In addition, Amtrak has agreed to implement a company-wide environmental management program, including developing a new environmental information system, enhancing compliance training, instituting ongoing environmental audits and increasing compliance staffing, EPA said. The total cost for the new management program is expected to exceed \$11 million. Amtrak already has added 27 new environmental positions—a three-fold increase from the number it had when the CWA violations were discovered, EPA said.

Amtrak also has agreed to immediately complete environmental compliance audits at 51 of its facilities nationwide and to voluntarily disclose and correct any environmental problems that are uncovered.

This case is only the second time an enforcement action has been taken against a national company for

David Salmonsens, a spokesperson for the American Farm Bureau, one of the organizations challenging the rule in court, said that he hopes the review will lead to significant changes in the rule. "We are looking for a lot better emphasis on monitoring and better data collection to see exactly what is going on in these water bodies before they are put on lists," Salmonsens said.

Many environmental groups, on the other hand, are critical of the decision to review the rule. "We feel we should not be starting down the road of weakening important water pollution regulations," said Howard Fox, an attorney for the San Francisco-based Earthjustice law firm, which is representing environmental groups that want the rule to stand.

"This water quality program was supposed to be put in place over 20 years ago. Instead of dickered about the details, we ought to be getting on with it, he said."

EPA said it plans to establish a process to solicit comments on the rule from all stakeholders. The agency also will carefully consider the comments made in the NAS report, Whitman said.

EPA plans to propose changes to the rule by spring 2002 and hopes to adopt the changes within the 18-month timeframe. For more information, visit the EPA Web site at www.epa.gov. ■

multi-state violations of the stormwater provisions. The first case occurred in June when Wal-Mart agreed to spend \$5.5 million to resolve stormwater violations at 17 locations in four states.

EPA discovered Amtrak's environmental violations during inspections in the late 1990s at the company's facilities in Connecticut, Massachusetts and Rhode Island. Amtrak allegedly did not have required stormwater permits, pollution prevention plans and spill prevention plans for the sites, and failed to sample its effluent as required by discharge permit requirements, EPA said.

The agency also found violations of discharge permit effluent limits and determined that Amtrak had failed to obtain a discharge permit in Rhode Island.

As part of the settlement, Amtrak will spend approximately \$400,000 to implement an environmental project improving tidal flows at seven culvert locations along one of the company's routes. Amtrak also will spend about \$500,000 to retrofit 13 locomotive transformers to dramatically lower their concentrations of polychlorinated biphenyls. For more information about the settlement, visit EPA's Web site at www.epa.gov. ■

Stormwater Permit Manual

Bulletin

Volume 10, Number 12

July 2001

National Research Council Report Endorses TMDL Program, But Recommends Significant Changes in Implementation

The U.S. Environmental Protection Agency (EPA) should proceed with its total maximum daily load (TMDL) program, but the agency should make several significant changes if the program is going to achieve its objectives, according to a June 15 report conducted by the National Research Council (NRC), a division of the National Academy of Sciences.

The report, *Assessing the TMDL Approach to Water Quality Management*, acknowledges that though the current state of science used to develop TMDLs is relatively sound, scientific uncertainty in the TMDL program is widespread. However, a lack of certainty is unavoidable in light of changing ecosystems, and, therefore, should not be used as a reason to halt implementation of the program, according to NRC.

The Clean Water Act (CWA) requires states to establish standards for waterbodies and to develop

lists of impaired waters that fail to meet those standards even after point sources of pollution have installed the minimum required levels of pollution control technologies.

States then must rank the impaired waters and develop TMDLs for each. A TMDL is essentially a "pollution budget" for a waterbody that specifies the amount of a particular pollutant that may be present, allocates allowable pollutant loads among sources and provides the basis for attaining or maintaining water quality standards.

On July 13, 2000, EPA issued the final TMDL rule (65 FR 43585) requiring states to identify polluted waters, determine the source of the pollution and design

(Continued on page 4)

Wal-Mart Settles Unprecedented Stormwater Violation Suit With Agencies

A major retailer has agreed to pay a \$1 million civil penalty and spend \$4.5 million to develop and implement a comprehensive environmental management plan to settle a suit alleging violations of the Clean Water Act's (CWA's) stormwater provisions at the company's construction sites, according to the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Justice (DOJ).

The suit alleged that Wal-Mart Stores Inc. and 10 of its contractors failed to comply with stormwater regulations and allowed illegal discharges at 17 construction sites in four states. The suit is the first federal enforcement action against a company for multi-state violations of the CWA's stormwater provisions, according to EPA and DOJ.

The agencies did not elaborate on the nature of the alleged violations. However, Wal-Mart noted in a statement that the cited violations in Texas,

(Continued on page 2)

Inside This Issue ...

Texas Stormwater Permit
Awaiting Agency Final
Approval 3

Storm Warnings 3

Added BMP Information
Tab 600

Revised Manual Index
Index Tab

Wal-Mart Settlement

(Continued from page 1)

New Mexico, Oklahoma and Massachusetts "were primarily administrative and recordkeeping in nature." EPA alleged "no actual damage to the environment," according to the retailer.

Environmental Management Plan

Under the settlement, Wal-Mart is required to design and implement a \$4.5 million comprehensive environmental management plan to ensure compliance at its construction sites nationwide. Under the plan, Wal-Mart must require all of its contractors to certify that stormwater control measures are in place before construction of new stores begins. Wal-Mart must perform additional site inspections, and enhanced recordkeeping, reporting and training of workers, according to EPA and DOJ. In addition, the settlement requires the retailer to do the following:

- produce a video on stormwater control best management practices and present it to contractors at each site prior to excavation or construction;
- designate a stormwater coordinator responsible for overseeing stormwater compliance at all 17 sites subject to the consent decree;
- require at each Wal-Mart store construction site that the general contractor designate its site superintendent as its stormwater coordinator;
- review with the general contractor—as part of the construction contract award process—a checklist of stormwater control requirements;

- conduct an annual stormwater control seminar for contractors and others involved in the retailer's stormwater program;
- inspect stormwater controls at construction sites on a weekly basis and correct any problems within seven days;
- report to EPA all discharges of pollutants resulting from failed or lack of erosion or sediment controls at a site following a rainfall of at least 0.5 inch;
- conduct sampling at construction sites to monitor and analyze pollutants in stormwater discharges, and report this information to EPA; and
- allow an independent auditor to assess the effectiveness of the retailer's compliance plan and site compliance with stormwater regulations.

Wal-Mart Response

The Bentonville, Ark.-based retailer asserted that "while the contractors were responsible for activities at the construction sites (including compliance with stormwater requirements), Wal-Mart agreed to contribute to the penalty to assist in achieving a settlement and to avoid the heavy burden falling entirely on the contractors."

Paul Carter, president of Wal-Mart Realty, also noted that Wal-Mart typically is involved in 300 to 400 building projects per year. "Our environmental compliance procedures go beyond legal and regulatory requirements and set the standard for the industry," he said. Wal-Mart also stated that it requires its building contractors to exceed all permit requirements. "Failure to meet this requirement can result in financial penalties to the contractor and loss of future construction business," he said. ■

STORMWATER PERMIT MANUAL (USPS #0008-384) is published monthly by Thompson Publishing Group, Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. Periodicals Postage is Paid at Washington, D.C., and at additional mailing offices.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, William Stewart; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe; Contributing Editor, Tim O'Neill. Annual subscription rate is \$439. Discounts for multiple subscriptions to this publication are available.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group, Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789. This newsletter for the *Stormwater Permit Manual* comes with a looseleaf update to existing pages of the *Manual*.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Texas Stormwater Permit Awaiting Agency Final Approval

The commissioners of the Texas Natural Resource Conservation Commission (TNRCC) May 23 approved the Texas pollutant discharge elimination system (TPDES) stormwater permit for industrial facilities, but the permit is "still in limbo," according to Cindy Lee of TNRCC's Stormwater Permit Team (see *Bulletin*, January 2001, page 3).

After undergoing revisions that "largely dealt with requirements for new discharges to impaired waters" of the state, the TPDES permit will be issued and take effect when the commissioners sign it. However, it is unclear when this may occur, said Lee. TNRCC noted that the U.S. Environmental Protection Agency must review and approve the revisions before the permit can take effect.

Draft Permit Contents

The draft permit is organized into five sections—definitions, permit applicability and coverage, permit requirements and conditions common to all industrial activities, benchmark monitoring requirements common to many industrial activities, and specific requirements for industrial activities.

The permit would clarify rules related to co-location. For instance, when two or more industrial sectors exist at the same facility (i.e., co-located activities), the facility operator would have to comply with each sector's specific requirements. The sector-specific requirements would apply only to the portion of the facility where that specific activity occurs. However, when discharges from separate activities combine before leaving the property, the facility would have to meet monitoring requirements and effluent limitations from each sector, according to the draft permit.

When different owners or operators share the same property (i.e., co-located facilities), each owner or operator would have to apply for a permit and receive individual permit numbers, according to the draft permit. However, co-located facilities could either develop separate stormwater pollution prevention plans (SWP3s) or share a common SWP3. If they decided to share a plan, they would be required to meet the following additional requirements:

- Each participant would be required to sign the SWP3 and include his or her name and permit number.
- The SWP3 would have to clearly describe and allocate the responsibilities of each participant for meeting the shared requirements. If a responsibility is not clearly described and allocated, then each permittee would be responsible for meeting the requirement within the boundaries of his or her facility.
- A site map would have to clearly and accurately delineate the boundaries around each co-located facility.

When the permit takes effect, facility operators will have 90 days to complete an SWP3 and submit a notice of intent, TNRCC said. All necessary forms and information will be available on the agency's Web site at www.tnrcc.state.tx.us.

At press time, all of the TPDES training seminars that TNRCC had scheduled for the summer were full. However, the agency may schedule more seminars in August, according to Lee. For seminar information, call (512) 239-6644. General questions regarding the TPDES can be directed to the TNRCC Stormwater Permit Team at (512) 239-4433. ■

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Orders CAFOs To Cease Unauthorized Stormwater Discharges. U.S. Environmental Protection Agency (EPA) Region 5 announced June 21 that it ordered River Ridge Farms Inc. to stop illegally discharging manure, wastewater and silage leachate from large concentrated animal feeding operations in Coopersville and Allendale, Mich.

The administrative order stems from a Jan. 30 EPA inspection that revealed discharges of manure-contaminated stormwater. The Allendale facility discharges into a farm drain and subsequently into the nearby Grand River. The Coopersville facility discharges into the Terpstra Sadler Drain and subsequently into the Grand River as well.

The order requires River Ridge Farms to develop and implement a stormwater pollution prevention plan, improve its capacity to store waste, and submit a comprehensive plan to manage all wastes, including manure, wastewater, spoiled milk, waste feed and silage, silage leachate, and dead animals.

The order is the latest in a series responding to repeated Clean Water Act (CWA) violations allegedly committed by the company over a period of 20 years, according to EPA. "The Michigan Department of Environmental Quality has taken a number of enforcement actions against the company, however, unlawful discharges have continued," according to Jo Lynn Traub, director of EPA's regional water division. ■

TMDL Program Report

(Continued from page 1)

effective cleanup plans by July 2010 (see *Bulletin*, August 2000, page 1).

The rule requires all waterbodies to be ranked as high, medium or low priority. Polluted waters that are drinking water sources or that support endangered species must be given high priority, according to the rule. However, the rule generated significant controversy among states and legislators. In March 2000, the U.S. General Accounting Office (GAO) issued a report suggesting that states lacked the necessary data to set appropriate water quality standards, determine what waters are impaired and develop TMDLs within the allotted time frame. Many states expressed concerns about the costs of implementing the program as well.

In response to the GAO report and state concerns, Congress passed a law prohibiting EPA from spending any funds to implement the new rule during fiscal years 2000 and 2001, effectively delaying implementation of the rule until at least Oct. 1 of this year. The NRC report is the result of a congressional mandate to review the scientific basis of the TMDL program.

Report Recommendations

NRC concluded in the report that sufficient scientific knowledge currently is available for states to develop effective TMDLs in many situations. However, EPA should make three significant changes to the TMDL program to enable states to use the available scientific knowledge successfully, according to NRC.

First, EPA should allow states to develop both a "preliminary" list and an "action" list of impaired waters. "Many waters now on state lists were placed there without the benefit of adequate water quality standards, data or assessment," the report states. "These potentially erroneous listings contribute to a very large backlog of TMDL segments and foster the perception of a problem that is larger than it may actually be," according to the report.

States should be permitted to reassign waters for which there is a lack of adequate standards, data or analysis, to a preliminary list. The active list should be restricted to waterbodies for which there is sufficient data to confirm that they are impaired. The report also details the data requirements and other criteria that should be used to differentiate the preliminary list from the action list. No waterbody should remain on the preliminary list for more than one rotating basis cycle, which is the four-year cycle states use to assess the health of their waters, according to the report.

"This [approach] would provide the assurance that listed waters are indeed legitimate and merit the resources required to complete a TMDL," NRC states. NRC also advises that if no legal mechanism exists that would permit this change in the program, Congress should use its authority to create one.

Second, states should develop appropriate use designations for waterbodies in advance of assessment and then refine these designations prior to TMDL development. "CWA's goals of fishable and swimmable waters are too broad to be operational as statements of designated uses," the report states. Rather, states should implement a more specific stratification of waterbody uses, according to the report.

For instance, states should make an effort to distinguish between recreational waters which are able to support full-body immersion activities—such as swimming and boating—and shallow waters that can support only partial immersion activities, such as wading, NRC said.

Sufficient science and examples exist for all states to stratify waterbody uses more specifically, the report said. Once more appropriate stratification is completed, the criteria developed to measure whether a use is met should be logically linked to and consistent with the designated use, the report concludes.

Finally, TMDL plans should employ adaptive implementation. In other words, states should assess TMDL plans on a cyclical basis to determine their level of effectiveness in achieving water quality standards and designated uses. "If the implementation of the plan is not achieving attainment of the designated use, scientific data should be used to revise the plan," the report asserts.

Moreover, the report notes that "[a]daptive implementation is needed to ensure that the TMDL plan is not halted because of a lack of data and information, but rather progresses while better data are collected and analyzed, with the intent of improving upon the initial plan."

Congress and EPA need to address the policy barriers that inhibit adoption of an adaptive implementation approach, including issues of future growth, the equitable distribution of costs and responsibility among pollutant sources and EPA oversight, the report concludes.

The report also recommends several changes related to the science, data and analytical methods used in the TMDL program. Congress is expected to use the report as a basis for possible action on the EPA rule.

A copy of the report is available on the Web site of the National Academy Press at www.nap.edu. ■

Stormwater Permit Manual

Bulletin

Volume 10, Number 11

June 2001

Enforcement Actions Increase as EPA Issues Stormwater Management Advisory to Developers and Contractors

U.S. Environmental Protection Agency (EPA) Region 3 is encouraging developers and contractors to comply with federal stormwater management rules and avoid penalties, according to an advisory issued May 9.

The advisory notes that the agency will be increasing its enforcement efforts in the region because inspectors are still finding "widespread noncompliance" among the regulated community despite two years of outreach, according to Neeraj Sharma, an EPA enforcement officer.

EPA and state environmental agencies plan to conduct regular inspections of construction sites and take enforcement action if necessary. According to EPA, polluted stormwater runoff is responsible for 5,265 miles of impaired streams in Region 3.

The advisory was issued as several EPA regions and Washington state have stepped up their stormwater enforcement efforts. These actions include the following:

Region 3

Just prior to issuing the advisory, Region 3 charged Airston Group of Centerville, Va., April 24 with alleged stormwater violations at Governor's Run, a 28-acre housing construction site in Oakton, Va. According to EPA, construction activity led to periodic discharges of various pollutants, and severe site erosion and sedimentation between April 25, 1997, and the fall of 2000.

(Continued on page 2)

Wisconsin Ordinance Would Require Strict Controls at Construction Sites

A proposed ordinance would require Dane County, Wis., builders to implement stormwater management practices and obtain a permit prior to construction, according to the Dane County Lakes and Watershed Commission.

The proposal, which was introduced May 3 to the Dane County Board of Supervisors by the commission, "is the result of 11 public hearings and hundreds of hours of meetings with citizens, technical experts, builders, county staff, local municipalities and other stakeholders," according to Shary Bisgard, commission chair. Thirty-five of the 39 county board supervisors agreed to co-sponsor the ordinance.

The ordinance would establish countywide stormwater management standards but would allow landowners and developers to

Inside This Issue ...

Storm Warnings	3
Calendar of Events	4
Added BMP Information	Tab 600
Revised State Information	Tab 800
Revised Newsletter Index	Index Tab

(Continued on page 4)

Enforcement Actions

(Continued from page 1)

According to the administrative order, Airston did not apply for or obtain the necessary permits to control drainage and potential erosion during an excavation and reconstruction of a farm pond. Uncontrolled runoff from the area resulted in increased flow of water through a tributary on the site, pollutant discharge and severe stream bank erosion. Mud and silt flowed downstream into Lake Martin, where it accumulated as a small island, the agency said.

EPA ordered Airston to draft a dredging plan and correct the erosion and stormwater pollution problems. Airston must dredge and dispose of the sediment in Lake Martin, correct any other damage and control any other runoff problems, according to the order.

Prior to the EPA order, Fairfax County, Va., had filed a \$1.4 million lawsuit against Airston for violations of local construction and drainage requirements at Governor's Run. The case is set for trial in Fairfax County Circuit Court in August.

Region 9

EPA Region 9 announced May 7 that it fined Sharpe and Associates and Palisades Development Co. \$60,000 for stormwater violations at their 50-acre Catalina Shadows Phase Four Development site in Oro Valley, Ariz.

According to the agency, Sharpe and Palisades failed to carry out their stormwater pollution prevention plan (SWP3), failed to stabilize disturbed areas and failed to take measures to prevent sediment erosion during grading and construction activities. As a result, stormwater runoff carried excessive amounts of sediment into Big Wash in

the Canada del Oro watershed, which is a tributary of the Santa Cruz River.

Inspectors from EPA, the Arizona Department of Environmental Quality and the town of Oro Valley discovered the violations during three inspections between August 1998 and July 1999.

Region 1

EPA Region 1 announced April 18 that the Massachusetts Institute of Technology (MIT) agreed to pay a civil penalty of \$150,000 for 18 violations of the Clean Water Act, the Clean Air Act and federal hazardous waste laws.

In addition to many other projects, MIT agreed to install a "state-of-the-art" biofiltration stormwater control and treatment system in a campus area prone to flooding. The system likely will reduce the rate of stormwater runoff from the area into the Charles River by 50 percent and will reduce the amount of solids in stormwater runoff by 80 percent, according to the agency. MIT will spend an additional \$400,000 on innovative environmental projects on campus and around Cambridge, Mass.

EPA inspectors discovered the violations in 1998. MIT is the sixth university in New England to be fined by EPA in two years. After discovering widespread environmental compliance problems among the region's colleges and universities, EPA launched its university initiative in 1999 to step up inspections and improve campus environmental compliance.

Washington State

The Washington Department of Ecology (Ecology) announced May 15 that it fined the Dunlap Towing Co. \$10,000 for spilling approximately 150 gallons of

(Continued on page 4)

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Duntzen; Executive Editor, William Stewart; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe. Annual subscription rate is \$439. Discounts for multiple subscriptions to this publication are available. Periodicals Postage is paid at Washington, D.C., and additional mailing offices. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Publishes Semi-annual Agenda. The U.S. Environmental Protection Agency (EPA) published its semi-annual regulatory agenda May 14, outlining its projected plans for the next six months and beyond (66 FR 26120). Few stormwater-related regulatory activities are described. However, those that are expected include the following:

Effluent Guidelines and Standards for the Construction and Development Industry—EPA plans to develop design criteria for erosion and sediment controls and stormwater best management practices (BMPs) for construction sites. The guidelines will apply to new and redeveloped sites and will affect land developers, home builders, builders of commercial and industrial property and others. A proposal is expected by March 2002. For more information, contact Eric Strassler at (202) 260-7150.

NPDES Streamlining Rule: Round III—EPA plans to issue a rule to eliminate redundant regulations, clarify confusing aspects and remove or streamline unnecessary procedures in the national pollutant discharge elimination system (NPDES) program. The proposed rule is part of a Clinton-era directive that requires federal agencies to streamline and simplify burdensome regulations. A proposal is expected by February 2002. For more information, contact Thomas Charlton at (202) 564-6960.

NPDES Requirements for Municipal Sanitary Sewer Collection Systems, Municipal Satellite Collection Systems and Sanitary Sewer Overflows (SSOs)—EPA plans to re-evaluate the framework under which sanitary sewer collection systems are regulated. The proposed standard permit would include requirements that address reporting, public notification and recordkeeping for SSOs, and capacity assurance, management, operations and maintenance procedures for municipal collection systems. A proposal is expected by August 2001. For more information, contact Kevin Weiss at (202) 564-0742.

Water Quality Standards Regulation: Revision—EPA plans to propose revisions to federal water quality standards that would enhance water quality management on a watershed basis and would focus on federal, state and tribal resources in the areas of "greatest concern." Program areas that may be revised include mixing zone policies and procedures. A proposal is expected by July 2002. For more information, contact Jennifer Wigal at (202) 260-1188.

Study Estimates Stormwater, Other Benefits of Trees in Colorado Communities. Tree cover in Denver, Colo., and seven other Colorado cities

accounts for an estimated \$44 million worth of stormwater management and the removal of 2.2 million pounds of air pollutants, according to a study conducted by American Forests, a nonprofit conservation organization. In the regional study area, tree cover increased from 6 percent to 7 percent over 12 years, but the amount of impervious surfaces increased from 9 percent to 12 percent during the same time period. In the Denver metro area, tree cover increased from 4 percent to 6 percent, but impervious surface area increased from 30 percent to 39 percent during the study period.

The increase to 6 percent is a "good trend that should be continued." However, it is "still far short of the goal of 25 to 30 percent average tree cover that we believe is optimum for healthy communities in this region," said Gary Moll, study coordinator and vice president of urban forestry at American Forests.

A copy of the study, *Regional Ecosystem Analysis for Metropolitan Denver and Cities of the Northern Front Range, Colorado*, is available on the Internet at www.amfor.org/news_and_pubs/news/frontRange.html.

Report Reveals Strategies for Controlling Nonpoint Source Pollution. The Section 319 National Monitoring Program (NMP), which is a joint effort between the North Carolina State University (NCSU) Water Quality Group and EPA, recently released a report evaluating the successes of the program thus far and making recommendations for future nonpoint source (NPS) control. Prepared by NCSU, the report evaluates the effectiveness of watershed technologies designed to control NPS pollution at 22 sites around the country over an eight-year period. At the sites, baseline data was compiled prior to implementing and monitoring BMPs for three to six years. Data from pre- and post-BMP periods were statistically analyzed to determine whether water quality changes resulted from BMP implementation. Preliminary data indicate that the water quality at some of the sites has improved, according to the report. For more information on the report, *Nonpoint Source National Monitoring Program Successes and Recommendations*, contact the NCSU Water Quality Group at (919) 515-3723.

EPA Web Site Offers More Information for Construction Industry. EPA recently updated its Web site on the construction and development effluent guidelines project to include additional information and links. The new pages describe the project background, data sources, information for small businesses and links to related stormwater sites, including some state BMP manuals. The Web site is on the Internet at www.epa.gov/OST/guide/construction. ■

Wisconsin Ordinance

(Continued from page 1)

determine how to meet the standards according to the unique characteristics of each site, the commission said.

Ordinance Components

Any construction activity that would add 20,000 square feet of impervious surface would be covered by the new ordinance. Impervious surfaces include new rooftops, pavement and gravel. Agricultural expansions that meet the impervious surface threshold also would be covered. However, any activity associated with planting, growing and harvesting crops would be exempt, according to the commission.

Prior to construction, a permittee would be required to submit a permit application to the local zoning authority. The application would include, among other elements, a proposed timetable for the installation of all associated stormwater and erosion controls and the completion of the construction project, as well as the costs associated with the project.

Along with the permit application, builders would be required to develop and submit a stormwater management plan for review and approval. Methods used to meet ordinance standards may vary depending on the specific characteristics of the site. However, oil and grease control, runoff rate control, stable discharge outlets, infiltration of stormwater,

temperature control of stormwater runoff and sediment control would be required components of the plan. Sediment control measures at new construction sites ideally would result in an 80 percent reduction in erosion during a one-year, 24-hour storm event, according to the proposed ordinance.

The plan would have to be implemented prior to the start of construction, and certain stormwater components would have to be maintained even after construction is complete, according to the proposal.

Fees would be assessed as well. A fee of \$50 would be assessed for review of the plans and applications, plus an additional fee of \$.005 per square foot of impervious area added. However, installing more stormwater controls, such as grassed waterways, diversions, buffers, ponds and other control structures, would reduce permit costs, according to the commission.

The proposal will be reviewed and discussed by the commission, the personnel and finance committee, the zoning and natural resources committee and the judiciary committee. The board likely will vote on the proposed ordinance sometime in July, according to the commission.

If it passes, the ordinance would go into effect one year after its approval date to allow local municipalities to adopt the plan and develop the permit process. A copy of the proposed ordinance is available on the Internet at www.co.dane.wi.us/commissions/lakesandwatershed/stormwater.htm. ■

Enforcement Actions

(Continued from page 2)

mixed diesel and lube oil on Dec. 6, 2000, into Budd Inlet and failing to report the incident in a timely manner.

The spill originated from a poorly maintained oil and water separator. Though 95 gallons of the spill was recovered, the rest entered Budd Inlet. Dunlap made little effort to clean up the spill or report the spill until the day after it occurred, according to Ecology. "They did deploy a few oil-absorbent pads

and booms, but that wasn't enough to keep the oil out of the ditch and Budd Inlet," according to Eric Heinitz, a manager with Ecology's spill response team. In addition, the company failed to comply with their SWP3, which was prepared and on file, the agency said.

Ecology issued the company a warning in 1995 after a spill occurred from the same oil and water separator, causing 60 gallons of oil to spill into a stormwater ditch. At that time, the agency had ordered Dunlap to take precautions to prevent future releases, Ecology stated. ■

Calendar of Events

Water Environment Federation (WEF) Specialty Conference. WEF is conducting a conference titled "2001, A Collections Systems Odyssey: Integrating O&M and Wet Weather Solutions" July 8-11 in Bellevue, Wash. The conference will be dedicated to helping water quality professionals balance the demands of addressing wet weather conditions and additional regulatory requirements with operation

and maintenance needs of sewer collection systems. A pre-conference workshop will discuss revisions proposed by the U.S. Environmental Protection Agency to the national pollutant discharge elimination system program to improve capacity and management of operations and maintenance. For more information, call WEF's Edward Gonzalez at (703) 684-2400 or visit WEF's Web site at www.wef.org. ■

Stormwater Permit Manual

Bulletin

Volume 10, Number 10

May 2001

Caltrans Case Reveals Poor Performance of Stormwater Filters May Have Resulted from Lack of Maintenance, Other Factors

A recent evaluation of the effectiveness of stormwater filters used along a California freeway suggests that the technology failed to adequately control highway runoff, but others contend that the poor performance of the filters may be based on external factors, including a lack of proper maintenance.

The study, *Evaluation of Compost Storm Water Filters Installed Along the San Joaquin Hills Transportation Corridor (SJHTC)*, was conducted by Byron Berger, an engineer with the California Department of Transportation's (Caltrans) Stormwater Unit. Caltrans is responsible for controlling stormwater runoff along the state's highways.

The 39 filters, which use a proprietary design and are manufactured by Stormwater Management Inc. of Portland, Ore., were installed along 16 miles of the

6-lane highway that runs along the SJHTC, according to James Lenhart, vice president of engineering and research at Stormwater Management. Lenhart, who has been involved in the SJHTC project "since day one," believes the project is the largest water quality undertaking in the country.

The Study

The treatment device—a compost storm filter (CSF)—works by filtering stormwater runoff horizontally through an 18-inch layer of proprietary media composed primarily of composted leaves. The design, intended to accommodate flow from a 25-year storm event, treats stormwater runoff by filtering out heavy metals, oil and grease, and sediment. Regular maintenance is required to rid the filtering compost of

(Continued on page 4)

California Construction Company To Implement "State-of-the-Art" Controls

A California developer has agreed to implement "cutting edge" stormwater controls at a large construction site in Orange County, Calif., to settle a 17-month-long dispute with a local environmental organization, according to Garry Brown, founder and executive director of Orange County CoastKeeper.

The Irvine Co. and CoastKeeper announced March 8 that they have agreed on a "comprehensive water-quality enhancement program" to protect Crystal Cove State Park, which is the site of Irvine's 635-luxury home development project. Crystal Cove, which is situated between Newport Beach and Laguna Beach, is a dolphin birthing ground and is designated by the state as an area of special biological significance.

CoastKeeper first objected to Irvine's construction project in October 1999, contending that the company was illegally discharging sediment and pollutants into the cove and the Pacific Ocean.

(Continued on page 2)

Inside This Issue ...

Storm Warnings	3
Georgia Gov. Signs Bill That Will Allow Atlanta Area To Make Improvements to Stormwater and Wastewater Quality	5
President Proposes Shifting Enforcement Authority to States	6
Added BMP Information	Tab 600
Revised State Information	Tab 800

Crystal Cove

(Continued from page 1)

Irvine initially denied that it was directly discharging into coastal waters because it was discharging into nearby creek beds—not directly into the ocean. However, in November 2000, the Santa Ana Regional Water Quality Control Board responded to CoastKeeper's objections by issuing a cease-and-desist order, requiring the developer and others, including the California Department of Transportation, to stop the flow of discharge into the cove within one year. The order against Irvine was nullified, however, when the company and CoastKeeper reached an agreement.

The Agreement

Irvine and CoastKeeper agreed to an ambitious 10-year stormwater monitoring and management plan that surpasses state law requirements and may "serve as a model for other coastal areas," Brown said. According to Irvine, the company will implement the following control methods:

- *Detention and filtration of the first inch of rainfall.* Irvine will expand and improve its stormwater detention basins and enhance its filtration systems to treat the first flush of stormwater, which generally carries the bulk of urban contaminants. With these control measures in place, Irvine contends that stormwater will be contained in 95 percent of the residential and commercial areas within the Crystal Cove area for the first 40 hours of each storm.
- *Best management practices during site grading and construction.* During the construction phase of the project, Irvine will use detention basins to hold back stormwater during the rainy season; install sandbags, fabrics and other materials around storm drains and pipes for additional protection;

use biodegradable reinforcements, plants and seeds on slopes to minimize erosion; and cover building pads with erosion-control materials.

- *Low-flow diversion system.* After construction is completed, a diversion system will capture dry weather runoff and divert it into the public sewer system for treatment.
- *Comprehensive water quality treatment regimen.* Irvine will implement additional control measures such as using vacuum street sweepers to prevent contaminants from entering stormwater runoff; using filters on storm drains that remove sediment, bacteria and trash from runoff; and expanding a wetland and an agricultural reservoir to detain and treat stormwater runoff.

Future Plans

Irvine and CoastKeeper also agreed to work together to develop a scientific water quality monitoring program in addition to the monitoring programs already required by the California Coastal Commission and the Regional Water Quality Control Board. The plan allows CoastKeeper and Irvine to determine over time whether additional water quality management practices are appropriate. The plan also eventually will set strict numeric limits on specified pollutants, according to Brown.

CoastKeeper plans to remain involved in the project throughout the construction phase, which will last about five years. Under the agreement, CoastKeeper will have access to the construction site to monitor discharges and to take grab samples of stormwater runoff, Brown said. After the homes are built, the homeowners association will be responsible primarily for maintaining the water quality enhancement program, but CoastKeeper still will be involved, Brown said. "We are trying to raise the minimum standards for coastal development to ensure water quality protection," he concluded. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789.

Editorial Director, Kathy Dunten; Executive Editor, William Stewart; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe. Annual subscription rate is \$439. Discounts for multiple subscriptions to this publication are available. Periodicals Postage is paid at Washington, D.C., and additional mailing offices. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought."—from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Issues Alaska, Montana Indian Country Permit. The U.S. Environmental Protection Agency (EPA) reissued April 16 the multi-sector general permit (MSGP) for industrial dischargers in Alaska and Indian lands in Montana. The permit replaces Alaska's expired MSGP and the baseline general permit for Indian lands within Montana, which had expired Sept. 9, 1997. Terms and conditions of the permit are consistent with EPA's MSGP published Oct. 30, 2000 ((65 FR 64801); see *Bulletin*, December 2000, page 1).

The MSGP for Alaska adds certain state-specific requirements provided under Section 401 of the Clean Water Act. Pollution prevention plans must be approved by a professional engineer registered in Alaska and must be submitted for approval to the state Department of Environmental Conservation (ADEC). Alaskan facilities that qualify and are seeking to continue coverage of their existing discharges under the MSGP must submit a notice of intent (NOI) to ADEC by July 16.

The MSGP for Montana Indian lands was delayed because of a court order that required EPA to cease issuing any new permits until the agency developed total maximum daily loads (TMDLs) for certain impaired waterbodies in the state. Though EPA still must develop the TMDL plans, the agency determined that issuing the MSGP does not conflict with the court's order because (1) the permit is not new but instead replaces the expired baseline permit; (2) the state's list of impaired waterbodies does not include any waterbodies within Indian lands; and (3) the permit prohibits stormwater discharges that would adversely affect any impaired waterbody.

Facilities in Montana Indian lands must submit NOIs to EPA by July 16. The permit is effective immediately and expires Oct. 30, 2005.

Maine Gets Partial NPDES Authority. EPA Region 1 approved Maine's application Jan. 12 to administer the Maine pollutant discharge elimination system (MEPDES) permit program (66 FR 12791). The state will administer and enforce the MEPDES program in all areas of the state except for Indian lands. EPA has not determined if the state has jurisdiction authority over Indian lands, which have been the subject of debate and controversy. EPA also will continue to regulate sewage sludge in Maine because the state did not apply for authorization of its municipal sewage sludge program.

Maine will administer permits issued to point-source dischargers and will have authority over the

pretreatment program covering industrial sources discharging to publicly owned treatment works. However, EPA will retain authority over cooling tower discharges until the state legislates the required statutory authority. EPA will retain authority over all existing permits until Maine reissues them as MEPDES permits. In addition, the state Department of Environmental Protection will hold primary enforcement authority.

An EPA guidance document, "Status of EPA Issued NPDES Permits After Maine Program Approval," is available upon request. For more information, contact EPA's Stephen Silva at (617) 918-1561.

State Stormwater Manual Under Review. Volume two of the *Georgia Stormwater Management Manual* currently is under review by the Atlanta Regional Commission (ARC). The technical manual is a tool for local governments, site engineers and designers, inspectors, and developers who want to reduce stormwater impacts on water quality and quantity.

The manual includes guidance on better site design practices, hydrologic techniques, criteria by which to select and design stormwater controls, drainage system design, and construction and maintenance information. It also includes model minimum standards for development and redevelopment that local jurisdictions may adopt as part of their local development code.

The manual is part of a three-volume set. Volume one, the *Stormwater Policy Guidebook*, explains the basic principles of effective urban stormwater management for local jurisdictions. First released as a draft in 2000, it is currently being revised. Volume three, the *Pollution Prevention Guidebook*, will be a compendium of pollution prevention practices for local jurisdictions, business and industry, and local citizens. It should be available for review this summer, according to ARC.

Web site Offers Stormwater Management Financing Information. A new Web site, titled *An Internet Guide to Financing Stormwater Management*, is designed to help communities find ways to pay for stormwater management projects. The site, which was developed by the Center for Urban Policy and the Environment at Indiana University in Purdue, includes reference materials such as:

- a bibliography of stormwater financing materials;
- an archive of published materials;

(Continued on page 5)

Caltrans Study

(Continued from page 1)

excessive sediment. The product is designed to last about four years, Lenhart said.

The study examined the current condition, general performance and maintenance requirements of the CSFs, which have been in use along the SJHTC for five years—one year longer than the manufacturer's recommended lifetime.

The study found that 35 (90 percent) of the CSFs were not operating properly. Many were clogged with excessive sediment and several had vegetative growth on the surface of the media compost. In other CSFs, the compost media had been "washed out."

The report also noted that though the CSFs were relatively successful in reducing the concentration of metals, oil and fecal coliform in highway runoff, the filters were less successful in treating nutrients such as phosphorus, nitrogen, nitrate and nitrite. In fact, the study found that concentrations of nutrients increased along the SJHTC while the filters were in use.

The report also concluded that maintenance of the CSFs was too labor intensive. It estimated that "a full-time team of four or five people [would be] required to perform annual maintenance of the 39 CSFs" at an estimated periodic maintenance cost of more than \$850,000.

Another View

Lenhart concedes that the conclusions of the SJHTC study are "reasonably accurate," and agrees that many of the filters had accumulated a significant amount of sediment. However, he presented several reasons why the CSFs faltered. First, he notes that the construction phase of the project was "hurried" and believes the system was brought online before adequate erosion controls could be implemented.

Second, El Niño rains devastated the area shortly after the installation phase, thus washing enormous amounts of sediment into the CSFs. "Many of the filters were literally buried in sediment," he said, and the situation was made worse by the inadequate erosion controls.

Therefore, the maintenance job "became too big from the start," he postulates. At the time, Caltrans repaired eight of the most heavily impacted systems, he said. Lenhart disagrees with the study's conclusion that labor and maintenance costs of a properly installed system would be prohibitive. "There is no such thing as a maintenance-free water quality facility. The system does require weeding and

periodic maintenance, but that doesn't mean it doesn't work," he said. Lenhart adds that photos in the report "indicate that the majority of the systems are still functioning but do require removal of accumulated sediment."

He also explained that the system was not designed to control nutrients. It was designed to handle roadway runoff only, and Caltrans knew this before it chose to install the CSFs. Therefore, the nutrient finding in the report should not have been a surprise to the agency, Lenhart said.

A Future for Filters

Although Lenhart still expressed confidence in the general integrity of the CSF system, Stormwater Management does not recommend or manufacture the technology anymore. Instead, it is recommending that Caltrans upgrade the existing system by retrofitting the filters with newer technology—the StormFilter—that requires less maintenance. And unlike the older technology, the StormFilter can control nitrates in stormwater runoff, according to Lenhart. "This filter should have a longer life," than the older one, he predicted.

But the new system will still have to be maintained. Paul Bucich, surface water manager for the city of Federal Way, Wash., has been following the evolution of this technology for over 10 years and has used the product in his own work. He reiterates that maintenance is key to its success. "I have had the developer, scientist, engineering staff, marketer ... all state many times that if not maintained, the system will fail," he said. He concedes that the new product design allows it to handle higher loads of sediment before needing maintenance.

Both Lenhart and Bucich agree that no best management practice (BMP) will be effective unless it is properly maintained. "As an industry, we are putting in BMPs by the thousands with little or no plan for long-term maintenance," Lenhart said.

Bucich echoed this sentiment, stating that design changes in BMPs may be reducing the rate of maintenance-related problems, "but we are fooling ourselves if we think an engineered system designed to remove fine particles and soluble pollutants can be installed and then ignored."

Still, Bucich is optimistic about future BMP technological advances. "This is an evolving field, and we are bound to trip up from time to time as we continue our efforts to find solutions to problems not always under our control," he said.

More information about Stormwater Management's StormFilter is available on the Internet at www.stormwatermgt.com. ■

Georgia Gov. Signs Bill That Will Allow Atlanta Area To Make Improvements to Stormwater and Wastewater Quality

Georgia Gov. Roy Barnes signed a bill (SB 130) April 5 that will create an 18-county water planning commission to address the state's stormwater, wastewater and water quality concerns (see *Bulletin*, November 2000, page 1).

The Metropolitan North Georgia Water Planning District will be responsible for developing regional and watershed-specific plans to abate polluted stormwater runoff, "which is responsible for about 80 percent of water quality violations in the metro-Atlanta region," the governor said at a recent press conference.

Additionally, the plans will help reduce erosion and excessive siltation in Atlanta-area waterways. Barnes also noted that, in part, the action addresses a federal mandate requiring the Atlanta area to develop a plan for controlling water pollution by 2003.

The district will be composed of all counties in the Atlanta area with populations of 500,000 or more and all bordering counties, but the law allows for possible future expansion. It also allows bordering counties with populations of 100,000 or less to withdraw from the planning district area. Twenty-nine representatives from local governments within the district and other members appointed by the governor will govern the district, according to the bill.

Under the new law, the state Environmental Protection Division (EPD) will be responsible for establishing baseline water quality standards. The district's governing board will create a technical coordinating committee composed of local water quality professionals, who, in conjunction with watershed-specific advisory councils, will be charged with developing accurate stormwater, wastewater and water treatment recommendations.

Within two years, these recommendations will be used by the district to develop watershed-specific, comprehensive stormwater runoff management plans, wastewater management plans, and water supply and conservation plans, according to the bill. The plans must:

- include appropriate methods for monitoring water quality;
- describe the current amounts and types of pollutants that enter the watersheds, and predict future pollutant loads;
- identify all waterbodies that have or are required to have a total maximum daily load plan;
- establish priorities for protecting watershed resources;

- identify control programs and strategies—including regulatory and voluntary programs—to attain and maintain water quality standards;
- recommend any changes to local laws, regulations or ordinances;
- specify a timetable for implementation of plans;
- estimate associated costs and identify possible funding sources;
- establish public educational programs; and
- establish short- and long-term goals for each plan and measures by which they can be assessed.

Moreover, within one year, the district must develop a model stormwater ordinance for local governments that will include design, development, conveyance and infrastructure standards, the bill states.

Once the plans have been approved by the district, local governments will be required to implement them. If a jurisdiction within the district fails to adopt and implement the applicable plans, it may lose its eligibility for state grants and loans for water and conservation projects, the bill states. Stormwater permits may be modified by EPD to make them consistent with the plans, thus requiring any permittee to comply with the plans prior to obtaining or renewing a permit, according to the bill.

The law took effect May 1. By Dec. 1, a district finance committee must recommend to the governor an appropriate funding structure for water infrastructure improvements. ■

Storm Warnings

(Continued from page 3)

- a manual on available financing options; and
- case studies of successful stormwater finance programs.

The Web site is located at <http://stormwaterfinance.urbancenter.iupui.edu>.

EPA Extends Comment Period on Animal Feedlot Rule. EPA announced that it is extending until July 30 the comment period on a Jan. 12 proposed rule (66 FR 2959) aimed at reducing water pollution from large animal feedlot operations. The proposed rule would revise the national pollutant discharge elimination system provisions that define what operations are considered concentrated animal feeding operations and establish permit requirements. The rule also would amend the feedlot effluent limitations guidelines. ■

President Proposes Shifting Enforcement Authority to States

President George Bush is proposing a \$10 million increase in the U.S. Environmental Protection Agency's (EPA) enforcement and compliance budget for fiscal year (FY) 2002, but is asking that more of the budget be placed under the control of state and tribal governments, according to the administration's recent EPA funding request to the U.S. Congress.

Overall, the administration is proposing a \$475 million budget for EPA's Office of Enforcement and Compliance Assurance (OECA) for FY 2002. That figure includes \$25 million in new grants to state and tribal governments to be spent on enforcement and compliance efforts that reflect the individual government's priorities, according to Christine Todd Whitman, EPA's administrator.

"In some cases, that will mean prosecution," Whitman said. "In others, it will mean compliance assistance. But no matter which course is chosen, it will produce the best possible result in each individual situation." To make the additional state funding possible the administration proposed scaling back federal enforcement and compliance efforts, including trimming \$6 million from OECA's

inspections budget, \$2.5 million from civil enforcement and nearly \$1 million from enforcement training. The federal criminal enforcement budget would receive a small increase.

A number of environmental groups have expressed concern that the state grants program will weaken overall environmental enforcement and compliance efforts. EPA believes, though, that enforcement efforts will remain the same, said Mike Stahl, acting assistant administrator of OECA.

EPA is currently working on guidelines outlining which states will be eligible for the enforcement grants and how they will be allowed to spend them, Stahl said. The guidelines will require that states use the grant money on enforcement efforts related to the Clean Water Act, the Clean Air Act and the Resource Conservation and Recovery Act, he said.

The agency expects to have the guidelines in place well before Oct. 1 when the new fiscal year begins, Stahl said. More information about the proposed budget for OECA is available on the Internet at www.epa.gov. ■

Make your PSM program work for you.

Chemical Process Safety Report

- ▶ Understand all of OSHA's chemical process safety requirements
- ▶ Coordinate your efforts to comply with OSHA's PSM standard and EPA's Risk Management Program regulations
- ▶ Manage your PSM program with advice from industry experts
- ▶ Avoid the most frequent flaws found in PSM programs with guidance from top industry experts

CALL
1-800-677-3789

TRIAL SUBSCRIPTION CERTIFICATE CHEMICAL PROCESS SAFETY REPORT

YES! Please enter my one-year subscription to *Chemical Process Safety Report* to use and evaluate risk free for 30 days. Within that time, I'll either return the materials and owe nothing . . . or honor your invoice for \$481. I understand my subscription includes the looseleaf manual, monthly newsletters and update pages, and access to the Editorial Hotline. I'll be billed annually until I wish to cancel my subscription.

Name _____

Title _____

Organization _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

E-mail Address _____

Signature _____

(REQUIRED ON ALL ORDERS.)

BL190172

Payment enclosed. (\$481) **Bill me.** (\$481 plus \$19.50 postage and handling.)

Please make check payable to Thompson Publishing Group, Inc. Residents of DC, FL and MD, please add appropriate sales tax.

MAIL TO: Thompson Publishing Group, Inc. • Subscription Service Center • P.O. Box 26185 • Tampa, FL 33623-6185

CHEM

Stormwater Permit Manual

Bulletin

Volume 10, Number 9

April 2001

Verification Program To Test Effectiveness of Stormwater Treatment and Other Wet Weather Flow Technologies

The U.S. Environmental Protection Agency (EPA) and NSF International, an independent, nonprofit testing organization, have developed a testing protocol to determine the viability of stormwater treatment technologies and other wet weather flow (WWF) controls.

ETV Program

The protocol, completed in March, is part of the WWF Technologies pilot study, conceived by EPA and NSF to "verify the performance of commercially available technologies used to control and treat urban WWFs, including stormwater runoff, combined sewer overflow (CSO) and sanitary sewer overflow (SSO)." The pilot study, initiated in 1998, is one of 12 pilots formed under EPA's Environmental Technology Verification (ETV) Program, according to Kevin Smith, program coordinator with NSF.

More and more technologies are available now to solve the problem of treating wet weather flows, Smith said. "The overall objective of the ETV program is to help innovative technologies or technologies with new applications gain acceptance in the marketplace by generating third-party data," he added.

In addition to stormwater treatment technologies, NSF will test and verify high-rate separation/clarification and high-rate disinfection technologies, flow monitoring equipment, and wet weather models, according to NSF. Testing protocols for these categories also are being developed by technology panels composed of technical experts. NSF plans to test characteristics of technologies such as contaminant removal efficiency, applicability to various flow types (i.e., CSO, SSO or stormwater), space require-

(Continued on page 2)

Alabama Manual Offers 'Roadmap' for Communities Subject to Phase II Program

A manual developed for Alabama municipalities may help other communities develop more effective stormwater management programs. The *How-To Guide for Stormwater and Urban Watershed Management* was developed by Michael Mullen, director of the Center for Environmental Research and Service at Troy State University in Troy, Ala., to serve as a "roadmap" for individuals and communities that are in the process of developing stormwater and watershed plans and programs.

Specifically targeted to municipalities that must develop stormwater management plans under the U.S. Environmental Protection Agency's (EPA's) phase II program by March 10, 2003, the document aims to encourage other communities to be proactive in their urban watershed management programs.

(Continued on page 4)

Inside This Issue ...

Storm Warnings 3

Study Finds Contaminants Are Consistent Among Sites, Suggests Balanced Management Efforts 5

Added BMP Information Tab 600

Revised State Information Tab 800

Technology Testing

(Continued from page 1)

ments, service and maintenance requirements, and cost, NSF said.

A stakeholder advisory group—composed of 24 individuals representing technology vendors; state and federal regulatory and permitting officials; municipalities such as New York City, Montgomery, Ala., and others; technology users (e.g., private companies and treatment works); and “technology enablers” (e.g., consulting engineers)—is guiding the pilot. The group is responsible for prioritizing the WWF technologies that will be tested and verified, reviewing new and existing test protocols, providing guidance on test site selection and quality assurance procedures, and strategic planning, according to NSF.

NSF maintains that many stakeholders will benefit from pilot results. For instance, municipalities and businesses that may have to comply with existing or future regulations will be able to rely on the independent data procured from the study when evaluating their control options. On-site pilot testing of WWF technologies may become unnecessary, NSF predicted.

Vendors that elect to participate in the pilot “want to demonstrate that their technologies are effective,” Smith said. The data will be useful to consulting engineers who offer technology selection advice to clients. Finally, verified technologies will help regulatory agencies to facilitate permit writing and critically review stormwater and CSO plans, NSF said.

In addition to relying on the stakeholder advisory group, NSF plans to contract with engineering and scientific organizations on an as-needed basis to

develop test protocols, develop and operate field testing sites, and review documents.

Stormwater Treatment Technologies

The stormwater treatment technologies protocol applies to commercial, proprietary technologies that treat stormwater runoff from urbanized and highly impervious surfaces before it reaches a stormwater collection system or waterbody. Tests are intended to “measure the performance of a stormwater treatment technology in relation to the performance claims made by the manufacturer,” according to the protocol document.

Though vendors of technologies in other categories of WWF treatment have shown moderate interest in the verification program, manufacturers of stormwater treatment technologies have shown the greatest interest in the pilot study, according to Smith. He noted that at least 11 such vendors have signed onto the program.

The relatively high interest in the verification process may be attributed to the level of competition in the field. “Communities are looking for solutions [to their stormwater problems], particularly in highly developed areas where property values are high,” and space for traditional natural stormwater controls, such as retention ponds, is limited, Smith noted.

In addition, “some permitting agencies have been somewhat resistant to these technologies,” preferring natural systems. The participating vendors “are making an effort to demonstrate that their technologies can be just as effective,” according to Smith.

However, none of the technologies have been tested yet. “It has been difficult to agree on what the tests

(Continued on page 6)

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, William Stewart; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe. Annual subscription rate is \$439. Discounts for multiple subscriptions to this publication are available. Periodicals Postage is paid at Washington, D.C., and additional mailing offices. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

“This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.” —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA To Modify Public Access Requirement in 2000 MSGP. The U.S. Environmental Protection Agency (EPA) plans to modify language in the 2000 multi-sector general permit (MSGP) that currently requires facilities to make their stormwater pollution prevention plans (SWP3s) publicly available upon request, according to Dan Weese, stormwater team leader in EPA's Office of Wastewater Management. The modified language would be consistent with the provisions of the 1995 permit, which only recommends that a facility make its SWP3 available to the public.

Weese said that the change in the 2000 MSGP was precipitated by language the agency was considering for the concentrated animal feeding operations (CAFO) rule, which would have required CAFOs to provide public access to comprehensive nutrient management plans. When stakeholders convinced EPA to drop that language from the proposed rule, the agency felt it was no longer necessary to include the public access requirement in the 2000 MSGP, Weese said. In addition, industry expressed some concerns that public access to SWP3s may compromise some confidential business information (see *Bulletin*, January 2001, page 1).

The change is considered to be a major modification and, therefore, will be subject to a public comment period, according to Weese. The proposed amendment should be published in the *Federal Register* by late spring, he said.

Michigan CAFO Cited for Stormwater, Wastewater Violations. EPA Region 5 announced March 6 that it issued an administrative order to Walnutdale Farms Inc. in Wayland, Mich., to stop unlawful discharges of manure-contaminated stormwater and unpermitted wastewater and cooling water into the Red Run Drain and Rabbit River.

The Feb. 26 order requires the dairy to apply for a national pollutant discharge elimination system permit through the Michigan Department of Environmental Quality; cease application of manure on frozen and snow-covered ground; improve its waste storage capacity; develop and submit an SWP3 to EPA and the state; and submit a comprehensive plan to manage manure, wastewater, spoiled milk, waste feed, silage leachate and dead animals at the facility.

The order stems from a January EPA inspection that determined the facility had more than 700 dairy cattle and was discharging manure-polluted wastewater into a farm drain, thus categorizing it as a CAFO.

California Oil Facilities Fined for Stormwater Violations. Texaco Inc. pleaded guilty March 12 to Clean Water Act violations and agreed to pay \$4 million in fines for discharging contaminated wastewater into a nearby storm drain in Los Angeles and a San Luis Obispo creek (*United States v. Texaco Refining and Marketing Inc.*, No. CR01-93 (C.D. Cal.)).

According to a multi-agency investigation, a Texaco refinery in Wilmington, Calif., had been discharging oil and grease into the Dominguez channel in amounts in excess of its wastewater permit. A second felony stemmed from a March 11, 1997, incident at a San Luis Obispo service station where Texaco employees allegedly directed a contractor working on an underground storage tank to discharge oil-contaminated waste into the street. The unpermitted wastewater flowed into Prefumo Creek and eventually into the Pacific Ocean.

The terms of the plea direct \$3 million of the penalty to fund supplemental environmental projects in the Channel Islands National Park, Santa Monica National Recreational Area, the counties of San Luis Obispo and Ventura, the Wilmington district in Los Angeles, and the Los Angeles County Sanitation District.

Manual Available for Maintaining Unpaved Roads. The Choctawhatchee, Pea and Yellow Rivers Watershed Management Authority in Alabama recently made available the *Recommended Practices Manual: A Guideline for Maintenance and Service of Unpaved Roads*. The manual describes cost-effective techniques used to enhance the stability and maintenance of unpaved roads as well as to reduce erosion and sedimentation from the roads. The manual addresses road surfaces, ditch profiling and grading, culverts, outlet structures, bank stabilization, sediment and erosion control tools, and other considerations, such as aesthetics and roadside vegetation management. The manual is available on EPA's nonpoint source Web site at www.epa.gov/owow/nps/unpavedroads.html.

American Oceans Addresses Stormwater Management. The American Oceans Campaign (AOC) recently began distributing a one- to two-minute public service announcement video free-of-charge to television stations, newspapers and stormwater officials. The video, narrated by AOC founder Ted Danson, urges communities and citizens to consider the impact of their actions on stormwater runoff. The video is one of several resources AOC makes available on its Web site. Other resources include 60 organizational contacts related to runoff in California. Details of AOC's stormwater campaign are available on the Internet at www.american oceans.org/issues.htm. ■

Phase II Manual

(Continued from page 1)

The guide acknowledges that some communities already are managing stormwater in some capacity. However, “past stormwater management efforts have usually been one-dimensional and have focused on getting the water to run off as fast as possible so as to avoid flooding,” the guide states.

In addition, installation of concrete conveyances have contributed to stream degradation, water temperature alteration and flooding where the conveyance ends. The manual discusses “better approaches” to stormwater flow management, such as employing tailored design methods that take into account stormwater control during land development.

Stormwater Runoff Impacts

The guide describes two categories of stormwater runoff and their potential impacts. First, “hydrologic impacts”—or impacts from water movement—occur in urbanized areas with higher percentages of impervious surfaces and increased runoff rates. Increased runoff can lead to increased flooding, stream and habitat degradation, and decreased groundwater supplies because less precipitation can infiltrate the soil.

Hydrologic impacts are exacerbated when public officials are pressured to construct additional concrete conveyances to lessen flooding potential in a specific area. Communities experiencing significant growth rates find it particularly difficult to address hydrologic impacts, according to the guide.

The second category of stormwater runoff, “water quality impacts,” generally is caused by hydrologic changes. For instance, changes in stream geography and flow rate lead to higher water temperatures, which reduce the amount of dissolved oxygen in the water. In addition, runoff from warm pavement, rooftops and compacted earth surfaces often contains pollutants of concern that can raise water temperatures even further.

To reduce stormwater flow, communities should work to retain natural surfaces in newly developing areas that will allow percolation of water into soil and slow runoff. In already developed areas, retrofitting the area with detention and retention ponds may help keep stormwater discharges at pre-development levels, the guide explains.

Strategies for Fulfilling Phase II Requirements

The guide discusses the six required stormwater program elements that phase II permit holders must address and includes suggestions for fulfilling them.

Public Education and Outreach: Initially, the municipality should designate an individual to be responsible for ongoing public education and provide that person with the authority and funding to develop and implement an effective education program. The guide suggests developing a mix of activities targeted to both adults and students that range from informational messages to hands-on training to technical training. Specific needs will differ from community to community, according to the guide.

Communities also should consult existing educators involved in environmental education and recruit local conservation organizations to conduct neighborhood activities such as stream walks, storm drain stenciling and other hands-on activities.

Public Involvement and Participation: Communities should involve the public from the onset of the stormwater program. A community should form an advisory group composed of key public employees, members of the regulated community (i.e., developers, builders, business owners), taxpayers, property owners, environmental groups, educators and volunteers. Including all interested parties in the development of the program will lessen the risk of legal action over program funding, ordinances and other less popular aspects of the stormwater management program implementation.

Detection and Elimination of Illicit Discharges: The phase II program requires communities to develop and maintain maps of their stormwater and sewer systems. Maps make it easier to detect illicit connections to storm sewers.

Communities should emphasize education programs for business owners and homeowners to encourage voluntary detection and correction of illicit discharges. Communities also should visually inspect industrial sites and water courses for unusual pipes, use smoke and dye testing and dry-weather testing to detect suspected discharges, inspect stormwater conveyances using remote cameras, and sample upstream where any contamination may be found, the guide suggests.

Construction Site Runoff Control: The phase II program requires communities to permit construction sites as small as one acre. Communities should consider developing an erosion and sediment control ordinance, and train inspectors to enforce the ordinance. Training should be provided for local developers and construction personnel, according to the manual.

A community also may require that at least one individual, who is involved in a construction project and certified as a professional in erosion and sediment control, take responsibility for conducting inspections and reviewing and approving erosion and sediment control plans. Finally, a community

must decide whether to develop its own local enforcement program or refer problem sites to the state environmental agency, the guide states.

Post-construction Runoff Management: Communities should provide incentives to encourage developers to implement structural and nonstructural best management practices (BMPs) to stabilize newly constructed areas. A recurring fee should be considered to assure maintenance funding when needed.

Pollution Prevention and Good Housekeeping for Municipal Operations: A municipality should set a good example by implementing proper stormwater management practices at its own facilities. In addition to educating city employees and contractors about BMPs, municipalities should implement erosion and sediment control measures on municipal property, protect or restore riparian corridors, use flow and pollution BMPs at municipal parking areas, and use design elements to prevent polluted storm-

water runoff at new sites and redeveloped areas, the manual advises.

Finally, though the phase II program does not require monitoring reports, some level of monitoring may be required to determine a baseline for water quality and improvement, and to detect illicit discharges. The guide suggests a variety of ways in which the data may be collected.

For instance, communities should consider taking photographs to assess stream habitat conditions; establishing basic stream parameters such as temperature, pH and dissolved oxygen content; and determining the stream's biological condition at the onset and near the end of the permit cycle.

The guide lists additional resources that are available for developing a stormwater management program. To obtain a copy of the guide, contact Michael Mullen via email at mmullen@trojan.troyst.edu. ■

Study Finds Contaminants Are Consistent Among Sites, Suggests Balanced Management Efforts

A study conducted in Dothan, Ala., by Michael Mullen noted the consistent nature of pollutants in stormwater runoff among different types of urban and suburban areas. The study was designed to provide baseline data for jurisdictions that must develop stormwater management plans.

The study, *Characteristics of Pollutants in Stormwater Runoff from Dothan, Alabama Catchments: Implications for Phase II Stormwater Management*, sampled stormwater runoff from five sites: an agricultural site, a light industrial site, a residential site, a low-traffic commercial parking lot and a moderate to high-traffic parking lot.

Results suggested that contaminants in stormwater runoff are similar from site to site, except in agricultural areas and construction sites, which are more susceptible to erosion and sedimentation.

A survey of regional and national studies revealed that stormwater runoff from different types of sites has been accurately and consistently characterized as having similar contami-

nants. Thus, spending stormwater management resources to test for types of contaminants may be unnecessary, the study concludes. Also, end-of-pipe control or treatment of many pollutants often is financially prohibitive, according to the study. Thus, emphasis should be on changing human behavior and persuading manufacturers to redesign products and devices to eliminate toxic materials, the study notes in its recommendations.

In addition, Mullen advises communities not to use all of their resources to conduct exhaustive monitoring. Rather, communities could select several indicators to assess the status of their watershed, such as using a single species indicator or some measure of water quality.

Also, a large portion of resources should not be devoted to large restoration projects, nor should communities attempt to correct every problem at one time. Rather, restoration and prevention efforts should be balanced according to the specific needs and priorities of the community, the study concludes. ■

Technology Testing

(Continued from page 2)

should consist of, where tests should be sited and how tests can be done in a cost-effective manner," Smith said.

The protocol, which Smith describes as "rigorous," involves a three-phase verification process: planning, verification testing, and data assessment and reporting. NSF is responsible for identifying an appropriate field testing organization and personnel to oversee the testing. The protocol requires field testing and sampling during a minimum of 15 storm events; a battery of tests must be conducted on samples.

Moreover, the cost of the verification process can be "prohibitive" to vendors, even though NSF pays for a substantial portion, according to Smith. The process includes costs for test plan development, testing itself and writing of the verification report. He noted that the program also is looking to communities that may be able to offer grant money for testing, especially communities that are in the process of trying to resolve stormwater issues. If the stormwater is dirty, "it is easier to show a technology has an effect," Smith said.

Future of the Program

Smith points out that the private sector, e.g., large operations with large amounts of stormwater runoff,

has not yet shown much interest in participating in the program. However, he believes that the program "could benefit [private sector facilities] greatly and would save [them] from having to do evaluations on their own."

He predicted that once the program begins to generate concrete results, private sector participation likely will increase. He also would like to see NSF and industrial dischargers collaborate in future verification programs.

The program currently is funded by EPA through 2003. NSF hopes that it will eventually become a self-sustaining program, and that reliance on public funds will diminish. It is possible that the WWF pilot will be consolidated with other NSF-administered pilots, such as the source water protection technologies pilot and the drinking water treatment systems center, Smith speculated.

Once verification reports have been completed, vendors are free to use the results in their marketing efforts. In addition, results will be made publicly available via EPA's and NSF's Web sites: www.epa.gov/etv and www.nsf.org/etv, respectively, as they are completed.

For more information or to participate in the program, contact Kevin Smith at (734) 913-5719, John Schenk, pilot manager at (734) 913-5786 or EPA's Mary Stinson at (732) 321-6683. ■

Keep your environmental compliance program running effectively and efficiently . . .

Environmental Compliance Tool Kit

With over 200 ready-to-use tools, your subscription provides:

- ▶ Easy-to-use charts, checklists, forms, sample letters and plans, worksheets, lists of state contacts and compliance calendars
- ▶ Internet access to all the compliance tools
- ▶ Monthly newsletters and update pages
- ▶ And more!

CALL
1-800-677-3789

TRIAL SUBSCRIPTION CERTIFICATE

Environmental Compliance Tool Kit

YES! Please enter my one-year subscription and send me the *Environmental Compliance Tool Kit* to use and evaluate risk free for 30 days. Within that time, I'll either return the materials and owe nothing... or honor your invoice for \$416. I understand my subscription includes the *Tool Kit*, monthly newsletters and update pages, and that I will be billed annually until I decide to cancel my subscription.

Name _____

Title _____

Organization _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

E-mail Address _____

Signature _____

(REQUIRED ON ALL ORDERS.)

BL190172

Payment enclosed. (\$416) **Bill me.** (\$416 plus \$19.50 postage and handling.)

Please make check payable to Thompson Publishing Group, Inc. Residents of DC, FL and MD, please add appropriate sales tax.

MAIL TO: Thompson Publishing Group, Inc. • Subscription Service Center • PO Box 26185 • Tampa, FL 33623-6185

TOOL

Stormwater Permit Manual

Bulletin

Volume 10, Number 8

March 2001

Massachusetts "How-To" Guide May Help Communities Implement Successful Stormwater Management Systems

Municipalities that are interested in creating and implementing a stormwater utility or management system may find a "how-to" kit developed by several entities in Massachusetts and the U.S. Environmental Protection Agency (EPA) to be useful.

How To Create a Stormwater Utility is the product of a cooperative effort between the Pioneer Valley Planning Commission (PVPC) and officials of Chicopee and South Hadley, Mass., the Massachusetts Department of Environmental Protection and EPA. It examines the feasibility of creating a stormwater utility in Massachusetts; however, the guide includes general principles that may be applied in other states as well.

PVPC organized and staffed the advisory committee responsible for the project. The committee researched successful stormwater utilities across the country, the

legal aspects of creating such a utility in Massachusetts, and the design and implementation of a stormwater utility in Chicopee. PVPC also oversaw the production of public information materials designed to educate the citizenry of the need for and benefit of a stormwater management system.

Research Findings

PVPC found that stormwater utilities have existed for 19 years in over 150 towns and cities across the country. PVPC studied the design and implementation of successful stormwater management programs in 10 communities: Fort Collins and Aurora, Colo.; Bellevue and Tacoma, Wash.; Austin, Texas; Charleston, S.C.; Hillsboro and Los Angeles, Calif.; Boca Raton, Fla.; and Cincinnati. PVPC concluded that the

(Continued on page 4)

Report Addresses Impending Water Infrastructure Crisis; Flaws Debated

A new report recommends that Congress invest \$57 billion over the next five years to help municipalities upgrade rapidly deteriorating water, sewer and stormwater infrastructures across the country. However, not all water professionals agree with this approach to solving the infrastructure problem.

The Water Infrastructure Network (WIN)—a coalition of local elected officials, drinking water and wastewater service providers, state environmental and health administrators, engineers, and environmental organizations—predicts that water and wastewater systems will require \$23 billion a year more than they currently invest to repair or replace aging and failing water infrastructures, and meet Clean Water Act and Safe Drinking Water Act requirements. WIN's Feb. 13 report, *Water Infrastructure Now: Recommendations for Clean and Safe Water in the 21st Century*, examines the possible reasons why infrastructures are

(Continued on page 3)

Inside This Issue ...

Storm Warnings	2
ASCE, EPA Add More New Studies to National BMP Database	6
Calendar of Events	6
Added BMP Information	Tab 600
Revised State Information	Tab 800

Storm Warnings

Stormwater-Related News in Capsule Format

Hawaiian Company Fined for NPDES Violations.

The U.S. Environmental Protection Agency (EPA) announced on Dec. 21, 2000, that it fined the Hawaiian Electric Co. for alleged national pollutant discharge elimination system (NPDES) violations at two facilities that may have led to toxic discharges into the Honolulu and Pearl Harbors.

The alleged violations include failure to conduct stormwater inspections and toxicity tests, failure to calibrate meters and safeguard samples properly, and failure to report test results. The charges stem from a September 1999 inspection conducted by EPA and the state Department of Health. Hawaiian Electric has agreed to pay a \$200,000 penalty, has revised its procedures and is addressing the violations, according to EPA.

New Water Quality Publications Available.

The Center for Watershed Protection recently announced the release of three new publications. *The National Pollutant Removal Performance Database, 2nd Ed.*

expands upon the original edition and includes statistical and graphical comparisons of removal rates for six groups of stormwater management practices (ponds, wetlands, open channels, filters, infiltration and onsite devices). It also contains summaries of more than 135 urban pollutant removal monitoring studies. A bibliography is included. Price: \$25.

The Practice of Watershed Protection: Techniques for Protecting and Restoring Urban Watersheds contains 150 articles on various aspects of watershed maintenance and is organized according to specific tools of watershed protection. Price: \$80.

Urban Stream Restoration Practices: An Initial Assessment evaluates 24 urban stream restoration projects in the Mid-Atlantic and Midwest and provides suggestions for improvements. Price: \$20.

Los Angeles Region Sets Strict Trash TMDL. The Los Angeles Regional Water Quality Control Board Jan. 25 approved a total maximum daily load (TMDL) program for Los Angeles County that establishes a zero trash discharge goal into the Los Angeles River. A TMDL is a pollution allocation plan designed to limit the amount of a pollutant discharged into an impaired waterbody.

The focus of the TMDL is to significantly reduce the amount of trash that travels through municipal storm drains and stormwater runoff—which ultimately ends up in the Los Angeles River—over a 10-year period of time.

Under the program, municipalities would gather baseline data by monitoring trash deposition during the first two years of the program. Trash reduction efforts and requirements would be phased in over the next eight years. Waste load allocations will be assigned to municipal stormwater permit holders, according to the board.

Permittees will be able to employ whatever method they deem appropriate to achieve the zero-discharge goal. Such methods may include end-of-pipe nets, which are inexpensive but generally only partially capture trash; structural vortex separation systems, which are more expensive but generally are successful at capturing nearly all trash; and other methods such as catch basin inserts. ■

unrealistic

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, William Stewart; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe. Annual subscription rate is \$439. Discounts for multiple subscriptions to this publication are available. Periodicals Postage is paid at Washington, D.C., and additional mailing offices. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

WIN Plan

(Continued from page 1)

failing and recommends various public and private actions to meet the impending infrastructure challenges.

Background

Much of the coming "shortfall in infrastructure finance" will be the result of demographic changes, according to WIN. Water and wastewater utilities currently in use were built as a response to population growth in the post-war 1920s and 1950s. Many local utilities "will face unprecedented funding hurdles" when these 50- to 80-year-old infrastructures all begin to wear out at about the same time and need to be replaced.

According to WIN, the water and wastewater infrastructure should be a federal priority just like national defense or interstate highways. Instead, federal contributions to water infrastructures have declined. Local solutions, such as raising utility fees, will only address a portion of the future financial need, the report states. Therefore, federal investments in the forms of grants, loans and other assistance will be needed for communities that will not be able to afford the massive infrastructure undertaking, according to WIN.

WIN Recommendations

WIN suggests that Congress "renew its commitment to America's water resources" by funding a new five-year \$57 billion program that would allow states to administer grants and loans to upgrade local water infrastructures. The funding should be administered through state water and wastewater infrastructure financing authorities (WWIFAs), which would have broad discretionary authority to combine grants, loans and other financial methods to appropriately meet state needs, according to WIN.

WIN recommends that up to 50 percent of each year's funding allotment be devoted to grants that fund up to 55 percent of the costs associated with a water infrastructure project. Loans should comprise up to 25 percent of each year's allotment, and WWIFAs should be flexible as to the types of loans given and the interest rates applied, WIN states. WIN recommends loan terms of up to 30 years.

WIN notes that in addition to funding for the WWIFAs, Congress should contribute \$400 million per year for five years for state implementation of the Clean Water Act and the Safe Drinking Water Act. Moreover, Congress should authorize an additional \$250 million a year to promote research, development and use of innovative technologies that could reduce the cost of upgrading water

infrastructures and complying with clean water requirements. WIN also recommends that Congress authorize \$150 million a year to fund local research, development and implementation of innovative stormwater management projects. Finally, \$25 million a year should go to communities in need of technical assistance, the report concludes.

WIN notes that other financial assistance sources, such as public-private partnerships, may contribute to solving the infrastructure problem, and Congress should allow WWIFAs to cultivate such projects, if possible. In addition, WIN recommends that EPA form an Office of Water and Wastewater Infrastructure Financing to streamline and implement the administration of grants to state WWIFAs.

Dissent

The H₂O Coalition, which represents the National Association of Water Companies (NAWC), the Water and Wastewater Equipment Manufacturers Association and the National Council for Public-Private Partnerships, says it is pleased that WIN has tackled this issue. However, it believes several of the WIN recommendations are flawed. WIN "would have the American taxpayer pay for a multi-billion dollar bailout of the coming infrastructure funding problem," said Peter Cook, coalition member and executive director of NAWC.

Though the coalition agrees that the nation's water infrastructure will need massive upgrades in the near future and the current level of investments will not meet those needs, it believes that aid in the form of grants will only "breed inefficiency, encourage dependency and stifle innovation," Cook said. He added that the goal of the water industry "should be long-term self-sustainability, not perpetual reliance on subsidies." In contrast, the coalition suggests that utilities should charge their customers the full cost of service rates "to assure that all who can afford to pay do so." Low-income customers would receive assistance when appropriate under the coalition's plan.

The coalition also believes that the WIN report does not sufficiently encourage "new thinking and creative solutions." Rather, it only pays "lip service" to unconventional ideas such as public-private partnerships, which the coalition believes may play a significant role in infrastructure improvements. Moreover, the coalition states that the creation of a new EPA office and state WWIFAs would only add bureaucratic hurdles. Rather, "the best mechanisms for providing loans and grants are modified and expanded revolving state fund programs that already exist," the coalition suggests.

The WIN report is available on the Internet at www.wef.org. For more information about the H₂O Coalition, contact Peter Cook at (202) 833-8383. ■

Stormwater Utility

(Continued from page 1)

following general concepts are necessary for a successful program:

- The approach to collecting fees from property owners must be carefully and tactfully considered.
- Community outreach and involvement and ongoing educational campaigns are essential to managing a successful stormwater utility.
- Most stormwater utilities change over time, including the types of assessment methods and payment structures used.
- Any plan should consider ways to change residents' behavior toward improving stormwater quality.

By studying the implementation of a new stormwater program in Chicopee, where citizens lodged few complaints about the new stormwater fee, PVPC also found the following:

- A comprehensive stormwater ordinance is useful when justifying the legality of the new utility.
- The fee structure must be rationally devised. For instance, the fee should be consistent with the level of user contribution to the problem (i.e., the amount of a property owner's impervious surface and any onsite best management practices).
- An appropriate billing process should be devised prior to the program's implementation.
- The participation of a diverse advisory committee is essential to the success of the program.
- In light of the impending National Pollutant Discharge Elimination System Phase II regulations, stormwater utilities may become more attractive to covered municipalities with populations below 100,000 who may be required to improve their stormwater management.

Essential Areas of Concern

The "how-to" kit explains five essential factors a municipality should consider when planning the utility. These include legal issues, community outreach and public involvement, management, assessment and rate setting.

Legal Issues. A municipal stormwater utility generally should be established by a local ordinance, usually enacted by local government. A community can avoid legal challenges by citing the legal authority under which a utility is established from the outset, providing evidence of the need for the utility and the public process used to create it, and ensuring that the stormwater utility ordinance is consistent with other local, state and federal regulations.

A stormwater utility ordinance should include at least the following eight basic components:

- A clear, functional name.
- The article designation in the municipal code.
- The purpose, responsibilities and administration of the utility and its power to collect fees.
- The system of fees and a description of the elements used to calculate the fees.
- Identification of who will and who will not be charged fees.
- A process by which customers who believe they are being charged incorrectly may appeal or obtain an adjustment.
- Protection of the municipality from liability in the event that flooding occurs after the creation of the stormwater utility.
- Severability, which allows that if one portion of the ordinance is deemed invalid by a court, the remaining portions are unaffected.

An ordinance may be enhanced by including findings of fact that provide information about the development of the utility; explicit definitions; a statement of authority under which the utility is established; its physical jurisdiction; and billing regulations, collection of fees and penalties, according to the guide.

Community Outreach and Public Involvement. Educational outreach can foster better understanding and acceptance among property owners of the stormwater management program and fees. The guide notes that a municipality should determine what message it wants to communicate and how; what kinds of media it intends to use; how much of the budget will be devoted to education; and how outreach activities will be conducted and by whom.

Management. A community should consider how it plans to organize its stormwater utility, its staffing needs, what activities will be funded and how possible alternative sources of revenue may be obtained, according to the guide.

A stormwater utility may be established as a separate entity or be incorporated into an existing department of public works (DPW). A separate stormwater utility can directly control its funding and may apply for and receive outside funding targeted to stormwater projects. In addition, a stormwater utility independent of the DPW avoids potential conflict with the DPW. However, creating a separate stormwater utility is expensive, and some expenses that duplicate those of the DPW may seem gratuitous in the public's opinion, according to the guide.

A stormwater utility requires three basic staffing divisions and funding for each. A community should

consider funding for an operations and maintenance staff, which conducts the necessary daily maintenance of the stormwater infrastructure; a capital improvement project staff, which determines future workloads and employment needs; and an administration staff, which coordinates utility activities such as budgets, plans, designs and permits.

Moreover, communities should consider that initial funding for the startup of the utility, which may be quite expensive, will not come from user fees. Rather, the community may have to rely on grants, permit fees, development fees and taxes to first implement the program.

Assessment. A community must determine how it will assess a property owner's contribution to polluted stormwater runoff. Though developing an equitable fee assessment may be difficult and complicated, fairness and ease of implementation must be balanced, the guide states. In addition, rates should coincide with customers' land use. Flat rates may be easier to explain and appropriate for residential properties. However, a calculated rate based on the amount of impervious surface on a property may be more appropriate for nonresidential properties.

Rate Setting. The rate is the amount of money customers are charged for each billing unit over a specific period of time. When determining rates, communities should consider the total funds required to manage the system, the political feasibility of implementing a user fee and the public relations efforts that will be required to gain public acceptance of the fee. Flat rates may appear simple, but they may be more vulnerable to legal challenges and customer complaints, the guide warns. Variable rates are more difficult to calculate and require more preparation. However, they are generally more effective in accounting for how different land uses contribute to stormwater runoff problems.

Stormwater Utility Development

The guide recommends communities follow a 12-step program to create a viable stormwater utility. These steps are:

Define the Problem: Define the scope of the community's stormwater management problems and water quality issues.

Research: Research existing utilities in other communities to identify key issues.

Community Outreach and Public Involvement I: Begin educational outreach by issuing press releases, distributing brochures, publicizing meetings, etc.

Program Development I: Develop a preliminary stormwater management program that includes a

budget, and determine where the program will be housed and how it will function.

Collaboration I: Form an advisory committee composed of diverse participants from city departments such as public works, water, sewer, planning, community development, engineering, legal, etc. Representatives from the business community, the chamber of commerce, environmental groups, the regional planning agency, the state environmental protection agency and elected officials also should be consulted.

Community Outreach and Public Involvement II: Continue ongoing educational programs.

Collaboration II: Work with stakeholders to begin the process of passing a comprehensive stormwater management system, if necessary.

Program Development II (Refinement): Select an assessment method and rates based on cost/benefits analyses of different methods.

Legal/Political Foundation: Pass an ordinance if necessary.

Program Implementation: Begin billing procedures.

Community Outreach and Public Involvement III: Continue ongoing educational programs and include information about the use of the funds being collected.

Program Development III: Evaluate the program, refine rough details and modify fee structures if necessary.

The guide also includes extensive briefing papers that expand on the key areas of concern. Additionally, the guide includes sample public education materials such as press releases, flyers and a video script designed to foster better public awareness of stormwater issues.

A copy of the "how-to" kit is available from PVPC by calling (413) 781-6045. ■

Attention Subscribers!

Continuously updated newsbriefs on all aspects of environmental compliance are available on the Internet at www.thompson.com/libraries/environment/index.html.

For customer care-related information, please call (800) 677-3789.

If you have editorial-related questions, contact the editor at (202) 739-9611 or via e-mail at STRM@thompson.com.

ASCE, EPA Add More New Studies to National BMP Database

Twenty-five new best management practices (BMP) studies have been added to the comprehensive National Stormwater BMP Database, according to the American Society of Civil Engineers (ASCE).

The database, a cooperative effort between ASCE's Urban Water Resources Research Council and the U.S. Environmental Protection Agency (EPA) and first conceived in 1999, is a clearinghouse of BMP performance data designed to allow stormwater professionals across the United States to exchange information on BMPs (see *Bulletin*, November 1999, p. 1). Information such as test site location, researcher contact data, watershed characteristics, regional climate statistics, BMP design parameters, monitoring equipment types, and data such as precipitation, flow and water quality are provided for each BMP study included in the database.

Several of the new studies concern detention and wetland basins, oil/grit separators, retention ponds, and street inlet filters. Others examine grassed swales, hydrodynamic devices and wetland channels. Study locations range all over the country. Additional monitoring, precipitation, georeferencing and flow data, and agency information was added to four existing studies previously entered into the database.

The database includes both data entry and retrieval modules. Records added to the database must undergo a quality assurance review by the database development team. Data can be retrieved by specifying

one or more parameters such as state, country, watershed size, general BMP type (i.e., structural or nonstructural), BMP group (e.g., detention basins), specific BMP type, and water quality criteria.

In addition to the 25 new studies added, more than 70 studies are being considered for entry into the database, which would double the number of BMP studies listed since the database's inception, according to ASCE.

The database is one component of a broader project that aims to discover factors that affect BMP performance so that measures may be developed to improve BMP design and implementation, according to ASCE. Future versions of the database will contain analysis tools based on project conclusions, the organization said.

Formerly available only on CD-ROM, the database is now available at www.bmpdatabase.org. A user's guide and performance measure documents also can be downloaded from the Web site. In addition, ASCE and EPA are developing a BMP monitoring guidance manual that will be consistent with the database protocols that should be available by spring 2001, according to Eric Strassler, project officer in EPA's Office of Water.

For more information about submitting studies for the database, contact Jane Clary, ASCE project manager, via email at clary@wrightwater.com. ■

Calendar of Events

World Water and Environmental Resources Congress 2001. The American Society of Civil Engineers (ASCE) and the Environmental and Water Resources Institute are holding a conference May 20-24 in Orlando, Fla., to address the world's water resources challenges. Sessions will cover issues such as stormwater and best management practices, rivers and reservoirs, southeastern U.S. water issues, water resources management, water and wastewater treatment, environmental modeling, sedimentation, environmental issues, and water distribution systems. Peer reviewed symposia and workshops will address stormwater retrofitting, urban drainage modeling and integrated surface and groundwater management, and model calibration.

The conference targets engineers, consultants, policy makers, public planners, environmental researchers and water resources engineering suppliers. Fee for ASCE members and members of cooperating organizations if paid by April 27: \$595. Nonmembers: \$695.

More information is available on the Internet at www.asce.org/ewri2001.

Nonpoint Source Pollution Information and Education Programs. The Chicago Botanic Garden, the U.S. Environmental Protection Agency and the Illinois Environmental Protection Agency are co-sponsoring a second annual conference May 14-17 in Chicago, Ill., to discuss and disseminate nonpoint source pollution information and education strategies. Speakers will feature creative and successful public outreach programs targeted to nonpoint source program staff at the local, state and federal levels.

Fee: \$195 if received by April 23. Additional \$45 fee for grant-writing pre-conference workshop. For more information, contact Bob Kirschner at (847) 835-6837 or bkirschn@chicagobotanic.org. Information also is available on the Internet at www.chicagobotanic.org/SchoolSymp.html. ■

Stormwater Permit Manual

Bulletin

Volume 10, Number 7

February 2001

Copper Roofs and Architectural Features May Contribute Significantly to Polluted Stormwater Runoff, Study Suggests

A significant amount of copper found in area waterways can be attributed to stormwater runoff from copper roofs, gutters and downspouts, according to a study released in November 2000.

The study, *Architectural Uses of Copper, An Evaluation of Stormwater Pollutant Loads and BMPs*, was prepared by Thomas Barron, P.E., for the Palo Alto Regional Water Quality Control Plant (RWQCP) in Palo Alto, Calif. In addition to studying the impacts of copper in stormwater runoff, Barron suggested several best management practices (BMPs) for reducing the amount of copper releases.

Copper Usage

Copper is used in the construction of roofing sheets, tiles, flashing strips, gutters, downspouts, cupolas, vents, handrails, light fixtures and signs. Though the

initial cost of copper is significantly more than alternatives such as steel, it is often chosen for its appearance, fire resistance and longevity, according to Barron. In fact, the overall expected life of a copper roof can be several hundred years, according to the study.

Copper roofs do corrode; however, after several years, a light green "patina" builds up on the surface of the copper, which slows the corrosion rate, the study noted.

The study also noted that a complete inventory of copper roofs and appurtenances in the Palo Alto area was unavailable. However, based on personal communications with roofing associations, suppliers, contractors and building department officials in

(Continued on page 2)

EPA Considers Effluent Guidelines for Construction Industry Stormwater Runoff

The U.S. Environmental Protection Agency (EPA) plans to propose effluent limitation guidelines for the construction industry by March 2002 and currently is collecting data from construction companies regarding their management of stormwater runoff at construction projects, according to Eric Strassler, project manager in the Engineering and Analysis Division of EPA's Office of Water.

The action is the result of a consent decree between EPA and the Natural Resources Defense Council (NRDC), which sued the agency for allegedly violating the Clean Water Act when it became evident that the agency would miss a December 2000 deadline for the effluent guidelines proposal (*NRDC v. Browner*, D.D.C. Civ. No. 89-2980 (RCL) (D.D.C. Aug. 16, 2000)). That deadline had been decided under a 1992 consent decree between NRDC and EPA.

(Continued on page 5)

Inside This Issue ...

Storm Warnings	3
Chesapeake Group Sets Goals To Reduce Polluted Stormwater	4
Revised MSGP Information Tab 500, Appendix	1

Copper Study

(Continued from page 1)

Palo Alto, Barron estimated that about "70 homes and a dozen larger structures had copper roofs, 650 structures of all kinds are believed to have copper gutters and downspouts, and 40 houses have roofs made of copper-containing algae-resistant shingles."

Copper Releases

Using data obtained by the Palo Alto RWQCP, Barron estimated the average annual copper release rate. The data included such information as annual rainfall amounts, pH and salinity; typical copper corrosion rates reported for each type of architectural copper feature; and typical copper release rates for corrosion byproducts that form over time.

The amount of copper released during a storm depends on the daily corrosion rate and type of corrosion that occurs, the number of days since the last rainfall, and the intensity and amount of the current rainfall, the study explained. The rate of copper corrosion decreases over time as a protective patina forms. Conversely, the amount of corrosion byproducts that are released in the stormwater runoff from the roof is initially small and increases over time until the release rate is equal to that of the corrosion rate, according to the study.

Based on average annual rainfall and ocean air exposure conditions in Palo Alto, Barron concluded that releases from copper roofs decrease significantly once a protective patina develops. Copper releases from gutters and downspouts also may decrease over time but possibly not as much as from roofs because acidic organic debris can lodge in gutters. In addition, releases from algae-resistant copper shingles will vary depending on the amount of rain that falls each year, the study noted.

Barron estimated that about 298 pounds per year (lbs/yr) of copper are released from roofs and other copper architectural features in the Palo Alto area. This estimate accounts for about 20 percent of the 1,540 lbs/yr of copper observed in local creeks, the study concluded.

Recommended BMPs

Barron made several recommendations to reduce the amount of copper releases. For instance, he noted that a steel roof that is coated to look like mature, patinated copper can be used in place of copper. Coated steel is a newer option and less expensive than copper, and it "probably has a practical service life approaching that of copper," he said.

Barron also suggested using a small metals treatment system that can remove copper from runoff before it enters the environment, though the report noted that this option may be practical only for large buildings. A metallic and ion exchange unit could capture half or more of the copper released at an installation cost of about \$2,500. However, the system would require yearly maintenance, the study said.

The study offered other BMPs, but they are largely untested:

- Using pre-patinated copper materials. This technique may cost more than plain copper, and the patina coating may be fragile.
- Using a clear-coated copper surface. This is an unproven technique and the impact on copper releases is unclear. Estimates predict that it may reduce copper releases by 75 percent or more.
- Routing stormwater runoff to a planted area. The ability of planted areas to effectively capture copper from stormwater runoff is unknown.

The study is available on the Internet at <http://www.westp2net.org/news/cu/copper.htm>. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe. Annual subscription rate is \$439. Discounts for multiple subscriptions to this publication are available. Periodicals Postage is paid at Washington, D.C. and additional mailing offices. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitscarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Developer Fined for Stormwater Violations. The U.S. Environmental Protection Agency (EPA) Dec. 28, 2000, announced that it cited Colrich Communities Inc., a San Diego-based developer, for stormwater pollution violations at an 80-acre subdivision near Temecula, Calif. The agency fined Colrich \$60,000 for lack of proper sediment erosion controls and failing to develop and implement a proper stormwater pollution prevention plan (SWP3). As a result of ineffective controls, excessive erosion occurred at the site, according to the agency.

The citation stemmed from EPA inspections conducted in 1997 and 1998 after two earlier violation notices issued by the California Regional Water Quality Control Board went unheeded.

D.C. Facility Charged with Stormwater Violations. The U.S. Department of Justice (DOJ) and the U.S. Attorney's Office jointly Jan. 10 announced that the government has filed a civil suit against Garcia Auto Parts of the District of Columbia, for stormwater violations.

The complaint alleges that since February 1999—when EPA conducted inspections at the facility—the auto salvage yard has discharged stormwater containing motor oil, lead from batteries, organic plastics and other hazardous materials into the District's sewer system, which drains into the Anacostia River. According to DOJ, "polluted stormwater is a major source of the pollution found in the Anacostia." EPA ordered Garcia to obtain a national pollutant discharge elimination system (NPDES) stormwater permit, but the facility failed to do so and continued to discharge pollutants, according to DOJ.

The complaint seeks a ruling that would order Garcia to obtain and comply with an NPDES permit and implement a proper SWP3. In addition, Garcia could be fined up to \$27,500 for each violation per day that the facility has been in violation.

Steel Manufacturer Settles Water, Air Violations. DOJ announced on Dec. 19, 2000, that it had settled a suit against Nucor Corp. Inc., that alleged numerous environmental violations, including stormwater violations. According to the settlement, Nucor must pay a \$9 million civil penalty and install \$85 million worth of state-of-the-art pollution controls—the most comprehensive environmental settlement ever with a steel manufacturer, according to DOJ.

According to the complaint, Nucor allegedly "mis-managed" K061 dust, which is a hazardous waste produced by electric arc furnaces. The dust contami-

nated soil, groundwater and stormwater discharges at 14 Nucor steel mills in seven states. Nucor also failed to control air pollution that resulted in thousands of tons of illegal air emissions each year, according to the complaint.

In addition to monetary penalties, the settlement requires Nucor to improve its management of the K061 dust and stormwater discharges; sample stormwater, groundwater and soil at each of its facilities; and remediate those areas that are contaminated with K061 dust using an EPA or state-approved plan. Nucor also must complete \$2 million worth of community-based supplemental environmental projects.

MPCA Unveils Pilot Program to Reduce Permitting Burden for Printers. The Minnesota Pollution Control Agency (MPCA) Dec. 11, 2000, announced a voluntary pilot program that would reduce permitting burdens for the printing industry. The Printers Simplified Total Environmental Partnership (PrintSTEP) would combine air, water, hazardous waste and stormwater permits and fee structures into one "user-friendly" application.

The program will be piloted in St. Cloud, Minn., where, "according to the St. Cloud Area Chamber of Commerce, printing is one of the three largest industries," said Brian Livingston, coordinator of the PrintSTEP program. The program's goal is to start enrolling printers in 2001. Once the program is underway, area printers will have the option of being permitted and regulated under the simplified system, or they may continue using the existing process, Livingston said.

Environmental agencies in New Hampshire and Missouri also plan to participate in the PrintSTEP pilot program. For more information about the Minnesota program, contact Brian Livingston at (651) 297-1830.

Minnesota Contractor, Township Cited for Stormwater Violations. MPCA announced on Dec. 27, 2000, that it has fined Louis Leustek and Sons and Silver Creek Township \$7,625 for failing to obtain a stormwater construction permit and failing to implement erosion control measures at the Castle Danger wastewater treatment system construction project site.

During an April 1999 inspection, MPCA inspectors found that neither the contractor nor the township had applied for a stormwater permit or installed any erosion controls. Also, neither party notified MPCA when polluted stormwater was discharged into area waterways. After the inspection, the contractor and

(Continued on page 4)

Storm Warnings

(Continued from page 3)

township applied for and obtained the proper permit and established erosion protection at the site, according to MPCA.

EPA Proposes Effluent Guidelines for CAFOs. EPA on Dec. 15, 2000, proposed revisions to NPDES permit regulations for concentrated animal feeding operations (CAFOs) (66 FR 2960, Jan. 12, 2001). The proposal presents two alternative methods for determining if a facility is a CAFO. The first alternative uses a two-tiered structure in which a facility is considered a CAFO if it has 500 cattle or comparable animal units (AUs). The second option would retain the three-tiered structure of the existing regulation where the following operations would be subject to

permitting: operations with 1,000 AUs or more; operations with 300 to 1,000 AUs that meet certain conditions; and operations designated as a CAFO by the permitting authority.

Other proposed revisions include eliminating the 25-year, 24-hour storm event permit exclusion but retaining it as a design standard because EPA believes the exclusion has been inappropriately used by some CAFOs to avoid permitting obligations. Best available technology, new source performance standards and best management practices also are specified. EPA predicts that under the proposed new regulations 39,000 facilities would be subject to the rule. Currently, only 2,500 facilities classified as CAFOs have permits.

Comments are due May 2. For more information, contact Karen Metchis at (202) 564-0766. ■

Chesapeake Group Sets Goals To Reduce Polluted Stormwater

The Chesapeake Bay Program, a coalition of stakeholders, including the states of Maryland, Virginia and Pennsylvania and the District of Columbia, announced an action plan Dec. 12, 2000, that would set specific goals to reduce toxics from nonpoint sources of pollution such as stormwater and agricultural runoff.

The *Toxics 2000 Strategy* is a voluntary program aimed at reducing or eliminating chemically polluted runoff from entering the Chesapeake Bay, particularly in three regions of concern—the Anacostia River, Baltimore Harbor and Elizabeth River. Over 300 government, citizen, industry, environmental and scientific representatives from all over the Chesapeake Bay area were involved in developing the strategy. The plan comes after results from the 1999 Chesapeake Bay Basinwide Toxics Loading and Release Inventory found that urban stormwater runoff and other nonpoint sources contribute substantially to bay and tidal river contamination.

In addition to nonpoint source control, the plan aims to “surpass current regulatory requirements and strives to achieve ‘zero release’ of chemical contaminants into the bay by phasing out chemical mixing zones, reducing point source loads, and adopting new measures to ensure that finfish and shellfish are safe to eat,” according to a program statement.

Nonpoint Source Pollution Control

The plan considers urban and suburban stormwater runoff, agricultural runoff, atmospheric deposition and groundwater contamination to be sources of nonpoint pollution. It sets goals within specific time frames to achieve the ultimate objective of a zero release rate of contaminants. For instance, between 2001 and 2005, the bay program intends to work with local governments to implement projects that

emphasize stormwater pollution prevention measures, innovative site designs and best management practices (BMPs) to reduce chemical contaminants. However, the plan is not specific about which measures, designs or BMPs it will encourage.

Between 2005 and 2010, program officials plan to evaluate the status of the voluntary pollution prevention measures, though the plan was not specific about what methods it will employ to gather this information. However, by 2010, the plan states that at least a 30 percent reduction in chemically contaminated runoff is achievable using voluntary methods.

Throughout the ten-year period, plan objectives also include working with the construction and development industry to reduce pollution at construction sites; working with landowners to reduce chemical use during home activities; and ensuring that appropriate stormwater management technologies are in place at newly developed lands. Bay program partners plan to use data from the national pollutant discharge elimination system stormwater permit program, total maximum daily load development efforts and demonstration projects to improve estimates of urban stormwater runoff.

More information is available on the Internet at www.chesapeakebay.net/press.htm. ■

Correction

In the January 2001 issue of the *Bulletin*, the Internet address provided for obtaining special stormwater reports and information was incorrectly listed.

The correct address is www.thompson.com/libraries/environment/strm/index.html.

Effluent Guidelines

(Continued from page 1)

In preparation for the proposal, EPA is asking commenters to address the following topics:

- What have been a construction company's two predominant types of construction work in the past five years, e.g., roads, buildings, pipelines, etc? In addition, what proportion of these projects are public works?
- How do erosion and sediment controls and/or best management practices (BMPs) for heavy construction projects differ from those for residential projects?
- What types of innovative stormwater management practices or systems are used at various construction areas?
- How does a company handle unexpected stormwater management costs, such as costs associated with possible future regulatory requirements?

In addition to extending the proposal deadline, the consent decree requires EPA to develop regulatory options applicable to point source discharges from construction, development and redevelopment projects that are subject to the national pollutant discharge elimination system (NPDES) stormwater phase I and phase II rules.

However, the agreement does not require the agency to select any specific option it develops as the basis for its proposed rule. Such options may include requiring dischargers to:

- meet effluent limits for sedimentation and turbidity for one or more BMPs identified by EPA in its proposed rule;
- control pollutants other than sedimentation and turbidity, such as discarded building materials, trash, pathogens, pollutants found in truck washout water and other pollutants EPA has identified as pollutants of concern, during construction and post-construction phases;
- implement short and long-term structural and nonstructural BMPs for controlling post-construction runoff;
- establish short- and long-term performance-based operation and maintenance BMPs; or
- implement stormwater controls designed to retain pre-development conditions where possible.

The consent decree also requires EPA to consider the estimated costs to builders and developers associated with complying with the proposed effluent limits. Moreover, the agency should consider possible additional revenue that may result from projects with stormwater controls that enhance property values.

In addition, the agency agreed to issue a guidance document by March 31, 2002, for municipal separate storm sewer systems and others subject to the NPDES program on maintaining the effectiveness of post-construction BMPs identified in the proposal. The guidance document would be updated by July 31, 2004, to be consistent with the final effluent limitations guidelines, which must be issued by March 31, 2004, according to the consent decree.

EPA also agreed to meet with NRDC several times in the next year to discuss its progress toward developing the proposed guidelines. In addition, the consent decree notes that the commitments made under the agreement are contingent on funding available to the agency.

Industry Reaction

The plan to propose effluent guidelines for construction sites has generated some concern within the industry. For instance, imposing specific numeric effluent limits and requiring routine sampling of stormwater runoff may "impose a heavy financial burden on developers and purchasers of construction sites," according to Leah Wood, environmental counsel for the Associated General Contractors of America (AGC).

Moreover, Wood notes that it is "unrealistic and impractical for EPA to assume that a given BMP would perform the same way on every construction site." Wood argues that because soil types and weather conditions vary between state borders, a "typical construction site" does not exist, and certain BMPs would perform differently on every construction site. Therefore, she recommends that the agency avoid standardizing any BMPs for the industry and allow state agencies to implement controls that are determined by local site characteristics, she said.

The agency acknowledged the difficulty of setting specific BMPs in a March 1999 fact sheet in which it stated that it "does not intend to require the use of particular BMPs at specific sites, but plans to assist builders in BMP selection by publishing data on the performance to be expected by various BMP types." Strasser also notes that the agency has not yet decided if it plans to set numeric effluent limits, follow a design criteria approach or set performance-based BMPs. However, the agency does want "to encourage site-by-site design and discourage a cookbook style approach for implementing BMP plans," he said.

Wood also noted that the agency should allow flexibility in the BMP selection process. "Contractors are in the best position to determine which BMPs are appropriate for use on any given site," she said,

(Continued on page 6)

Effluent Guidelines

(Continued from page 5)

adding that flexibility would allow for "greater innovation and adaptation to site-specific conditions."

Wood also asserts that the data that EPA likely will use to develop the rule is incomplete. Most of the data available to EPA is from large construction sites, which have been covered under the NPDES program since the early 1990s. "Very little data exists for smaller sites" because permit applications for sites between one and five acres, which are newly covered under phase II of the NPDES program, are not due until late 2002, Wood said.

In addition, AGC is concerned that EPA will propose guidelines without adequately researching all the issues surrounding BMP selection. Wood recommends that EPA develop and use a standardized questionnaire to gather BMP information from construction companies prior to proposing the rule.

Unfortunately, developing and distributing a questionnaire—which would be a "massive undertaking"—has been ruled out as a feasible option because the agency is under pressure to propose the rule

within two years and is limited financially, said Strassler. Instead, the agency is relying on existing published professional material, existing BMP databases, field sampling and personal interviews with stakeholders. The agency has consulted with organizations such as the American Society of Civil Engineers, the National Association of Home Builders and the International Erosion Control Association to collect data.

Finally, Wood notes that EPA's outreach efforts have been poor thus far, though the agency held a public meeting in April 1999 to encourage stakeholders to submit any data that may help guide development of the rule. Also, in October 2000, the agency issued an "invitation" to construction companies to share information "about their experiences with stormwater issues." However, Wood believes that the agency has "made no real attempts at national outreach." Still, Strassler notes that the agency plans to hold one or two public meetings in the spring or summer of 2001 to discuss the progress of the proposal.

According to Strassler, EPA currently is on schedule and expects to propose the rule by the March 2002 deadline. For more information, contact Eric Strassler at (202) 260-7150. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
• monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$498
- Environmental Compliance Tool Kit \$416
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$327
- Chemical Process Safety Report \$481
- Risk Management Program Handbook \$439
- Aboveground Storage Tank Guide \$437
- Underground Storage Tank Guide \$307
- Community Right-To-Know Manual \$384
- Ozone Depleter Compliance Guide \$548

Check enclosed (payable to Thompson Publishing Group Inc.)

Please bill me (add \$19.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group Inc., Subscription Service
Center, P.O. Box 26185, Tampa, Fla. 33633-6185

**Call Us Toll-Free At 1-800-677-3789 or
visit our website: www.thompson.com**

BJ86040

Stormwater Permit Manual

Bulletin

Volume 10, Number 6

January 2001

EPA Issues Draft Guidance on NPS Pollution at Marinas; Solicits Comments on BMPs for Stormwater Control, Other Issues

The U.S. Environmental Protection Agency (EPA) has developed and is soliciting comments on a draft guidance document for managing nonpoint source (NPS) pollution at inland and coastal marinas and recreational boating facilities. The document includes recommended best management practices (BMPs) to control and reduce contaminated stormwater runoff and other sources of NPS pollution.

National Management Measures To Control Nonpoint Source Pollution from Marinas and Recreational Boating provides technical assistance "on the best available, economically achievable means of reducing nonpoint pollution" at marinas and boating facilities, according to EPA. The document is consistent with the 1993 *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters* but expands it to include inland marinas. It also provides back-

ground information about NPS pollution, discusses the concepts of assessing water quality on a watershed level and provides updated technical information on BMPs.

In addition to comments on the information currently in the document, the agency is soliciting additional information on other management measures or BMPs that stakeholders believe may be as effective or more effective at controlling NPS pollution at marinas and boating facilities.

Document Design

The document targets 15 management measures—or operational issues—that marina owners and operators must address and recommends BMPs that can be

(Continued on page 4)

New MSGP Provokes Little Reaction, Certain Provisions Cause for Concern

The new stormwater multi-sector general permit (MSGP), issued Oct. 30, 2000, by the U.S. Environmental Protection Agency (EPA), has not provoked strong reaction as a whole because few states are still subject to EPA's stormwater permitting authority. However, some stakeholders remain concerned about specific provisions (see *Bulletin*, December 2000, p. 1; September 2000, p. 1; and May 2000, p. 1 for related articles).

John Whitescarver, director of the National Stormwater Center in Stuart, Fla., described the new permit as "ho-hum," because it does not affect many facilities that are under state authority. However, he did express some concern about a new provision that requires a regulated facility to provide a copy of its stormwater pollution prevention plan (SWP3) to any citizen who provides a written request. Whitescarver does not recall this provision in the proposal,

(Continued on page 6)

Inside This Issue ...

Storm Warnings	2
EPA Furthers Process in Controversial TMDL Rule, Solicits Comments on Costs Associated with Implementing Program	5
Revised MSGP Information	Tabs 200, 500

Storm Warnings

Stormwater-Related News in Capsule Format

State Agency Issues Belated Stormwater Permit.

The Minnesota Pollution Control Agency (MPCA) announced Dec. 5, 2000, that it issued stormwater permits to the cities of Minneapolis and St. Paul. The three-year permits include requirements for developing stormwater infrastructure, best management practices (BMPs), monitoring at points where stormwater enters waterbodies and additional strategies for preventing polluted stormwater runoff. The MPCA Citizens Board approved the permits at a Nov. 28 meeting. The permits formalize management activities already underway, MPCA said.

Both Minneapolis and St. Paul, which have populations over 100,000 and are covered under Phase I of the national pollutant discharge elimination system stormwater program, applied for permits in 1993, as required by the Clean Water Act (CWA). MPCA delayed the permits "to concentrate on other environmental priorities," the agency said. Because of the delay, a citizen group brought a lawsuit, which alleged that the cities were unlawfully discharging stormwater without a permit (see *Bulletin*, October 2000, p. 1).

Facility Ordered To Implement Stormwater, Wastewater Plans. The U.S. Environmental Protection Agency (EPA) Region 1 announced Dec. 4, 2000, that it ordered a casting and firearms manufacturer in Newport, N.H., to comply with stormwater and wastewater laws. According to the order, Sturm, Ruger and Co. failed to implement its current stormwater management plan or accurately monitor the acidity of its wastewater discharges.

The agency discovered the alleged violations during inspections of the facility in November 1999 and

March 2000. Sampling at the facility indicated high levels of zinc and iron in stormwater runoff, which flows into the nearby Sugar River. To comply with the order, Sturm Ruger must fully implement its stormwater plan and create an acceptable plan to monitor its wastewater discharges, the agency stated.

Developers Fined for Stormwater Violations. EPA Region 9 announced Dec. 4, 2000, that it fined two developers a total of \$60,000 for stormwater violations at a 74-acre construction site in Redding, Calif. The developers, Jaxon Enterprises Inc. and Creative Living, were building a subdivision near Keswick Dam. EPA investigators discovered the alleged violations during inspections in 1998 and 1999 after the Central Valley Regional Water Quality Control Board issued two earlier citations that went unheeded, according to EPA.

When construction of the subdivision was delayed several years, the developers left a rough roadway and a large cleared area exposed to rains with no erosion control and ineffective sediment control measures, according to EPA. As a result, large amounts of silt and sediment were discharged into nearby Harland Creek, a tributary of the Sacramento River, and a local salmon habitat, the agency said.

The agency cited Jaxon and Creative Living for the following violations:

- an exposed rough-graded road, cut slopes and other cleared areas that were excessively eroded because of a lack of erosion control measures;
- ineffective sediment runoff controls such as hay bales, silt fences and berms; and

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe. Annual subscription rate is \$439. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2001 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

- improper implementation of a stormwater pollution prevention plan (SWP3).

For construction sites five acres or larger, CWA requires temporary control measures such as seeding, mulch, rolled blankets or other suitable ground cover to control erosion on rough or final graded areas. Land developers have a "legal obligation to maintain management practices for both erosion control ... and sediment control ... to ensure that sediment in stormwater does not pollute waterways during the build-out process," said Alexis Strauss, director of the Water Division of EPA Region 9.

D.C. Companies Cited for Stormwater Violations.

EPA Region 3 announced Nov. 15, 2000, that it reached agreements with three cement companies in the District of Columbia that allegedly failed to control stormwater discharges into the Anacostia River. The alleged violations were discovered during an investigation conducted by the Anacostia Environmental Enforcement Task Force, which includes members of EPA Region 3's water enforcement program and the District's Environmental Crimes Unit.

According to EPA, Opportunity Concrete failed to obtain a permit for stormwater discharges from its ready-mixed concrete manufacturing facility and will pay a \$4,000 penalty. The DC Rock concrete recycling business, owned by John Driggs Co., also did not have a required permit for its stormwater discharges, EPA said. It will pay a \$4,000 penalty as well. Finally, Maryland Rock Industries Inc., which stores and processes sand and gravel at its Anacostia Terminal, allegedly failed to implement an SWP3 and has agreed to pay a \$6,781 penalty.

TNRCC Proposes MSGP for Stormwater Discharges. The Texas Natural Resource Conservation Commission (TNRCC) issued Oct. 10, 2000, a proposed Texas pollutant discharge elimination system (TPDES) permit for the state's industrial dischargers. The state received permitting authority from EPA when the federal multi-sector general permit (MSGP) expired Sept. 29, 2000 (see *Bulletin*, October 2000, p. 3).

The proposed permit contains provisions similar to the 1995 federal MSGP and would be available to Texas facilities currently covered by the federal MSGP, except certain oil exploration, production, processing or treatment operations that are under the authority of the Railroad Commission of Texas. The permit proposes technology-based numeric effluent limitations and establishes stormwater pollution control measures that largely are based on the federal MSGP, according to TNRCC.

The proposed permit includes benchmark monitoring requirements that are slightly different from

those of the federal program. In the federal program, permittees must begin quarterly analytical monitoring in the second year of the permit term, suspend monitoring in the third year and complete monitoring in the fourth year. The proposed TPDES permit would require that monitoring be conducted during the second and third years of the permit term.

TNRCC notes that the revision may benefit permittees. For instance, SWP3s must be evaluated on a regular basis and revised accordingly. Monitoring in consecutive years will provide a more continuous source of data and therefore may sooner allow a permittee to determine if a facility's SWP3 is effective, the agency predicted. In addition, it is less likely that a facility will overlook the second-year data collection requirements if the monitoring data must be taken in consecutive years, the agency said.

The proposed permit follows the baseline general permit strategy by requiring certain standard pollution prevention practices and BMPs, the proposed permit notes. However, permittees also will be allowed to "use their knowledge of the facility and expertise in the specific industrial process to develop a site-specific pollution prevention plan," TNRCC said.

According to a TNRCC spokeswoman, the proposed permit was published in the *Texas Register* on Nov. 3, 2000. The final permit should be issued by late January or early February of 2001, she said. For more information, contact TNRCC's Stormwater Permit Team at (512) 239-4433.

EPA, States Launch National Compliance Assistance Clearinghouse. EPA, states and several other stakeholders have developed the National Compliance Assistance Clearinghouse to provide regulated industries with information for complying with environmental requirements. The clearinghouse was developed in response to requests "by states and other compliance assistance providers to create a central network to help them find information quickly and allow them to communicate with each other more effectively."

The clearinghouse provides a single repository of compliance assistance materials, according to a Dec. 7, 2000, EPA press release. It has unique features that solicit participation from the user community to quickly locate compliance assistance information that is housed on multiple Web sites. It allows users to add links from their own Web sites and to notify EPA of their compliance needs.

Initially, the clearinghouse will provide links to EPA and state Web sites, but it will be expanded to include information about industry resources, private organizations and other assistance providers. The clearinghouse can be found on the Internet at www.epa.gov/clearinghouse. ■

Marina BMPs

(Continued from page 1)

used to achieve improvements in each area. Besides addressing stormwater runoff, BMPs for the following management measures also are included: marina flushing, water quality assessment, habitat assessment, shoreline stabilization, fueling station design, petroleum control, liquid material management, solid waste management, fish waste management, sewage facility management, maintenance of sewage facilities, boat cleaning, boat operation and public education.

The document notes that these management measures ideally should be incorporated into the early stages of marina design to ensure that the site will have good water circulation characteristics and does not encroach on sensitive aquatic habitats, thus reducing the potential for water quality problems. Designers should keep in mind the physical location, shoreline stability and pollution prevention efforts prior to building the marina, EPA states. However, many of the BMPs described in the document can be incorporated into pollution prevention plans and “retrofit” at existing marinas, according to the document.

EPA also notes that the management measures and BMPs described in the document are only examples of the types of BMPs that may be implemented. Site-specific or regional circumstances should be considered prior to selecting BMPs for a particular marina, according to the agency. In addition, the BMPs and management measures described in the document generally are more applicable to facilities with 10 or more slips; boat maintenance or repair yards located adjacent to the water; federal, state or local facilities; public boat ramps; or mooring fields with 10 or more boats, according to EPA.

Following the discussion of each management measure and its associated BMPs, the document provides a table summarizing key aspects of the BMPs. The table explains where in the marina a BMP is appropriate, the benefits of the BMP, initial cost estimates of the BMP, and annual operation and maintenance costs associated with the BMP.

Stormwater Runoff Management

Unlike some management measures, managing stormwater runoff is an issue that all marinas must face, EPA states. Improvements to stormwater runoff areas, fueling stations, sewage facilities and hull maintenance areas can significantly reduce stormwater pollution to the marina basin, the document explains.

The document establishes a goal of an 80 percent reduction of total suspended solids in stormwater

runoff. Most marinas use some management practices and are already either achieving or nearly achieving this 80 percent reduction rate, EPA notes.

The agency organized the BMPs that it believes are the most effective in reducing runoff pollution into two categories: pollution prevention strategies and source reduction strategies. According to the document, marinas should consider implementing the following pollution prevention strategies:

- Perform as much boat repair and maintenance work as possible inside work buildings. The work area is protected from wind, and dust and debris are more effectively contained.
- Where inside work space is unavailable, perform abrasive blasting and sanding within spray booths or tarp enclosures.
- Where buildings or enclosed areas are not available, provide clearly designated land areas for boat repair and maintenance. Schedule maintenance work on calm days.
- Design hull maintenance areas to minimize contaminated runoff. A dry, impervious surface like a cement pad will allow easy collection, cleanup and disposal of debris, residues, solvents and spills.
- Use vacuum sanders to remove paint from hulls and to collect paint dust. Immediate capture of paint dust prevents it from entering the marina basin. Some sanders can capture over 98 percent of the dust generated, allowing workers to forgo wearing suits and respirators.
- Restrict the types and amount of “do-it-yourself” work done at the marina.

Marinas also should consider implementing some or all of the following source reduction strategies:

- Clean hull maintenance areas immediately after any work to remove debris, and dispose of collected material properly. Waste such as paint chips, trash and grit should be vacuumed or swept—not hosed—from the area.
- Capture and filter pollutants out of runoff water with permeable tarps, screens and filter cloths.
- Sweep and vacuum hull maintenance areas, roads, parking lots and driveways frequently.
- Plant grass and other deeply-rooted, erosion-resistant vegetation between impervious areas and the marina basin to retain and filter pollutants from runoff before it reaches the water.
- Construct or restore former wetlands where feasible and practical. Wetlands are extremely efficient pollution filters.
- Where feasible, use porous pavement, which has a coarse, permeable top layer covering an additional

layer of gravel. Runoff infiltrates the porous layer and seeps into the ground. Porous pavement can recharge groundwater and can filter 80 percent of sediment, trace metals and organic matter.

- Install oil/grit separators to capture petroleum spills and coarse sediment.
- Use catch basins where stormwater flows to the marina basin in large quantities. Catch basins trap particulates and soil before they reach the marina basin while allowing the water to escape.
- Add filters to storm drains that are located near work areas.

- Place absorbents in drain outlets.
- Use chemical and filtration treatment systems only where necessary. Though this type of treatment system can remove more than 90 percent of the suspended solids and 80 percent of the most toxic metals found in hull pressure-washing wastewater, the chemicals used in this process require disposal themselves.

Comments are due March 5. For more information, contact Ed Drabkowski at (202) 260-7009. A copy of the draft guidance is available on the Internet at www.epa.gov/owow/nps/new.html. ■

EPA Furthers Process in Controversial TMDL Rule, Solicits Comments on Costs Associated with Implementing Program

The U.S. Environmental Protection Agency (EPA) published a notice Dec. 4, 2000, asking for public comments on the costs associated with the development and implementation of the total maximum daily load (TMDL) program.

The Clean Water Act requires states to prioritize rankings for waters listed as impaired and develop TMDLs for these waters. A TMDL, which essentially is a "pollution budget" for a specific waterbody, specifies the amount of a particular pollutant that may be present in a waterbody, allocates allowable pollutant loads among sources, and provides the basis for attaining or maintaining water quality standards. EPA issued a final TMDL rule on July 13, 2000 (see *Bulletin*, August 2000, p. 1).

However, to address concerns about the costs associated with the implementation of the rule, Congress passed a law prohibiting EPA from spending any funds to implement the new rule during fiscal years 2000 and 2001.

Request for Comments

Although the TMDL rule does not take effect until Oct. 1, 2001, congressional reports accompanying EPA's appropriations for fiscal year 2001 directed EPA to conduct a "comprehensive assessment" of state and regulated community costs associated with TMDLs, to solicit comments from the states and the general public on these costs and to present the results of the study to Congress within 120 days of the signing of the appropriations bill, which the President signed Oct. 27, 2000.

Specifically, House Report 106-988 (HR 4635) requires EPA to provide an estimate of the rule's annual costs to the regulated community, address economic concerns identified by the Comptroller General in a June 21, 2000, report and estimate the economic burden that the TMDL program will place on small businesses.

Similarly, Senate Report 106-410 states that "at a minimum, the report should (1) identify any expected increase in state personnel needed to develop and implement 40,000 TMDLs; (2) specify additional data collection activities to make listing decisions; (3) identify the cost of conducting the needed studies to collect high quality data on the current loads from ... point and nonpoint sources of a pollutant on 303(d) listed waters slated for TMDL development; and (4) provide an estimate of the annual costs to the private sector due to TMDL implementation and related costs."

In light of the congressional mandates, EPA is soliciting comments on the following issues:

- costs to states and territories associated with the development and implementation of TMDLs, including any savings that may be associated with the use of a TMDL, and the potential need for additional information to assess current loads;
- costs to the regulated community associated with TMDL compliance, including any savings that may result from more cost-effective pollution control approaches developed through the TMDL process (e.g., use of more cost-effective control mechanisms, coordination of program requirements and time lines for waterbodies, and integration of pollution control planning for multiple water bodies with common pollution control problems);
- potential costs that small businesses may incur as a result of the final TMDL rule;
- concerns about EPA's cost assessment of the final TMDL rule; and
- any additional data collection efforts that may be required by the TMDL rule to make listing decisions.

For more information, contact Michael Haire at (202) 260-2734. ■

MSGP Reaction

(Continued from page 1)

nor does Jeffrey Longworth, an attorney with Kelly, Drye and Warren LLP in Washington, D.C., who represents the Stormwater Reform Coalition. With this new provision, any citizen can ask for the plan and review it, Whitescarver said.

Longworth expressed misgivings and noted the new provision could "provide an opportunity for abuse." He explained that SWP3s often contain confidential business and other proprietary information that a company may not want to share with the public or competitors. The provision "raises business issues" because a competitor can simply request a copy of the plan and obtain the information, he said. He added that if this provision is allowed to stand, it needs more "checks and balances."

Longworth noted that to his knowledge, prior to the adoption of the new provision, individuals could obtain copies of a facility's SWP3 from the permitting authority, which could screen out sensitive proprietary information if necessary before providing the plan as requested. He is unsure why the agency chose to include this provision in the 2000 permit, but he noted that citizens might use information in a facility's SWP3 in lawsuits alleging violations of the Clean Water Act.

In fact, Nancy Stoner, director of the Clean Water Project of the Natural Resources Defense Council, had argued in her comments on the proposed MSGP that "the public should be able to obtain access to and comment upon a stormwater pollution prevention plan before it is finalized." However, she had no comment for the *Bulletin* on the new provision of the final permit.

Analytical Monitoring

In the permit proposal, EPA requested comments on the analytical monitoring process and asked for alternatives to the controversial requirement. Several commenters, including Longworth, noted that the results of analytical monitoring were unreliable and inconsistent and suggested that EPA replace the requirement with visual monitoring or annual monitoring reports. However, EPA chose not to change this particular provision.

Longworth and Whitescarver both expressed disappointment with EPA's decision. Whitescarver claimed that it was "never clear whether EPA was looking at the [analytical data] being submitted anyway." It appeared to him that EPA "didn't know what to do, so [the agency] just kept doing it the old way," he suggested.

He believes that the monitoring provisions should have been revised to allow facilities to submit an

annual report rather than taking a "grab sample" during a storm event. "Sending an employee out in the rain to get a sample is unreliable, unrealistic and doesn't work," he said. An annual report would have at least prompted facility operators to think about their SWP3 plans once a year, which would have been much more effective, he said.

Longworth does not believe that EPA sufficiently explained why they chose not to change the requirement and questioned the accuracy of grab sample results as well. "It is impossible to draw conclusions [from grab sample data] because there are so many variables," he said. Alternatively, EPA should require facilities to "implement best management practices that we know work," thus concentrating on pollution prevention, he suggested.

In comments to EPA during the permit proposal phase, Fredric Andes, an attorney with Barnes and Thornburg in Chicago, who represents the Federal Water Quality Coalition, expressed concern about the permit's water quality standards provisions, some of which include discharge-specific conditions. "Our overall concern is that if you start putting discharge-specific conditions [on facilities], you've taken away the value of a general permit," he said. However, Andes still is reviewing the new permit to determine if the coalition's concerns were satisfactorily addressed.

Despite their problems with some aspects of the permit, both Whitescarver and Longworth believe the new "no-exposure" exemption will benefit permittees. However, neither are sure of the extent to which stakeholders will take advantage of the option. Whitescarver characterized it as "legally strict," which may discourage some from invoking it. Additionally, questions exist about "what the provision really means, whether [a facility] can maintain it, and if [the exemption] is user-friendly enough to be useful," said Longworth. In any case, Whitescarver predicted that some facilities will have taken advantage of the exemption by next summer. ■

Attention Subscribers!

Important information and stormwater documents, such as EPA's NPDES Phase II Final Rule and the Final MSGP, are now available at www.thompson.com/environment/strm/index.html.

For editorial questions, contact the Editor at (202) 739-9611 or via E-mail at STRM@thompson.com.

For customer service questions, call (800) 677-3789.

Stormwater Permit Manual

Bulletin

Volume 10, Number 5

December 2000

Reissued Multi-sector General Permit Effective Immediately, Includes Consolidated Requirements and New Provisions

The U.S. Environmental Protection Agency (EPA) Oct. 30 reissued the stormwater multi-sector general permit (MSGP) under the national pollutant discharge elimination system (NPDES), thus replacing the recently expired MSGP that was issued Sept. 29, 1995. Revisions to the permit, which take effect immediately, consolidate many of the requirements from the original permit and reduce its overall size by 75 percent, EPA said (65 FR 64746).

The requirements of the new permit generally are consistent with the previous MSGP. For instance, the new permit retains the numeric effluent limitations found in the expired permit. It also retains the analytical monitoring requirements of the 1995 MSGP. EPA rejected other industry suggestions, such as visual monitoring, annual reporting or group monitoring techniques, because the agency determined the alternatives to be insufficient.

The agency added some new provisions and clarified others as well. Generally, however, the new MSGP closely follows the proposed permit (see *Bulletin*, May 2000, p. 1). The new permit covers areas where EPA is the permitting authority in regions 1, 2, 3, 4, 5, 6, 8 and 10.

Changes in the Permit's Provisions

EPA has made several changes to the MSGP. For instance, the agency added a special provision to the permit that enables a facility to discontinue permit coverage if it determines that it is eligible for the "no-exposure" permit exemption. EPA created the exemption when it issued the Phase II stormwater regulations (see *Bulletin*, December 1999, p. 1). A notice of termination (NOT) is not required to

(Continued on page 3)

Study Finds Urban Tree Cover May Significantly Reduce Stormwater Burden

A study conducted by American Forests' Urban Forest Center indicates that the level of urban tree cover can significantly affect urban stormwater management and also may decrease related costs, according to American Forests.

The conservation organization recently studied the impact of trees on the stormwater management system in Garland, Texas, and found that more tree canopy cover can lead to less stormwater runoff. Fewer stormwater retention facilities would be required and stormwater management costs would decrease if tree cover increased, the organization stated. The study "illustrates the financial savings and positive health effects trees can have on an urban area and how these benefits increase as tree cover increases," said Gary Moll, vice president of American Forests' Urban Forest Center.

(Continued on page 4)

Editor's Note:

An electronic version of the new multi-sector general permit can be found on the Internet at www.epa.gov/owm/sw/industry/msgp/index.htm.

Inside This Issue ...

Storm Warnings	2
Revised MSGP for Industrial Activities	Appendix 1(e)

Storm Warnings

Stormwater-Related News in Capsule Format

Copper Smelter Fined for Stormwater Violations. Chemetco Inc., which operates a copper smelter in Madison County, Ill., was sentenced in federal district court Oct. 30 to pay about \$3.9 million for violating the Clean Water Act (*United States v. Chemetco Inc.*, S.D. Ill., No. 99-CR-30048-WDS). The company pleaded guilty Jan. 10 in the U.S. District Court for the Southern District of Illinois to discharging pollutants for 10 years through a pipe connected to a stormwater runoff control system that drained into a nearby creek that ultimately fed into the Mississippi River. The company also pleaded guilty to making false statements to the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers about the discharges.

In addition to the fine, the court imposed a five-year probation period. During that period, Chemetco must comply with the Illinois EPA's closure and remediation plan for the contaminated site, according to U.S. Attorney W. Charles Grace.

Oregon Proposes Revisions to Stormwater Permits for Construction Activities. The Oregon Department of Environmental Quality (ODEQ) proposed revisions Nov. 13 to two national pollutant discharge elimination system (NPDES) general permits for construction activities, which cover clearing, grading, excavation and stockpiling activities, that will disturb five or more acres of land. The permits also cover construction activities that disturb less than five acres "if part of a common plan or phased development." One permit, the 1200-C, applies to private construction activities. The 1200-CA permit applies only to public agencies involved in construction activities.

New federal regulations require states that are approved to issue NPDES permits to reduce the acreage threshold from five acres to one acre by

December 2002. According to the proposal, ODEQ will implement the lower acreage requirement using a phased approach during permit renewals. This means that starting Dec. 1, 2002, construction activities of one acre or more must apply for coverage under one of the permits, the proposal explains. The permits also will include construction activities that disturb a total of one or more acres and are part of a larger common plan of development, it also states.

Other changes to the permits would include: defining maintenance criteria for some commonly used best management practices; documenting inspections and requiring that they include specific observations; and updating the requirements for terminating a permit.

Public comments on the proposed permit are due Dec. 19.

Georgia Voters Place High Priority on Water Quality Issues. Georgia voters rank water quality among the state's top priorities, with a majority willing to pay higher taxes to ensure cleaner water, according to a new statewide poll conducted for the Metro Atlanta Chamber of Commerce. The poll was conducted last month following a landmark recommendation from the Clean Water Initiative Task Force organized by the Chamber of Commerce and the Regional Business Coalition (see *Bulletin*, November 2000, p. 1). The task force proposal, which calls on 16 metro counties to collaboratively solve metro Atlanta's mounting wastewater and stormwater runoff problems, will go before the governor and the general assembly for consideration. Statewide, over 50 percent of voters believe that local governments should be required to work together to manage stormwater and wastewater problems, and over 30 percent think the state government should get involved, according to the poll. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

MSGP

(Continued from page 1)

discontinue permit coverage, but, in accordance with Phase II rules, a no-exposure certification must be filed with the permitting authority, EPA said.

The permit also includes slightly modified requirements regarding the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA). First, facilities are eligible for MSGP permit coverage only if they can certify that stormwater and allowable nonstormwater discharges and "discharge-related activities" do not jeopardize endangered or threatened species or critical habitat.

Alternatively, EPA describes several other options under which a facility may comply with the ESA-related requirements. For example, a discharger may be covered if the U.S. Fish and Wildlife Service or the National Marine Fisheries Service can conclude that no jeopardy to endangered or threatened species or habitat will result from stormwater discharge. The agency dropped a proposed requirement that would have required permittees also to consider species that are proposed for listing as endangered or threatened.

Coverage also may be granted if discharges and related activities were previously addressed in another operator's certification of eligibility whose activities surround or include those of the first operator. Such a situation may exist at an airport facility where one operator (e.g. the airport authority) may have covered the entire airport through its certification, EPA explained.

Moreover, stormwater discharges may not adversely affect properties protected under the NHPA. Where such properties may be affected, a discharger must describe the measures that will be used to minimize damage.

In addition, a new provision establishes eligibility conditions with regard to discharges to water-quality-limited and water-quality-impaired waters. A permittee that plans to discharge into a waterbody for which there is an approved total maximum daily load (TMDL) plan, which allocates pollution levels among dischargers to bring the water quality up to acceptable standards, will have to confirm that the TMDL allows for the discharge.

The new permit clarifies the conditions under which transfer from an individual permit to a general permit would be acceptable. First, the individual permit could not have contained numeric water-quality-based effluent limitations developed for the stormwater component of the discharge. Also, the permittee must include any specific best management practices (BMPs) for stormwater required

under the individual permit in its stormwater pollution prevention plan (SWP3) for the MSGP.

Other Changes

The reissued MSGP includes numerous other revisions such as the following:

- No solid materials, including floating debris, may be discharged in stormwater, except as authorized under the Clean Water Act.
- Co-located facilities—facilities where industrial activities being conducted onsite fall into more than one category or sector—must comply with all sector-specific conditions.
- Certain incidental cooling tower mist discharges will be considered authorized nonstormwater discharges.
- Permittees now must include a copy of the permit in their SWP3.
- Facilities covered under Sector AD (nonclassified facilities) cannot choose coverage as a nonclassified facility. Only the permitting authority can assign coverage in this sector.
- BMP requirements were added in Sectors S (air transportation facilities), T (treatment works) and Y (rubber, miscellaneous plastic products and miscellaneous manufacturing industries).
- A 30-day deadline was established for submitting an NOT.
- The manufacturing of fertilizer from leather scraps was moved from Sector Z (leather tanning and finishing) to Sector C (chemical and allied products).
- Special conditions for facilities subject to the Emergency Planning and Community Right-to-Know Act were modified.
- The new permit will accommodate electric filing of notices of intent (NOIs) and NOTs if these options become available during the permit's term.

Deadlines

Facilities covered by the 1995 MSGP must submit an NOI requesting coverage under the reissued MSGP by Jan. 29, 2001. For these facilities, the requirements of the 1995 MSGP are incorporated into the revised MSGP and continue to apply until the NOI is submitted, EPA said. Facilities currently covered by the 1995 MSGP that cannot immediately determine if they are eligible for coverage under the new permit can be covered for up to 270 days provided an application for an alternative permit is submitted within 90 days.

Facilities that commence operations after the permit was reissued must submit an NOI at least two days prior to the commencement of any new industrial activity. ■

Stormwater Study

(Continued from page 1)

Garland commissioned the study in an effort to fulfill certain requirements of its national pollutant discharge elimination system (NPDES) stormwater permit, according to Philip Welsch, the city's NPDES program manager. A city ordinance requires the equivalent replacement of any trees that are removed, and this study was meant to demonstrate to the U.S. Environmental Protection Agency that the ordinance is successful and its NPDES permit still is valid, Welsch said.

The city also established a stormwater utility in 1991 to fund stormwater management projects. Property owners pay a variable stormwater fee depending on the amount of impervious surface on their property and the volume of stormwater that the property generates. The findings of this study may allow the city to "offer property owners a direct incentive for reducing the amount of stormwater that flows off their property" by increasing the number of trees, American Forests said.

The Study

American Forests used its CITYgreen software—a geographic information systems modeling technology—to determine the value of Garland's existing urban tree canopy. The study analyzed 10 residential, commercial and industrial plots in Garland, ranging in size from four to 21 acres and ranging from 43 percent tree coverage to no coverage. The software developed various models of tree canopy cover percentages and translated the percentages into dollar amounts saved.

For example, a study scenario showed that a 3.86-acre residential site with an 8-percent canopy cover reduces the potential amount of stormwater that would require management by 3 percent with an estimated cost savings to the city of \$2,630. The modeling technique also projected that if canopy cover on the site was increased to 25 percent, 35 percent or 45 percent, stormwater runoff would decrease by 9.3 percent (with an estimated cost savings of \$8,446), 12.8 percent (\$11,881) and 16.1 percent (\$15,270), respectively.

In addition, the study projected that Garland's existing 10.6 percent tree cover saves the city \$5.3 million per year. Without the current tree cover, the study estimated that the city would have to manage an additional 19 million cubic feet of stormwater during a major storm event at an additional annual cost of approximately \$2.8 million.

This cost estimate is based on an average cost of constructing stormwater retention facilities at \$2 per cubic foot. Such facilities generally must undergo significant maintenance work about every 30 years.

Annual monetary savings estimates are based on a 6 percent interest rate on a 30-year loan, which would otherwise be necessary to construct the facilities, according to American Forests.

The organization notes that its CITYgreen software based its stormwater runoff calculations on a model developed by the U.S. Natural Resources Conservation Service. According to American Forests, the method is widely used for stormwater planning and uses a "runoff curve number" based on land cover and soil characteristics to estimate resulting stormwater runoff.

The Benefits of Trees

American Forests, which has studied the effects of trees on the urban environment for 20 years, believes the tree canopy can act as an effective nonstructural best management practice in stormwater control. For instance, tree leaves, branches and trunks help manage stormwater, especially during light rains, by intercepting rainfall and slowing the rate at which the rain reaches the ground. Water flow also is spread over a longer period of time, American Forests noted. Moreover, some stormwater soaks into the soil, and some intercepted rainfall evaporates before reaching the ground, further reducing stormwater flow.

In addition, trees can potentially act as "pollution filters," according to American Forests. Their canopies, trunks, roots and associated soil can filter particulate matter and other "byproducts of urban living" such as nitrogen, phosphorus and potassium, out of the stormwater flow before it reaches the drains.

In addition to stormwater benefits, American Forests postulated that Garland's trees also remove 497,000 pounds of pollutants from the air per year and store and sequester a significant amount of carbon each year as well.

Recommendations

Based on the study's findings, American Forests recommended that Garland city officials develop public policies that lead to increased tree cover and promote a "green infrastructure." Garland also should include trees and their associated values when making land-use decisions, American Forests suggested. Lastly, the city should set goals for optimum tree cover and develop a plan to reach this goal, the organization said.

Welsch noted that educational campaigns are scheduled to begin in 2001, and the city likely will set tree cover goals as recommended. In addition, the city encourages builders to leave as many trees as possible when developing land, but the "political climate" and rapid pace of development in the area may not allow the city to require anything beyond the existing tree ordinance, Welsch noted. ■

Stormwater Permit Manual

Bulletin

Volume 10, Number 4

November 2000

Atlanta Area Reveals Ambitious Plan To Improve Regional Water Quality, Stormwater and Wastewater Management

The Atlanta area Clean Water Task Force, an organization composed of regional leaders, representatives from the local environmental community and elected officials, approved a proposal Oct. 4 that created the Metro Atlanta Water Planning District, which will assume responsibility for planning and implementing a program to improve regional stormwater and wastewater management.

The task force is part of the Clean Water Initiative, which was created through a "collaborative process" by the Metro Atlanta Chamber of Commerce and the Regional Business Coalition. Since May 2000, the task force has been examining water quality issues, especially stormwater runoff and wastewater treatment discharges in and around Atlanta.

The ambitious proposal outlines the planned organizational structure of the district, how it plans

to obtain funding for the program and its goals for addressing regional water quality issues. Finally, it outlines recommendations on how the district can improve the region's stormwater and wastewater management.

Organization and Funding

Initially, the district will encompass the city of Atlanta and 16 surrounding counties, according to the proposal. Neighboring counties could join the program voluntarily once it gets underway, the proposal says. The district's governing board will be organized into an executive committee, a technical coordinating committee, basin advisory councils that represent each of the major basins in the district (Chattahoochee, Etowah, Flint and Ocmulgee), and general

(Continued on page 5)

Hawaii's Newly Approved Polluted Runoff Plan Receives \$763,000 Grant

The U.S. Environmental Protection Agency (EPA) Sept. 19 approved Hawaii's plan to control polluted runoff and gave the state a \$763,000 grant to implement the plan.

Under *Hawaii's Implementation Plan for Polluted Runoff Control*, pursuant to Section 319 of the Clean Water Act (CWA), the state upgraded its nonpoint source program by integrating polluted runoff control programs under CWA and the Coastal Zone Act Reauthorization Amendment, according to an EPA press release. The Hawaii Department of Health and the state's Coastal Zone Management program will have joint responsibility for this polluted runoff control program.

"Nonpoint source pollution or polluted runoff includes rain that washes motor oil off roadways, garden watering that flushes fertilizers or pesticides down the storm drain and sediment from construction sites and agricultural land washing into waterways," EPA explained in a press

(Continued on page 2)

Editor's Note:

As this issue went to press, EPA issued the final multi-sector general permit (MSGP). Read a newsbrief at www.thompson.com/libraries/environment/index.html. An in-depth article examining the MSGP will appear in the December issue.

Inside This Issue ...

States Address Stormwater Management and Permit Issues	3
Storm Warnings	4
EPA Report Highlights FY 1999 Enforcement Achievements	6

Hawaii Plan

(Continued from page 1)

release. "Polluted runoff is among the most significant causes of water quality problems in Hawaii and across the country. Controlling this source of water pollution is difficult because it doesn't flow from any single point, but flows over land carrying pollutants to the nearest stream or coastal water."

Congress amended CWA in 1987 to establish the Section 319 Nonpoint Source Management Program because it recognized the need for greater federal leadership to help focus state and local nonpoint source efforts. Under Section 319, states, territories, and Indian tribes receive grant money for a wide variety of activities, including technical assistance, financial assistance, education, training, technology transfer, demonstration projects and monitoring to assess the success of specific nonpoint source implementation projects.

In a letter approving Hawaii's plan, Felicia Marcus, regional administrator for EPA, wrote, "we find the implementation plan successfully incorporates the nine key elements, as defined by the *Nonpoint Source Program and Grant Guidance for FY 1997 and Beyond* (EPA, May 1996) and characterizes an effective and dynamic state nonpoint source program." The following is a summary of the nine elements:

- The state program contains explicit short- and long-term goals, objectives and strategies to protect surface and ground water.
- The state strengthens its working partnership and linkages to appropriate state, interstate, tribal, regional and local entities, private sector groups, citizen groups, and federal agencies.
- The state uses a balanced approach that emphasizes both state nonpoint source programs and on-ground management of individual watersheds.
- The state program abates known water quality impairments from nonpoint source pollution and prevents significant threats to water quality from present and future nonpoint source activities.
- The state program identifies waters and watersheds impaired by nonpoint source pollution and identifies important waters threatened or at risk. Further, the state establishes a process to progressively address these identified waters by conducting more detailed watershed assessments and developing watershed implementation plans, and then by implementing the plans.
- The state reviews, upgrades and implements all program components required by Section 319(b) of CWA and establishes flexible, targeted and iterative approaches to achieve and maintain beneficial uses of water as expeditiously as practicable.
- The state identifies federal lands that are not managed consistently with state nonpoint source program objectives. Where appropriate, the state seeks EPA assistance to resolve such issues.
- The state manages and implements its nonpoint source program efficiently and effectively, including financial management.
- The state periodically reviews and evaluates its nonpoint source management program using environmental and functional measures of success, and revises its nonpoint source assessment and management program at least every five years.

Hawaii's new plan "contains strategies, goals and objectives for protecting surface and groundwater, strengthening partnerships with agencies and communities, and providing a balance between statewide and watershed approaches to environmental protection," according to the EPA press release.

More information about Hawaii's plan is available online at www.epa.gov/region09/water/nonpoint/hi/index.html. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought."—from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

States Address Stormwater Management and Permit Issues

A number of states have revised or amended their stormwater management regulations or have made progress toward adopting their own stormwater permits. The following are brief descriptions of three of those states' efforts.

Maryland. A final rule, effective Oct. 2, amends regulations affecting stormwater management and construction on nontidal waters and flood plains (COMAR 26.17.02.01 and .01-01). The rule applies to stormwater management during the development and redevelopment of land for residential, commercial, industrial or institutional use. The rule incorporates the *2000 Maryland Stormwater Design Manual, Volumes I and II*, which serves as the official guide for counties and cities on stormwater management principles, methods and practices.

According to the regulations, cities and counties must adopt ordinances with the following elements:

- requirements for submission and approval of a stormwater management plan by covered entities;
- certain exemptions and waivers;
- criteria and procedures for stormwater management and proper implementation of the plan;
- maintenance and inspection requirements; and
- enforcement proceedings against violators of the ordinance, such as suspension of construction activities when appropriate.

For more information, contact the state Nonpoint Source Program at (410) 631-3543.

Virginia. The state water control board adopted amendments to the Virginia pollutant discharge elimination system permit regulation, effective Sept. 27. The amendments make the state regulation consistent with recent changes to the federal regulations and include revised stormwater discharge requirements; new permitting requirements for discharges of treated sewage and water into and from impoundments; and other changes. For more information, contact Richard Ayers at (804) 698-4075.

Texas. The Texas Natural Resource Conservation Commission (TNRCC), which assumed responsibility Sept. 27 for administering the federal multi-sector general permit (MSGP) in Texas, proposed a state general permit that would replace the MSGP on the same day (see *Bulletin*, October 2000, p. 3). According to TNRCC, the permit would affect more than 6,000 manufacturing entities in the state, including those associated with timber and paper, agricultural chemicals, asphalt and roofing, metal and coal mining, landfills, automobile salvage yards, steam electric generation, ship and boat building, air transportation, textile mills, printing operations, and some electronic industries.

The conditions and requirements in the proposed permit are similar to the current federal MSGP. For instance, industrial facilities would be authorized to discharge stormwater under the general permit only after developing and implementing a stormwater pollution prevention plan. TNRCC expects the proposed permit to be published in the *Texas Register* for public comment soon. For more information, contact the Stormwater Permits Team at (512) 239-4433. ■

Statement of Ownership, Management and Circulation		
1. Title of Publication: Stormwater Permit Manual	2. Publication No. 008-384	3. Filing Date: October 23, 2000
4. Frequency of Issue: Monthly	5. No. of Issues Published Annually: 12	6. Annual Subscription Price: \$398.00
7. Complete Mailing Address of Known Office of Publication: 1725 K St. N.W., Suite 700, Washington, D.C. 20006		
8. Complete Mailing Address of Headquarters of General Business Offices of the Publisher: 1725 K St. N.W., Suite 700, Washington, D.C. 20006		
9. Name and Address of Publisher, Editor, Managing Editor: (a) Daphne Musselwhite, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (b) Colleen Labbe, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (c) Elizabeth Sherty, 1725 K St., N.W., Suite 700, Washington, D.C. 20006		
10. Owner: Thompson Publishing Group, Richard E. Thompson, 1725 K St. N.W., Suite 700, Washington, D.C. 20006		
11. Known Bondholders, Mortgages, and other Security Holders: None		
12. Tax Status (For completion by nonprofit organizations authorized to mail at special rates): None		
13. Publication Title: Stormwater Permit Manual		
14. Issue Date for Circulation Data Below: October 2000		
15. Extent and Nature of Circulation		
	Average No. Copies Each Issue During Preceding 12 Months	Actual No. Copies of Single Issue Published Nearest to Filing Date
A. Total No. of Copies Printed (<i>Net press run</i>)	971	1,050
B. Paid and/or Requested Circulation:		
(1) Paid/Requested Outside-County Mail Subscriptions	666	641
(2) Paid In-County Subscriptions	0	0
(3) Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Non-USPS Paid Distribution	0	0
(4) Other Classes Mailed Through the USPS	0	0
C. Total Paid and/or Requested Circulation (<i>Sum of 15b(1), (2), (3) and (4)</i>)	666	641
D. Free Distribution by Mail (<i>Samples, complimentary, and other free</i>):		
(1) Outside-County	15	15
(2) In-County	0	0
(3) Other Classes Mailed Through the USPS	0	0
E. Free Distribution Outside the Mail (<i>Carriers or other means</i>)	0	0
F. Total Free Distribution (<i>Sum of 15d and 15e</i>)	15	15
G. Total Distribution (<i>Sum of 15c and 15f</i>)	681	656
H. Copies not Distributed	290	394
I. Total (<i>Sum of 15g and h</i>)	971	1,050
Percent Paid and/or Requested Circulation (<i>15c/15g x 100</i>)	98%	98%
16. Publication of Statement of Ownership. Publication required. Will be printed in the November 2000 issue of this publication.		
17. I certify that the statements made by me above are correct and complete. Colleen Labbe, Editor		

Storm Warnings

Stormwater-Related News in Capsule Format

Mobil Settles Numerous Violations. The U.S. Environmental Protection Agency (EPA) Region 9 announced Sept. 29 that it reached a settlement with Mobil Oil Corp. for alleged violations of the Clean Water Act, the Clean Air Act, the Emergency Planning and Community Right-to-Know Act and the Superfund Amendments and Reauthorization Act at its Torrance, Calif., refinery. The company will pay a \$500,000 penalty and spend \$1 million on supplemental environmental projects.

According to EPA, the facility exceeded permitted effluent limits on its stormwater discharge permits and failed to properly analyze its effluent discharges. The settlement with EPA requires Mobil to reduce its stormwater discharges and conduct an effluent risk assessment. In addition, it must reduce its air pollutant emissions and comply with community right-to-know requirements.

EPA Draft Guidance Includes Additional Technical Information for CAFOs. EPA announced Oct. 17 that it is requesting comments on a draft guidance document for controlling nonpoint source pollution from concentrated animal feeding operations (CAFOs) (65 FR 61325). The draft guidance does not replace the 1993 Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters, which details management measures for the control of nonpoint pollution from urban areas, marinas, agriculture, forestry and hydromodification in the coastal zone. Nor does it replace the recommendations set forth in that document, EPA said.

However, it enhances technical information contained in the 1993 guidance to include inland nonpoint source pollution. It is intended to provide technical assistance to state program managers and others on the best available means to reduce surface and groundwater pollution from CAFOs. Although the 1993 guidance only recommends adequate control of animal waste runoff for all storm events up to and including a 25-year, 24-hour storm, the draft guidance recommends that CAFOs implement adequate manure storage in addition to runoff management, diversion of clean water and other controls. Recent concerns regarding waste management from CAFOs, changes within the industry and recent state laws regulating CAFOs prompted the proposed revisions, the agency said.

CAFO Inspection Reveals Violations. EPA Region 5 announced Oct. 19 that it ordered Hartland Farms Inc. of Clayton, Miss., to cease all wastewater discharges and apply for a national pollutant discharge elimination system permit after an inspection

revealed that the operation met criteria for CAFO designation but did not have the proper permits. The inspection also indicated that Hartland had discharged contaminated stormwater, milk house wash water, wastewater and manure from its 700-cow operation into the nearby Rooney drain and Bear Creek. The agency also ordered Hartland to submit a comprehensive stormwater pollution prevention plan and a waste management plan.

Senate Approves Bill Affecting Water Funding, TMDLs. The Senate passed and referred to the House of Representatives the Water Pollution Enhancements Act of 2000 (S 2417) Oct. 11, which would increase funding for state nonpoint source pollution control programs and require studies that would analyze EPA's controversial total maximum daily load program (TMDL). The bill, sponsored by Sens. Mike Crapo, R-Idaho, and Bob Smith, R-N.H., would authorize \$250 million in state grants each fiscal year from 2001 to 2007 for prevention, reduction and elimination of pollutants. An additional \$500 million would be authorized each year for developing state nonpoint source programs.

The bill also would require the National Academy of Sciences to conduct a study of the scientific basis underlying the development and implementation of the TMDL program as well as any alternative programs that may comparably reduce point source and nonpoint source pollution. In addition, the National Academy of Public Administrators would be required to study the effectiveness of existing voluntary programs and practices that are meant to reduce pollution and the costs and benefits of each. Both studies would have to be submitted to Congress within 18 months of the bill's enactment, according to the bill.

California Database Reveals Runoff Residue. The California Department of Pesticide Regulation (DPR) recently released nine years of surface water monitoring data that includes details on 4,600 water samples collected by various agencies. The samples were taken from urban storm drains, rivers, creeks, delta waterways, agricultural drains and sloughs in 16 counties between January 1991 and March 2000. Monitoring results from approximately 30 studies conducted by local, state and federal agencies, industry and an environmental group revealed that about two-thirds of the samples contained some pesticide residue from 86 types of pesticides. However, the vast majority of detections were below established levels of health or water quality concern, DPR said. The database can be downloaded from DPR's Web site at www.cdpr.ca.gov/docs/surfwatr/surfdata.htm or ordered from DPR on CD-ROM. ■

Atlanta Stormwater Plan

(Continued from page 1)

staff, and will consist of 35 locally elected officials; private citizens; and business, technical and conservation members.

The proposal also notes that though the district will be the primary planning entity, it will not act as an enforcement or regulatory authority. Rather, enforcement will rest primarily with the state Environmental Protection Division (EPD), the proposal says.

Legislation would be required to provide EPD the authority to enforce the program, the proposal notes. In addition, such legislation would allow the district to expand when and if neighboring counties wish to join the program, and it would enable additional districts to be created in other regions based on their particular water needs, the proposal says.

Operational funding for the planning work would require a one-time initial planning grant from the state. Annual operating funds (about \$3 million) should be shared by the local governments and the state on an equal basis, the task force recommended. Permit fees and fines also may be a source of revenue for the project, but legislation would be required to ensure the necessary funding, the proposal states.

In addition, the task force suggests that a \$2 billion clean water loan fund be phased in over four years and made available to local governments as low-interest loans so that stormwater controls, upgrades and expansions may be implemented expeditiously. Finally, the district should seek federal appropriations, according to the task force.

Task Force Goals

Among other responsibilities, the district will be responsible for developing watershed-specific stormwater and wastewater management plans. According to the task force, each plan should include the following elements:

- monitoring existing problems;
- forecasting future pollutant loads;
- setting priorities based on the most important water resource needs and goals for the watershed;
- developing effective control programs to improve water quality and comply with total maximum daily load (TMDL) limits;
- plans for the implementation of appropriate controls, county by county;
- benchmarks and performance measures with which to gauge progress; and
- annual reports to track progress toward goals.

Each plan would specify benchmarks to be achieved within the first two years, the task force notes. For instance, within one year, the district should develop a model stormwater ordinance suitable for region-wide adoption. Within two years, it should develop minimum stormwater management standards for new construction and redevelopment based on natural systems and good design (e.g., ponds, swales, buffers, stormwater treatment and reuse).

The district also would review sub-watershed plans for consistency with regional and watershed plans, and resolve any conflicts between regional plans and existing local government stormwater ordinances. Guidance for meeting TMDL requirements, and a program and process for adopting ordinances and implementing best management practices (BMPs) also are goals included in the proposal.

Stormwater Management Recommendations

The task force makes several recommendations to achieve the initiative's goals. First, it recommends that the district consolidate the 21 existing watershed assessments in order to create consistent plans for the four major regional watersheds.

The proposal also suggests that EPD and the district work together to expand water quality monitoring and data gathering to develop, implement and evaluate effective stormwater management strategies. Data collecting efforts of local governments, federal agencies, citizens, academics and environmental groups also should be coordinated, it says.

In addition, the proposal suggests that land use plans should include provisions for expansion of stream buffers beyond the state requirement of 25 feet, where needed and scientifically supported; assurance that existing development regulations and zoning ordinances benefit water quality; establishment of impervious surface limitations where appropriate; and enforcement of existing stream buffer ordinances.

The task force also suggests that EPD better enforce existing erosion and sedimentation control laws and inspect construction sites regularly. To do this, EPD should designate certain staff members to review the sites and ensure that BMPs are in place, the task force says. The proposal notes that an increase in EPD funding may be necessary for the additional duties.

Finally, the proposal suggests that the district develop stormwater education programs for integration into school curricula, as well as create awareness of water quality issues and drive behavior change. Educational programs also should be directed toward contractors and builders. The task force hopes to reach 75 to 90 percent of the population.

The task force plans to issue a final report by the end of November. ■

EPA Report Highlights FY 1999 Enforcement Achievements

The U.S. Environmental Protection Agency's (EPA's) *Annual Report on Enforcement and Compliance Assurance Accomplishments in 1999* highlights the agency's achievements, including the reduction of pollutants and an increase in civil actions against violators. The report also discusses EPA's integrated approach to enforcement as well as compliance monitoring and assistance programs.

EPA's report touts several of the agency's achievements in fiscal year 1999 (FY 99). For example, the agency reduced pollutants by 6.8 billion pounds as a result of enforcement actions, according to the report.

In addition, EPA took 3,935 civil judicial and administrative enforcement actions in FY 99, the highest number of civil actions taken over the past three years, the report said. The agency also referred 403 civil judicial cases to the U.S. Department of Justice.

In FY 99, polluters spent more than \$3.4 billion, a 72 percent increase over FY 98 levels, to correct violations and take additional steps to protect the environment, such as perform supplemental environmental projects, the report states.

EPA attributes much of its enforcement success to an integrated approach that includes compliance monitoring (e.g., inspections, surveillance and investigations), assistance and incentives, and

enforcement measures. EPA also reviews self-reported documents, permits and records, and prepares reports on compliance findings and inspection results. The report notes that in FY 99, the agency performed 21,847 inspections, many of which were conducted under the Clean Water Act and the Resource Conservation and Recovery Act.

The report also notes significant enforcement measures taken against some potentially high-risk violators. For example, the largest settlement in Clean Air Act enforcement history requires seven heavy-duty diesel engine manufacturers to spend more than \$1 billion to settle charges that they illegally released millions of tons of nitrogen oxides into the air. Other enforcement efforts by the agency targeted hazardous waste facilities and petroleum refineries.

Finally, the report discusses EPA's efforts to ensure industry compliance by providing incentives such as EPA's audit policy, which encourages companies to voluntarily disclose environmental violations in exchange for a penalty waiver or reduction.

The report includes an appendix that reviews EPA's enforcement and compliance achievements in certain priority sectors. Another appendix includes historical enforcement data.

A copy of the report is available online at: <http://es.epa.gov/oeca/fy99accomp.html>. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
• monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$379
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$437
- Risk Management Program Handbook \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Ozone Depleter Compliance Guide..... \$498

- Check enclosed (payable to Thompson Publishing Group Inc.)
- Please bill me (add \$5.50 postage and handling for each publication ordered; \$14.50 for Environmental Compliance Tool Kit and Ozone Depleter Compliance Guide.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group Inc., Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33633-0922

Call Us Toll-Free At 1-800-677-3789 or visit our website: www.thompson.com

BJ86040

Stormwater Permit Manual

Bulletin

Volume 10, Number 3

October 2000

Environmental Group Offers Advice To Reduce Stormwater Runoff From Auto Recycling and Related Facilities

Auto recyclers, salvage yards and other similar industries can take additional steps to reduce polluted stormwater runoff, according to a report by Sustainable Conservation, a San Francisco-based environmental interest group. The report identifies industry-related barriers to the use of best management practices (BMPs) to reduce polluted runoff and provides advice for removing those barriers and improving water quality.

In the report, *Working in Urban Watersheds: Industry Analysis of Auto Recycling, Scrap Processing, Tires and Marine Paint*, Sustainable Conservation analyzed the effect of four industries — auto recyclers, scrap metal recyclers, tires and marine paint — on urban watershed pollution. The industries were selected based on the following criteria:

- the industry or product has a significant presence in at least one of California's large urban areas;

- the pollutants released by the industry or product are considered "pollutants of concern" in the urban area;
- the industry or product can be linked with an acceptable level of scientific certainty to an urban pollutant or pollutants; and
- there are significant gaps in current efforts to change industry behaviors that are causing the industry to contribute pollution to the urban watershed.

For each of the four industries selected, Sustainable Conservation conducted research on topics such as the pollutants of concern; identified relevant BMPs and barriers to those BMPs; and developed methods for encouraging industry to use the BMPs.

(Continued on page 4)

Citizen Suit Against EPA Dismissed; Agency Not Responsible for Issuing Permits

A federal court dismissed a citizen suit brought against the U.S. Environmental Protection Agency (EPA) for failing to issue stormwater discharge permits to the Minnesota cities of Minneapolis and St. Paul. The U.S. District Court for the District of Minnesota ruled that EPA was not responsible for issuing the permits because it had delegated its authority to the state of Minnesota (*Mississippi River Revival, Inc. v. EPA*, No. 99 Civ. 1597 (D. Minn. Aug. 10, 2000)). However, the court upheld another citizen suit against St. Paul, Minn., for discharging stormwater without a permit.

Section 402 of the Clean Water Act (CWA) establishes the national pollutant discharge elimination system (NPDES) requirements for municipal and industrial stormwater discharges. Under the law, permit applications for stormwater discharges from municipal separate storm sewer systems (MS4s) had to be filed by Feb. 4, 1990, and approved by Feb. 4, 1991. EPA, however, did not issue final rules regarding permit applications for large MS4s until Nov. 16, 1990. Despite the statutory mandate, the agency's final

(Continued on page 2)

Inside This Issue ...

Storm Warnings 3

Updated Nevada and Oregon State Pages
Tab 800

Revised Sector-specific BMPs
Tab 600

Citizens' Suit

(Continued from page 1)

rules set a due date for final permit applications of Nov. 16, 1992, and gave permitting authorities until Nov. 16, 1993, to issue or deny permit applications.

The plaintiffs, representing Mississippi River Revival Inc. and other groups concerned about stormwater discharges into the Mississippi River, filed a citizen suit against EPA and the cities of St. Paul and Minneapolis, alleging that Minneapolis, a large MS4, submitted its stormwater permit application by Nov. 16, 1992, and that St. Paul, another large MS4, submitted its application approximately six months late. They further alleged that neither city had been issued a final stormwater permit in violation of the regulatory deadlines, although they acknowledged that draft permits had been issued. The plaintiffs, therefore, claimed that EPA violated CWA by failing:

- to carry out its mandatory duties to approve or disapprove the cities' stormwater permit applications;
- to require the cities to resubmit their stormwater permit applications; and
- to issue stormwater permits to the cities.

They also claimed that the city of St. Paul violated CWA because it maintains stormwater sewer systems that convey stormwater to area surface waters without a permit and because its application for a stormwater permit does not comply with the permit application requirements. Both EPA and St. Paul filed motions to dismiss the plaintiffs' claims.

Claims Against EPA

In a motion to dismiss the three claims against EPA, the agency asserted that the federal court lacked subject matter jurisdiction over the plaintiffs' claims. Section 505(a)(2) of CWA permits citizen suits against EPA "where there is a failure of the adminis-

trator to perform any act or duty under this act which is not discretionary." EPA contended that it did not have a mandatory duty to act on the cities' permit applications because it had delegated authority for administering the NPDES program to the state of Minnesota.

Agreeing with EPA, the court dismissed the plaintiffs' claims against the agency. The court noted that "while section 402 requires the state to transmit to the administrator a copy of each permit application received by such state and provide notice to the administrator of every action related to the consideration of such permit application, there is no corresponding mandatory duty for EPA to approve or disapprove any permit application or action." Because Minnesota was authorized to administer the NPDES program in 1974, "the duty to issue or deny the cities' applications for MS4 permits rests with the state, not the EPA," the court ruled.

Claims Against St. Paul

The city of St. Paul also submitted a motion to dismiss the claims asserted against it. The court, however, allowed the plaintiff's claim that St. Paul, Minn., violated CWA by maintaining stormwater sewer systems that convey stormwater to area surface waters without a permit to proceed. "Section 301(a) of the CWA absolutely prohibits the discharge of any pollutant by any person, unless the discharge is made according to the terms of a NPDES permit," the court stated. It further noted that, "plaintiffs allege—and St. Paul admits—that it does not have a NPDES MS4 permit, and yet it continues to discharge stormwater through its storm sewers into the Mississippi River."

The district court dismissed the claim that the city's application for a stormwater permit does not comply with the permit application requirements. The court agreed with the city's argument that CWA does not authorize citizen suits challenging the contents of a stormwater permit application. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Cites Facilities for Stormwater Violations. The U.S. Environmental Protection Agency (EPA) announced Aug. 25 that it cited several facilities in Guaynabo, Puerto Rico, for failing to comply with stormwater regulations and has proposed to assess \$296,930 in combined penalties against three of the facilities. Coatings Inc. & Co., Forto Chemical Corp. and J.S. Chem Corp. were cited for not having national pollutant discharge elimination system (NPDES) stormwater permits and for not updating their pollution prevention plans to meet NPDES permit requirements. EPA ordered two other companies—Besst Chemicals Inc. and PCI Printed Components—to comply immediately with stormwater requirements.

The agency discovered the violations during a series of inspections of 56 facilities in the Los Frailes and Minillas Industrial Parks after contamination was found in the Guaynabo drinking water system. These stormwater violations did not necessarily cause the contamination, and a specific source has not been pinpointed, according to EPA. However, the facilities were targeted because they “are located near a water body that serves as a drinking water source for hundreds of thousands of Puerto Ricans,” EPA’s Jeanne Fox said in a statement.

Dairy Farmer Pleads Guilty to Discharge Violations. Joe Silva of Acampo, Calif., pleaded guilty Aug. 8 in U.S. District Court in Sacramento, Calif., to charges of violating the Clean Water Act at his 600-cow dairy farm. Silva admitted to discharging cattle waste directly into the nearby Gill Creek.

The plea agreement requires Silva to prevent future discharges by increasing the size of the dairy’s waste retention pond, cleaning the existing pond and creating stormwater diversion and tailwater systems. Silva also will serve six months in home detention and pay a \$50,000 fine. The case was investigated by EPA’s Criminal Investigation Division, the state Department of Fish and Game, the San Joaquin District Attorney’s Office and the Dairy Task Force, and was prosecuted by the U.S. Attorney’s Office in Sacramento.

TNRCC Inherits MSGP Authority. The Texas Natural Resource Conservation Commission (TNRCC) announced Aug. 22 that authority to administer the federal multi-sector general permit (MSGP) transfers to the TNRCC from EPA Region 6 on Sept. 29—when the federal MSGP expires. Facilities that discharge under the federal MSGP will be able to obtain continued coverage by applying for the Texas Pollutant Discharge Elimination System

(TPDES) MSGP or by applying for an individual TPDES stormwater permit.

TNRCC currently does not have an MSGP. However, **the agency plans to propose to reissue the federal permit as a TPDES permit shortly after accepting administration of the federal program.** Facilities permitted under the expiring MSGP will be allowed to continue discharging stormwater until the TPDES MSGP is issued. The agency plans to allow permittees about 90 days after the permit is issued to make any necessary changes to their stormwater pollution prevention plans (SWP3s) and to submit notices of intent (NOIs) for permit coverage.

Though no workshops are scheduled yet, TNRCC plans to provide assistance with understanding permit requirements, developing SWP3s and completing NOIs after the permit is issued. For more information, call TNRCC’s Stormwater Permits Team at (512) 239-4433 or visit TNRCC’s Web site at www.tnrcc.state.tx.us.

New Guidance Document Available. EPA announced July 27 the availability of the **Nutrient Criteria Technical Guidance Manual for Rivers and Streams.** The document, which is divided into nine chapters, provides technical guidance for states in developing regionally based nutrient and algal criteria for river and streams.

Chapter one introduces the topic and addresses the necessity of defining water quality standards. Chapter two discusses stream classification and nutrient criteria development. Chapter three describes the variables that can be used to determine the condition of eutrophication in a waterbody. Chapter four provides guidance on designing effective sampling programs. Chapter five describes how to build a database of nutrient and algal information. Chapter six discusses data analysis. Chapter seven presents ways that water quality managers can select appropriate numeric criteria.

Chapter eight discusses regulatory programs that relate to nutrient criteria such as NPDES permits, stormwater planning and total maximum daily loads. Combined sewer overflows and pollutant trading also are discussed as well as the effects of nonpoint source pollution and how to manage and control it. Finally, chapter nine discusses monitoring, assessment and evaluation of established nutrient criteria as well as continued monitoring techniques.

A copy of the document may be obtained on the Internet at www.epa.gov/OST/standards/nutrient.html/.

After the state accepts the program

Stormwater Advice

(Continued from page 1)

Many potential pollutants of concern can be found at automobile recycling yards, according to the report. Those pollutants include heavy metals; fluids from brake, transmission and cooling systems; motor oil; toxins from shredded seats; tires; and other liquid wastes, such as fuel, solvents and battery acids.

Auto recyclers must have national pollutant discharge elimination system (NPDES) stormwater permits, which require a detailed stormwater pollution prevention plan (SWP3) that incorporates BMPs. The report finds that BMPs generally fall into four categories: using inside storage, paving or berming the site, performing inspections for leaks, and proper drainage and disposal of fluids.

However, many auto recyclers are not complying with the stormwater requirements, the report says. "No pollution prevention plan has been completed, BMPs are not being implemented and monitoring is not being conducted."

According to the report, facilities are not implementing BMPs because small yards do not know or cannot comply with the disposal regulations because they are too complex or costly, stormwater pollution is a low priority, and an antagonistic relationship exists between the recyclers and other environmental stakeholders such as government regulators and environmental groups.

To increase the use of BMPs, the report suggests simplifying the regulations and inspection process; establishing industry certification programs that focus on stormwater issues and reward recyclers for using BMPs; increasing stormwater enforcement; and improving relations between recyclers, regulators and other parties.

Scrap Metal Processing

Scrap metal processing includes the handling of both ferrous and nonferrous metals, such as aluminum siding, appliances, pots and pans, and industrial machinery. Pollutants that affect stormwater runoff can come from auto hulks, and include fuel, oil, brake fluids, lead and other heavy metals, the report explains. It also notes that materials from demolition projects, oily scrap and paint pigments contribute to stormwater pollution. Like auto recyclers, scrap metal processors must have NPDES stormwater permits that include an SWP3 and BMPs.

"BMPs for scrap metal processing facilities include customer education and training, inspection of incoming scrap, paving, roofing and barriers, cleaning up spills, and requiring suppliers to spin dry their scrap," the report says. However, Sustainable

Conservation found barriers to BMPs that are similar to those associated with auto recycling, such as unfamiliarity with stormwater regulations and antagonism toward regulators. Therefore, the report suggests simplifying the regulations, establishing certification programs that encourage the use of BMPs and making funds available for employee training.

Tire Industry

Tire industry pollutants of concern are extremely difficult to identify because tire ingredients are trade secrets, the report explains. However, the most popular tires generally contain fabric, rubber, reinforcing chemicals, antidegradents, adhesion promoters, curatives and processing aids.

No specific regulations exist that directly affect the contents of tires, the report states. Additionally, few causes of action are available to directly sue tire manufacturers for polluted runoff, it says. Nonetheless, BMPs are available for such products. They include: changing the product's content; changing the way the product is used in a particular watershed; banning the product in a particular watershed; and treating the stormwater runoff containing the harmful product.

Barriers to implementing BMPs to reduce stormwater runoff from tire-related pollutants include the fact that tire wear has not been proven to be a serious stormwater problem and tire reformulation is not profitable. To get around these and other barriers, Sustainable Conservation suggests more stringent scientific studies on tires' impact on stormwater; increasing industry, automaker and consumer awareness of tire debris concerns; and developing financing to enable tire companies to reformulate new tires.

Marine Paint Industry

Marine antifouling paints release toxic chemicals into the surrounding water to prevent plants or animals from attaching to the ship or boat bottom, the report states. According to the report, the major pollutant associated with the paint are tributyltin compounds, which are bioaccumulative toxins. BMPs for dealing with marine paint products include: changing the product, banning the product and changing the way it is used.

Barriers to these BMPs exist because there are no alternatives to the paints and it is too costly to develop new ones, it concludes. The report suggests lowering the cost of potential alternatives and increasing funds for researching alternatives.

Copies of the report are available online at: www.suscon.org. ■

Stormwater Permit Manual

Bulletin

Volume 10, Number 2

September 2000

Commenters Dissect Proposed MSGP-2000 Revisions

Fewer than 50 stakeholders submitted comments on the U.S. Environmental Protection Agency's (EPA's) proposed revisions to its multi-sector general permit (MSGP) for industrial stormwater discharges. Commenters most commonly addressed proposed revisions relating to analytical monitoring, total maximum daily loads (TMDLs) and sector-specific best management practices (BMPs). The revised permit, referred to as MSGP-2000, would replace the existing MSGP, which was issued Sept. 29, 1995, under the Clean Water Act's National Pollutant Discharge Elimination System program and expired Sept. 29, 2000 (see newsletter, May 2000, p. 1). MSGP-2000 would regulate stormwater discharges from 29 industrial sectors in EPA regions 1, 2, 3, 4, 6, 8, 9 and 10 where the agency is the permitting authority.

Analytical Monitoring

In response to EPA's request for comments on possible alternatives to existing MSGP analytical

monitoring requirements, several commenters expressed their dissatisfaction with the current requirements. Airports Council International-North America (ACI-NA), the American Association of Airport Executives (AAAE) and the Stormwater Reform Coalition (SRC) submitted identical comments on the analytical monitoring issue. All three groups believe that analytical monitoring "is not a viable tool for measuring BMP effectiveness." Results are unreliable because stormwater data can vary significantly when storm intensities, durations and patterns vary, the groups said. They also agree that no adequate standard or measurement exists by which to compare monitoring results.

The proposed revisions also do not address historic monitoring problems, according to ACI-NA, AAAE and SRC. The analytical monitoring framework is a "minefield of liability for permittees" and has generated confusion. Thus, the practical solution is visual

(Continued on page 5)

EPA Administrator Defends TMDL Rule Amid Mounting Legislative Opposition

At a congressional oversight hearing, the U.S. Environmental Protection Agency's (EPA's) assistant administrator for water defended the final total maximum daily load (TMDL) rule issued July 13 (65 FR 43586) and denied allegations that EPA drafted the rule without considering all stakeholder input (see newsletter, August 2000, p. 1, for discussion of the rule).

EPA's Chuck Fox testified July 27 before the House Transportation and Infrastructure Subcommittee on Oversight, Investigations and Emergency Management in an effort to appease congressional "concerns about the substantive provisions of these regulations and the process that EPA followed in developing [them]."

Fox began his testimony by reminding the committee that the 1972 Clean Water Act required the agency to develop the TMDL program and by reiterating the need for TMDLs to address persistent "serious water

(Continued on page 4)

Inside This Issue ...

EPA Recognizes States' Innovative Water Quality Control Plans	2
Storm Warnings	3
Calendar of Events	6
Updated Newsletter Index	

EPA Recognizes States' Innovative Water Quality Control Plans

The U.S. Environmental Protection Agency (EPA) recently commended efforts by two states to improve the quality of their waters. California's comprehensive plan to control polluted runoff is the first unified state plan in the nation to be approved by EPA, and Minnesota's Project XL program will afford certain facilities regulatory flexibility while they reduce metal discharges, and stormwater and wastewater runoff.

California

EPA and the National Oceanic and Atmospheric Administration (NOAA) approved July 31 *The Plan for California's Nonpoint Source Pollution Control Program*, which was developed by the State Water Resource Control Board, the Regional Water Quality Control Boards (RWQCBs) and the California Coastal Commission. It outlines 61 management measures that will be implemented over the next 13 years to limit nonpoint source pollution from agriculture, forestry, urban areas, marinas and recreational boating, hydromodification, and wetlands.

The program includes three five-year implementation plans that contain certain objectives, actions and measures to target specific problems and goals. The state's RWQCBs will develop total maximum daily loads (TMDLs) and effluent limits for specific sources and corresponding corrective actions to assist with the comprehensive watershed-level management practices, according to the plan. In addition, the program promotes coordination among state and federal agencies.

Finally, to ensure that program activities remain on track, California plans to develop a database by Aug. 1, 2001, to trace the implementation of management measures and practices. The program will be evaluated after the first five years and reevaluated every five years thereafter. Evaluations will deter-

mine which performance measures have been met, the extent to which management measures have been implemented, and will analyze available water quality information.

Minnesota

EPA announced May 31 the final draft of a Project XL agreement between the agency and the Steele County Community in Minnesota. Project XL, which stands for "eXcellence and Leadership," is a national EPA initiative that encourages companies and communities to develop innovative ways of achieving environmental compliance. Each project tests ideas that potentially could be more widely applied.

The Steele County Community Project will consist of two phases and will specifically address industrial stormwater and wastewater effluents from 10 small-to-medium-sized facilities in Owatonna and Blooming Prairie, Minn. Under phase I, Owatonna facilities have agreed to reduce the discharge of four metals, reduce water usage, develop and implement a stormwater and sewer water separation and education plan to minimize stormwater impact on the Owatonna wastewater treatment facility, and develop and participate in a training and assessment program of environmental management systems.

Phase I also will include regulatory flexibility so that as participating facilities meet metal discharge goals, monitoring frequency may be reduced and monitoring of pollutants that are not discharged may be eliminated. Current regulatory limits for participating facilities will remain in effect.

Phase II, to be considered at a later date, would expand the program to include overall community performance in reducing emissions, solid waste, hazardous waste and chemical storage, and achieving community sustainability, EPA said. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought."—from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Special Journal Issue Focuses on Stormwater. The most recent issue of the *Water Quality Research Journal of Canada* (Vol. 35(3) (2000)) focuses on stormwater pollution issues. Articles examine issues such as urban stormwater management for ecosystem protection; characterizing stormwater sediments for ecotoxic risk; using benthic assessment techniques to determine combined sewer overflow and stormwater impacts in aquatic ecosystems; contamination and wildlife communities in stormwater detention ponds; algal communities as biological indicators of stormwater management pond performance and function; winter flow dynamics of an on-stream stormwater management pond; and biological filtration of stormwater.

The *Water Quality Research Journal of Canada* publishes original research papers on a quarterly basis on all aspects of water quality research, including surface water and groundwater quality, polluted wastewater and drinking water treatment processes, bioaccumulation of contaminants in and from polluted aquatic ecosystems, aquatic ecotoxicology, and strategies and policies related to water pollution control. The articles are on the Internet at www.cciw.ca/wqrjc/35-3.htm.

Georgia Issues New Stormwater Permit. The Georgia Environmental Protection Division (EPD) July 26 issued a general national pollutant discharge elimination system permit for stormwater discharges from construction sites greater than five acres. The permit, which was effective Aug. 1, regulates silt, sediment and other pollutants often present in stormwater from construction sites. Permittees are required to design and implement a plan on how they will control runoff and how nearby waters will be monitored for silt or turbidity. Developers also will be required to submit a report to EPD each month. The new permit is in addition to existing land disturbing activity permits issued by local authorities or EPD.

Existing construction sites that are covered under the new permit have six months from the permit's effective date to comply with the permit's terms and conditions. New construction sites will be required to submit a notice of intent at least one week prior to beginning any construction activity. For more information, contact EPD's nonpoint source program, water protection branch at (404) 675-6240.

Maryland Stormwater Management Ordinance Now Available. The Maryland Department of Environment, Water Management Administration (MDE/WMA) released a near-final draft of a Model Stormwater Management Ordinance in July. The

ordinance provides guidance and minimum criteria to county and municipal code developers for establishing stormwater management requirements. WMA will use the document as a template to ensure that all stormwater management ordinances contain a minimum set of components, though the department recognizes that stormwater management plans vary depending on the nature and extent of local development.

The document describes what the minimum stormwater control requirements should be, what structural and nonstructural management measures are required, what components should be included in stormwater management plans, who should prepare the stormwater management plans, what fees may be required, when inspections should be conducted and by whom, and what penalties may result from non-compliance. In addition, the document describes when exemptions are applicable and what conditions are required for a project to be eligible for a waiver. A final version of the document should be available in September, according to MDE. For more information, contact MDE's Nonpoint Source Program at (410) 631-3543 or visit the state's Stormwater Management Program's Web site at www.mde.state.md.us/environment/wma/stormwatermanual/.

Vegetated Roofs Reduce Stormwater Runoff. Roof-top vegetation can reduce the volume and peak flow rate of stormwater runoff, improve the quality of stormwater runoff, attract wildlife, extend the life of a roof and improve aesthetic quality, according to Philadelphia-based Roofscapes Inc. Vegetated roof covers generally consist of a waterproof membrane on the roof deck, a drain layer, a growth media and principal root layer, and a foliage layer. Stormwater runoff is controlled because the foliage captures and holds precipitation, and the roots absorb water. Also, once the vegetation is established, little or no maintenance is required, according to Roofscapes. For more information, visit Roofscapes Inc. on the Internet at www.roofmeadow.com.

Great Lakes States' Water Quality Plans Approved. The U.S. Environmental Protection Agency (EPA) announced Aug. 3 that it approved six states' programs to improve water quality. EPA fully approved plans from Minnesota and Pennsylvania. Plans from Illinois, Indiana, Michigan and Ohio were approved with minor exceptions. Where EPA believes the plans are insufficient, federal Clean Water Act standards will apply. Some federal total maximum daily load provisions will apply in Illinois until the state adopts acceptable provisions. EPA's whole effluent toxicity criteria will apply in Indiana, Michigan and Ohio until the states adopt them. Any industry that discharges to the Great Lakes could be affected by the plans, EPA said. ■

TMDL Defense

(Continued from page 1)

pollution problems," as demonstrated by a list of more than 20,000 impaired waterbodies recently identified by states.

He also noted that the new TMDL regulations improve and build on existing core elements that have been in place for more than 15 years. For example, the new rules require a more complete tracking and accounting of polluted waters and cleanup efforts; call for more specific plans and schedules to implement cleanup activities; foster more sharing of responsibility among point and nonpoint sources; and provide for more consistent EPA backstop efforts to aid state TMDL work, thus reducing the potential for litigation, he said.

In addition, Fox pointed out that because the TMDL program has been allowed to "drift," many citizen suits were filed, forcing the federal courts to step in and address clean water issues through consent decrees and orders. Essentially, courts have found that "many states and EPA were not following either the law or the regulations," Fox said. Though he believes that most parties think it would be more appropriate for states and EPA to carry out clean water requirements, "some courts have not been convinced that we can or will do the job," he said. The new rule would allow EPA to demonstrate to the courts that it can and will "get the job done," but the congressional decision to delay implementation is a "major setback to this effort," he added.

Fox also responded to states' concerns regarding the potential costs and workload of the TMDL program. The annual federal appropriation available to states to administer and implement the program has steadily increased from \$112 million in 1993 to a proposed \$410 million in the fiscal year 2001 budget, and current House legislation would significantly increase funding for the water quality program, according to Fox. The final rule also encourages states to develop more cost-effective TMDLs for groups of waterbodies on a watershed basis, he added.

TMDL Development Process

Fox denied allegations that EPA did not follow the proper channels when developing the TMDL rule. Rather, many of the proposed revisions were based on consensus recommendations developed by a federal advisory committee consisting of representatives from states, federal agencies, industry, agriculture, environmental organizations and the academic community, he said. In addition, EPA "took great care to respond to all requests for information and discussion," and considered the interests of all the parties involved, he noted.

Fox also responded to the General Accounting Office (GAO) report, *Clean Water Act: Proposed Revisions to EPA Regulations to Clean Up Polluted Waters*, that questioned EPA's economic analysis. EPA strongly disagrees with GAO's findings for two specific reasons, according to Fox. First, GAO's conclusions about EPA's cost analysis included assertions that the rule would force significant expenditures by forest operators to control pollution from their activities. However, that point is moot because the final rule does not include the proposed provisions for forest operations, he said.

Second, much of the confusion regarding the economic analysis is based on the incorrect assumption that no TMDL program exists today, and the new rule alone would drive costs. However, when EPA conducted the economic analysis, it assessed the incremental costs of the new rule above the costs of the existing TMDL regulations, Fox said.

Finally, Fox insisted that EPA listened and appropriately responded to comments from industry, states, agriculture, environmental organizations and members of Congress, and made changes accordingly. The changes to the rule reflect this nonpartisan position, according to Fox.

For example, proposed provisions that would have required certain forestry operations, animal feeding operations and aquaculture facilities to obtain national pollutant discharge elimination system permits were deleted as a result of adverse comments. The provision that would have required new or significantly expanding dischargers to obtain offsets when discharging to a polluted waterbody also was deleted for the same reason. In addition, extending the interval by which states must submit lists of impaired waters from every two years to every four years was a concession to commenters, Fox said.

Legislative Activity

The fate of the TMDL rule remains uncertain, as several initiatives have been introduced by a number of congressional members. *The Water Pollution Program Enhancements Act of 2000* (S. 2417) sponsored by Sens. Michael Crapo, R-Idaho, and Bob Smith, R-N.H., which would require a National Academy of Sciences study of the TMDL rule and the costs associated with its implementation, is in the process of being amended, according to a spokesman for the Senate Committee on Environment and Public Works (see newsletter, May 2000, p. 3). The *TMDL Regulatory Accountability Act of 2000* (H.R. 4922), sponsored by Rep. Charles Stenholm, D-Texas, would require more public and congressional review of the rule. In addition, resolutions of disapproval to block the rule have been introduced by Reps. Marion Berry, D-Ark., Jay Dickey, R-Ark., and Ron Paul, R-Texas. ■

MSGP Comments

(Continued from page 1)

monitoring, according to the organizations' comments. "Observations will provide significant information about stormwater quality. Significantly soiled discharges will spur an immediate investigation and ... action to revise the BMPs of the facility appropriately," they said.

The Federal Water Quality Coalition expressed its general dissatisfaction with analytical testing, asserting that it is of "marginal value in assessing and protecting water quality." The coalition represents numerous companies, municipal entities, agricultural parties and trade associations, such as the American Forest and Paper Association, the American Petroleum Institute (API), the American Chemistry Council, the National Association of Home Builders, the National Mining Association and the Rubber Manufacturers Association. "EPA should incorporate the option of allowing dischargers to choose to submit annual reports in lieu of conducting analytical testing," the coalition added.

In contrast, the Natural Resources Defense Council (NRDC) noted that an annual description of practices would "not be comparable to real data on the pollutants being discharged." Moreover, NRDC said that it was "wholly insufficient" to limit required monitoring of stormwater pollutants only to those being discharged into impaired waterbodies because "many waterbodies have never even been assessed to determine whether they are impaired."

TMDL Revisions

Commenters also criticized the proposed permit's new "eligibility conditions" for discharges that impair a waterbody for which a TMDL has been developed. A TMDL is the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards. Under the proposed permit, a discharger would be required to confirm that a TMDL for the waterbody would allow its discharges.

The coalition objected to the proposed requirement. Subjecting dischargers to individual review of TMDL-related issues is "contrary to the concept of treating dischargers as a group," it said. Additionally, numeric allocations are inappropriate for discharges treated as a group. Rather, the coalition suggested that as long as the discharges are somehow accounted for in the TMDL, they would be "consistent with that TMDL and should be allowed."

SRC, ACI-NA and AAAE believe that EPA should require only those MSGP permittees that discharge to waterbodies for which a TMDL already is in place to consider the impacts of the discharge on the TMDL. They also believe that the EPA or the appropriate

state authority should confirm that the discharge is consistent with the TMDL, not the permittee.

Air Transportation Facilities BMPs

ACI-NA and AAAE also commented on the proposed provision that would require Sector S permittees (air transportation facilities) to consider several new BMPs related to aircraft deicing. Although they do not object *per se* to the idea, EPA's summary of innovative practices is incomplete, they said.

The Air Transport Association (ATA) agreed and suggested EPA direct permittees to appropriate sources for complete information. ATA also explained that "operations at different airports present both different challenges and different opportunities" to control deicing discharges. Alternatives that may be appropriate in some airports may not be in others, ATA asserted.

Other Comments

Comments on other proposed provisions varied. Regarding BMPs in general, NRDC commented that instead of providing a list of example BMPs for each sector, and "encouraging facility operators to be creative in ways to cut corners," the agency should identify minimum management practices, and then encourage facility operators "to supplement with additional BMPs as necessary."

Despite its disapproval of many of the proposed new provisions, the coalition supports the proposed extension of the permit to include incidental discharges of mist from cooling towers. In addition, both the coalition and API approve of the proposed new opportunity for some facilities to discontinue permit coverage if the facility can certify that it falls under the "no-exposure exemption" created by the phase II stormwater regulations.

However, the coalition noted that some terms and phrases need to be defined further and questioned EPA's proposed "violation" policy for MSGP dischargers. It alleged that EPA currently does not follow its violation policy consistently for individually permitted dischargers. Therefore, "such a policy is even less merited for stormwater dischargers covered by a group permit, where increases in the discharge will generally be unplanned, caused by a variable nature of storm events," the coalition said.

Finally, ACI-NA, AAAE and SRC suggested that the agency should encourage group compliance programs. For example, California and Wisconsin both provide alternative stormwater permitting programs on an industry-specific basis. Both rely on trade associations to collect and disseminate BMPs. EPA should encourage other states to adopt similar programs with the help of associations, they said. ■

Calendar of Events

Stormwater Permitting and Management Training.

The U.S. Environmental Protection Agency (EPA) Office of Wastewater Management is presenting a two-day workshop on the national pollutant discharge elimination system (NPDES) stormwater program, followed by a one-day presentation on the stormwater phase II rule. The NPDES stormwater program course will cover both phase I and phase II of the stormwater program and will provide training on the permitting requirements for regulated industrial facilities, construction activities and municipal separate storm sewer systems. The course will conclude with a case study examining the interaction of the three industries affected by the stormwater program. Pre-registration is required for this course. Upcoming sessions will be held in Denver, (Sept. 26-27), Newport, R.I. (Oct. 24-25), and Tampa, Fla. (Nov. 28-29).

The one-day phase II workshop will examine how the new rule affects municipalities, construction operators, industrial facilities and others. Presenters will focus on the main features of the rule, and a question-and-answer period will follow. Pre-registration is recommended. Sessions will be held in the

same cities following the two-day course on Sept. 28, Oct. 26, and Nov. 30. E-mail questions regarding the two courses to sw2@epa.gov.

EPA's Stormwater Permits and Pollution Prevention Plans.

The Environmental Resource Center (ERC) is conducting a one-day seminar Sept. 29 in Philadelphia on the NPDES program and stormwater pollution prevention (SWPP) plans. The course will examine the scope of NPDES authority, industrial activities covered by stormwater regulations, permit application options and processes, and individual permits. Other topics include how to develop a site-specific SWPP plan; how to select and implement best management practices; how to estimate and measure stormwater flows and volumes; how to prepare a site drainage map, and identify stormwater conveyances and outfalls; and how to evaluate stormwater using visual inspections, dye testing and electronic line surveys. In addition, instructors will explain how to collect stormwater discharge samples and how to report sample results. Fee is \$879 and registration is required. For more information, contact ERC at (800) 537-2372 ext. 222, or visit ERC's Web site at www.ercweb.com. ■

The only continuously updated, comprehensive reference for UST owners —

Underground Storage Tank Guide

Depend on the *Guide* for up-to-date information and guidance on these and other important issues:

- ▶ How to comply with tank upgrade and replacement deadlines.
- ▶ New UST and remediation technologies that could save you thousands of dollars.
- ▶ 10 ways to get your bank to finance an UST installation.
- ▶ State trust fund financial difficulties and reforms, and state UST program developments.

You'll find all this and MORE in the *Underground Storage Tank Guide*.

TRIAL SUBSCRIPTION CERTIFICATE

Underground Storage Tank Guide

YES! Please enter my one-year subscription and send me the *UNDERGROUND STORAGE TANK GUIDE* to use and evaluate risk-free for 30 days. Within that time, I'll either return the materials and owe nothing . . . or honor your invoice for \$279. I understand my subscription includes the two-volume looseleaf *Guide*, monthly updates and newsletters, and that I will be billed annually until I decide to cancel my subscription.

Name _____

Title _____

Organization _____

Address _____

City _____ State _____ Zip _____

Signature _____ (REQUIRED ON ALL ORDERS.) BL190172

Bill me. (\$279 plus \$5.50 postage and handling.)

Payment enclosed. (\$279)

Please make check payable to Thompson Publishing Group, Inc. Residents of DC, FL and MD, please add appropriate sales tax.

CALL
1-800-677-3789

MAIL TO:
Thompson Publishing Group, Inc. • Subscription Service Center
PO Box 26185 • Tampa, FL 33623-6185

USTT

Stormwater Permit Manual

Bulletin

Volume 10, Number 1

August 2000

Final TMDL Rule Issued Amid Discontent, Includes Revisions

Amid heated debate and widespread controversy, the U.S. Environmental Protection Agency (EPA) issued on July 13 the final Total Maximum Daily Load (TMDL) rule, which requires states to identify polluted waters, determine the sources of pollution and design effective cleanup plans within a specified time period (65 FR 43586). A TMDL, which essentially is a "pollution budget" for a specific waterbody, specifies the amount of a particular pollutant that may be present in a waterbody, allocates allowable pollutant loads among sources, and provides the basis for attaining or maintaining water quality standards, according to EPA.

The circumstances surrounding the finalization of the rule have caused significant dissatisfaction among key players. EPA's Administrator Carol Browner signed the rule into effect shortly before the president signed a Congressional supplemental appropriations law containing a last-minute rider designed to prevent EPA from going ahead with the

rule. If the law had been signed before the rule was finalized, the rider would have effectively blocked EPA from issuing the rule because it prohibits EPA from spending any more funds on the TMDL rule during the 2001 fiscal year.

The law, however, does force EPA to push back the effective date of the program to Oct. 1, 2001, to coincide with the end of the legislative delay. In addition, the rule was upgraded to "major rule" status under the Congressional Review Act, which allows Congress 60 days to review and disapprove it.

Key TMDL Revisions

The final rule includes several changes from the proposed rule, for which EPA received over 30,000 comments from industry, state officials and environmentalists. For example, new and revised definitions were included for key terms such as "pollutant,"

(Continued on page 4)

Controversial TMDL Rule Debated Among Stakeholders, Congress

As the U.S. Environmental Protection Agency (EPA) finalizes the Total Maximum Daily Load (TMDL) rule (see related story above), states, industry, environmental organizations and congressional members continue to contentiously debate the fate of the controversial water quality standard. Although many question that rule and the data on which it was based, others believe it will address a serious water pollution problem.

Opposing Opinions

The rule was signed into law by EPA Administrator Carol Browner hours before President Clinton approved an emergency appropriations bill that contained a rider designed to prevent EPA from proceeding with the final TMDL rule, which many stakeholders believe will create an undue burden on the states. Browner's timing, which effectively rendered the rider moot, was a move that Rep. Sherwood Boehlert,

(Continued on page 5)

Inside This Issue ...

Study Examines Effectiveness of Nonpoint Source Control	2
Storm Warnings	3
Calendar of Events	6
Added information on stormwater treatment devices	Appendix 3

Study Examines Effectiveness of Nonpoint Source Control

The Environmental Law Institute (ELI) released a study June 23 that assesses eight states' efforts to control nonpoint source water pollution. The study, *Putting the Pieces Together: State Nonpoint Source Enforceable Mechanisms in Context*, offers guidance about ways to structure enforcement, develop programs and integrate enforcement approaches to reduce nonpoint source pollution, ELI said.

The study, which builds on several related prior studies, was prompted by a recent tendency among states to implement more direct mechanisms to reduce nonpoint source pollution—discharge prohibitions, direct enforcement of water quality standards, pollution abatement orders, required operating practices, nuisance and misdemeanor prosecutions, and civil and administrative penalties—in addition to more traditional but less effective voluntary programs and technical advice.

The states included in the study were Georgia, Maine, Maryland, Ohio, Oregon, Virginia and Wisconsin. These states were selected primarily because they were identified in prior studies as having specific enforceable strategies in place. For instance, Georgia has authority under the state's water pollution law to regulate nonpoint pollution sources. Maine has an array of land use laws that affect nonpoint source polluters.

Ohio has authority to issue state-level nonpoint source abatement orders to farming and forestry operations. Maryland has a mandatory nutrient management planning law, and its enforcement programs address discharges from agriculture, development and forestry operations.

The study does not address water quality outcomes because little monitoring data exist that assess the

effect of nonpoint source programs on water quality, an incidental finding worthy of its own analysis, ELI said. Instead, the study discusses how effectively states have used various enforcement tools and resources to address nonpoint source pollution, and what issues, impediments and opportunities may result from each state's approach.

Study Results

The study results offer several insights for state officials interested in improving nonpoint source pollution programs, according to ELI. Not surprisingly, states that concentrate on "after-the-fact" remedies rather than operating requirements and standards, inspections and monitoring tend to have less effective programs.

Similarly, states such as Wisconsin and Oregon, that link their nonpoint source efforts to comprehensive watershed planning can more effectively tie their nonpoint source enforcement efforts to water quality objectives, the study found.

The study also found that simple and prompt enforcement procedures are more effective; cost-sharing efforts, in which federal or state funds are used to subsidize certain pollution control practices, are widely used tools, particularly for agricultural sources; and more ambitious enforcement actions generally are targeted in specific geographic areas that are considered unique or fragile such as Georgia's river corridor, Maryland's Chesapeake Bay and Texas' Edwards Aquifer.

In conclusion, the study notes that more state and federal funding and accountability are necessary to reduce nonpoint source pollution. The study is available on ELI's Web site at www.eli.org. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Managing Editor, Elizabeth Sherfy; Editor, Colleen Labbe. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Colleen Labbe at (202) 739-9611; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Publications Now Available From WERF. The Water Environment Research Foundation released several new publications July 18 devoted to point source issues. They include:

Tools To Measure Source Control Program Effectiveness, which details effectiveness measurement for stormwater and wastewater pollution prevention and public education efforts. The report includes information on implementation costs and a framework for developing an effective pollution prevention or source control program.

Nitrogen Credit Trading in the Long Island Sound Watershed, which offers guidance on how to develop a watershed-based trading program. The report examines Connecticut's point-source-to-point-source trading system for nitrogen reduction in the Long Island Sound watershed, which led to other watershed trading legislative initiatives.

Other reports include *Investigations of Hybrid Systems for Enhanced Nutrient Control and Analysis and Fate of Polymers in Wastewater Treatment*. For more information, call WEF at (703) 684-2400.

New Stormwater Journal Available. Forester Communications will begin publishing *Stormwater, The Journal for Surface Water Quality Professionals* in September. The business journal will be written specifically for individuals who are responsible for complying with stormwater rules and regulations and will focus on various aspects of stormwater programs and surface water quality improvement or protection operations.

For more information or to sign up for a complimentary subscription, visit the journal's Web site at www.stormh2o.com.

EPA Releases WET Guidance Document. The U.S. Environmental Protection Agency (EPA) issued July 18 the final draft of the guidance document "**Understanding and Accounting for Method Variability in Whole Effluent Toxicity (WET) Applications Under the NPDES Program.**" The WET approach is defined by EPA as "the aggregate toxic effect of an effluent measured directly by an aquatic toxicity test." Aquatic toxicity tests involve measuring the biological effects of effluents on aquatic organisms through laboratory experiments.

The document was developed in response to questions from national pollutant discharge elimination system (NPDES) permittees and regulatory authorities on how to understand and account for measurement variability in WET testing. In addition

to satisfying some litigation over efforts to standardize WET test procedures, the document addresses three issues regarding WET variability, EPA said. It quantifies the variability of the test methods, evaluates the statistical methods used to determine WET permit conditions, and suggests guidance for regulatory authorities to minimize test method variability.

EPA concludes in the document that WET method variability is within the acceptable range of variability experienced in other types of analyses. EPA also recommends that regulatory authorities implement the statistical approach previously outlined in the agency's "**Technical Support Document for Water Quality-based Toxics Control,**" which presents guidelines for developing appropriate effluent limits. Finally, the document suggests ways to minimize WET test variability.

For more information contact Debra Denton at (415) 744-1919 or Laura Phillips at (202) 260-9522.

Additional Stormwater Fees in North Carolina. Gov. James Hunt signed a law (HB 1602) June 30 that allows counties and cities in North Carolina to impose additional stormwater management fees to fund "any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and state laws, regulations and rules," according to the law. Prior to the legislation's passage, fees could be assessed only for expenses associated with the construction and maintenance of stormwater and drainage systems.

The text of the law can be obtained from the Internet at www.ncga.state.nc.us.

Stormwater Permit Approved for Arizona Copper Mine. EPA Region 9 announced July 25 its approval of a stormwater discharge permit issued to Carlota Copper Co. Carlota has agreed to clean up existing copper pollution present at Pinto Creek prior to constructing a new copper mine in the Tonto National Forest and on private land near Phoenix. Pinto Creek currently is contaminated by uncontrolled copper discharges from a nearby inactive copper mine, which has been abandoned since the 1980s.

The permit allows stormwater discharges from waste rock piles into Pinto Creek only in the event of a 100-year/24-hour storm event and into Power Gulch only in the event of a 10-year/24-hour event. During most years, no discharge is expected, EPA said. To further reduce levels of copper contamination at Pinto Creek, EPA and the Arizona Department of Environmental Quality are collaborating to draft a total maximum daily load plan for the site. ■

Final TMDL Rule

(Continued from page 1)

“load allocation,” “wasteload allocation,” “impaired waterbody,” “management measures” and “reasonable assurance.”

Additionally, many commenters noted that it is technically difficult to determine water quality trends and make accurate listing decisions. Thus, EPA dropped the proposed provision that would have required states to list threatened waterbodies along with those designated as impaired, and no TMDLs will need to be prepared for them. However, states may include threatened waterbodies and prepare applicable TMDLs at their discretion.

Under the new rule, each state will be required to develop a comprehensive list of all polluted waterbodies every four years instead of the current two-year interval.

The proposed rule required all impaired waterbodies to be ranked according to high, medium and low priority. In the final rule, EPA requests that polluted waters that are drinking water sources or that support endangered species be given higher priority status. In addition, states must establish a schedule for cleanup plans within 10 years of July 10, 2000, rather than the 15 years EPA initially proposed. However, states may apply for a five-year extension if they can show that establishment of a TMDL within the allotted time frame is “not practicable.”

The final rule clarifies how reasonable assurance that a state will carry out a TMDL’s implementation plan can be demonstrated, and provides additional detail on how it can be demonstrated for nonpoint sources.

In light of controversial data submitted by commenters, EPA withdrew its proposal to designate certain silviculture operations, animal feeding facilities and aquatic animal production facilities as subject to the national pollutant discharge elimination system permitting program. These operations will be addressed separately at a later date, EPA said in the preamble to the rule.

The final rule, like the proposal, requires states to prepare an implementation plan as part of the TMDL. However, according to the rule, plan requirements will differ depending on whether the waterbodies are impaired by point sources, nonpoint sources, or both.

EPA believes the implementation plan is the most important aspect of the rule. The plan should describe what actions will be necessary to achieve the TMDL and a reasonable timeline for implementation. The plan also should include reasonable assurances that improvements will occur. In addition, the plan must have a monitoring or modeling plan and

milestones for measuring progress; plans for revising the TMDL if progress toward cleaning up the waterbody is not made within the established time frame also are required.

Elements of a TMDL

According to the final rule, TMDLs must contain 11 key elements, most of which were identified in the proposed rule. Specifically, a TMDL must include:

- the waterbody name and location;
- identification of the pollutant to be addressed and the water quality standard to be reached;
- the amount of pollutant a waterbody can contain while still meeting water quality standards;
- the load reduction amount needed to meet the standards;
- point sources and nonpoint sources of the pollutant;
- the load allocation for point sources to the waterbody;
- the load allocation for runoff and other nonpoint sources of pollution to the waterbody;
- a margin of safety for the waterbody;
- consideration of seasonal variations and flow levels;
- an allowance for reasonably foreseeable increases in pollutant loads; and
- an implementation plan.

The final rule includes a transitional period of 18 months from the publication date of the rule or nine months from the rule’s effective date, whichever is later, to allow states time to phase in new TMDL elements. In addition, the public will have the opportunity to comment on the methodology, lists, prioritized schedules and TMDLs prior to the state submitting the plan to EPA for approval. For more information, contact EPA’s Jim Pendergast at (202) 401-4078. ■

Questions? Ideas?

Contact the Editor at (202) 739-9611, or

Visit Thompson Publishing Group’s
Web site at

www.thompson.com

TMDL Reactions

(Continued from page 1)

R-N.Y., believes was “anti-environmental” and “could bring the TMDL program to a halt.” Other congressional members, such as Sen. James Inhofe, R-Okla., who called the rule “an affront to Congress and citizens,” have expressed their disapproval of the way the rule was finalized.

Moreover, several opponents of the TMDL rule refer to a report prepared by the General Accounting Office (GAO) at the request of Rep. Bud Shuster, R-Pa., chairman of the House Committee on Transportation and Infrastructure, that questioned some of the assumptions EPA used to develop the rule. The report, *Clean Water Act: Proposed Revisions to EPA Regulations to Clean Up Polluted Waters*, suggested that certain baseline assumptions EPA used to estimate the costs to implement the revisions were flawed and distorted.

For example, according to the report, EPA incorrectly concluded from its economic analyses that the TMDL regulation would not result in expenditures in excess of \$100 million annually by states and the private sector, thus negating the need for more detailed analyses required under the Unfunded Mandates Reform Act. The agency also concluded in error that the regulations would not have a significant impact on small entities because the rule did not directly affect them. Rather, the agency said that the rule only affects states directly, an assumption that GAO questioned.

EPA also assumed in its analyses that states essentially were in full compliance with current regulations or will be soon. Thus, EPA’s cost estimates excluded any costs to be incurred by states that have not yet met the requirements of the existing program. However, GAO’s report notes that compliance among states with the current TMDLs has been problematic and inconsistent. In fact, only about 1,300 of the estimated 40,000 TMDLs needed were approved by EPA through fiscal year 1999, according to the report.

Another key limitation is the water quality data that EPA used to identify the number of waterbodies not meeting standards, according to the GAO report. EPA collected the data primarily from states, but states often collected inconsistent data based on outdated and unconfirmed sources, the report asserted. Thus “EPA’s cost estimates are subject to substantial uncertainty,” the report concluded.

Criticism of the new rule also has come from industry and local government representatives, including the National Governors Association (NGA), which believes that the costs associated with the rule have not been adequately addressed and may cause “major financial burdens on our state environmental agencies.”

NGA notes that with the estimated 40,000 TMDLs that will need to be established, states will have to create an average of 1.5 TMDLs per week, nonstop, for the next 10 years, a time frame the organization calls “aspirational.” States also have testified that the actual costs to prepare the TMDLs will be between \$1 billion and \$2 billion annually, said NGA in a statement. The rule, which NGA terms a “one-size-fits-all approach,” is not sufficiently flexible and “does not allow states enough time to compile adequate scientific data to support their decisions,” which will lead to increased litigation, NGA concluded.

The American Chemistry Council also believes that the rule is “flawed” and is “certain to result in significant litigation.” Of particular concern to the council were the changes made after the public comment period ended. “The changes are largely based on what may be *ex parte* communications between EPA and certain environmental advocacy groups,” said council President and CEO Fred Webber in a statement. One example was the “last minute decision to shift much of the burden of the program to point-source industries,” Webber said. Webber also noted that the council had concerns about the economic analysis the agency used for the rule, citing GAO’s report.

Support for the Rule

In contrast, the Association of Metropolitan Sewerage Agencies (AMSA), which represents publicly owned wastewater agencies, believes the rule is commendable. It “provides critical mechanisms for holding states accountable for addressing nonpoint source pollution,” AMSA said in a statement. AMSA believes that “without the new rule ... point sources would bear a disproportionate share of the cleanup, allowing an unacceptable number of nonpoint sources to continue polluting the water.”

The Natural Resources Defense Council (NRDC), an environmental advocacy organization, also believes the rule will have a positive impact. Initially, NRDC was concerned that the proposed rule lacked an adequate structure and timeline for establishing TMDLs, implementing control measures, and attaining and maintaining water quality standards, according to Nancy Stoner, NRDC’s director of the Clean Water Project. Many of its concerns were addressed in the final rule, but the key to a successful TMDL program will be “the degree of implementation and enforcement,” Stoner said in a letter to EPA’s Charles Fox, assistant administrator for the Office of Water.

The fate of the TMDL rule remains to be seen, as Congress considers whether to use its authority under the Congressional Review Act (CRA) to block the regulation, a power never before invoked. Under CRA, Congress has 60 days to review the rule and pass a resolution of disapproval. ■

Calendar of Events

NPDES Permitting and Negotiation—What You Need To Know. Government Institutes (GI) will conduct a two-day program Sept. 25-26 in Washington, D.C., designed to inform and educate those subject to the national pollutant discharge elimination system (NPDES) permit program. The course will cover general permit contents, indirect discharge permits and stormwater permits. Other issues to be discussed include technology-based limitations, water quality limitations, monitoring and recordkeeping, enforcement, and specific compliance strategies. Fee: \$999.

GI also will conduct a **Stormwater Discharge Regulations Course**, Sept. 28-29 in Houston, Texas. The course will discuss how the federal stormwater program is evolving, including new developments under multi-sector general permits; techniques and methods for streamlining monitoring activities; how to manage reporting and recordkeeping requirements; what is required in a stormwater pollution prevention (SWPP) plan; and how to coordinate SWPP plans with other compliance programs. Fee: \$999. For more information on either course, contact GI at (301) 921-2345 or visit its Web site at www.govinst.com.

WEF 73rd Annual Conference and Exposition. The Water Environment Federation (WEF) will host its

annual water quality conference and show Oct. 14-18 in Anaheim, Calif. The conference will include nearly 500 technical presentations and more than 800 exhibitors with the latest products and services in the water quality field. Presenters will discuss issues such as tools for achieving point and nonpoint source partnerships; assessing controls for NPDES programs; facility operations; industrial issues and treatment technology; surface water quality and watershed management; providing services to small communities; and other topics. The keynote speaker in the opening session will be Dr. Sylvia Earle, founder and chair of the Deep Ocean Exploration and Research Marine Operations. Fees vary. For more information, contact WEF at (800) 666-0206 or visit WEF's Web site at www.wef.org/weftec.

Stormwater Compliance Workshops. The National Stormwater Center will conduct three one-day workshops dedicated to understanding and complying with phase I and phase II of the stormwater rules, best management practices and monitoring, permit exemptions, and writing an actual SWPP plan for the industrial, municipal and construction sectors. Workshops will be held in Albuquerque, N.M., Sept 25; Orlando, Fla., Oct. 16; and San Antonio, Texas, Nov. 13. Fee is \$395 and pre-registration is required. For more information, visit the center's Web site at www.storm-water.com. ■

Keep your environmental compliance program running effectively and efficiently . . .

Environmental Compliance Tool Kit

With over 200 ready-to-use tools, your subscription provides:

- ▶ Easy-to-use charts, checklists, forms, sample letters and plans, worksheets, lists of state contacts and compliance calendars
- ▶ Internet access to all the compliance tools
- ▶ Monthly newsletters and update pages
- ▶ And more!

CALL
1-800-677-3789

TRIAL SUBSCRIPTION CERTIFICATE

Environmental Compliance Tool Kit

YES! Please enter my one-year subscription and send me the *Environmental Compliance Tool Kit* to use and evaluate risk-free for 30 days. Within that time, I'll either return the materials and owe nothing . . . or honor your invoice for \$379. I understand my subscription includes the *Tool Kit*, monthly newsletters and update pages, and that I will be billed annually until I decide to cancel my subscription.

Name _____

Title _____

Organization _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

E-mail Address _____

Signature _____

(REQUIRED ON ALL ORDERS.)

BL190172

Payment enclosed. (\$379) **Bill me.** (\$379 plus \$14.50 postage and handling.)

Please make check payable to Thompson Publishing Group, Inc. Residents of DC, FL and MD, please add appropriate sales tax.

MAIL TO: Thompson Publishing Group, Inc. • Subscription Service Center • PO Box 26185 • Tampa, FL 33623-6185

TOOL

Stormwater Permit Manual

Bulletin

Volume 9, Number 12

July 2000

Study Undermines Accuracy of EPA's Data on Forestry Operations

The U.S. Environmental Protection Agency (EPA) has "no basis" for its allegations that silviculture operations cause water pollution problems, according to a recent study conducted by the Society of American Foresters and the National Association of State Foresters (SAF-NASF). Data contained in their June report—*A Review of Waterbodies Listed as Impaired by Silvicultural Operations*—may be a "major cause" of EPA's reported decision to remove provisions from its proposed total maximum daily load (TMDL) regulations that would have required certain forestry operations to obtain National Pollutant Discharge Elimination System (NPDES) permits, SAF-NASF said.

Background

In August 1999, EPA proposed revisions to the existing TMDL regulations that would allow states to designate certain silviculture operations as point sources and require them to obtain

NPDES permits after the state established a TMDL (64 FR 46011). Based on extensive comments, EPA remarked that its initial proposal "needed to be substantially revised." The agency worked with the U.S. Department of Agriculture (USDA) to develop an alternative approach to reduce water pollution from forestry operations. The revised approach, described in a joint statement issued by USDA and EPA, is the result of an agreement between the two agencies that gives states the lead role in forest water quality and encourages the development of strong state forest water quality programs (see June 2000 newsletter, p. 3). In short, the statement indicates that forestry operations that develop and maintain best management practices consistent with its state's EPA-approved forestry program would not have to obtain NPDES stormwater permits.

The revised permitting approach described in the statement was to be reflected in EPA's final TMDL rule. However, in a June 8 letter to key Congressional

(Continued on page 3)

Report Identifies 'Major Weaknesses' in State TMDL Watershed Cleanup Programs

Although the Clean Water Act (CWA) establishes a plan for controlling nonpoint source pollution, most states have done little to prevent polluted runoff from entering nearby waters, a recent report by the National Wildlife Federation (NWF) states.

The primary tool under CWA for reducing pollution from nonpoint sources is the total maximum daily load (TMDL) program, according to NWF. However, the federation's report—*Pollution Paralysis II: Code Red for Watersheds*—maintains that "over three-quarters of the states are failing to [properly] use the TMDL program to restore our polluted waterways." As a result, over one-third of U.S. waters still are not safe for fishing or swimming, said NWF.

The TMDL program uses a watershed-based cleanup approach to regulate all pollutant sources regardless of whether they originate

(Continued on page 4)

Inside This Issue ...

Storm Warnings 2

EPA Modifies Water Quality Standards Approval Process 3

Updated information on EPA's stormwater permitting program

Tab 800

Storm Warnings

Stormwater-Related News in Capsule Format

Stormwater Utility Guide Now Available. The Florida Association of Stormwater Utilities (FASU) has created a manual to assist communities in developing and implementing stormwater utilities. The manual, called *Establishing a Stormwater Utility in Florida*, is written for citizens, elected officials and city or county administrators and staff who want to understand the issues and community investment associated with stormwater utilities.

Stormwater utilities—funds that may provide supplemental or alternative funding for stormwater operations—are a recent development in municipal stormwater management, according to FASU. Because stormwater management has been a difficult program for local governments to fund, the concept of a stormwater utility is spreading quickly. In Florida, stormwater utilities focus on areas such as: capital projects for water quality treatment; water quality management; regulations and enforcement activities; and permit compliance for municipal separate storm sewer systems.

The majority of the guide contains information that is relevant to local governments throughout the United States. One chapter covers legal authority that is state-specific. To view the contents of the guide, go to www.fasu.org/fasu/manual/index.html on the Internet.

EPA Publishes Atlas of America's Polluted Waters. The U.S. Environmental Protection Agency (EPA) recently published the *Atlas of*

America's Polluted Waters, EPA 840-B-00-002, which identifies over 20,000 waterbodies across the United States that do not meet applicable water quality standards. The maps are color coded to indicate the type of pollutant causing the pollution problem. Under the Clean Water Act, states are required to submit lists of impaired waters, called 303(d) lists, and develop total maximum daily loads (TMDLs) for EPA to review and approve.

Copies of the document may be obtained from the National Service Center for Environmental Protection by calling (513) 489-8190. A copy of the Atlas also is posted on EPA's TMDL web site at www.epa.gov/owow/tmdl/atlas/index.html.

Comment on Draft NPS Guidance Requested. EPA recently published a draft guidance and reference document to provide technical assistance to state program managers and others on controlling agricultural nonpoint source (NPS) pollution. The draft guidance—*National Management Measures to Control Nonpoint Source Pollution from Agriculture*—provides background information about agricultural NPS pollution, discusses the concept of addressing water quality problems on a watershed level, and presents up-to-date technical information on the best available, economically achievable means of reducing pollution of surface and ground water from agricultural activities.

EPA currently is soliciting comments on this draft guidance. For additional information, e-mail EPA's Sharon Buck at buck.sharon@epa.gov. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Forestry Operations

(Continued from page 1)

leaders, EPA's Assistant Administrator for Water Chuck Fox said that the agency will not include any forestry provisions in the TMDL regulations to be finalized this summer. Instead, EPA expects to revise and repropose the August 1999 proposal as it relates to forestry at a later date. The proposal will reflect the approach described in the USDA/EPA joint statement, according to Fox. The agency intends to engage stakeholders extensively in reviewing the forestry provisions prior to the reproposal, he said.

'Flawed' List of Waterbodies

EPA maintains that silvicultural operations are a significant source of water pollution. In support of this premise, EPA submitted to Congress in March 2000 a list of 1,040 waterbodies that it claimed are impaired by forestry operations. However, the SAF-NASF study contradicts EPA's findings, stating that the agency "relied on inadequate and unscientific data, misinterpreted state information, and ignored the effectiveness of state programs to ensure water quality."

"Our report raises very serious questions about the quality of EPA's data."

—Bill Banzhaf, executive vice president of SAF

According to state agency data collected by SAF-NASF, only 84 of the 1,040 waterbodies that EPA found to be impaired by silviculture are actually impaired. Moreover, 48 percent of the 1,040 waterbodies on EPA's list are not named on the most recent state lists of waterbodies that fail to meet water quality standards, according to the report. "Our report raises very serious questions about the quality of EPA's data," said Bill Banzhaf, executive vice president of SAF.

EPA prepared its list of 1,040 impaired waterbodies from reports generated by the states, according to the agency. The SAF-NASF study discusses several reasons why EPA's data nevertheless is "flawed." State agency personnel in Louisiana, Mississippi, Oklahoma and South Carolina said that their reports often are qualitative rather than quantitative, according to SAF-NASF. Spokespersons from Arkansas, Florida, Mississippi and Oklahoma acknowledged that they "padded" their lists of impaired waters—based on "anecdotal information and best

guesses"—because federal watershed funding was tied to their identification of waterbodies as possibly impaired, the report states. In addition, Arkansas and Mississippi agency staff said that EPA specifically encouraged them to include waters that they identified only as possibly impaired, according to SAF-NASF.

The report's executive summary is available on the Internet at www.safnet.org/policy/tmdl2000.html. For additional information, contact SAF at (301) 897-8720 or NASF at (202) 624-5415. ■

EPA Modifies Water Quality Standards Approval Process

A final rule issued by the U.S. Environmental Protection Agency (EPA) changes the way in which state and tribal water quality standards become effective under the Clean Water Act (CWA) (65 FR 24642, April 27, 2000).

New and revised state or tribal water quality standards can become effective only after they have been approved by EPA, the rule states. To facilitate the transition to this approach, standards that were adopted under state and tribal law and submitted to EPA before May 30—the effective date of the rule—may be used for CWA purposes without obtaining the agency's approval, the rule states.

The new approach stems from a decision issued by the U.S. District Court for the Western District of Washington, which held that state water quality standards do not go into effect under CWA until they are approved by EPA (*Alaska Clean Water Alliance v. Clark*, No. C96-1762R, W.D. Wash. July, 8, 1997).

EPA intends to work closely with states and tribes to set up procedures to improve the process for developing and approving standards and making them accessible. In the past, delays have been caused by Endangered Species Act consultations with the Fish and Wildlife Service and other agencies, according to EPA. The agency plans to discuss with states and tribes ways to assure that the needs of threatened and endangered species also are addressed in the development of standards, according to the rule. ■

TMDL Process

(Continued from page 1)

from point or nonpoint sources. CWA Section 303(d) and the U.S. Environmental Protection Agency's (EPAs) regulations require states to identify waters that do not meet water quality standards, despite dischargers' adherence to technology-based effluent limits. States must then develop a TMDL for each impaired waterbody by: 1) calculating the maximum amount of pollutant that a waterbody can receive and still meet water quality standards; and 2) allocating that amount among all point and nonpoint sources that discharge that pollutant.

Examining State Efforts

Using a report card approach, the report provides a state-by-state summary of water quality impairments and rates how public agencies are responding. Prior to assigning letter grades, NWF reviewed each state's list of polluted waters, called the TMDL list, and interviewed EPA and other state agencies to gather additional information. NWF then analyzed the information using 36 separate criteria, which were divided into the following seven categories: minimum EPA standards, public participation, listing, delisting, prioritization, scheduling and development/implementation status.

Although most states are doing a better job identifying impaired waters, the report finds that 77 percent of the states have not properly developed and implemented TMDLs to limit polluted runoff and other impairments from entering their lakes, streams and coastlines, according to NWF. The federation gave 21 states a failing grade for their TMDL programs, and an additional 20 states received a D grade.

These results indicate that "there is little commitment on the part of state agencies to develop, implement and enforce cleanup plans, so that all sources of pollution are prevented and controlled," NWF said.

The report notes "major weaknesses" that are shared by many state TMDL watershed restoration programs. Common problems include: lack of a TMDL advisory committee with public representation; inadequate state responses to public comments; failure to submit comprehensive lists of impaired waters; delayed scheduling of waters

with more difficult problems; lack of inclusion of threatened waters; improper delisting of waters; and failure to consider all types of pollution when developing a TMDL list.

Recommendations

To better address the problem of polluted runoff, the report offers several solutions. As part of the TMDL process, states should develop implementation plans that contain a schedule for reducing pollutant loadings, measurable milestones and enforceable commitments, according to NWF. In addition, states should not allow discharges into already polluted waters until they are restored, and waters that pose human health risks should be a top priority for restoration. Moreover, states should identify and use TMDLs to restore waters that are impaired or threatened by reduced flow, according to NWF.

The report also recommends that EPA revise its permitting rules to require all large animal feeding operations, especially those contributing to known water quality impairments, to obtain NPDES permit coverage. States also should demand better pollution controls at major polluted runoff sites such as logging operations, the report states. Furthermore, according to the report, adequate funding from states and the federal government is needed because many state agencies lack sufficient resources to develop and implement TMDLs.

The report notes that many of NWF's recommendations are included in the proposed revisions to the existing TMDL regulations issued by EPA Aug. 23, 1999 (64 FR 46011). The proposed rules would achieve further progress toward attaining water quality standards in impaired waters while the TMDLs are under development and provide greater assurance that completed TMDLs will be adequately implemented, among other things, according to EPA (see related newsletter stories: June 2000 newsletter, p. 3; October 1999 newsletter, p. 5; and September 1999 newsletter, p.1).

Although the report identifies some "potentially disastrous loopholes" in the proposed rules, NWF says that the rulemaking would "improve the quantity and quality of TMDLs developed and implemented by the states."

A copy of NWF's report is available on the Internet at www.nwf.org/nwf/watersheds/paralysis/index.html. For additional information, contact NWF at (734) 769-3351. ■

Stormwater Permit Manual

Bulletin

Volume 9, Number 11

June 2000

Enforcement Focuses on Salvage Yards, Other Industries Cited

A recent flurry of enforcement actions in the eastern United States and Puerto Rico sends a clear message that the U.S. Environmental Protection Agency (EPA) intends to enforce vigorously federal stormwater regulations under the Clean Water Act (CWA).

EPA Region 3 announced that it has taken enforcement action against 62 waste recycling and salvage yards throughout the mid-Atlantic region for violations of CWA. EPA inspections revealed that these facilities failed to obtain required permits or were not complying with their stormwater pollution prevention plans, the complaints alleged.

The facilities cited include 39 in Pennsylvania, 13 in Virginia, four in Maryland, four in Washington, D.C., and two in West Virginia. A complete list of company names can be found in four different press releases on Region 3's web site at www.epa.gov/region3/news.htm. The facilities

have the right to a hearing to contest the alleged violations and proposed penalties.

In a separate enforcement action, EPA Region 3 cited the owners and developers of 10 properties in the tidewater area of Virginia for unauthorized stormwater and dredge-and-fill discharges. From five to 45 acres of wetlands were disturbed on each of the 10 properties cited, EPA alleged. The administrative orders seek compliance and restoration at all 10 sites to reverse the alleged environmental harm.

Puerto Rico Enforcement

In other enforcement news, EPA proposed fines against several companies in Puerto Rico for not curbing pollutants in stormwater runoff.

According to a press release, Lilly Del Caribe was cited for unauthorized discharge of condensed

(Continued on page 6)

EPA's Report to Congress Calls Phase I Of the Stormwater Program 'Successful'

The phase I program has been successful in reducing pollutant loadings in stormwater discharges and in protecting and improving water quality on a site-specific basis, according to a U.S. Environmental Protection Agency (EPA) report to Congress on the impact of the phase I stormwater regulations.

The Appropriations Act of 2000 directed EPA to conduct an evaluation of the phase I stormwater program (see November 1999 newsletter, p. 1). In response to the act, EPA prepared a report that evaluates the impact the phase I program has had on improving water quality in the United States, and includes descriptions of specific measures that have been successful and those that have been unsuccessful.

In the report, EPA acknowledges that it does not currently have a system in place to measure the success of the phase I program on a national scale. Instead, the agency relied on existing surveys, case

(Continued on page 4)

Inside This Issue ...

EPA Issues Stormwater Permit With Unpopular Numeric Limits	2
Certain Region 4 Permittees Face New Monitoring Requirements	3
Joint Statement Details USDA-EPA Agreement On TMDL Proposal	3
Storm Warnings	5
Updated information on permitting requirements for large and medium MS4s	

Tab 400

EPA Issues Stormwater Permit With Unpopular Numeric Limits

For the first time ever, the U.S. Environmental Protection Agency (EPA) has included numeric effluent limitations in a municipal stormwater permit. The long-overdue permit, recently issued to the District of Columbia, regulates the discharge of stormwater from the city's municipal separate storm sewer system (MS4) to nearby waters, according to an EPA Region 3 press release.

EPA defines "MS4" as a publicly owned or operated stormwater conveyance system that discharges into the waters of the United States. Under EPA's phase I stormwater rule, operators of regulated large MS4s must develop, implement and enforce stormwater management programs designed to reduce the discharge of pollutants from the MS4 to the "maximum extent practicable," among other things. To meet this standard, the district's municipal stormwater permit requires the city to improve its stormwater management plan to reduce the amount of pollutants discharged from approximately 500 stormwater outfalls to Rock Creek and the Anacostia and Potomac Rivers, according to EPA Region 3. Unique to the district's permit, however, are numeric limits placed on the amount of oil and grease that the city's MS4 may discharge into Hickey Run, a small tributary of the Anacostia River, EPA Region 3 said.

Numeric Limits

For all impaired waters, the Clean Water Act requires states to: identify pollutants of concern and their sources; set a total maximum daily load (TMDL) for each pollutant; and reduce effluent discharges to meet the TMDL.

According to EPA Region 3, Hickey Run is impaired for oil and grease. Much of this pollution is flushed into the waterbody from the District's MS4, EPA Region 3 said. Based on the Hickey Run

TMDL, EPA determined that, to meet state water quality standards, it was necessary to limit the amount of oil and grease discharged from the district's MS4 to Hickey Run to 11.9 pounds per day. To meet this allocation, the city's permit orders an 88.9-percent reduction in the amount of oil and grease currently being discharged from four MS4 outfalls to the Hickey Run watershed.

One municipal government official says the agency's decision to set a numeric stormwater limit "may be a sign of things to come." Others fear that adhering to numeric limits could increase nationwide costs of complying with stormwater permits.

Washington, D.C., was the last U.S. city with a population of more than 100,000 to file its application for a municipal stormwater permit, according to an EPA Region 3 spokesperson. The district has not indicated whether it will appeal the permit. ■

Calendar of Events

EPA Announces Two New Training Courses. The U.S. Environmental Protection Agency (EPA) plans to hold the following training courses, which will focus on the National Pollutant Discharge Elimination System stormwater program: a two-day workshop on the complete stormwater program, and a separate one-day presentation on the new phase II stormwater rule. There is no fee to attend either course, but space is limited. Dates and locations vary.

The two-day course will cover both the phase I and phase II rules and provide in-depth training on the permitting requirements for regulated industrial facilities, construction activities and municipal

(Continued on page 6)

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Kelley, Drye & Warren, L.L.P.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Certain Region 4 Permittees Face New Monitoring Requirements

The U.S. Environmental Protection Agency (EPA) Region 4 recently expanded the monitoring and reporting requirements in its general construction permit to assure that stormwater discharges from regulated construction sites do not cause or contribute to sediment-related impairments of receiving waters.

The modified Region 4 permit will take effect July 1 and regulate the discharge of stormwater runoff from construction sites of five acres or larger in the state of Florida and on Indian lands in Alabama, Florida, Mississippi and North Carolina, according to an April 28 *Federal Register* notice (65 FR 25141).

Background

Clean Water Act Section 303(d) and EPA regulations require states to identify waters that do not meet water quality standards, despite existence of technology-based effluent limits. States must submit lists of impaired waters—called 303(d) lists—to EPA. In addition, the act prohibits EPA from authorizing stormwater discharges that will cause or contribute to the impaired use of waters that appear on an EPA-approved 303(d) list.

To satisfy these requirements, EPA Region 4 added new measures to its general construction permit to prevent stormwater discharges from causing or contributing to the impaired designated uses of receiving 303(d) waters that are listed for total suspended solids (TSS) or other parameters associated with sediment.

According to the notice, operators must comply with the new requirements of the modified general permit if they discharge stormwater to waters that appear on the 1998 EPA-approved 303(d) list (or any subsequently approved list) for TSS or other

parameters associated with sediment such as turbidity, siltation or sedimentation. Dischargers are required to contact the permit issuing authority for help in determining whether they are discharging to 303(d)-listed waters.

Discharges to Impaired Waters

If the receiving water is impaired from TSS, the discharger must comply with certain new monitoring requirements in the modified permit. For example, the permit holder must perform monthly monitoring for settleable solids, TSS, turbidity and volume flow. Collection of this data allows the permittee to determine if its discharge is contributing to the impairment of the receiving water, EPA said. The notice further states that all monitoring must occur within the first 30 minutes of a qualifying storm event or by monitoring a discharge that was previously collected. A “qualifying storm event” consists of one-half inch of rain or more over a 24-hour period, according to the notice.

In addition to effluent monitoring, upstream monitoring is required where appropriate. Other permit modifications direct permittees to report monitoring results on a monthly basis, as well as other data, such as the slope of the drainage area of each outfall.

To obtain coverage under the general permit, a new discharger must submit a notice of intent and comply with the terms of the permit. However, the permit modifications apply to all qualifying facilities, even if coverage under the permit began prior to the effective date of the modification. The permit expires April 28, 2005.

For additional information, contact EPA Region 4’s Floyd Wellborn at (404) 562-9296. ■

Joint Statement Details USDA-EPA Agreement on TMDL Proposal

The U.S. Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (EPA) recently issued a joint statement that details an agreement between the two organizations on agricultural and silvicultural issues raised by the August 1999 proposed revisions to the total maximum daily load (TMDL) regulations (64 FR 46011).

EPA and USDA agree that voluntary and incentive-based approaches are the “best way to address nonpoint source pollution,” according to the joint statement.

In response to the proposed TMDL rules, USDA and the agricultural community expressed concern that EPA had moved away from “traditional notions of what is a nonpoint source of pollution and strategies for reducing impacts

through voluntary efforts and best management practices (BMPs).” But the agreement between the agencies indicates that farmers will receive “credit” for water quality improvements made through conservation programs. These improvements will be recognized when a future cleanup strategy for the waterbody is developed.

“States have the flexibility to allocate pollution load reductions between nonpoint and point sources as they consider appropriate and are not required to allocate pollution reductions to specific categories (e.g., agriculture) in proportion to pollution contributions,” the joint statement concludes.

In addition, the statement explains that “no [National Pollutant Discharge Elimination System]

(Continued on page 6)

Phase I Report

(Continued from page 1)

studies by individual permittees and limited modeling to conclude that "significant milestones are being achieved." The report states that EPA used three types of information to measure program effectiveness: programmatic indicators (i.e., measures of the effectiveness of administrative activities undertaken by permitting authorities and the regulated community); loading reductions of pollutants achieved as a result of phase I best management practices (BMPs); and direct measures of water quality improvements.

According to the report, the "regulated community agrees with the overall approach EPA has taken to implement the phase I program." Support for the program is evidenced by two small surveys of the municipal community conducted by the National Association of Flood and Stormwater Management Agencies (NAFSMA) and EPA and one large survey of industrial facilities conducted by the Water Environment Federation (WEF). These surveys also provided EPA with much of its data on the effectiveness of the program, which appears in the report.

Impacts of the Phase I Program

A review of "existing and readily available information" on the status and effectiveness of the program found that load reductions and subsequent water quality protection and improvements have been documented on a site-specific level. The report provides survey and case study data identifying specific instances where stormwater pollution prevention plans (SWP3s) and BMPs were effective in preventing or reducing the discharge of pollutants in stormwater. A modeling analysis conducted for the report estimated that stormwater BMPs applicable to construction sites kept 73 percent of the sediments generated during construction from reaching surface waters. In addition, the use of SWP3s and BMPs has prevented at least 882,000 tons of sediment from entering the nation's waters, according to the report. Moreover, these measures or practices were implemented cost-effectively, the report states.

Results of the WEF and NAFSMA surveys indicated that respondents believed that "water quality protection and improvement have been achieved as a result of phase I implementation" and that additional protection and improvements will occur in the future, according to the report. Based on EPA's experience with other water quality management programs, water pollution control efforts do not always produce immediate, recognizable environmental results, the report states. Therefore, EPA anticipates that long-term improvements attributable

to phase I will continue to be observed in the future, as the program matures.

Successful vs. Unsuccessful Measures

Municipal surveys conducted by EPA and NAFSMA, and the WEF industry survey, identify two BMPs—illicit discharge control and public outreach and training—as being "particularly effective components of municipal and industrial stormwater management programs," the report states. The report also applauds the "flexible nature of the program," which has encouraged innovation and allowed permittees to tailor control programs to their own unique circumstances. As a result of the program's flexibility, many members of the regulated community support the program and would implement SWP3s even in the absence of stormwater regulations, according to the report.

Information collected for the report also identified measures of the phase I stormwater program that are "less than successful." Both the industrial and municipal communities have expressed concerns over the cost and usefulness of analytical monitoring conducted under phase I, the report states. Currently, EPA's multi-sector general permit (MSGP) for industrial facilities requires analytical monitoring for certain industrial sectors. EPA is considering alternatives to analytical monitoring and recently requested public comment on the issue in a March 30 *Federal Register* proposal to reissue the MSGP (65 FR 17012) (see May 2000 newsletter, p. 1). Additionally, some municipalities regulated under phase I have stated that uniform discharge monitoring requirements for municipal permittees have "resulted in a significant expenditure of resources without a commensurate return in water quality improvement," according to the report.

Finally, the industrial community, through the WEF survey, identified the following BMP measures as ineffective in controlling the discharge of pollutants in stormwater: site mapping; recordkeeping and reporting; and raw material and product substitution. EPA addresses the importance of these measures in its report, stating that a site map can "provide an operator with a better understanding of the potential sources of pollutants exposed to stormwater." The agency also maintains that accurate recordkeeping is essential to track compliance with SWP3 implementation requirements. And with regard to measures that address raw materials and product substitution, the report states that these are BMPs that facilities should "consider and implement as appropriate and necessary, according to EPA."

EPA's full report to Congress on the progress of the phase I stormwater program is available on the Internet at www.epa.gov/owm/sw/about/index.htm. ■

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Issues NPDES Streamlining Amendments. The U.S. Environmental Protection Agency (EPA) May 15 issued a final rule that revises the National Pollutant Discharge Elimination System (NPDES) regulations as part of an agencywide effort to streamline its regulations (65 FR 30886). The May 15 rule follows a June 29, 1995, rule that eliminated clearly obsolete provisions of the Office of Water program regulations (including NPDES regulations).

The new rule further streamlines NPDES permitting regulations by eliminating redundant regulatory language, providing clarification and removing or revising unnecessary procedures that do not provide any environmental benefits. Many of the revisions affect NPDES permitting generally; others target regulations for specific types of permits, including stormwater permits.

The stormwater-specific revisions in the rule include the addition of subheads to 40 CFR 121.21(g)(7), which require certain permittees to submit information on effluent characteristics. The subheads are designed to separate out the requirements that are specific to stormwater discharges. The rule also removes the stormwater group permit application provisions because they are no longer necessary in light of the availability of general permits.

Finally, to assist the regulated community in developing and implementing best management practices (BMPs), EPA will include a note to 40 CFR 122.44(k) that will provide references to available agency guidance on BMPs. The note also will provide that additional guidance may be available from the states and will include a reference to the Office of Waste Water Management's web page.

Semiannual EPA Regulatory Agenda Issued. On April 24, EPA published its semiannual regulatory agenda, which summarizes plans for upcoming regulatory activity (65 FR 23429). Among the items included in the agenda are several that may affect the stormwater program. For example, EPA said it will issue a notice of proposed rulemaking (NPRM) in December that would address effluent guidelines for construction activities associated with new development and redevelopment activities. The proposal would cover stormwater runoff from construction sites during the active phase of construction and post-construction runoff. EPA indicated that it will develop design criteria for erosion and sediment controls and stormwater BMPs. The requirements would be implemented in NPDES stormwater permits.

EPA also said it will issue an NPRM in September that would propose revisions to the water quality standards regulations to enhance water quality

management on a watershed basis, and focus federal, state and tribal resources on the areas of greatest concern. In addition, EPA was scheduled to issue an NPRM in April that would propose to change the NPDES regulations to allow reports and other information to be submitted to EPA electronically.

In addition, EPA plans to issue a final rule amending the total maximum daily load (TMDL) regulations in June. The revisions would provide states with clear and consistent direction for listing waters and developing TMDLs to meet water quality standards. EPA also plans to issue a related final rule in June that would revise the NPDES and water quality standards regulations to facilitate implementation of TMDLs and to improve water quality in impaired waters before TMDLs are established.

EPA also indicated that it plans to issue a notice of proposed rulemaking in December that would revise the existing effluent guidelines and standards for feedlots to address swine and poultry operations. The proposal also would revise the NPDES regulations for concentrated feeding operations.

Low Impact Development Guidance Now Available. EPA announced the availability of two guidance manuals for stormwater managers that contain information on the low impact development (LID) approach to site designs. The documents—Low-Impact Development: An Integrated Design Approach (EPA 841-B-00-003 January 2000) and Low-Impact Development: Hydrologic Analysis (EPA 841-B-00-002 January 2000)—were developed by Prince George's County, Maryland Department of Environmental Services. The documents include a description of LID principals, programmatic considerations, design strategies and an example of an analytic and computational procedure to use in designing appropriate runoff treatment systems.

Copies are available from the National Service Center for Environmental Publications (NSCEP) at (800) 490-9198 or on the Internet at www.epa.gov/ncepihom/orderpub.html.

Catalog Provides Funding Information. The recently published Catalog of Federal Funding Sources for Watershed Protection (second edition, EPA 841-B-99-003) provides information to watershed practitioners about 69 federal programs that may provide funding for various aspects of watershed protection and local watershed projects. The catalog provides information about the types of projects funded and eligibility requirements. Copies are available from NSCEP at (800) 490-9198. EPA plans to publish the document on the Internet at www.epa.gov/OWOW/watershed/wacademy/fund.html. ■

Enforcement

(Continued from page 1)

cooling water, failure to properly maintain its facility and failure to comply with certain monitoring and reporting requirements. The agency is seeking compliance and a \$137,500 penalty for the alleged violations.

Lilly de Caribe has a National Pollutant Discharge Elimination System permit to discharge wastewater from its Puerto Rico facility into a nearby river, according to EPA. The permit limits the amount and type of pollutants that can be contained in stormwater discharges and requires the company to monitor and implement appropriate best management practices.

A June 1999 EPA inspection revealed that the facility allegedly had not taken proper steps to prevent unauthorized discharges from a broken pipe, which was leaking condensed cooling water into a storm drain. EPA also alleges that the facility was poorly maintained, with discarded

equipment and waste containers exposed to precipitation. In addition, subsequent review of discharge monitoring reports revealed that the facility allegedly had failed to monitor or had inadequately monitored its discharges between August 1997 and November 1999.

In another enforcement action in Puerto Rico, EPA cited four other companies for allegedly failing to apply for required stormwater permits. As a result, Puerto Rico-based Danbury Parmacal P.R. Inc., Petroleum Chemical Corp., Rhone Poulenc Rorer and Wyeth Pharmaceuticals Co. face fines of up to \$27,500 and must apply for permits and develop stormwater pollution prevention plans.

According to EPA, the agency is doing its part to increase compliance with stormwater regulations in Puerto Rico. Since 1991, EPA has sponsored annual stormwater seminars and has provided compliance assistance to hundreds of regulated facilities. For information on future seminars in Puerto Rico, contact EPA's Caribbean Environmental Protection Division at (787) 729-6951. ■

Calendar of Events

(Continued from page 2)

separate storm sewer systems. EPA recommends this course to stormwater staff with less than one year of experience with the stormwater program.

The one-day workshop will feature a presentation on the new phase II rule, followed by an interactive question-and-answer period. This session is for people who are familiar with the stormwater program, but have questions about the implications of the phase II rule, according to EPA.

The agency currently is accepting online and facsimile pre-registration. Additional information on

these courses, including location and dates, is available at www.epa.gov/owm/sw, under "training."

Registration Is Open for the Water Quality Standards Academy. EPA will present two sessions of the Water Quality Standards Academy on July 10-14 and Aug. 7-11. Both sessions will be held in Arlington, Va. Attendance is free, but seats are limited. To obtain more information and the pre-register form, visit www.epa.gov/ost/announce/academy or call (202) 260-7301.

The Water Quality Standards Academy is an introductory course on EPA's water quality standards program, designed for individuals with fewer than six months experience with standards, according to the agency. ■

USDA-EPA Statement

(Continued from page 3)

NPDES permits will be required for point sources of polluted stormwater from forestry operations for five years from the publication of the final rule."

USDA recently raised concerns about EPA's proposal to allow states, and in some cases the agency itself, to issue an NPDES permits where needed to regulate the discharge of stormwater from forestry operations. In response to the concerns, USDA and EPA agreed to a modified approach that calls for states to design and adopt forestry BMP programs based on a guidance to be developed by EPA. Forestry operators

that develop and maintain BMPs consistent with its state's EPA-approved forestry program will not have to obtain stormwater permits, according to the joint statement.

"Only if a state does not have an approved forestry BMP program after five years, will the state or EPA have the discretion to issue NPDES permits." Furthermore, the statement indicates that any permits issued by EPA will require the implementation of BMPs, not the attainment of numeric effluent limitations.

The entire joint statement is posted on EPA's TMDL web site at www.epa.gov/owow/tmdl/tmdlwhit.html. ■

Stormwater Permit Manual

Bulletin

Volume 9, Number 10

May 2000

Circumstantial Evidence Supports Standing in CWA Citizen Suit

Reduced use of a waterway caused by reasonable fear and concern of pollution "adequately document[s] injury in fact" necessary for standing to bring a Clean Water Act (CWA) citizen suit, the en banc U.S. Court of Appeals for the Fourth Circuit held Feb. 23 (*Friends of the Earth v. Gaston Copper Recycling Corp.*, No. 98-1938 (4th Cir. Feb. 23, 2000)). In allowing the plaintiffs' suit to go forward, the appellate court required no evidence of actual harm to the waterway, noting that the relevant showing for standing "is not injury to the environment, but injury to the plaintiff."

Background

Under Section 505(a) of CWA "any citizen" may file suit against a National Pollutant Discharge Elimination System (NPDES) permit holder who allegedly has violated a condition of its approved permit. "Citizen" is defined as "a person or persons having an interest which is or may be adversely affected."

In this case, Friends of the Earth (FOE) and Citizens Local Environment Action Network (CLEAN)—two nonprofit, environmental groups—filed a citizen suit on behalf of their members against a nonferrous metals smelting facility for allegedly discharging a variety of pollutants into a South Carolina waterway in violation of its permit. Pursuant to the NPDES permit, Gaston Copper Recycling Corp. of Lexington County, S.C., is authorized to discharge limited amounts of pollutants, including cadmium, copper, iron, lead, mercury, nickel, polychlorinated biphenyls and zinc into a nearby stream. In their complaint, FOE and CLEAN claimed that Gaston Copper had exceeded its permit's discharge limitations on numerous occasions, failed to observe the permit's monitoring and reporting requirements and failed to meet the permit's schedule of compliance.

Wilson Shealy, a CLEAN member who owns a lake four miles downstream from Gaston Copper's

(Continued on page 6)

EPA Proposes 'Major Changes' to the Existing Multi-sector General Permit

Eight U.S. Environmental Protection Agency (EPA) regional offices are proposing to reissue EPA's multi-sector general permit (MSGP) for industrial stormwater discharges, according to a March 30 *Federal Register* notice (65 FR 17012). The existing MSGP expires Sept. 29, 2000.

The MSGP originally was issued on Sept. 29, 1995, under the Clean Water Act's (CWA) National Pollutant Discharge Elimination System (NPDES) program. The MSGP regulates stormwater discharges from 29 industrial sectors in areas of EPA regions 1, 2, 3, 4, 6, 8, 9 and 10 where the agency is the permitting authority. The proposal would make several significant changes to the existing MSGP. These changes are discussed in detail below; for a complete list of what EPA categorizes as "major changes" to the existing MGSP, see the box on p. 5.

(Continued on page 4)

Inside This Issue ...

TMDLs Apply to Agricultural Runoff and Other Nonpoint Sources	2
New Legislation May Delay Enactment of TMDL Proposed Rule	3
State Lists of Impaired Waters Not Due Until 2002, EPA Says	3
Summary of Proposed Changes to the Multi-sector Permit	5
Added information on phase II construction requirements	

Tab 500

TMDLs Apply to Agricultural Runoff and Other Nonpoint Sources

Nonpoint sources can be regulated under the U.S. Environmental Protection Agency's (EPA's) total maximum daily load (TMDL) program, according to a recent federal district court ruling. In a March 30 decision, the U.S. District Court for the Northern District of California held that EPA can consider nonpoint sources of pollution such as logging or agricultural runoff when "assembling the substandard-waters list required by section 303(d) [of the Clean Water Act (CWA)] and in preparing corresponding TMDLs."

CWA requires states or EPA to list waters for which the effluent limitations are not "stringent enough to implement any water quality standards applicable to such waters." For each listed body of water, the states and EPA must develop a TMDL, which EPA defines as the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources that can be released into that body of water while achieving the applicable water standards.

In 1992, EPA required California to add the Garcia River to its list of substandard waters and to develop a TMDL for sediment for the river. Guido and Betty Pronsolino, timber land owners, challenged EPA's decision to list the river as an impaired waterway in California and to develop a TMDL for sediment for the river.

The plaintiffs, who were joined by several agriculture groups, argued that listings and TMDLs are not required for rivers and waters polluted only by logging, agricultural runoff and other nonpoint sources, including the Garcia River. They contended that EPA and states should calculate TMDLs only for pollutants that are discharged from pipes or other point sources.

Nonetheless, the district court relied on the comprehensive nature of CWA to rule in EPA's

favor, holding that the TMDL process covers nonpoint as well as point sources (*Pronsolino v. EPA*, No. C99-01828 (N.D. Cal. March 30)). "To have excluded the large number of rivers and waters polluted solely by agricultural and logging runoff would have left a chasm in the otherwise 'comprehensive' statutory scheme. It would have crippled the continuing planning process by which the states were expressly required to confront nonpoint-source pollution and to incorporate TMDL data into their continuing planning process."

"For the first time, a federal judge has upheld the EPA's long-standing interpretation and practice that the EPA and states have the authority to identify which U.S. waterways are polluted by runoff from urban areas, agriculture and timber harvesting—'nonpoint sources' of pollution—and to identify the maximum amount of pollutants that may enter these waterways," according to an EPA press release.

"This ruling should put to rest any questions about the Clean Water Act's scope," according to Ken Kirk, executive director of the Association of Metropolitan Sewerage Agencies (AMSA).

"It sends a clear message that Congress intended the act to address all forms of water pollution. Now, everyone with a stake in cleaning the nation's waters—EPA, Congress, states, local governments, industry and agriculture—can move forward, together, in finding solutions to America's remaining water quality challenges," he said in a press release.

AMSA entered the case because it had concerns that if nonpoint-source pollution were excluded from TMDLs, waters would remain impaired and "point sources such as municipal solid wastewater treatment plants could be responsible for cleaning up someone else's pollution." the press release says. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Editor, Leah F. Wood; Contributing Editor, Elizabeth J. Sherfy. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott, P.L.L.C.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

New Legislation May Delay Enactment of TMDL Proposed Rule

Proposed Clean Water Act (CWA) legislation could delay the U.S. Environmental Protection Agency's (EPA) plan to finalize regulatory revisions to the total maximum daily load (TMDL) program by June 2000.

A bill introduced recently by Sens. Michael D. Crapo, R-Idaho, and Bob Smith, R-N.H., would authorize \$5 million for an 18-month National Academy of Sciences (NAS) study of the science behind the development and implementation of TMDLs, the cost of complying with the proposed TMDL rule and the availability of alternative programs to reduce the discharge of pollutants from point and nonpoint sources. The bill would require EPA to consider the NAS study and its recommendations before enacting the proposed TMDL regulations.

"Despite EPA's push to adopt the new rules by the end of June, more than 30,000 public comments have come in against the water pollution proposals," said Crapo. "My disagreement with the proposed rule is not its basic objective... but the hurried approach EPA has elected to take, and [its] refusal to address the very numerous, very real concerns of states, cities and stakeholders," Crapo said on the Senate floor while introducing the *Water Pollution Program Enhancements Act of 2000* (S 2417) April 13.

The bill also would amend the CWA to increase funding over the next six years to \$750 million for grants to states for water pollution control. Specifically, the bill calls for \$250 million in CWA Section 106 grants to states to establish and implement ongoing water pollution control programs, and

\$500 million in funding for CWA Section 319 grants to states to control nonpoint sources of pollution.

In addition, the bill would authorize an additional \$2 million for EPA and the states to establish a three-year watershed management pilot program to evaluate different approaches to limiting impacts of point source and nonpoint source water pollution.

According to Crapo, EPA's proposed TMDL rule could require states to write 40,000 new water plans over the next 15 years at a cost of more than \$1 billion. Smith expressed similar concern, warning that the proposal may "prove too costly for states to implement effectively," noting that "the vast majority of states do not have sufficient data to develop accurate TMDLs for their waters." If enacted, S 2417 would help ensure that states have the necessary resources and sufficient scientific data to protect water quality, according to the senators.

Proposed revisions to the existing TMDL regulations were issued by EPA Aug. 23, 1999 (64 FR 46012). A related proposal issued the same day includes changes to the National Pollutant Discharge Elimination System program and water quality standards regulations (64 FR 46058) (see September 1999 newsletter, p. 1; October 1999 newsletter, p. 5; and April 2000 newsletter, p. 1).

The bill has been referred to the Senate Environment and Public Works committee for further review. The text of the bill and other legislative information can be viewed on the Internet at www.thomas.loc.gov. For more information, contact Crapo's office at (208) 334-1776. ■

State Lists of Impaired Waters Not Due Until 2002, EPA Says

The U.S. Environmental Protection Agency (EPA) gave states, territories and authorized tribes a temporary break from the requirement to submit to the agency lists of "water quality limited" waterbodies on April 1 of every even-numbered year, under a March 31 final rule (65 FR 17166).

The Clean Water Act (CWA) and EPA regulations require states to submit to the agency lists of impaired waters, called 303(d) lists, and develop total maximum daily loads (TMDLs) for EPA to review and approve. According to the final rule, states do not have to submit 303(d) lists in the year 2000, unless EPA has been required by a court-ordered consent decree or settlement agreement to take action based on a state's year-2000 list. The final rule does not change the existing regulatory requirement that lists be submitted on April 1, 2002, and on subsequent even-numbered years, EPA notes.

EPA offers several reasons for relieving states of the requirement to submit year-2000 lists. To begin with,

EPA recently proposed changes to its TMDL regulations under CWA that would provide states with "clear, consistent, and balanced direction" for listing waters and allocating pollutant load reductions (64 FR 46012, 46058, Aug. 23, 1999), the agency said. EPA believes the proposed changes will result in better 303(d) lists than are being created under current rules. Therefore, states should prepare for the new listing requirements rather than develop year-2000 lists under the current regulations, EPA explained. In addition, removing the requirement to submit year-2000 lists will allow states and EPA to concentrate on setting TMDLs for impaired waters on earlier lists, the agency said.

Some states may submit lists that were developed before the rule was finalized. EPA will review any such list, consistent with current legal requirements, according to the agency.

For further information, contact EPA's James Pendergast at (202) 260-9549. ■

Multi-sector Permit

(Continued from page 1)

The *Federal Register* notice states that the proposed permit would require certain permittees to consider additional sector-specific stormwater best management practices (BMPs). It also would impose additional controls on all industrial stormwater discharges. In addition, the notice solicits public comment on suggested alternatives to the analytical monitoring requirements currently required by the permit.

Other proposed changes include restrictions on discharges to impaired waterbodies; limits on coverage under sector AD, which is reserved for facilities not covered under other sectors; and the option to discontinue permit coverage for those who qualify for the no-exposure exemption that was created under the phase II rule.

New Sector-specific BMPs

Because additional technologies have been developed since issuance of the original MSGP, EPA re-evaluated the sector-specific BMP requirements of the permit to determine whether these provisions needed to be updated. Based on EPA's findings, the proposed MSGP would add new BMPs that permittees in several industries would need to consider when developing stormwater pollution prevention plans (SWP3s) for their facilities.

For Sector S (Air Transportation Facilities), for example, the proposed permit would require permittees to consider several new deicing chemicals—such as magnesium acetate, calcium acetate and anhydrous sodium acetate—as alternatives to urea, ethylene glycol and propylene glycol deicers. The proposed permit also would require permittees to evaluate new technologies for aircraft deicing, including infra-red, hot air and sonic treatment.

EPA also re-evaluated the BMPs for industrial facilities in Sector T (Treatment Works) and is proposing that operators of treatment works address additional areas or activities that are exposed to precipitation—including dried sludge piles, compost piles and hauled waste receiving stations—in their SWP3s.

The proposed MSGP would require Sector Y (Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries) facilities to consider three additional BMPs for reducing pollutants in their stormwater discharges: (1) using chemicals that are purchased in preweighed, sealed polyethylene bags to reduce dust emissions from mixers; (2) storing materials in sealed containers and ensuring an airspace between the container and the cover to minimize "puffing" losses when the container is

opened; and (3) purchasing automatic dispensing and weighing equipment to minimize chemical losses due to spills.

Also for Sector Y, the proposed permit would require plastics manufacturers to consider several BMPs to minimize the loss of plastic resin pellets to the environment, including pellet capture and disposal precautions.

According to the notice, all industrial sectors would be affected by a new restriction that would prohibit the discharge of solid materials, including floating debris, to waters of the United States, except as authorized by a permit for the discharge of dredged or fill material under Section 404 of CWA. In addition, all permittees would be required to minimize the off-site tracking of materials or sediment and the release of dust. EPA notes that these requirements are similar to those included in its general stormwater permit for construction activities.

Analytical Monitoring Requirements

Although the proposed MSGP retains the existing permit's analytical monitoring requirements, EPA is requesting comments on these requirements and "whether better alternatives are available for evaluating the overall effectiveness of the industrial stormwater pollution control program," the notice states. According to the notice, analytical monitoring requirements include laboratory chemical analyses of samples collected by the permittee. EPA recognizes industry's concern about the usefulness of analytical monitoring and whether facility resources are being diverted away from activities that might provide greater environmental benefits, the notice states.

The notice suggests several possible alternatives to the present requirements for analytical monitoring, however, the agency "welcomes any other suggestions for alternatives to the monitoring requirements of the existing MSGP." Potential options include:

- submission of an annual report to EPA describing a permittee's stormwater pollution control activities during the previous year;
- group monitoring conducted by a representative group of facilities within a sector, or watershed monitoring conducted by industrial facilities in a specific area;
- alternative testing options such as field test methods, including colorimetric test kits, titrimetric test kits and spectrophotometric field test instruments; and
- monitoring only discharges to impaired waterbodies.

In addition, EPA seeks comment on the role of alternate environmental indicators in the industrial

stormwater program, such as those discussed in a 1996 publication written by the Center for Watershed Protection (CWP), titled *Environmental Indicators to Assess Stormwater Control Programs and Practices*. Copies of the publication may be purchased for \$15 on CWP's web site at www.cwp.org/publicat.htm.

Other Significant Changes

The proposed permit includes a new provision that would establish "eligibility conditions" for discharges that contain pollutants that impair a waterbody or for which a total maximum daily load (TMDL) has been developed. A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards. Under the proposed MSGP, a new discharge to a waterbody that has an approved TMDL would not be eligible for permit coverage unless the discharge is consistent with the TMDL. In other words, the discharger would have to confirm that the TMDL allocated a portion of the load to stormwater point source discharges, the notice explains.

EPA recently proposed revisions to the NPDES regulations for discharges to impaired receiving waters, the notice states (see April 2000 newsletter, p.1; September 1999 newsletter, p. 1; and October 1999 newsletter, p. 5). "How these revisions will ultimately apply to general permits is unclear at this time," according to the agency. The final MSGP may

include additional requirements to "ensure consistency with the final revisions," EPA notes.

According to the notice, the proposal also would restrict coverage under sector AD to those facilities that have been designated by the permitting authority as needing a stormwater permit. Specifically, the proposed permit states that permittees must be assigned to Sector AD and may not choose it on their own as the sector describing their permitting activities.

Finally, the proposed MSGP would allow a facility to discontinue permit coverage if the facility determines that it is eligible for the no-exposure exemption that was created by phase II of the stormwater regulations. A notice of termination would not be required to discontinue permit coverage under these circumstances, the notice states. The notice also reminds facilities operating under the existing MSGP that they are eligible, as of Dec. 8, 1999, to submit no-exposure certifications immediately if they meet the criteria for the exemption (see December 1999 newsletter, p. 3).

The public comment period for the proposed MSGP ends May 30. All comments should be submitted to MSGP-2000 Comments, W-99-26, MC 4101, U.S. EPA, Room EB57, 401 M St. SW, Washington D.C., 20460. For further information, contact EPA's Dan Weese at (202) 260-6809 or the appropriate EPA regional office. See this month's update to the *Guide* for a revised list of stormwater contacts. ■

Summary of Proposed Changes to the Multi-sector Permit

In addition to the changes outlined above, EPA listed the following as "major changes" to the existing MSGP in its Sept. 29 notice:

1. Clarified requirements for co-located activities.
2. Included incidental cooling tower mist discharges as authorized nonstormwater discharges, subject to certain requirements.
3. Provided eligibility for coverage of inactive mining activities occurring on federal lands where an operator has not been identified.
4. Clarified permit language for situations where a discharge previously covered by an individual permit can be covered under the MSGP-2000.
5. Clarified/added language for facility compliance with water quality standards and requirements for follow-up action if standards are exceeded.
6. Modified Endangered Species Act and National Historic Preservation Act eligibility requirements.
7. Clarified that discharges must comply with anti-degradation requirements to be authorized by the permit.
9. Added deadline of 30 days for submission of a notice of intent (NOI).
10. Modified NOI requirements and form.
11. Modified permit to accommodate electronic filing of NOIs, notice of terminations or discharge monitoring reports.
12. Added requirement to include a copy of the permit with a facility's stormwater pollution prevention plan.
13. Modified permit conditions for Emergency Planning and Community Right-to-Know Act facilities.
14. Transferred permit requirements for facilities that manufacture fertilizers from leather scraps from Sector Z (Leather Tanning and Finishing) to Sector C (Chemical and Allied Products).
15. Included new effluent limitations for landfills in Sectors K and L.
16. Clarified NOI reapplication process.
17. Clarified process for EPA to remove facilities from permit coverage. ■

CWA Citizen Suit

(Continued from page 1)

facility, alleged that the pollution or threat of pollution from Gaston Copper's upstream facility has "adversely affected his and his family's use and enjoyment of the lake." CLEAN also submitted various federal, state and private studies as evidence that the pollutants released by Gaston Copper adversely affected or threatened Shealy's lake. Other members of FOE and CLEAN expressed similar concerns that the facility was discharging excessive pollutants, thereby hindering their use and enjoyment of nearby waterways.

Standing in CWA Citizen Suit

FOE and CLEAN asserted representational standing under CWA on behalf of their members who have been harmed or threatened by Gaston Copper's discharge. A group's standing to sue on behalf of its members depends in part on the members' standing to sue in their own right. To establish standing in an environmental case, a plaintiff must show injury in fact, traceability to the alleged offending conduct and redressability through the courts, the appellate court's opinion states.

The district court dismissed the case, finding that none of the groups' members established "an injury fairly traceable to Gaston Copper's alleged permit violations," according to the appellate court's opinion. The district court's conclusion was based on the absence of evidence that Gaston Copper's discharges affected the chemical content or salinity of the waters or otherwise impaired the water's ecosystem.

On appeal, Chief Judge J. Harvie Wilkinson III of the 4th Circuit concluded that the direct scientific evidence demanded by the district court is not necessary. The court referred to a recent U.S. Supreme Court opinion, *Friends of the Earth v. Laidlaw*, 68 U.S.L.W. 4044 (2000), which found that an injury in fact is established where plaintiffs allege a decrease in a waterway's aesthetic and recreational values. Therefore, showing actual harm to the water in question is not required, the appeals court said.

The appeals court found Shealy to be "a classic example" of an individual who meets the requirements for standing to bring a CWA citizen suit. Dismissing such an action, the court said, would "erect barriers to standing so high as to frustrate citizen enforcement."

According to the appellate court's opinion, "Shealy has plainly demonstrated injury in fact by claiming that he limits the amount of time that his family swims in the lake, as well as the amount of

fish they eat because of his concern that the water is polluted. These injuries are "precisely [the] type ... that Congress intended to prevent by enacting the Clean Water Act," which aims to ensure among other things that the nation's waterways are "fishable and swimmable," the court said.

FOE and CLEAN also presented state discharge monitoring reports showing more than 500 permit violations by Gaston Copper in four years. Clearly, Shealy's claim is not a "generalized grievance," and he is "anything but a roving environmental ombudsmen seeking to right environmental wrongs" the court concluded.

Courts have "left no doubt that threatened injury to Shealy is by itself injury in fact," the court said, noting that "Shealy need not wait until his lake becomes barren and sterile or assumes an unpleasant color and smell before he can invoke the protection of the Clean Water Act."

The appellate court also found that FOE and CLEAN demonstrated traceability by showing that Gaston Copper discharged pollutants that cause or contribute to the kinds of injuries alleged. Shealy presented evidence that the types of chemicals released into the water by Gaston Copper had been found previously in his lake. "Traceability does not mean that the plaintiffs must show to a scientific certainty that defendant's effluent caused the precise harm suffered by the plaintiffs," the opinion states.

"Citizens may thus rely on circumstantial evidence such as proximity to polluting sources, predictions of discharge influence and past pollution to prove both injury in fact and traceability," the court said. "To require more would impose on Clean Water Act suits a set of singularly difficult evidentiary standards." ■

Calendar of Events

Delaware Sediment and Stormwater Conference. The Sediment and Stormwater Management Program of Delaware's Department of Natural Resources and Environmental Control (DNREC) recently announced Conference 2000 to be held Oct. 24-26 at the University of Delaware.

The conference will focus on topics related to erosion, sediment and stormwater management, as well as related resources. Early registration fee is \$195, and \$235 after September 15.

For additional information, contact DNREC's Jeanne M. Feurer, conference coordinator, at (302) 739-4411 or via e-mail at jfeurer@dnrec.state.de.us. ■

Stormwater Permit Manual

Bulletin

Volume 9, Number 9

April 2000

TMDL Proposal May Place Undue Burden on Municipalities

In the wake of the new phase II stormwater regulations, local governments fear they soon may shoulder an unmanageable burden if the U.S. Environmental Protection Agency (EPA) finalizes its proposed revisions to the total maximum daily load (TMDL) regulations. These proposed regulations would impose further requirements on stormwater discharges from municipal separate storm sewer systems (MS4s).

At a recent hearing of the Senate Environment and Public Works Committee's Fisheries, Wildlife and Water Subcommittee, state and local officials and groups potentially affected by the TMDL plan expressed concern that EPA has not properly analyzed and reviewed the impact of the TMDL program on municipalities.

A TMDL is the greatest amount of a pollutant that a water body can receive without violating water quality standards. Section 303(d) of the Clean Water Act (CWA) and EPA's current TMDL regulations require states to identify waters that do not meet water quality standards. The states then must calculate how much pollution can be

discharged into an impaired water without violating water quality standards, and allocate that quantity among all sources of pollution. This process is referred to as load reduction allocation. EPA must approve state lists and TMDLs. If a state submission is inadequate, EPA must establish the list or the TMDL.

To clarify and strengthen the existing TMDL program and implement procedures to promote the attainment of water quality standards pending the development of new cleanup plans for impaired waters, EPA proposed the regulatory revisions to the TMDL regulations, as well as associated revisions to the National Pollutant Discharge Elimination System (NPDES) program and water quality standards regulations (64 FR 46012, 46058, Aug. 23, 1999) (see September 1999 newsletter, p. 1, and October 1999 newsletter, p. 5).

Numeric Effluent Limits

The proposed regulations would clarify that the TMDL regulations require states to allocate pollutant load reductions among sources of pollution and

(Continued on page 2)

Dischargers Can Choose From Broad Array of Stormwater Treatment Devices

Prompted by increasingly stringent stormwater regulations, industrial and municipal dischargers continue to search for effective, innovative best management practices to control and reduce pollutants in stormwater runoff. Vendors distributed information on several stormwater treatment options at the 2000 National Conference on Tools for Urban Water Resource Management and Protection, held in Chicago in February.

The following describes three of those technologies, selected to represent the range of options available to dischargers. (For additional companies offering other technologies, see box on p. 4.)

Vortechs Stormwater Treatment System

The patented Vortechs Stormwater Treatment System removes grit, contaminated sediment, silt, heavy metals and petroleum-based pollutants

(Continued on page 4)

Inside This Issue ...

EPA, States Take Action
Against Illicit Stormwater
Discharges 3

Stormwater Treatment Devices 4

Storm Warnings 6

Added information on phase II
program requirements and
implementation options

Tab 400



TMDL Proposal

(Continued from page 1)

obtain "reasonable assurance" that all sources meet their assigned pollution reductions. To obtain reasonable assurance, states would have to revise NPDES permits to be consistent with applicable pollutant reduction allocations specified in the TMDLs, the proposal states. Where a discharge is not subject to permitting requirements, as is the case for nonpoint source discharges, states would have to establish controls that are "specific to the pollutant causing the impairment"—i.e., best management practices (BMPs).

According to an official of the National Association of Flood and Stormwater Management Agencies (NAFSMA), who spoke at the Senate hearing as a representative of local and state stormwater management agencies, the proposed requirement to include load reductions in NPDES permits "fails to recognize the original intent of Congress to address stormwater discharges differently than traditional point source discharges." CWA requires MS4s to reduce pollutants in their stormwater discharges to the "maximum extent practicable" through the use of management practices, control techniques and design changes. Neither the law nor EPA's stormwater regulations require municipal stormwater discharges to meet specific numeric effluent limitations, which apply to traditional point sources, the official said. Yet, EPA officials have stated that the proposed TMDL regulations would apply to stormwater discharges from MS4s because such discharges are regulated as point sources under CWA and permitted under the NPDES program. Consequently, under the TMDL proposal, MS4s that discharge stormwater into impaired waters would be required to meet pollution load reductions, which would necessitate the use of numeric effluent limits, the official said. Thus, the NAFSMA membership has asked "that MS4s be classified [under the TMDL regulations] as nonpoint sources subject to best management practices," as specified in CWA.

The National League of Cities (NLC), representing cities at the hearing, expressed a related concern, warning that "there is inadequate knowledge, inexact technology and insufficient resources" to require stormwater dischargers to meet numeric effluent limits. Accordingly, NLC asked that all phase I and phase II municipal stormwater permittees be exempt from TMDL requirements.

NLC also expressed concern over the costs stormwater dischargers will face if they are required to meet numeric effluent limits rather than using BMPs to meet the maximum extent practicable standard. Speaking on behalf of its members, an NLC official said that "city officials are distressed and frustrated by endless unfunded federal mandates." Moreover, the costs for stormwater dischargers to meet the TMDL requirements was not reflected in EPA's cost estimates of the TMDL program, according to NAFSMA.

Offsets

Under the proposed regulations, permits for new large dischargers or existing dischargers that significantly expand their pollutant loadings would have to show "reasonable further progress" toward water quality goals. These NPDES permits would require a pollution offset of 1.5 times the permittees' proposed new or expanded discharge before the discharge could commence. According to testimony given at the Senate hearing, municipalities are worried that this proposed requirement may severely limit growth and economic development in urban areas. NAFSMA requested that NPDES permits for municipal stormwater discharges "be exempted from the 150-percent offset requirement for new dischargers and significantly expanding dischargers," adding that the proposed action is not appropriate because CWA provides no basis for such a restriction.

EPA's strategies for addressing TMDLs "have been developed without consideration of the interrelationship among [wet weather] programs," specifically the municipal stormwater program and the TMDL

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Managing Editor, Andrea Hall; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott, P.L.L.C.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

program, according to NLC. Municipalities are just beginning to develop stormwater programs as required by phase II, and NLC is concerned that just as phase II implementation has begun the TMDL rule will be finalized, thereby "creating a whole new set of criteria." Specifically, the proposed requirements that NPDES permits contain load reduction allocations and offsets for new or expanded discharges would likely alter the use of general permits and the information required in the notice of intent. NLC believes it is "disruptive to continually change the requirements of new programs and impossible for MS4s to meet more stringent stormwater permit requirements."

Opposing View

According to Richard A. Parrish of Southern Environmental Law Center, a nonprofit environmental advocacy group, who also testified at the hearing, it is understandable that local governments are concerned with the cost of complying with EPA's

proposed rules. However, "if states had taken seriously their responsibility to restore polluted waters under the TMDL program over the past 15 to 20 years, they would not be facing [this] burden." Despite resistance from most stakeholders, Parrish asserted, EPA is proposing significant federal funding for state TMDL programs and state nonpoint source pollution control programs in its fiscal year 2001 budget to meet these new obligations.

The American Society of Civil Engineers (ASCE) also expressed its support for most aspects of the proposed revisions to the TMDL program, stating that the proposal "merely would extend some load reduction allocations for impaired water bodies to . . . point sources that already are subject to a general NPDES permit." ASCE believes that "these aggregate allocations covering permitted point sources are a sensible solution to the problem of managing runoff from multiple sources, none of which is easily identifiable by itself." ■

EPA, States Take Action Against Illicit Stormwater Discharges

The U.S. Environmental Protection Agency (EPA) and states continue to file civil and criminal cases to enforce provisions of the Clean Water Act (CWA) relating to stormwater discharges and urban runoff.

B.L.&S. Coal Co. of Morgantown, W.Va., recently was cited by EPA for allegedly discharging polluted stormwater runoff from two surface coal mines into nearby waterways without National Pollutant Discharge Elimination System (NPDES) permits. In separate civil complaints, EPA seeks a \$25,000 penalty for unpermitted discharges at a mine in Marion County and a \$10,000 penalty for unpermitted discharges from a mine in Monongalia County. The company is entitled to a hearing to contest the charges and proposed penalties, according to EPA.

Specifically, EPA alleges that the Monongalia County mine discharged contaminated stormwater runoff into tributaries of Flaggy Meadows Run and into a tributary of the Monongahela River. The Marion County mine allegedly discharged into Parker Run and other tributaries of the Monongahela River.

NPDES permits for both mines expired in 1996, according to EPA. The company allegedly did not apply for a reissued permit, despite orders to do so from the W.Va. Department of Environmental Protection. Both of the surface mines currently are undergoing reclamation and are required to have NPDES permits until the process is complete, the agency claims.

In other enforcement news, Joe Avis, owner and operator of Joe Avis Dairy in Elk Grove, Calif., was

charged Feb. 24 for allegedly discharging pollutants into a drain that leads to nearby surface waters in violation of wastewater requirements under CWA. The complaint alleges that on five occasions between January 1995 and February 1999 wash water and wastewater containing animal urine and feces illegally flowed from the dairy into Stone Lake and the Sacramento River. Avis faces a maximum penalty of 15 years in prison and a \$1.25 million fine. The case was investigated by EPA's Criminal Investigation Division and the state of California Regional Water Quality Control Board and is being prosecuted by the U.S. Attorney's Office in Fresno, Calif.

In a separate enforcement action, Delaware-based International Matex Tank Terminals (IMTT) pleaded guilty Feb. 23 to violating CWA. IMTT owns and operates a tank farm that stores a variety of oils and other substances in St. Rose, La. The company admitted that between August 1996 and August 1998, it intentionally took stormwater samples at places other than those required in its stormwater discharge permit. The samples, which did not adequately measure the discharge from the tank farm, were falsely submitted to the Louisiana Department of Environmental Quality (LDEQ). IMTT must pay a \$400,000 fine, pay \$400,000 in restitution, serve five years probation and develop annual training for its employees concerning applicable environmental laws. The case was investigated by EPA's Criminal Investigation Division, the U.S. Federal Bureau of Investigation, the Coast Guard Services, the Louisiana State Police Department and LDEQ, and prosecuted by the U.S. Attorney's Office in New Orleans. ■

Stormwater Treatment

(Continued from page 1)

from stormwater runoff, according to Vortech Inc. of Portland, Maine, the product's manufacturer. The precast concrete and aluminum, below-grade system combines two treatment structures to separate and capture sediment and oils.

During a storm event, runoff enters a circular grit chamber in a swirling motion created by the system's specially designed inlet. The circular water flow directs sediment and other settleable materials toward the center of the chamber. Simultaneously, floating liquids and debris rise to the surface and become trapped in an oil chamber, which remains permanently submerged to prevent resuspension and wash-through. In a third chamber, weir and orifice plates regulate the velocity of water passing through the system to keep the water still.

According to Vortech, the system's design prevents resuspension and release of pollutants by

eliminating turbulent conditions and provides high pollutant removal even during infrequent storm events. When the system is sized and maintained according to manufacturer's guidelines, it provides a net total removal efficiency for suspended solids of over 80 percent, according to company data. Captured pollutants may be removed through a manhole located above the system's grit chamber using a vacuum truck.

A Vortech System can treat from 1.6 to 25 cubic feet of stormwater per second (cfs), depending on its design, the company states. One cfs is equal to 450 gallons per minute. System prices range from \$11,000 to \$40,000. Typical system maintenance, which includes an average of one cleanout per year, costs approximately \$400. For more information, contact Vortech at (207) 878-3662 or visit its web site at www.vortech.com.

Hydro-Kleen Filtration System

The Hydro-Kleen Filtration System is designed for use with a stormwater catch basin or storm drain. The patented system uses a "multi-media filtration

Stormwater Treatment Devices

Manufacturer	Product	Web Address
AbTech Industries	Ultra-Urban Filter	www.oars97.com
Aqua Treatment Systems Inc.	Gullywasher Brand Products	www.gullywasher.com
BaySaver Inc.	BaySaver Separation System	www.baysaver.com
Best Management Products Inc.	The SNOUT	www.bestmp.com
Foss Environmental	StreamGuard Products	www.fosscatalog.com
H.I.L. Technology Inc.	Downstream Defender	www.hil-tech.com
Jay R. Smith Mfg. Co.	Ultracapt-Oil/Water Separator	www.jrsmith.com
Kistner Concrete Products Inc.	V2B1 Structural Treatment System	www.env21.com
Practical Best Management LLC	CrystalStream Oil/Grit Separator	www.practicalbestmgmt.com
Remedial Solutions Inc.	AquaShield Filtration System	www.remedialsolutions.com
Stormceptor Corp.	Stormceptor System	www.stormceptor.com
StormTreat Systems Inc.	StormTreat System	www.stormtreat.com
Stormwater Management	StormFilter	www.stormwatermgt.com

design combined with sedimentation containment and overflow protection" to trap sediments and reduce contaminant levels in stormwater and other wet weather runoff, according to Hydro Compliance Management Inc. of Whitmore Lake, Mich., the product's manufacturer. Specifically, Hydro-Kleen removes hydrocarbons, organically bound metals, polychlorinated biphenyls, pesticides, volatile organic compounds, sulfides and other contaminating waste products, according to the company.

Hydro-Kleen units may be placed into an existing catch basin or drain by removing the cover or grate, inserting the unit into the basin and replacing the cover. As water enters the system, it is directed into a sedimentation chamber where coarse sediment and debris are collected, and from there it flows into the filtration side of the system. The first media (Sorb44) catches hydrocarbon contaminants through absorption into a hydrophobic pulp material. The second media, an activated carbon (AC10), removes remaining hydrocarbons and a variety of organically bound metals and other contaminants.

The system must be maintained on a regular schedule to prevent the filter media from becoming saturated by contaminants or blocked by sedimentation and debris buildup. Maintenance consists of removing the catch basin or drain cover, vacuuming debris from the sedimentation chamber and replacing filters every four to six months.

A typical unit costs around \$2,000, and the media can be replaced for less than \$400, including labor. Hydro-Kleen does not require expensive installation and labor costs because it fits into most existing catch basins, the company notes. For more information, contact Hydro Compliance Management Inc. at (800) 526-9629, or visit its web site at www.HydroCompliance.com.

CDS Unit

CDS Technologies Inc. of Morgan Hill, Calif., is the manufacturer of the patented Continuous Deflective Separation (CDS) water pollution control unit, which removes trash, debris, vegetation, coarse and medium sediments, and some fine sediments from stormwater under rapid flow conditions, according to the company. The unit consists of a cylindrical tank with specially shaped inlet and outlet channels that lead the water smoothly to and from the unit. As water passes through a separation screen with 0.048-inch or 0.185-inch openings, solids contained in the water stream move away from the screen toward the center of the unit where they either float to the top and are retained in a separation chamber, or sink downwards and are collected in a sump.

The CDS process relies on a "unique hydraulic balance to effect separation without blocking or clogging the screen," according to the company. The operating principle of the unit is to create increased velocity along the screen that washes particles away from the screen's face, allowing only water to pass through the screen's holes. The velocity along the screen is many times greater than the velocity that pushes the water through the screen. It is the ratio of these two types of velocity that achieves the "hydraulic balance" of the system, according to the company.

According to Bob Howard, company manager, "no other device that separates solids from liquids employs the nonblocking, indirect screening process of CDS units." Direct screening filtration systems are subject to clogging, which reduces trapping efficiency and the hydraulic performance of the drainage system, Howard said.

A CDS unit captures 100 percent of floatable solids and removes 100 percent of all particles equal to or greater than the screen opening size, according to the company. The unit also can capture as much as 100 percent of sediment that is half the screen opening size, the company claims. CDS units retain 100 percent of the material they capture, even under high flow conditions, and the pollutants do not wash-out during high flow or flood events, according to company materials.

Recent laboratory tests have shown that adding sorbent material to the separation chamber also enables the CDS unit to capture more than 80 percent of the free oil and grease transported in stormwater, the company said. According to CDS Technologies, the hydraulic characteristics of the CDS unit and the design of the separation chamber provide an excellent opportunity to achieve maximum exposure of sorbent material to the pollutants, thereby allowing the capture and retention of most oil and grease found in stormwater runoff. CDS Technologies presently is working with a number of cities to enhance the effectiveness of existing oil/water separators in the cities.

CDS units can treat from 1 cfs to 300 cfs of runoff. The price of units range from \$13,000 to \$750,000, depending on the amount of flow being treated. Operation and repair requirements of CDS units are minimal, according to the company. Maintenance of a unit consists of cleaning out the sump with a vacuum truck on a seasonal basis, which costs between \$250 and \$1,500 depending on the storage capacity of the unit. For more information, contact CDS Technologies at (888) 535-7559, or visit the company's web site at www.cdstech.com. ■

Storm Warnings

Stormwater-Related News in Capsule Format

Proposed Legislation Aims to Reduce Polluted Runoff. Rep. Ron Kind, D-Wis., recently introduced a bill in Congress that would reduce sediment and nutrient build-up in the Upper Mississippi River (UMR) by targeting polluted runoff from farms and city streets, according to a press release from Kind's office. "UMR has been slowly filling" with sediment, nutrients and other pollutants that wash off farms and yards, causing a reduction in wetland habitat in the river. The new legislation—called the *Upper Mississippi River Conservation Act*—would address the polluted runoff problem by establishing a water quality monitoring network and a computer modeling program to identify significant sources of pollution in the UMR basin. In addition, the legislation would increase funding for conservation programs that provide assistance to landowners who voluntarily implement land use practices designed to reduce erosion and polluted runoff.

New Fact Sheet on Forestry Published. The U.S. Environmental Protection Agency (EPA) recently published a new forestry fact sheet—*Achieving Cleaner Water Across America: Supporting Effective Programs To Prevent Water Pollution from Forestry Operations*—that explains August 1999 proposed regulatory revisions to the National Pollutant Discharge Elimination System (NPDES) permit program regarding forestry activities (64 FR 46058, Aug. 23, 1999).

According to EPA, despite public and private forest management efforts, pollutants such as sediment and excess nutrients contained in runoff from forestry operations—e.g., road building and harvesting—have caused water quality problems. The proposed regulations would allow states to control pollution from forestry operations, but only where:

- the operations includes a discharge of stormwater from a discrete conveyance; and
- the state permit authority determines that the operation is a significant contributor of pollutants or is contributing to the violation of a water quality standard.

Specifically, if needed, states would have the authority to issue an NPDES permit for a forestry stormwater discharge, according to the proposed rule. Forestry operations that are not causing significant water quality problems would not be subject to permitting requirements.

The forestry fact sheet is available on the Internet at www.epa.gov/owow/tmdl/proprule.html.

For more information on forestry best management practices and the development and implementation of forest management plans, visit EPA's Office of Wetlands, Oceans and Watersheds web site at www.epa.gov/owow/nps/MMGI/Chapter3.

NRCS Offers Free Water Quality Monitoring Course. The National Resources Conservation Service (NRCS) of the U.S. Department of Agriculture is offering a self-paced training course on how to design a water quality monitoring system. The focus of the course, which is available to the public free of charge, is on evaluating the effectiveness of nonpoint source control and conservation practices in agricultural settings; however, learned principles and procedures may be applied more generally, according to NRCS.

A pretest is administered at the time of registration. A score of 48 or more correct answers out of a total of 50 questions indicates the participant has a basic understanding of the material and will not be registered for the course. Participants scoring below 48 will receive instructional materials for self-study, including the *NRCS National Handbook of Water Quality Monitoring*, a video and student workbook. For more information on registration and testing, visit NRCS's web site at www.ftw.nrcs.usda.gov/nedc/homepage.html.

Report Documents CWA Violations. A national report, *Poisoning Our Water: How the Government Permits Pollution*, released by the U.S. Public Interest Research Group (PIRG) looks at the behavior of dischargers of water pollution nationwide. The report documents violations of the Clean Water Act (CWA) that occurred between October 1997 and December 1998, as recorded in the U.S. EPA's Permit Compliance System database. It also summarizes toxic chemicals discharged into U.S. waters, based on data in the Toxics Release Inventory. According to PIRG, nearly 30 percent of the nation's largest industrial, municipal and federal facilities were in "serious violation of CWA at least once during a recent 15-month period."

To increase compliance with water permits, the report recommends:

- imposing mandatory minimum penalties for facilities that violate permits (the amount of the penalty should be set to prevent polluters from profiting by breaking the law); and
- removing obstacles to citizen suits, including allowing citizens to sue federal facilities.

The report is available on the Internet at www.pirg.org. ■

Stormwater Permit Manual

Bulletin

Volume 9, Number 8

March 2000

New Legislation May Provide Funding For Phase II Municipalities

State and local governments are concerned about the high costs associated with developing and implementing new stormwater programs for municipal separate storm sewer systems serving fewer than 100,000 people, as required by phase II of the U.S. Environmental Protection Agency's (EPA) stormwater program. A bill highlighted at the 2000 National Conference on Tools for Urban Water Resource Management and Protection, held in Chicago in February, would help address the concerns of permit writers and municipal stormwater permittees that are anxious about how they will balance the capital needed to meet mandatory stormwater controls with the investments already made under other urban wet weather programs.

Conference speaker Jeffrey L. Lape, chief of EPA's Water Quality and Industrial Permits branch, highlighted a bill recently introduced by Rep. Steven C. LaTourette, R-Ohio, that would amend the Clean Water Act to provide funds to municipalities struggling to control urban wet weather

discharges. "The federal government is raising the bar when it comes to clean water standards while the pot of money to help communities meet those standards keeps shrinking," LaTourette said in a recent press release.

The Urban Wet Weather Priorities Act of 2000 (HR 3570) would provide grants to municipalities to encourage the use of watershed management techniques to control wet weather pollution and to determine the most cost-effective management practices for reducing pollutants in wet weather flows. The bill also would address the "clean water funding gap" by establishing an urban wet weather grants program, according to LaTourette. Finally, the bill would establish nationally consistent control standards for three urban wet weather programs, including the stormwater program. The bill has been referred to the House Transportation and Infrastructure Committee for further review.

(Continued on page 6)

LA Developers Must Limit Stormwater Runoff Under New "Treatment Standard"

A new stormwater "treatment standard" recently approved by the Los Angeles Regional Water Quality Control Board (LARWQCB) will require certain building projects in Los Angeles county to limit stormwater runoff, according to Xavier Swamikannu, stormwater program manager for the Los Angeles region.

Under the new rule, a variety of development sites in Los Angeles county will have to be designed to collect or filter the first three-quarters of an inch of stormwater runoff that flows from roofs, parking lots and other pavement, Swamikannu explained. This requirement is far more stringent than what the federal Clean Water Act requires, he noted.

Specifically, the standard applies to new commercial development projects over 100,000 square feet, new parking lots with 25 or more

(Continued on page 4)

Inside This Issue ...

Storm Warnings	2
Ky. Law Designed To Keep Animal Waste Out of Stormwater	3
Calendar of Events	4
EPA Official Outlines Future of Urban Wet Weather Programs	5
Added information on phase II program coverage	

Tab 100

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Proposes Revisions to Water Quality Listing Regulations. The U.S. Environmental Protection Agency (EPA) recently proposed revisions to the total maximum daily load regulations that would eliminate the regulatory requirement for states, territories and authorized tribes to submit to the agency lists of impaired and threatened waters by April 1, 2000 (65 FR 4919, Feb. 2, 2000). The proposed revision would not apply to situations where EPA has been required by a court order, consent decree or settlement agreement to take action based on a state's year-2000 list. The proposal only affects the April 1, 2000, list. The existing regulatory requirement that lists be submitted on April 1, 2002, and on April 1 of subsequent even numbered years remains unchanged. For more information, contact EPA's Annette Widener at (202) 401-4078.

Ohio EPA Proposes Changes to Industrial Stormwater Permit. Ohio EPA issued a draft general permit for stormwater discharges associated with industrial activity on Dec. 22, 1999, that would limit the categories of industrial activity covered by the permit.

Under the proposed revisions, the following industries would no longer be eligible for general permit coverage:

- petroleum bulk stations and terminals;
- mineral mining operations;
- landfills;
- new facilities with coal pile runoff; and
- new discharges to state resource waters, outstanding resource waters and superior high-quality waters.

Industries no longer eligible for coverage under the permit would have to apply for individual permits, according to Ohio EPA. Individual permits are subject to more site-specific requirements, public participation and individual review.

The revised general permit would continue to require dischargers to develop and implement a stormwater pollution prevention plan and fulfill annual monitoring requirements. The proposed permit also would cover industries that formerly received an industrial stormwater group applicant general permit, according to Ohio EPA.

A general permit covers many facilities that have similar discharges or operations. Ohio EPA has issued six general permits to date. The state-wide permits undergo one antidegradation review at the time of issuance and have a five-year duration.

Copies of the proposed draft general permit and a fact sheet may be viewed on the Division of Surface Water's web site at www.epa.state.oh.us. The draft permit will be issued as a final action unless the director revises it after consideration of the public hearing record or written comments, according to Ohio EPA.

Template May Help Municipalities Comply with Phase II Requirements. The North Central Texas Stormwater Management Program has created a "management template," called the *Water Quality Management Program Template for New and Redevelopment*, to assist municipalities regulated under phase II of EPA's stormwater program meet the requirement to minimize the discharge of pollutants from areas of new development and significant redevelopment.

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Managing Editor, Andrea Hall; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffing, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott, P.L.L.C.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

The template is divided into two parts. The first part lists new development and redevelopment goals that apply to the entire region, such as promoting low-impact development, the effective use of pervious surfaces and landscaping for commercial/municipal properties. The template lists several different options designed to achieve each goal. Permittees may choose the option that is best suited to their local stormwater program. The second component lists permittee-specific activities that apply only to particular permittees.

The format and content of the template have been reviewed and deemed acceptable by EPA Region 6. The combination of the regional and permittee-specific formats "will allow permittees to work together, while still allowing flexibility for unique activities," according to the city of Fort Worth, Texas, that participated in the creation of the template.

A copy of the template is available on the Internet at <http://ci.fort-worth.tx.us/dem/stormpg.htm>. The web page also provides a list of web sites for municipal and county stormwater programs throughout the United States.

Ky. Law Designed To Keep Animal Waste Out of Stormwater

Following on the heels of the *Unified National Strategy for Animal Feeding Operations*, released last year by the U.S. Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (EPA), another state has enacted a law aimed at reducing contamination of surface waters by animal waste in stormwater runoff (see September 1999 newsletter, p. 3, and April 1999 newsletter, p. 1).

Pursuant to emergency regulations, certain companies that pay farmers to raise livestock on a large scale in Kentucky must obtain a Kentucky Pollutant Discharge Elimination System (KPDES) permit (401 KAR 5:072E, Feb. 14, 2000). The regulation, signed by Gov. Paul Patton, also states that these companies will share liability for "any environmental violation that occurs as a result of the animal feeding operation," according to Mark York, spokesman for the Kentucky Natural Resources and Environmental Protection Cabinet.

Companies required to get a permit include those who enter into contracts with owners or operators of concentrated animal feeding operations (CAFOs) and: own the animals; direct the manner in which the animals are housed or fed; or control the input or other material aspects of the operation. These companies also will share liability with the farmer for any violation of the KPDES permit, the regulations state.

New Team Effort To Control Erosion. Emerging along with EPA's phase II rule governing stormwater runoff are groups of local government officials and organizations dedicated to preventing erosion and runoff in their communities. One example is the Erosion Team or E-Team, created by the Minnesota Pollution Control Agency (MPCA) and the Dakota County Soil and Water Conservation District. The group provides training and partnering efforts to help local governments design affordable erosion-control programs.

In two training sessions, the E-Team explains how to develop a permitting program and how to implement it. The first session, designed for elected officials and administrators, brings in speakers from other communities to describe their experiences, such as how they funded their programs. The second session, geared toward field personnel such as city engineers and public works employees, focuses on how to design and operate the program.

For additional information, contact MPCA's Jay Michels at (651) 296-7036. ■

Once a company obtains a KPDES permit, it will not need a separate permit to cover stormwater discharges, said York. The KPDES permit requirements adequately address the management and control of stormwater runoff, he explained.

To address promptly environmental concerns raised by CAFOs in Kentucky, the rule takes effect immediately and applies to swine, poultry, beef and dairy operations in the state that confine more than 1,000 animal units, according to the regulations. An "animal unit," commonly referred to as one head of beef cattle, is used to measure waste production.

In addition, the new regulations place restrictions on where livestock barns, poultry houses and lagoons may be located, stating that they "shall not be located in a 100-year floodplain or a sinkhole." The rule also sets out a specific distance at which waste handling structures must be "setback" from nearby waterbodies and roads. For example, beef and dairy barns must remain at least five miles away from a public water intake, according to the regulations. These requirements apply only to structures that will be "constructed or expanded" after Feb. 14.

The regulations were scheduled to be published in the March 1, 2000, *Administrative Register of Kentucky*. Printed copies of the *Unified National Strategy for Animal Feeding Operations* may be obtained by calling USDA at (202) 720-3210 or EPA at (202) 260-7786. ■

Calendar of Events

New Stormwater Management Technologies. The Michigan Department of Environmental Quality will present "Stormwater Treatment: Evaluation of New Technologies" on April 10 in Lansing. The workshop will explore new ways to improve the wet-weather health of urbanizing watersheds and provide an opportunity to learn about new ways to treat stormwater and mitigate its impacts, as required by new regulations. Vendor presentations will be followed by expert panel discussions. For more information, call (517) 487-1991.

Stormwater Management Conference in Delaware. The Sediment and Stormwater Management Program of Delaware's Department of Natural Resources and Environmental Control will sponsor "Conference 2000" Oct. 24-26 at the University of Delaware in Newark. The conference will focus on issues related to erosion, sediment and stormwater management, including regulatory programs, best management practices, low-impact development and watershed programs, and will present case studies. For more information, contact Jeanne Feurer at (302) 739-4411 or via e-mail at jfeurer@dnrec.state.de.us.

Regulatory Compliance Course. Government Institutes will host "The Storm Water Discharge Regulations Course" May 18-19 in Arlington, Va. The course will cover how the federal stormwater program is evolving; techniques for streamlining monitoring requirements; how to manage reporting and recordkeeping requirements; the steps involved in a stormwater pollution prevention (SWPP) plan; and how to determine first-hand what will and will not work, after critiquing other SWPP plans. For more information, call (301) 921-2345. ■

LA Developers

(Continued from page 1)

spaces, gas stations, auto repair garages, restaurants over 5,000 square feet, and subdivisions with at least 10 houses, Swamikannu said. To meet the new requirement, developers may select from 30 to 40 stormwater control techniques outlined in the appendix to the rule. For example, planting grassy swales allows runoff to seep into the ground instead of flowing into storm drains, Swamikannu said. Other options include building detention ponds and trenches for collecting stormwater or installing filters in curbside drains, he said.

Although the rule was not designed to control runoff at existing developments, it will apply to all redevelopment projects, which eventually will lead to a decrease in stormwater runoff, Swamikannu said. LARWQCB's main goal was to ensure that the amount of polluted runoff does not increase as the county grows with new buildings, parking lots and housing subdivisions, he explained, stating that the "rule is designed to eliminate 85 percent of runoff from new developments."

Los Angeles County now joins a handful of places in the country, including Maryland, Washington, Hawaii and Florida, that have restricted the amount of pollution that flows off urban land, Swamikannu said. A similar action currently is being considered in several other of California's nine water quality control regions, he said.

The builders will be subject to penalties if they fail to collect or filter the first three-quarters of an inch of rainfall; no exceptions.

Xavier Swamikannu
—stormwater program manager

The new standard was hotly disputed, however, as officials representing nearly all of Los Angeles county's 85 cities tried to persuade LARWQCB to reject the runoff standard. Numerous concerns were raised, such as uncertainties over how well the suggested stormwater control techniques would work and the potential high costs to developers in meeting the new treatment standard.

Swamikannu pointed to two critical issues that developers and city officials must address. First, the building industry will be held to a specific control standard, Swamikannu said, adding that implementing good housekeeping measures to control stormwater runoff will no longer suffice. The builders will be subject to penalties if they fail to collect or filter the first three-quarters of an inch of rainfall; no exceptions, he said. Second, city officials must find personnel and resources to maintain any stormwater filtering or collection systems once they are in place.

The rule requires city governments to amend their local ordinances by mid-July to reflect the new treatment standard. By mid-August, measures must be in place to ensure that the standard is properly implemented. For instance, each city will need to review all new development plans to determine compliance before issuing a building permit, Swamikannu said. Penalties must be assessed where the standards are not properly met, he said. ■

EPA Official Outlines Future of Urban Wet Weather Programs

Future progress in cleaning up polluted waterways may be linked to the development of water quality programs that control urban wet weather pollution, according to federal, state and local government officials present at the 2000 National Conference on Tools for Urban Water Resource Management and Protection, held in Chicago in February.

Almost 40 percent of the nation's waters still do not meet water quality goals, said J. Charles Fox, U.S. Environmental Protection Agency (EPA) assistant administrator for water, who spoke on the future direction of the agency's urban wet weather programs. Fox pointed out that 20 percent to 40 percent of current water pollution problems stems from stormwater runoff and other urban wet weather discharges. In his discussion of the federal government's emerging role in controlling urban wet weather pollution, Fox's focused on three areas: government funding, anticipated regulatory actions and smart growth.

Government Funding

According to Fox, President Clinton has proposed to substantially expand fiscal year 2001 funding for grants to states for water pollution control. The president's budget proposes an additional \$50 million in funding for Clean Water Act (CWA) Section 319 grants to states to control nonpoint source pollution, and a \$45 million increase in CWA Section 106 grants to states to establish and implement ongoing water pollution control programs. Most of the Section 106 grant money, however, will go directly to funding the total maximum daily load (TMDL) program, according to Fox.

Recognizing a shortage of financial assistance available for nontraditional sources of water pollution, such as stormwater, Fox acknowledged the "need for a national debate" to identify what is "reasonable funding" for clean water infrastructure investments and water pollution control. Fox also mentioned proposed legislation that would expand the Clean Water State Revolving Fund and "get more money out to nontraditional projects."

Regulatory Actions

Fox discussed future CWA programs slated for this year, such as revising the TMDL program and a rulemaking to address sewer overflows. EPA proposed two sets of regulations on Aug. 23, 1999, that would revise the TMDL program, which requires states to identify waters not meeting pollution standards and develop plans to clean them up (64 FR 46012, 46058). The proposed

package would, among other things, revise the rules for National Pollutant Discharge Elimination System (NPDES) permits to provide additional means for obtaining "reasonable assurance" that nonpoint source pollution reductions actually will occur, Fox explained. The NPDES rule would allow a state to designate some nonpoint sources as point sources, Fox said. EPA plans to finalize the proposal this summer, he added.

The agency also expects to propose a rule to address sanitary sewer overflows, which occur as a result of heavy storms, poor maintenance and operation of sewer systems or other causes, Fox said. EPA anticipates that the proposed rule will provide a clearer regulatory framework, including standard permit conditions. According to Fox, the agency plans to propose the sanitary sewer overflow rule in May.

Other actions EPA expects to take by the end of the year include proposing revisions to the effluent guidelines for poultry and swine feedlots, and large beef and dairy cattle operations, Fox said. The agency also intends to issue NPDES permit guidance for animal feeding operations.

Smart Growth

The adoption of "smart growth" policies, such as measures to preserve green space and other "environmentally critical areas," can substantially benefit overall water quality, Fox said. Several national water program projects, such as TMDL and stormwater regulations, have the potential to encourage smart growth policies, he said. For instance, under the proposed TMDL regulations, where a state allows a "large new discharge" to polluted waters, the discharge permit must not cause further harm to the receiving water. In addition, recently enacted phase II stormwater regulations will help EPA monitor new development projects.

But it is the federal government's job to make sure that proper incentives are in place, Fox said. ■

Attention Subscribers

The complete stormwater phase II final rule and preamble can be found on the *Stormwater Permit Manual* web site at www.thompson.com/tpg/strm.html.

New Legislation

(Continued from page 1)

The Association of Metropolitan Sewerage Agencies (AMSA) worked closely with LaTourette and other interest groups to draft the language of HR 3570. According to AMSA, today's water quality impairments are far more complicated and expensive to control than the "easily identifiable point sources of the past." For example, in EPA's most recent *Clean Water Needs Survey*, the agency predicted that it will cost \$7.4 billion to control stormwater runoff over the next 20 years.

Nonpoint source control projects were valued at \$9.4 billion, and the survey estimated that \$44.7 billion would be needed to control combined sewer overflows through the year 2020. But a recent report released by AMSA and the Water Environment Federation (WEF)—*The Cost of Clean*—estimated much higher costs.

"The federal government is raising the bar when it comes to clean water standards while the pot of money to help communities meet those standards keeps shrinking."

Rep. Steven C. LaTourette

At the conference, many participants commented that the only consistent federal funding source for clean water projects, the Clean Water State Revolving Fund, has been repeatedly targeted for reductions by the administration. A recent WEF press release states that EPA proposed to cut the fund to \$800 million in 2001, down from \$1.35 billion in fiscal year 1999. Because there is nominal federal funding available, communities have to pass the costs of complying with EPA wet weather programs on to new businesses, said LaTourette. Local governments alone can't pay "the cost of clean," according to the AMSA and WEF report.

Urban Watershed Demonstration Grants

To date, municipalities have spent billions of dollars on wet weather controls with limited scientific knowledge about the effectiveness of stormwater control practices, according to comments made by conference attendees. HR 3570 would direct EPA to conduct municipal demonstration projects related to:

- the management of urban wet weather flows on a watershed or subwatershed basis; and
- the determination of stormwater management controls that are cost-effective in reducing pollutants from urban stormwater runoff.

The bill would authorize \$45 million over the next three years to fund the watershed demonstration projects. The bill also specifies that EPA should allow those municipalities participating in the projects to engage in innovative practices, including utilizing a watershed approach to control the cumulative wet weather flows from an urban area.

Urban Wet Weather Grants Program

If enacted, HR 3570 would establish a new grants program to help fund specific municipal wet-weather control efforts, including:

- planning, design and construction of facilities to intercept, transport or control flows from separate storm sewer systems, as well as combined and sanitary sewers;
- planning and implementation of urban wet weather control measures and management practices; and
- development and implementation of urban watershed management plans.

The bill calls for \$3 billion in grant money over the next three years and specifies that the grants may be awarded only to municipalities or local governments, intermunicipal agencies, regional sewer districts or interstate agencies. In 2002, and every two years thereafter, EPA would be required to submit a report to Congress recommending funding levels for the following two years. In addition, the bill would require the federal government to share at least 55 percent of the cost of activities carried out using the grant money.

Requirements for Municipal Stormwater Discharges

The bill also would clarify that "the original intent of Congress was to require the use of targeted best management practices to control municipal stormwater pollution to the maximum extent practicable, and not to impose numerical discharge standards," according to a companion summary of the bill prepared by AMSA. The bill provides a definition for the term "maximum extent practicable," which is not defined in the phase II stormwater regulations. In addition, the bill would require municipalities to take affirmative steps to escalate their control strategies if further analysis indicates that water quality impairments continue to occur after the implementation of best management practices.

Groups supporting the bill include AMSA, WEF, the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the American Public Works Association and the National Association of Flood and Stormwater Management Agencies. ■

Stormwater Permit Manual

Bulletin

Volume 9, Number 7

February 2000

XL Projects Aim To Reduce Pollutants in Stormwater Runoff

Two publicly owned treatment works (POTWs) have volunteered to focus their energy and resources on activities that will reduce contaminants in stormwater runoff. Their innovative plans are described in separate draft Project XL Final Project Agreements (FPAs), which recently became available to the public, according to notices issued by the U.S. Environmental Protection Agency (EPA) (64 FR 67912, Dec. 3, 1999, and 64 FR 72350, Dec. 27, 1999).

Project XL is a national pilot program that gives regulated sources the flexibility to develop alternative technologies or strategies to replace or modify regulatory requirements, on the condition that they produce "superior environmental results." In 1998, EPA issued a notice inviting POTWs to submit proposals for XL projects that aim to increase the effectiveness of wastewater pretreatment programs (63 FR 34170, June 23, 1998). In response, the cities of Denton, Texas, and Albuquerque, N.M., proposed projects that would enable POTWs in those cities to

reduce the pollutant loads entering their wastewater collection systems by integrating stormwater management measures and controls with their existing industrial pretreatment programs (IPPs).

Under Denton's draft Project XL FPA, the city would redistribute its IPP resources toward watershed protection, focusing specifically on pollutants in urban stormwater drainage.

The project would allow Denton's POTW to reduce the amount of monitoring and annual inspections of certain industrial sites if it voluntarily implements stormwater controls similar to those required under EPA's phase II stormwater program, which regulates operators of both small construction activities and small municipal separate storm sewer systems. Reducing the frequency of industrial user inspections and visits would allow Denton to develop and implement best management practices (BMPs) to control the runoff of

(Continued on page 5)

Broad Range of Stormwater Dischargers Encounter EPA Enforcement Actions

A first-of-its-kind enforcement action was launched against a Northwestern feedlot as part of an ongoing effort by the U.S. Environmental Protection Agency (EPA) and state agencies to ensure that concentrated animal feeding operations (CAFOs) comply with the Clean Water Act (CWA).

Several facilities in other industries recently have been investigated and charged by EPA officials with violating stormwater discharge regulations, indicating the agency is committed to achieving compliance across the board with all CWA water pollution requirements.

In the CAFO case, EPA filed a complaint against Thomas T. Nicholson of CC&T Livestock, a large dairy replacement feeding operation in Canyon County, Idaho, seeking \$95,000 in civil penalties for alleged CWA violations, according to EPA Region 10.

(Continued on page 4)



Inside This Issue ...

EPA Region 6 Issues Final NPDES General Permit Covering Stormwater Discharges From Concrete Facilities in Texas 2

Stormwater Runoff May Harm Fish Communities, Studies Show 3

Policy Research Group Suggests Project XL Is a Costly Endeavor for Some Participants 5

Text of EPA Phase II Stormwater Final Rule

Appendix 1(b)(3)

EPA Region 6 Issues Final NPDES General Permit Covering Stormwater Discharges From Concrete Facilities in Texas

A new National Pollutant Discharge Elimination System (NPDES) general permit authorizing discharges of contact stormwater and wastewater from ready-mixed concrete plants, concrete products plants and their associated facilities in Texas was issued Jan. 13 by U.S. Environmental Protection Agency (EPA) Region 6 (64 FR 2166).

The new permit establishes numeric effluent limits for a variety of pollutants and specifies a minimum frequency of monitoring and sample type for each chemical. In addition, permittees are required to develop and implement stormwater pollution prevention plans (SWP3s).

Coverage Conditions

To be covered under the permit, operators of facilities currently discharging contact stormwater from ready-mixed concrete plants, concrete products plants and their associated facilities must submit a notice of intent (NOI) no later than May 14. New dischargers must submit an NOI 30 days prior to beginning operations. The five-year permit took effect Feb. 14 and will expire Feb. 14, 2005.

Even though Texas assumed authority for the NPDES program in 1998, EPA Region 6 issued the permit because the permit was drafted before Texas received permitting authority. However, NOIs and discharge monitoring reports must be sent to the Texas Natural Resources Conservation Commission (TNRCC), the NPDES permitting authority, instead of EPA. According to the permit, NOIs must be submitted on a form provided by TNRCC. The form may be obtained by calling Charles Eanes at (512) 239-4563.

The permit defines "contact stormwater" as "stormwater which comes in contact with any raw material, product, by-product, co-product intermediate or waste material." Covered facilities include those in Standard Industrial Classification 3271, 3272 and 3273.

Permit Limits

The permit places numeric effluent limits on oil and grease, total suspended solids and pH. Permittees are required to monitor for these pollutants once a month using grab samples. In addition, the permit restricts the quantity of arsenic, barium, cadmium, chromium, lead, manganese, mercury, nickel, selenium, silver and zinc that may be discharged from facilities covered by the permit. Permittees must monitor for these pollutants at least once a year using grab samples.

Facilities with multiple stormwater-only outfalls discharging substantially identical stormwater effluents will have the option of collecting and analyzing an effluent sample from one outfall and reporting the results for the other substantially identical outfalls. In the SWP3, the permittee must explain why the outfalls are expected to discharge substantially identical effluents. This option does not apply to outfalls discharging wastewater.

Pollution Prevention

Each facility covered by the permit that discharges contact stormwater must prepare and implement an SWP3. The plan should identify potential sources of pollution that may contribute pollutants to stormwater discharges. In addition, it should

(Continued on page 6)

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Managing Editor, Andrea Hall; Contributing Editor, Colleen Labbe; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott, P.L.L.C.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Stormwater Runoff May Harm Fish Communities, Studies Show

A coalition of conservation, environmental and sportsman groups led by Community and Environmental Defense Services (CEDS) is calling on local governments everywhere to protect fisheries by implementing and enforcing laws that control construction site pollution and post-construction stormwater impacts.

Stormwater pollution generated from land development could damage 600 miles of waterways in the state of Maryland over the next 20 years, according to a recent study prepared by CEDS president Richard Klein. Specifically, the study—*Preventing Damage to 600 Miles of Maryland Streams, Wetlands Rivers, & Tidal Waters*—points out a number of reasons why stormwater runoff from developed land is harmful to aquatic life. Although the study proposes modifications to Maryland's stormwater management program, its analyses and conclusions have broad-based implications.

The mud washed from a typical construction site can damage three miles of downstream waters and recovery may take up to a century, according to a related CEDS study—*How Much Development Is Too Much For Streams, Rivers, Lakes, Tidal Waters & Wetlands?* Sediment loadings from agriculture and construction sites choke streams and destroy fish as well as fish spawning sites, the study states. In addition, operating heavy equipment in wetlands and channels can intensify the impact on aquatic life, particularly if a habitat is altered or migration barriers are created.

Post-construction Effects on Fish

Construction leads to an increase in impervious surfaces, which prevents rainwater and snowmelt from soaking into the earth, the development study states. As a result, pollutants from rooftops, parking lots and streets are washed off into nearby waterways, harming the aquatic environment. According to CEDS, the first inch of rain carries numerous pollutants such as motor-vehicle fluids, heavy metals, fertilizers and pesticides. Likewise, CEDS points out a U.S. Environmental Protection Agency finding that metals, copper, lead and zinc are frequently found in runoff from impervious areas at concentrations that may be fatal to most aquatic organisms.

In addition to chemical contaminants, the temperature of street and ponded runoff is harmful to

many aquatic creatures, the Maryland study indicates. Stormwater that runs over a sun-baked asphalt road or parking lot may reach a temperature of 90 degrees, according to CEDS. Moreover, if the runoff flows into a stormwater management pond, it may continue to increase in temperature. CEDS has established that warmwater fish undergo stress at 78 F and begin dying when water temperatures reach 86 F. Trout suffer stress at temperatures above 68 F and begin dying at 72 F.

To reduce the thermal and chemical pollution present in surface runoff, CEDS recommends that the first 1.5 inches of runoff from all impervious surfaces be retained by infiltration or bioretention. Both measures are designed to get stormwater into the soil where it will be cooled and chemicals will be removed. This approach is known as groundwater recharge.

(Continued on page 6)

Restaurants Caught Dumping Grease

The U.S. Environmental Protection Agency (EPA) recently recognized the city of Cambridge, Mass., for the steps it has taken to reduce stormwater contamination.

The city's Department of Public Works (DPW) discovered that four local restaurants had been illegally dumping food waste, oil and grease into a storm drain that runs directly into the Charles River, EPA said. DPW ordered the restaurants to stop the practice immediately.

DPW workers discovered the illicit dumping while testing a nearby sewer system for contamination. Workers detected high levels of bacteria—450,000 colony forming units (CFU) per milliliter of fecal coliform, compared to an allowable count of 200 CFU—and subsequently determined that the source was a nearby storm drain that was coated with grease and food waste.

Waste thrown into storm drains is a common source of pollution in the Charles River, according to EPA. The agency's New England office is working to educate citizens about contaminants that pollute stormwater and eventually end up in the river, such as dog feces, fertilizer, motor oil and cooking grease. ■

Enforcement

(Continued from page 1)

Nicholson allegedly allowed runoff from the feedlot's stock pens to enter nearby ditches and canals that run into the Snake River, according to the agency. The complaint alleges that Nicholson did not take adequate measures to prevent runoff during rainstorms, which led to 36 different incidents of contaminated stock pen runoff over a five-year period.

In addition, Nicholson allegedly allowed discharged animal wastes to flow into waters leading to the Snake River almost daily for more than a year in the mid-1990s. Inspectors from EPA and the Idaho Division of Environmental Quality warned Nicholson to keep his cattle away from the ditches, the agency said.

"This complaint is the first time EPA has taken an enforcement action where the issue is the access of livestock to ditches, creeks or rivers. It won't be the last," said Bub Loiselle, CWA compliance manager at EPA's northwest regional office, in an EPA press release. Large feedlots and dairy operators should regard this action as a warning that they must keep their livestock out of creeks, drainage ditches and other waters, the release states.

Other Industries Charged

In related news, the Hawaii Department of Transportation (DOT) recently was ordered to comply with federal stormwater discharge requirements at Honolulu International Airport, according to EPA.

In a compliance order, EPA and the Hawaii Department of Health (DOH) allege that DOT did not sufficiently reduce pollutants in its stormwater runoff from Honolulu Airport. The agency's order requires DOT to take action to prevent the discharge of polluted stormwater and comply with all other stormwater discharge requirements. The order is the second enforcement action the agency has begun against Hawaii DOT in the last few months (see October 1999 newsletter, p. 2).

Stormwater runoff from airports can include litter, tire rubber, jet fuel, hydraulic fluids, solvent, lavatory wastes and paints, the agency said. Under CWA, airports are required to develop and implement a stormwater pollution prevention plan to reduce pollutants in stormwater runoff from their facilities. DOT's federal National Pollutant Discharge Elimination System permit, issued by DOH in July 1996, also includes these requirements.

In other enforcement activities, EPA cited three concrete companies for allegedly discharging untreated stormwater runoff into the Washington, D.C., storm sewer system, which discharges into the Anacostia River, according to the agency's mid-Atlantic regional office.

In separate administrative complaints, the agency alleged that the companies—Opportunity Concrete Corp. of Washington, D.C.; Maryland Rock Industries Inc. of Sparks, Md.; and Driggs Corp. of Capital Heights, Md.—violated requirements of CWA by failing to control pollution in stormwater discharged from their industrial sites.

EPA is seeking a \$33,000 penalty from both Opportunity Concrete and Driggs Corp. for allegedly discharging untreated stormwater runoff and process wastewater into municipal separate storm sewer systems without a permit, as required under CWA. The agency also proposed a \$8,200 penalty against Maryland Rock Industries for allegedly failing to minimize the discharge of solids such as sand and fine rock dust to the storm sewer and the Anacostia River. The concrete companies have the right to contest the alleged violations and proposed penalties. ■

Storm Warnings

Stormwater-Related News in Capsule Format

New Test Procedure for the Analysis of Cyanide Approved by EPA.

The U.S. Environmental Protection Agency (EPA) recently issued a final rule that expands the currently approved test procedures for measuring cyanide in water by adding Method OIA-1677: Available Cyanide by Flow Injection, Ligand Exchange and Amperometry (64 FR 73414, Dec. 30, 1999).

Stormwater permittees with hazardous waste treatment, storage or disposal facilities—Sector K under EPA's multi-sector stormwater general permit—must monitor their stormwater discharges associated with industrial activity for several pollutants of concern, including cyanide. The benefits of Method OIA-1667 include: lower detection limit; better accuracy and precision; improved laboratory safety; and reduction of hazardous chemical use and associated waste generation, according to the rule.

Copies of Method OIA-1677 are available from the National Technical Information Service by calling (800) 553-6847. For additional information, contact EPA's Maria Gomez-Taylor at (202) 260-1639. ■

Project XL

(Continued from page 1)

pollutants from “problem sites” such as parking lots, recycling centers, junkyards and salvage yards, which have a greater potential to contribute pollutants directly to receiving streams, the draft FPA states.

In addition, erosion control measures, such as the installation of silt fences to control stormwater runoff at construction sites, would be assessed by engineers from Denton’s Water and Wastewater Utilities Department. The department would submit additional BMPs to the city’s Planning and Engineering Departments for recommendation to developers. The city also would coordinate efforts with several departments to determine ways to reduce the rate of stormwater runoff from impervious surfaces. The draft FPA recommends the use of biofilters in Denton’s stormwater collection system.

Albuquerque’s Proposal

A similar draft Project XL FPA, submitted by Albuquerque, would expand its existing IPP to include stormwater pollution prevention activities. The goal of this project would be to reduce discharges of 13 pollutants by 10 percent to 50 percent. To achieve this objective, the city plans to shift its IPP resources from “less productive requirements” toward conducting a broader pollution prevention outreach program that combines various media such as wastewater and stormwater, thereby preventing the transfer of

pollutants, the draft FPA states. A joint pollution prevention approach would benefit businesses and decrease the overall amount of pollutants released to the POTW, ultimately improving the quality of receiving streams, it states.

Promoting the establishment of stormwater pollution prevention plans (SWP3s) would become part of the POTW’s new pollution prevention outreach activities, according to the FPA. The quality of stormwater runoff would improve as more businesses implemented SWP3s, it states. In addition, measurement of nonpoint source stormwater pollutant trends would be performed by the U.S. Geological Survey under contract with the city.

Proposed objectives outlined in the draft FPA include, among other things, collecting stormwater baseline water quality data to guide stormwater pollution prevention outreach work and conducting SWP3 surveys at businesses where stormwater notices of intent have been filed.

Under the FPA, EPA would grant relief from some of the regulatory requirements for Albuquerque’s POTW, such as monitoring and reporting frequencies, in exchange for increasing the effectiveness of the POTW’s pretreatment program. Presently, the city’s pretreatment program dedicates a minor part of its resources to pollution prevention work.

Both draft FPAs are available on the Internet at www.epa.gov/ProjectXL. For more information on either project contact Adele Cardenas of EPA Region 6 at (214) 665-7210. ■

Policy Research Group Suggests Project XL Is a Costly Endeavor for Some Participants

Results from a recent EPA-funded study conducted by Resources for the Future question whether the costs associated with EPA’s Project XL have been reasonable and whether developing regulations on a site-by-site basis is manageable.

The study, *Cost of Developing Site-Specific Environmental Regulations: Evidence from EPA’s Project XL*, relies on expenditure data collected from EPA regional offices and 11 companies that submitted proposals in the first six months of the program. The study found that the fixed costs to industry and EPA regional offices of implementing project agreements averaged \$450,000 per firm.

In addition, the study found that company interaction with EPA accounted for a major part of these costs. The lack of coordination between EPA agency offices as well as an unclear definition of what “superior environmental performance” entails contributed to delayed approval of projects. The study also found that the more innovative and complex proposals were the most costly to pursue.

The findings suggest that Project XL favors large firms that can afford to pay development costs, and that bias may exist against more innovative and complex proposals — precisely the type of proposals Project XL was designed to foster, according to the study. ■

Stormwater Permit

(Continued from page 2)

include a description of stormwater management measures and controls appropriate for each facility and describe how the facility implements such controls.

The permit recommends that facilities sweep paved portions of the site that are exposed to stormwater to prevent spilled cement, aggregate (including sand or gravel), settled dust and other materials from contaminating stormwater runoff. During periods when cement or aggregate is handled or processed in paved areas, permittees should sweep at least once a week, the permit states. In addition, to prevent stormwater exposure to fine granular solids, facilities should store cement and similar materials in enclosed silos or building or under covered areas.

The permit offers other measures and controls for covered facilities including: preventive maintenance of stormwater management devices such as cleaning oil/water separators, catch basins, and inspection and testing equipment; routine site inspections; employee training; recordkeeping and internal reporting procedures; sediment and erosion controls; and the management of runoff. In addition, qualified personnel should conduct site

compliance evaluations at appropriate intervals specified in the SWP3 and prepare a report.

For more information, contact Evelyn Rosborough at (214) 665-7515. Copies of EPA's response to comments and the final permit can be found on the Internet at www.epa.gov/earth1r6/6wq/6wq.htm. ■

Fish Communities

(Continued from page 3)

It is "highly probable that recharging 1.5 inches of runoff will protect the aquatic environment," according to Klein. After days of being stored underground, stormwater will cool to 55 F. In addition, as stormwater passes through the soil, 83 percent of the nitrogen and up to 98 percent of the copper will be removed, according to CEDS.

When it is not possible to recharge the first 1.5 inches of runoff from all impervious surfaces, the excess runoff should be treated with a filtering measure such as a dry swale or sand filter, said Klein. "Many filtering measures achieve pollutant removal almost as high as infiltration," he said.

CEDS is a combination nonprofit organization, law clinic and consulting group. For more information, contact Klein at (410) 329-8194. All CEDS publications are available on the Internet at www.ceds.org. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual

- updates and supplemental pages • 12 monthly newsletters
- special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$379
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$367
- Risk Management Program Handbook \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Ozone Depleter Compliance Guide..... \$498

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

Check enclosed (payable to Thompson Publishing Group Inc.)

Please bill me (add \$5.50 postage and handling for each publication ordered; \$14.50 for Environmental Compliance Tool Kit and Ozone Depleter Compliance Guide.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group Inc., Subscription Service Center, 8130 Anderson Road, Suite 300, Tampa, Fla. 33634-2358

Call Us Toll-Free At 1-800-677-3789 or visit our website: www.thompson.com

BJ86040

Stormwater Permit Manual

Bulletin

Volume 9, Number 6

January 2000

Phase II Dictates Mandatory Control Measures for Small MS4s

To reduce pollutants to the "maximum extent practicable" and significantly improve water quality, stormwater discharge control programs for regulated small municipal separate storm sewer systems (MS4s) must include all six minimum control measures outlined in the phase II stormwater regulations (64 FR 68723, Dec. 8, 1999), according to the rule.

Phase II requires all operators of MS4s serving fewer than 100,000 people to obtain coverage under a National Pollutant Discharge Elimination System (NPDES) permit. The permit, at a minimum, will require the operator to develop, implement and enforce a stormwater management program designed to reduce the discharge of pollutants from the regulated system to the maximum extent practicable. To accomplish this task, the program must include the following six minimum measures: public education and outreach; public involvement and participation; illicit discharge detection and

elimination; construction site stormwater runoff control; post-construction stormwater management; and pollution prevention, or "good housekeeping," for municipal operations.

Public Education and Outreach

Operators of small MS4s are required to develop and implement a public education or outreach program to distribute educational materials to the community that explain the impacts of stormwater discharges on water bodies and the steps to take to help reduce stormwater pollution, according to the rule. Citizens may ease the burden on municipalities by handing out educational information and gathering support for the program.

EPA encourages owners or operators of small MS4s to enter into partnerships with their states or other governmental entities to fulfill the public education

(Continued on page 4)

EPA Report Explores Costs and Benefits of Stormwater Best Management Practices

The benefits of using individual best management practices (BMPs) to control urban stormwater runoff are site-specific and depend on a number of factors, according to a new U.S. Environmental Protection Agency (EPA) report.

These factors include: the number, intensity and duration of wet weather events; the pollutant removal efficiency of the BMP; the water quality and physical conditions of the receiving waters; the current and potential uses of the receiving waters; and the existence of nearby "substitute" sites of unimpaired waters.

The report, *Preliminary Data Summary of Urban Storm Water Best Management Practices*, summarizes existing information and data regarding the effectiveness of BMPs to control and reduce pollutants

(Continued on page 6)

Inside This Issue ...

Calendar of Events	2
New Project Aims To Improve Nonpoint Source Funding Efforts	3
EPA Praises Plan To Stop Polluted Runoff	3
Model Ordinance Language Can Ensure Proper Maintenance of Stormwater BMPs, Says EPA	6
Updated Information To Reflect Promulgation of Phase II Rule	

Tab 100

Calendar of Events

Upcoming Conferences and Seminars

Urban Water Protection. The U.S. Environmental Protection Agency (EPA) and the Chicago Botanic Garden will cosponsor "Tools for Urban Water Resource Management and Protection," Feb. 7-10 in Chicago. The conference will provide participants with practical, applied information on the most effective tools and technologies for meeting the requirements of the phase II stormwater final rules. Cost: \$195. For more information, visit www.chicago-botanic.org/WaterConf.html or call (847) 835-8365.

Watershed Outreach Conference. A National Watershed Outreach Conference is scheduled for April 17-19 in San Diego. Sponsored by EPA, the University of California (UC) Cooperative Extension, the UC Sea Grant Extension Program, the Aquatic Outreach Institute, and the County of San Diego Watershed Working Group, the meetings will include a combination of preconference workshops, platform presentations, informal discussion sessions and field trips. Topics to be covered include creative curricula, linking outreach and enforcement, communicating technical information and creating partnerships to meet outreach goals. For more information, visit the conference web site at www.epa.gov/OWOW/watershed/outreach/events/aprilconf.html, e-mail Stacie Craddock at craddock.stacie@epa.gov, or call EPA at (202) 260-3788.

Watershed Academy. EPA's Watershed Academy provides training and information on implementing watershed approaches to local, state, tribal, and federal officials and private practitioners of

watershed management throughout the year. Some scheduled courses include Jan. 25-26 in Washington; Feb. 7-11 in Logan, Utah; Feb. 28-March 3 in Cincinnati; and March 21-24 in Atlanta. To find the latest information on course schedules, visit the Academy web site at <http://www.epa.gov/OWOW/watershed/wacademy.htm>. For more information, contact Anne Weinberg at (202) 260-7107 or via e-mail at weinberg.anne@epa.gov.

Interagency Watershed Training Cooperative. Two courses developed by the federal interagency watershed training cooperative will be presented in California in February. "Working at a Watershed Level," which addresses a wide range of watershed assessment, planning and management issues, will be held Feb. 7-11 in Turlock. In addition, "Stream Corridor Restoration: Principles, Processes and Practices," which deals with characterizing and remediating conditions in stream corridors, will be held Jan. 31-Feb. 4 in Asilomar. For more information on the Turlock course, visit www.dpla.water.ca.gov/sjd/sjrmp/workshop/index.html. For more information on the Asilomar course, contact Camilla Wheat at (559) 784-1500, ext. 1223 or via e-mail at cwheat/r5_sequoia@fs.fed.us.

AMSA. The Association of Metropolitan Sewerage Agencies (AMSA) 2000 Winter Conference, "Utility Leadership in the New Millennium," will be held Feb. 1-4 in Albuquerque, N.M. The meetings will focus on the challenges and opportunities facing public utility leaders. For more information, visit AMSA's web site at www.amsa-cleanwater.org or call (202) 833-AMSA. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Senior Managing Editor, Licia Ponzani; Managing Editor, Andrea Hall; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott, P.L.L.C.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 2000 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

New Project Aims To Improve Nonpoint Source Funding Efforts

A new project that seeks to identify innovative ways to finance nonpoint source (NPS) pollution reduction recently was launched by the Northeast-Midwest Institute of Washington and the Marine Studies Consortium of Chestnut Hill, Mass.

The Nonpoint Finance Project is designed to improve the efficiency and effectiveness of federal funding programs that address NPS water pollution. Although potentially \$2 billion per year in grants or loans is available for NPS projects, mainly through the U.S. Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (EPA), the federal government has devoted little attention on how to maximize the spending of pollution abatement dollars, according to the project's coordinators.

'Polluted runoff is the leading cause of water pollution in the United States.'

—Environmental Protection Agency

The project will explore NPS finance through forums involving key stakeholders. In particular, the forums seek to: identify inefficiencies in federal NPS funding programs; consider innovative finance mechanisms and funding sources; and explore how to integrate or modify NPS funding programs to maximize their effectiveness and increase funding. Representatives from USDA, EPA, farm organizations, environmental groups, state governments and the finance industry participated in the project's first forum, held in Chicago last October.

NPS pollution occurs when rainfall, snowmelt or irrigation runs over land, picks up pollutants, and deposits them in surface waters. It accounts for 60 percent of all water pollution, according to EPA. NPS pollution has been targeted by the Clean Water Action Plan, a joint effort of EPA and USDA.

In addition, EPA predicts that as states continue to develop total maximum daily load limits for pollutants in water bodies that do not meet water quality standards, greater attention will be drawn to NPS pollution's contribution to degraded water quality, increasing pressure to regulate and reduce NPS pollution.

EPA's Office of Water has developed a catalog, *Federal Funding Sources for Watershed Protection*, which lists federal monies that may be available to fund watershed protection projects. Copies of the catalog are available on the Internet at www.epa.gov/OWOW/watershed/wacademy/fund.html.

A summary of findings and recommendations from the Chicago forum can be found at www.nemw.org/ChicagoForum.pdf. For more information on EPA's Nonpoint Source Control Branch, visit www.epa.gov/owow/nps/. ■

EPA Praises Plan To Stop Polluted Runoff

The U.S. Environmental Protection Agency (EPA) recently announced its approval of \$840,000 in new federal funding to prevent polluted runoff from Nevada's streets and highways, parking lots, farms, forests and rangelands. The funding stems from EPA's recent approval of the Nevada Division of Environmental Protection's plan for reducing the state's polluted runoff over the next five years, which includes funding for locally based efforts, according to an EPA press release.

"The Nevada Nonpoint Source Program is doing an outstanding job," said EPA Regional Administrator Felicia Marcus. "The program's excellent plan to reduce polluted runoff has made it possible for EPA to award \$840,000 in new funding for watershed restoration," she said.

Polluted runoff is the leading cause of water pollution in the United States, according to EPA. Because nonpoint source contamination comes from numerous sources, rather than a single point such as a wastewater pipe, polluted runoff has been difficult to control, EPA said.

Nevada's Nonpoint Source Program focuses on the state's five largest watersheds. The program has a five-year schedule for assisting in the development of locally conducted watershed management plans for each of these priority watersheds. ■

Control Measures

(Continued from page 1)

requirement. MS4 operators also may look to nongovernmental organizations (e.g., environmental, nonprofit and industry) for assistance, because many already have educational materials and perform outreach activities, the preamble to the rule states.

It may be more cost effective to use an existing state program or to develop a new regional or statewide educational program than to have numerous MS4 owners and operators developing individual programs, according to the preamble. Although EPA supports the use of existing materials and programs, owners and operators of small MS4s should attempt to make their materials and activities relevant to local situations and issues, while using a mix of strategies to target a wide range of audiences and communities. Examples include distributing brochures or fact sheets, providing economic incentives to businesses and hosting community projects such as storm drain stenciling or watershed and beach cleanups.

Educational materials and activities must provide the public with information on how to reduce stormwater pollution, such as how to maintain septic systems properly, or how to properly use and dispose of landscape and garden chemicals, used motor oil and household hazardous waste. In addition, materials directed toward groups of commercial, industrial and institutional entities that are likely to have a significant impact on stormwater should be specific to those groups, according to the preamble. For instance, information given to restaurants should discuss the impact of grease clogging storm drains.

Public Involvement and Participation

Phase II requires municipal stormwater management programs to comply with applicable state and local public notice requirements, the rule states. Because traditional methods of soliciting public involvement are not always successful in generating interest, alternative advertising methods should be used whenever possible, including radio or television spots, postings at bus or subway stops, and announcements in neighborhood newsletters, the rule states.

Examples of practices that may be incorporated into a public participation and involvement program include conducting public meetings to allow citizens to discuss viewpoints and provide input on stormwater management policies and best management

practices, and organizing a citizen watch group to aid local enforcement authorities.

Illicit Discharge Detection and Elimination

Any NPDES permit issued to an operator of a regulated small MS4 must require the operator to develop, implement and enforce an illicit discharge detection and elimination program, the rule states. "Illicit discharge" is defined as any discharge to an MS4 that is not composed entirely of stormwater, except for discharges pursuant to an NPDES permit and discharges resulting from fire-fighting activities, according to the rule.

The illicit detection and elimination program must include the following:

- a storm sewer system map showing the location of all outfalls, and names and locations of all waters of the United States that receive discharges from them;
- a prohibition, to the extent allowable under state, tribal or local law, on illicit discharges into the MS4, and appropriate enforcement procedures and actions;
- a plan to detect and address illicit discharges, including dumping, into the MS4; and
- provisions for the education of public employees, businesses and the general public about the hazards associated with illegal discharges and improper disposal of waste.

According to the preamble, the storm sewer map should demonstrate a basic awareness of the intake and discharge areas of the system so that the MS4 operator can conduct dry-weather field screening for nonstormwater flows and respond to illicit discharge reports from the public. EPA recommends that the MS4 operator collect existing information on outfall locations (e.g., review city records, drainage maps and storm drain maps) and conduct field surveys to verify locations. The agency also recommends that plans include procedures for the following: locating priority areas (i.e., problem areas); tracing the source of illicit discharges; removing discharge sources; and evaluating and assessing the program.

Some MS4 permittees may have limited authority under state or tribal law to establish and enforce ordinances, or similar means, to prohibit illicit discharges. In these cases, EPA encourages permittees to obtain the necessary authority, if at all possible. Otherwise, the NPDES permitting authority would assume the responsibility for

implementing this component of the minimum control measure, the preamble explains.

Control of Construction Site Runoff

Operators of regulated small MS4s must develop, implement and enforce pollutant control programs to reduce pollutants in any stormwater runoff from construction activities that result in a land disturbance of one or more acres, according to the rule. Construction activity on sites disturbing less than one acre may be included in the program if the activity is part of a larger common plan of development or sale that would disturb one acre or more.

The construction runoff control program must include an ordinance or other regulatory mechanism requiring the implementation of proper erosion and sediment controls, as well as controls for other wastes. In addition, the ordinance must establish penalties for noncompliance, such as fines, bonding requirements and/or permit denials. The small MS4 owner also must: determine appropriate erosion and sediment control best management practices (BMPs); conduct site plan reviews; establish procedures for receipt and consideration of information submitted to the public; and establish procedures for site inspections and enforcement of control measures, according to the rule.

Because the small MS4 regulations apply only to discharges from the MS4, this control measure only requires small MS4 operators to control runoff into their systems. EPA anticipates, however, that MS4 operators will find that regulation of all construction site runoff will prove to be the most simple and efficient program.

To avoid duplication of small MS4 construction requirements with NPDES construction permit requirements, the final rule recognizes that the NPDES permitting authority can incorporate qualifying state, tribal or local erosion and sediment control requirements into NPDES permits for construction site discharges. This means that if a construction site is located in an area covered by a local program, the construction site operator's compliance with the local program could constitute compliance with its NPDES permit.

Post-construction Runoff Control

The phase II rule also requires an operator of a regulated small MS4 to develop, implement and enforce a program to reduce pollutants in post-

construction runoff to its MS4 that results from new development and redevelopment projects that disturb one acre or more, the rule states. Specifically, small MS4 owners or operators are required to: develop and implement a combination of structural and/or nonstructural BMPs appropriate for the community and ensure adequate and long-term operation and maintenance of those BMPs; use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowed under state, tribal or local law; and ensure that controls are in place to minimize water quality impacts, according to the rule.

Pollution Prevention

Recognizing the benefits of pollution prevention practices, phase II requires an operator of a regulated small MS4 to develop and implement an operation and maintenance program with the ultimate goal of preventing or reducing pollutant runoff from municipal operations into the storm sewer system. The program must include employee training on how to incorporate pollution prevention/good housekeeping techniques into municipal operations such as maintenance of parks, golf courses, fleets, buildings and storm water systems, as well as land development planning, the preamble states. To minimize duplication of effort and conserve resources, the MS4 owner or operator may use training materials available from EPA, its state, tribe or other relevant organizations.

For more information on EPA's phase II final stormwater rule, visit the agency's web site at www.epa.gov/owm/sw/phase2/index.htm. ■

Attention Subscribers

If you have questions or comments about the *Stormwater Permit Manual*, or would like to submit an article for publication in the *Bulletin*, please contact the editor at (202) 739-9580 or send an e-mail to:

STRM@thompson.com

EPA Report

(Continued from page 1)

in urban stormwater. It discusses what is currently known about the expected costs and environmental benefits of BMPs and identifies information gaps.

Stormwater BMPs may be divided into two major groups—structural and nonstructural. Structural BMPs include infiltration systems such as infiltration basins and porous pavement; retention systems such as wet ponds; constructed wetland systems; and vegetated systems such as grass filter strips and vegetated swales. Nonstructural BMPs include automotive product and household hazardous material disposal; industrial good housekeeping; lawn debris management; animal waste disposal; and educational and outreach programs.

The report notes that a wide variety of BMPs are available to address urban stormwater runoff and discharges. However, the pollutant removal performance of some BMP types and the role of chemical pollutant monitoring versus receiving stream biological monitoring in evaluating BMP performance is not well-documented. In addition, some BMP types are difficult to monitor and a widely accepted definition of "efficiency" or

"pollutant removal" is not available. Moreover, only a few cost studies have been conducted in this arena. A number of researchers continue to work on BMP performance monitoring, however, and several attempts are underway to develop comparison frameworks through the construction of comprehensive databases on BMP design characteristics and performance, the report explains.

The report is based largely on existing literature and BMP data that are used to control urban stormwater runoff, including the American Society of Civil Engineers (ASCE) database (see November 1999 *Bulletin*, p. 1) and the Center for Watershed Protection National Pollutant Removal Performance Database. In addition, EPA conducted a study of urban stormwater discharges between 1997 and 1998 to explore how the effluent guidelines program can contribute to the agency's efforts in implementing the national stormwater program requirements under the Clean Water Act.

A copy of the report may be downloaded from the EPA web site at www.epa.gov/OST/stormwater. For more information, contact the study's project manager, Eric Strassler, at (202) 260-7150 or via e-mail at strassler.eric@epa.gov. ■

Model Ordinance Language Can Ensure Proper Maintenance of Stormwater BMPs, Says EPA

The U.S. Environmental Protection Agency (EPA) has developed a Model Ordinances web site to assist local government officials with the drafting of local environmental ordinances.

The site features both model and real-life examples of ordinances that address a number of topics, such as stormwater control, operation and maintenance. This section of the site includes model ordinance language, in a fill-in-the-blanks format, that focuses primarily on the maintenance of stormwater best management practices, and includes the elements of design, routine maintenance and inspections. The stormwater section also contains sample ordinance language, an example maintenance agreement, an easement agreement,

an inspection checklist and a performance bond from five localities.

According to the web site, important elements of effective language for a stormwater operation and maintenance ordinance are the specification of an entity responsible for long-term maintenance and reference to regular inspection visits. The ordinance also should address design guidelines that can help ease the maintenance burden, such as the inclusion of maintenance easements.

The Model Ordinances web site can be accessed at www.epa.gov/owow/nps/ordinance/. Questions or comments about the site can be sent to Rod Frederick at frederick.rod@epa.gov or Robert Goo at goo.robert@epa.gov. ■

Stormwater Permit Manual

Bulletin

Volume 9, Number 5

December 1999

EPA Finalizes Long-awaited Phase II Stormwater Regulations

The U.S. Environmental Protection Agency (EPA) took a major step in controlling polluted stormwater runoff by finalizing a rule on Oct. 29 that regulates additional sources of stormwater discharges.

The final rule—known as phase II of the stormwater program—was scheduled to be published in the *Federal Register* in late November. It extends current regulations for stormwater discharges to municipal separate storm sewer systems (MS4s) in urban areas serving populations of less than 100,000 and construction sites between one and five acres in size. Approximately 110,000 construction sites and more than 5,000 municipalities have up to three years plus 90 days to obtain stormwater permits under the National Pollutant Discharge Elimination System (NPDES) program, according to the preamble to the final rule.

The new regulations supersede the interim phase II direct final rule published on Aug. 7, 1995. The interim rule required all nonregulated (non-phase I) stormwater dischargers to apply for permit coverage by Aug. 7, 2001.

The phase II permitting regulations are structured for "maximum flexibility," according to EPA. The rule allows each regulated entity to select the best management practices (BMPs) that make the most sense for conditions at a particular facility. It also allows permitting authorities to make decisions about who is regulated under the program through case-by-case designations and the granting of waivers. The permitting authority also may allocate responsibilities between regulated entities in certain situations, such as when multiple entities act as co-permittees. This flexibility facilitates watershed planning, according to EPA.

Small Municipalities

Under phase II, permits are required for discharges from small MS4s located in urbanized areas. NPDES permitting authorities must issue general permits for small MS4s by November 2002. A "small MS4" is any MS4 not already covered by the phase I program as a medium or large MS4, including urban stormwater sewer systems. "Urbanized area" means a city or

(Continued on page 2)

EPA Cost-benefit Report Details Impact of Phase II Rule on Local Governments

Neither the municipal control measures nor the soil erosion control provisions of the U.S. Environmental Protection Agency's (EPA) phase II stormwater regulations will have a significant impact on local governments, according to a recent EPA report to Congress.

The report was prepared in response to HR 2684, EPA's fiscal 2000 appropriations bill, which included language requiring the agency to prepare a detailed analysis of the effect of the stormwater rule on urban, suburban and local governments. The language was drafted by Sen. Kay Bailey Hutchinson, R-Texas, on behalf of local public works officials, who had expressed concern about the cost to taxpayers and the impact on development resulting from phase II, according to a

(Continued on page 4)

Inside This Issue ...

No-exposure Exemption Could Eliminate Permits for Some Facilities 3

Stormwater Phase II Implementation Schedule 5

New Information on Sector-specific BMPs Under the Multi-sector General Permit

Tab 600

Phase II

(Continued from page 1)

town and the adjacent densely populated surrounding territory that together have a minimum population of 50,000.

EPA or the state permitting authority may require additional small MS4s to comply with the phase II regulations after developing criteria for identifying these otherwise unregulated MS4s. This will most likely affect municipalities with populations of 10,000 or more and population density of at least 1,000 per square mile, the preamble states.

Regulated owners or operators of small MS4s must develop and implement a storm water management program designed to reduce their discharges of pollutants to the "maximum extent practicable" (MEP) and to protect water quality, according to the preamble. To allow maximum flexibility in MS4 permitting, the rule does not provide a precise definition of MEP. However, the program must include the following six minimum control measures:

- public education and outreach;
- public involvement and participation;
- illicit discharge detection and elimination;
- construction site stormwater runoff control;
- post-construction stormwater management; and
- pollution prevention, or "good housekeeping," for municipal operations.

Each permittee will determine appropriate BMPs to satisfy these measures, and identify them along with measurable goals for each control measure, in its permit application, according to the preamble. The NPDES permitting authority may ask the permittee to revise its mix of BMPs to better reflect the MEP pollution reduction requirement.

An evaluation and assessment of the chosen BMPs and measurable goals must be included in periodic reports to the NPDES permitting authority, the preamble states. Reports are required annually during the first permit term and every two years thereafter. Reports must include: the status of compliance with permit conditions; an assessment of the appropriateness of identified BMPs and progress made toward achieving measurable goals for each of the minimum control measures; results of information collected and analyzed, including monitoring data; a summary of what stormwater activities the permittee plans to undertake during the next reporting cycle; and a change in any identified measurable goals.

By November 2000, EPA must issue a menu of BMPs for small MS4s. One year later, the agency must issue guidance on the development of measurable goals for small MS4s. Operators of small MS4s will be required to fully implement their stormwater management programs by the end of their first permit terms (typically five years).

Phase II allows regulated small MS4 owners and operators to choose a number of implementation options, including sharing responsibility for program development with a nearby regulated small MS4, taking advantage of existing local or state programs, or participating in the implementation of an existing phase I MS4's stormwater program as a co-permittee, the preamble states. These options are intended to promote a regional approach to stormwater management coordinated on a watershed basis.

The permitting authority may waive the permit requirement for any small MS4 serving a jurisdiction with a population of less than 1,000, unless stormwater controls are needed because the MS4 is contributing to a water quality impairment, according to the preamble. Similarly, the permitting

(Continued on page 5)

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Senior Managing Editor, Licia Ponzani; Managing Editor, Andrea Hall; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott, P.L.L.C.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1999 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

No-exposure Exemption Could Eliminate Permits for Some Facilities

The final phase II stormwater rule gives industrial facilities incentives to protect their operations from stormwater exposure by providing a new exemption from stormwater permitting requirements.

The new provision—known as the conditional no-exposure exemption—offers certain industrial facilities a “simplified method for complying with the Clean Water Act” (CWA), according to the preamble to the rule. At least 70,000 industrial facilities could be excluded from the National Pollutant Discharge Elimination System (NPDES) program by removing various industrial materials and activities from potential exposure to stormwater, according to the U.S. Environmental Protection Agency (EPA).

Background

The 1990 regulations for phase I of the federal stormwater program identified 11 categories of industrial activities that must obtain an NPDES permit. Operators of “light” industrial facilities were exempted from the definition of “stormwater discharge associated with industrial activity” and the requirement to obtain an NPDES permit, provided their industrial materials or activities were not “exposed” to stormwater, the preamble states. Under the phase I exemption, light industrial facility operators are not required to submit any information supporting their no-exposure claim.

In 1992, the U.S. Court of Appeals for the 9th Circuit remanded to EPA for further rulemaking the no-exposure exemption for light industry after determining that it was “arbitrary and capricious,” the preamble explains. The court found that EPA had not supported its assumption that light industry not exposed to stormwater was not “associated with industrial activity.” Moreover, the court concluded that the exemption impermissibly relied solely on the judgment of the light industrial facility operator to determine if the exemption was applicable, the preamble states. Phase II of the stormwater program responds to both of the 9th Circuit’s concerns.

The phase II rule broadens the original no-exposure exemption to conditionally exclude from the NPDES program any facility that certifies a condition of “no exposure,” meaning all its industrial materials and/or activities are completely protected from rain, snow, snow melt or runoff by a storm-resistant shelter. The exemption applies to every industrial category listed in the 1990 stormwater regulations, except stormwater discharges from regulated construction activities because the main pollutants of concern (e.g., sediment) generally cannot be sheltered from stormwater, according to the preamble.

“Industrial materials or activities” include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, final products or waste products, according to the final rule. The term “storm-resistant shelter” includes completely roofed and walled buildings or structures, as well as structures with only a top cover but no side covering if materials under the structure are not exposed to any stormwater.

Although the intent of the no-exposure provision is to promote permanent no-exposure, the rule allows certain machinery to pass between buildings and, during passage, be exposed to rain and snow. In addition, maintained mobile equipment that is not industrial machinery or material handling equipment and that is not leaking contaminants also may be exposed to precipitation or runoff, according to the preamble. Similarly, vehicles awaiting maintenance at vehicle maintenance facilities that are not leaking contaminants are not considered exposed under the rule. A storm-resistant shelter is not required for:

- drums, barrels, tanks and other similar containers that are tightly sealed, provided the containers are not deteriorated and do not leak;
- adequately maintained vehicles used in material handling; and
- final products, other than products that would be mobilized in stormwater discharge.

For purposes of the final rule, visible deposits of residuals (e.g., particulate matter) near roof or side vents are considered exposed. Moreover, visible “track out,” defined as pollutants carried on the tires of vehicles, or windblown raw materials are considered exposed, as are leaking pipes containing contaminants exposed to stormwater. General refuse and trash, not of an industrial nature, is not considered exposed industrial material; however, industrial refuse and trash that is left uncovered is deemed exposed.

Requirements Under the No-exposure Provision

To claim relief under the no-exposure provision, an industrial operator seeking the exemption must certify that a condition of no exposure exists at the facility, according to the rule. The certification must be submitted to the appropriate NPDES permitting authority (EPA or the state) once every five years. Facilities that discharge to a municipal separate storm sewer system (MS4) also must provide certification to the MS4 operator. In addition, the facility must allow the NPDES permitting authority, or

(Continued on page 6)

Cost-benefit Report

(Continued from page 1)

spokesperson at the American Public Works Association (see *Bulletin*, November 1999, p. 1).

Among other items, the report summarizes the impacts of the municipal minimum control measures and soil erosion control provision on local governments. It also outlines EPA's rationale for the one-acre construction threshold.

Municipal Control Measures

EPA estimates that the overall annual cost to local governments for implementing a storm-water program based on the six minimum measures (see related story, p. 1) would be \$297 million, assuming that all of the 5,040 phase II-designated municipalities would incur program costs and that costs are related to the size of the community served, the report explains. However, the agency notes, this figure will most likely be lower because permitting authorities can waive permitting requirements for municipal separate storm sewer systems (MS4s) serving up to 10,000 people. See discussion of waivers in related story, pp. 2 and 5.

In conducting this analysis, EPA specifically considered the impacts on small local governments (municipalities with fewer than 50,000 people). The agency compared estimated annual compliance costs with annual municipal revenues for 4,455 of these small local governments and evaluated the cost-to-revenue ratios, looking for significant economic impacts.

EPA concluded that there would not be a substantial economic impact on a significant number of small governments. The agency's analysis found that no phase II municipality with a population of more than 6,000 had a cost-to-revenue ratio of more than 1 percent. In addition, all of the municipalities with cost-to-revenue ratios greater than 3 percent have populations of less than 1,000, and may therefore qualify for a waiver. As a result, "the flexibility of the rule addresses any potentially significant adverse cost impacts," the report states.

Soil Erosion Control

According to EPA, the phase II rule will apply to approximately 110,223 currently unregulated construction starts per year. Annual costs associated with installing the soil erosion controls and completing permitting activities is estimated at \$505 million, less than 0.5 percent of which would be borne by local governments.

EPA anticipates that most soil erosion control costs would accrue to the private sector, primarily to dischargers in the construction industry, the report states, although the greatest economic impact is expected to fall on small municipalities. However, according to U.S. Census Bureau statistics, only 5 percent of municipalities are expected to initiate a one- to five-acre construction project each year, indicating that a local government would not necessarily have a new phase II construction project in any given year.

EPA compared the annual cost per municipality for the soil erosion control provision to the national average local government revenue and found that the cost-to-revenue ratio for the smallest category of local government would be below 1 percent.

EPA also calculated the cost of complying with both the municipal control measures and the soil erosion control requirements to determine their combined impact on municipalities. EPA summarized the cost-to-revenue impacts for all small municipalities, as well as the impacts when the municipalities with populations below 1,000 are granted waivers from the MS4 discharger requirements.

For both analyses, EPA found that the vast majority of municipalities would not incur annual costs greater than 1 percent of revenues and fewer than 2 percent of these jurisdictions would incur costs greater than 3 percent of revenues.

One-acre Construction Threshold

According to the agency, the one-acre threshold provides an administrative tool for more easily identifying those sites that should be covered by the rule and those that are not automatically covered.

Regardless of the threshold established by EPA, an NPDES permit can only be required if a construction site has a point source discharge. In addition, the phase II rule gives permitting authorities the ability to provide waivers for sites greater than or equal to one acre and designate additional discharges from sites below one acre when location-specific information suggests that the one-acre default is either unnecessary or too limited to protect water quality, the agency explained.

By Feb. 19, 2000, EPA is required to submit a second report explaining if and how the phase II program has improved water quality in the United States, including a description of specific measures that have been successful and those that have not.

A copy of EPA's October 1999 Report to Congress is available on its web site at www.epa.gov/owm/sw/phase2. ■

Phase II

(Continued from page 2)

authority also may waive permit coverage if all waters that receive a discharge from the MS4 have been evaluated and discharges from the MS4 do not significantly contribute to water quality impairment or have the potential to cause an impairment.

Small Construction Sites

Previously unregulated owners or operators of small construction site activities that result in a land disturbance of between one and five acres in size are automatically subject to the phase II requirements, according to the preamble. Site activities disturbing less than one acre may be covered under the NPDES program if they are part of a larger common plan of development or sale with a planned disturbance of one to five acres or if a project is deemed to have the potential for adverse impacts on water quality. "Thus, the one-acre threshold under the phase II rule would not be an absolute threshold like the five-acre threshold that applies under the phase I rule," EPA said.

The phase II rule requires NPDES permitting authorities to issue general permits for small construction sites by November 2002. Owners and operators of regulated construction sites must obtain an NPDES permit and implement practices to minimize pollutant runoff, the preamble states. Stormwater control options include filter fences, storm drain inlet protections and temporary mulching and seeding of exposed land areas, according to EPA. The specific requirements for stormwater controls will be defined by the NPDES

permitting authority on a state-by-state basis. EPA anticipates that NPDES permitting authorities will use existing phase I general permits for construction activity as a guide for their phase II permits.

An "operator" of a construction site is defined as "the party or parties that has operational control of construction project plans and day-to-day operational control of those activities that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions." Depending on the site and the relationship between the parties, there may be more than one operator, all obligated to seek permit coverage.

The permitting authority may waive the permit requirement for construction site operators in two situations, the preamble states. A waiver is applicable for sites where little or no rainfall is expected during the construction period. EPA plans to develop guidance materials and computer or web-accessible programs to explain when stormwater dischargers are eligible for this waiver. A second waiver may be granted when a total maximum daily load or equivalent analysis indicates that controls on construction site discharges are not needed to protect water quality.

The final phase II rule had not been published in the *Federal Register* at press time, but is available on EPA's web site at www.epa.gov/owm/sw/phase2. EPA will provide tools to facilitate implementation of the rule, including fact sheets, guidance, federal financing programs, training, research and additional support. For more information, call EPA's Stormwater Phase II Rule Hotline at (202) 260-5816. ■

Stormwater Phase II Implementation Schedule

Activity	Deadline
NPDES-authorized states modify NPDES programs—if no statutory change required	November 2000
EPA issues a menu of recommended BMPs for regulated small MS4s	November 2000
NPDES-authorized states modify NPDES programs—if statutory change is required	November 2001
EPA issues guidance on the development of measureable goals for regulated small MS4s	November 2001
NPDES permitting authorities issue general permits for phase II regulated entities	November 2002
Operators of phase II regulated entities required to obtain permit coverage	February 2003
Regulated small MS4s' stormwater management programs fully implemented	November 2005
Reevaluation of the municipal storm water rules by EPA	November 2012

No-exposure Exemption

(Continued from page 3)

operator of an MS4 into which the facility discharges, to inspect the facility and to make inspection reports publicly available upon request, the rule states.

Inspections may be conducted at the discretion of the NPDES authority, according to the preamble. EPA intends for the certification to be available to and enforceable by appropriate federal and state authorities under CWA. Additionally, private citizens may take action against facilities for stormwater discharges that are inconsistent with a no-exposure certification, the preamble states.

If circumstances change, and industrial activity or materials become exposed to stormwater, the conditions for the exemption no longer apply. In such cases, the discharge becomes subject to enforcement as an unpermitted discharge. Thus, an exempt discharger that anticipates a change in facility operations that could lead to an unpermitted discharge should obtain permit coverage prior to the change.

Where EPA is the permitting authority, dischargers may submit a no-exposure certification at any time during the term of a permit, provided a new certification is submitted every five years. The final rule includes a No Exposure Certification Form for use in areas where EPA administers the NPDES stormwater program. In states where EPA is not the permitting authority, dischargers may not be able to submit

the certification until the state adopts the no-exposure provision.

Concerns Related to Water Quality Standards

Actions taken to qualify for no exposure must not interfere with the attainment or maintenance of water quality standards, including designated uses, according to the preamble. Increases in impervious surfaces, such as constructing a new building or cover to eliminate exposure, can result in increased runoff volumes from a site, which may increase pollutant loading, the preamble states.

The final rule addresses this issue by requesting information on the No Exposure Certification Form that allows the permitting authority to determine if actions taken to qualify for the exclusion have resulted in increased pollutant concentrations or loadings, toxicity of stormwater runoff, or a change that negatively impacts water quality. In these instances, the facility operator and its NPDES permitting authority should take action to ensure that attainment or maintenance of water quality standards can be achieved, the preamble states.

The no-exposure exemption is available on a facility-wide basis only, and is not available for individual outfalls. It does not apply to construction activity. In addition, the exemption is nontransferable. If the facility operator changes, the new discharger must submit a new no-exposure certification. The exemption becomes effective upon publication of the final rule. ■

Covering every aspect of Title V operating permit programs . . .

CLEAN AIR PERMITS:

Manager's Guide to the 1990 Clean Air Act

The practical, specialized resource you need to lead your company in the months and years ahead.

Coverage includes:

- ▶ Plain-English explanations of permitting, monitoring and toxics regulations.
- ▶ Practical compliance strategies and model permits.
- ▶ Monthly newsletters keeping you up-to-date.
- ▶ State-specific permit program descriptions.
- ▶ And much more!

TRIAL SUBSCRIPTION CERTIFICATE

CLEAN AIR PERMITS: Manager's Guide to the 1990 Clean Air Act

YES! Please enter my one-year subscription and send me *CLEAN AIR PERMITS: Manager's Guide to the 1990 Clean Air Act* to use and evaluate risk-free for 30 days. Within that time, I'll either return the materials and owe nothing . . . or honor your invoice for \$298. I understand my subscription includes the *Guide*, monthly updates and newsletters, and that I will be billed annually until I decide to cancel.

Name _____

Title _____

Organization _____

Address _____

City _____ State _____ Zip _____

Signature _____

(REQUIRED ON ALL ORDERS.)

BL190172

Bill me. (\$298 plus \$5.50 postage and handling.)

Payment enclosed. (\$298)

Please make check payable to Thompson Publishing Group, Inc. Residents of DC, FL and MD, please add appropriate sales tax.

CALL

1-800-677-3789

MAIL TO:

Thompson Publishing Group, Inc. • Subscription Service Center
P.O. Box 26185 • Tampa, FL 33623-6185

AIRR

Stormwater Permit Manual

Bulletin

Volume 9, Number 4

November 1999

EPA Finalizes Phase II Rule, Submits Cost-Benefit Report to Congress

New regulations to control stormwater runoff from smaller municipal separate storm sewer systems (MS4s) in urbanized areas and smaller construction sites were finalized Oct. 29 by the U.S. Environmental Protection Agency (EPA).

The rule—known as the stormwater phase II rule—was accompanied by a cost-benefit study demonstrating the need for further regulation, as required by recent appropriations legislation.

Building on the existing stormwater program, phase II requires municipalities serving fewer than 100,000 people and operators of construction sites of one to five acres to obtain National Pollutant Discharge Elimination System (NPDES) stormwater permits. Under the new regulations, additional permits will be issued for more than 5,000 municipalities and at least 110,000 construction sites, according to EPA. Facilities and sites

will have three years and 90 days to apply for NPDES permit coverage.

Phase II focuses on stormwater discharge management controls—referred to as best management practices (BMPs)—and requires permittees to devise a plan for reducing stormwater runoff. As part of the permit requirements, certain MS4s will have to implement six minimum controls that aim to reduce the impact of stormwater discharges, according to EPA.

Local public works officials are concerned about the cost to taxpayers and the impact on development resulting from phase II, according to a spokesperson at the American Public Works Association. In response to similar concerns, Sen. Kay Bailey Hutchison, R-Texas, proposed an amendment (number 1800) to EPA's fiscal 2000 appropriations bill (HR 2684) signed into law by

(Continued on page 4)

Comprehensive Database Offers Dischargers Pros and Cons of BMP Performance

A system for managing and evaluating stormwater best management practice (BMP) performance data was developed by the Urban Water Resources Research Council of the American Society of Civil Engineers (ASCE) under a U.S. Environmental Protection Agency (EPA) cooperative agreement.

This new tool—the National Stormwater BMP Database—will improve water quality by allowing professionals across the United States to exchange information on stormwater BMPs, according to a press release. The first release of the database was distributed on CD-ROM and updates will be made through CD-ROM or the Internet as additional BMP data are gathered.

The database software provides both data entry and data retrieval modules. The data entry module instructs users on how to collect

(Continued on page 6)

Inside This Issue ...

Companies Continue To Improve Stormwater Treatment Options	2
Proposed Legislation Could Thwart Expansion of Stormwater Regulations	4
Storm Warnings	5
New Information on Sector-specific BMPs Under the Multi-sector General Permit	

Tab 600

Companies Continue To Improve Stormwater Treatment Options

Prompted by increasingly stringent stormwater discharge regulations, many companies are striving to provide effective, innovative solutions to stormwater dischargers. Following are several stormwater treatment options that are currently being marketed.

AquaShield

The AquaShield Filtration System technology is 100-percent effective in removing contaminants from stormwater runoff, according to Remedial Solutions Inc. of Hixson, Tenn., the product's manufacturer.

The flow of incoming water begins the filtration process. As stormwater enters the system, unwanted debris and suspended solids are captured and extracted. The stormwater then flows through a series of filters composed of a patented hydrophobic media. The filter media allows water to pass through the filtration system but prevents captured contaminants from being released once they are absorbed into the material.

The filtration system extracts petroleum hydrocarbons, volatile organic compounds, heavy oils, polychlorinated biphenols, insecticides, herbicides, sulfides, organic acidic compounds and various organically bound heavy metals.

The Aquashield technology is compatible with any size or shape catch basin and is available in three models to allow for use in a variety of site-specific conditions. The surface drain catch basin model (SD-100) is made of stainless steel and can be installed in the surface opening of stormwater dry wells or leaching pools designed as detention basins. An adapter directs the water entering the catch basin into the filtration system without

restricting the normal surface flow. The filter stages can be added or removed from the system depending on the specific needs of the site and the size of the basin. A standard stormwater sampling device can be used to obtain representative samples after filtration has occurred.

The convergence flow model (CF-200) can accommodate the flow from several surface drains connected to a single discharge point. The CF-200 is installed downstream from the convergence of the surface drains and connects to the existing drain piping. The CFC-200 may be useful at vehicle maintenance centers because it is highly effective in removing oil and grease, heavy metals and total suspended solids (TSSs).

The customized series AquaShield is capable of filtering large volumes of stormwater discharged from excavation sites or secondary containment dikes. The stormwater is pumped into a large sediment and deceleration chamber that has self-cleaning capabilities before passing through a series of filters.

For more information on the Aquashield filtration technology, contact Remedial Solutions at (888) 344-9044.

StormFilter

The StormFilter removes pollutants from stormwater runoff before they enter receiving waterways using rechargeable filter cartridges that fit inside vaults. The cartridges are filled with different types of media including perlite, zeolite and fabric inserts used to treat specific pollutant loadings at a site.

Facilities may select a combination of media based on site characteristics and alter the media as land

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Senior Managing Editor, Licia Ponzani; Managing Editor, Andrea Hall; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Managing Partner, Stanzler, Funderburk and Castellon, L.L.P.; Susan E. Hoffman, Esq., Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott, P.L.L.C.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1999 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

use changes. The StormFilter was designed to handle the runoff from large industrial sites, parking lots and roadways.

The StormFilter is manufactured by Stormwater Management of Portland, Ore. For additional information, call (800) 548-4667.

StormTreat System

The Stormtreat System is an innovative stormwater treatment technology that combines several treatment processes in a self-contained system.

The system includes a series of six sedimentation chambers and a biological filter capable of sustaining wetland plants all within a modular, 9.5 foot diameter recycled-polyethylene tank.

The StormTreat System requires no energy inputs and may be constructed out of recycled plastic materials. Stormwater enters at the bottom of the unit through a pipe connected to the central sedimentation chambers. Water passes through a bag filter that collects grit and large debris and then flows around the sedimentation chambers, which are separated by solid bulkheads.

Inside the chambers, floating skimmers retain oil and grease. The final sedimentation chamber outlets to the biofilter that surrounds the perimeter of the unit. The biofilter contains a gravel matrix and is designed to support wetland plants.

The StormTreat system provides sedimentation, oil and grease separation, sand filtration and biological filtration. The system is capable of retaining grit, TSSs, petroleum hydrocarbons, metals, nitrogen, phosphorus and fecal coliform bacteria.

The StormTreat technology is owned by StormTreat Systems Inc. of Sandwich, Mass. For more information call (508) 833-1033.

Snout Oil and Debris Stop

The "Snout," produced by Best Management Products Inc. of Lyme, Conn., is a plastic composite hood designed to fit over the outlet pipe in a sumped catch basin. The device traps up to 80 percent of nonemul-sified oils, 95 percent of floatable debris and 50 percent of TSSs, according to the company.

The Snout is made of a strong plastic composite and is resistant to ice-melting chemicals and other corrosive elements found in stormwater runoff. The hood uses an anti-siphon device that prevents contaminants from being drawn downstream during full pipe flows. In addition, the hood contains a removable watertight access port, allowing for inspection and maintenance of the outflow pipe.

For more technical information on the Snout Oil and Debris Stop, contact Best Management Products Inc. at (800) 504-8008. ■

Statement of Ownership, Management and Circulation		
1. Title of Publication: Stormwater Permit Manual	2. Publication No. 008-384	3. Filing Date: October 1, 1999
4. Frequency of Issue: Monthly	5. No. of Issues Published Annually: 12	6. Annual Subscription Price: \$398.00
7. Complete Mailing Address of Known Office of Publication: 1725 K St. N.W., Suite 700, Washington, D.C. 20006		
8. Complete Mailing Address of Headquarters of General Business Offices of the Publisher: 1725 K St. N.W., Suite 700, Washington, D.C. 20006		
9. Name and Address of Publisher, Editor, Managing Editor: (a) Daphne Musselwhite, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (b) Leah Wood, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (c) Andrea Hall, 1725 K St., N.W., Suite 700, Washington, D.C. 20006		
10. Owner: Thompson Publishing Group Inc., Richard E. Thompson, 1725 K St. N.W., Suite 700, Washington, D.C. 20006		
11. Known Bondholders, Mortgages, and other Security Holders: None		
12. Tax Status (For completion by nonprofit organizations authorized to mail at special rates): None		
13. Publication Title: Stormwater Permit Manual		
14. Issue Date for Circulation Data Below: October 1999		
15. Extent and Nature of Circulation		
	Average No. Copies Each Issue During Preceding 12 Months	Actual No. Copies of Single Issue Published Nearest to Filing Date
A. Total No. of Copies Printed (Net press run)	1,068	1,050
B. Paid and/or Requested Circulation:		
(1) Paid/Requested Outside-County Mail Subscriptions	727	693
(2) Paid In-County Subscriptions		
(3) Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Non-USPS Paid Distribution	0	0
(4) Other Classes Mailed Through the USPS		
C. Total Paid and/or Requested Circulation (Sum of 15b(1), (2), (3) and (4))	727	693
D. Free Distribution by Mail (Samples, complimentary, and other free)		
(1) Outside-County	19	19
(2) In-County		
(3) Other Classes Mailed Through the USPS		
E. Free Distribution Outside the Mail (Carriers or other means)	0	0
F. Total Free Distribution (Sum of 15d and 15e)	19	19
G. Total Distribution (Sum of 15c and 15f)	746	712
H. Copies not Distributed	322	338
I. Total (Sum of 15g and h)	1,068	1,050
Percent Paid and/or Requested Circulation (15c/15g x 100)	97%	97%
16. Publication of Statement of Ownership. Publication required. Will be printed in the November 1999 issue of this publication.		
17. I certify that the statements made by me above are correct and complete. Leah F. Wood, Editor.		

Phase II

(Continued from page 1)

President Clinton on Oct. 21 that requires EPA to submit to Congress a detailed analysis of the effect the stormwater rule would have on urban, suburban and local governments, among other things.

The cost-benefit study required by the appropriations legislation was signed on Oct. 28 and submitted to Congress prior to the promulgation of phase II, according to John Kosco of EPA's stormwater program. EPA presented the following information:

- an impact analysis on the effect the final regulations will have on urban, suburban and rural local governments, including the costs of complying with the minimum control measures described in the regulations and the costs resulting from lowering the construction threshold from five acres to one acre;
- documentation demonstrating that stormwater runoff is a problem in communities with populations of 50,000 to 100,000;
- an explanation of EPA's rationale for lowering the construction site threshold from five to one

acre, including why a one-acre measure is any less arbitrary than a five-acre measure and all qualitative information used in determining an acre threshold for a construction site; and

- information that justifies administering the phase II program as part of the NPDES program.

In addition, by Feb. 19, 2000, EPA is required to submit a second report explaining if and how the phase I program has improved water quality in the United States, including a description of specific measures that have been successful and those that have been unsuccessful.

Next month's issue of the *Stormwater Permit Manual Bulletin* will discuss phase II and EPA's cost-benefit report in detail. The final phase II rule will be published in the *Federal Register* in mid-November, according to EPA.

For more information, call (202) 260-5816 or e-mail questions to sw2@epa.gov. A copy of the final rule may be obtained from EPA's web site at www.epa.gov/owm/sw/phase2. The text of the budget bill and other legislative information can be viewed on the Internet at www.thomas.loc.gov. ■

Proposed Legislation Could Thwart Expansion of Stormwater Regulations

Proposed Clean Water Act (CWA) legislation could weaken existing stormwater rules and hamstring the U.S. Environmental Protection Agency's (EPA) efforts to regulate small sources, EPA Assistant Administrator for Water J. Charles Fox told the Senate Committee on Environment and Public Works.

Specifically, Fox criticized provisions in S 1706, a bill sponsored by Sen. Kay Bailey Hutchison, R-Texas, that would amend CWA by excluding from stormwater regulation certain areas and activities and limiting the liability of the local government for failing to implement appropriate control measures when in a co-permittee arrangement.

In Fox's opinion, these measures would "seriously weaken existing stormwater pollution controls and dramatically restrict the water pollution controls to be promulgated in the phase II regulations."

Under Hutchison's bill, stormwater permits would not be required for construction sites of less than five acres or for maintenance activity associated with a road, street or vegetated road ditch or drainage way. In addition, any stormwater discharge associated with an above-ground vegetated drainage ditch or a drainage way owned and operated in conjunction with a street under the jurisdiction of a local government would not need a permit.

This bill would overturn provisions in the soon-to-be promulgated phase II rule, which would require small construction sites to have a National Pollutant Discharge Elimination System permit. "There is extensive evidence of the serious water pollution problems caused by small construction sources," said Fox. "Case-by-case designation of small construction sites as needing a clean water permit is an essential tool for protecting sensitive water bodies," he said.

Regarding the exemptions for above-ground vegetated ditches, Fox said these conveyances transport stormwater pollutants to waters of the United States and should be regulated.

The bill also would provide that when a permittee relies on a second governmental entity to carry out stormwater related actions, the permittee is not subject to enforcement if the second governmental entity does not do its job. This may create a situation where no one is legally responsible for stormwater pollution, warned Fox, because the bill does not require the second government entity to officially be a part of the permit (i.e., a co-permittee).

At press time, the bill remained before the Committee on Environment and Public Works. For information, contact Hutchison's office at (202) 224-5922. ■

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Extends Comment Period For Two Proposed Rules. On Aug. 23, the U.S. Environmental Protection Agency (EPA) issued two proposed rules to revise the current regulatory requirements for identifying impaired waters and establishing total maximum daily loads (TMDLs) under the Clean Water Act: revisions to the National Pollutant Discharge Elimination System (NPDES) program and water quality standards regulations (64 FR 46058); and revisions to the water quality planning and management regulations—known as the TMDL regulations (64 FR 46012). (See *Bulletin*, October 1999, p. 5.)

These proposed regulatory revisions “address issues of fundamental importance to cleaning up our nation’s polluted waters,” according to EPA.

Originally, EPA sought comment on both of the proposed rules by Oct. 22. In order to provide the public with adequate time to “fully analyze the issues and prepare comprehensive comments,” the agency extended the comment period to Dec. 22 (64 FR 53304, Oct. 1, 1999). In response to recent legislative action, EPA extended the comment period a second time to Jan. 20, 2000 (64 FR 57834, Oct. 27, 1999).

Send comments on the proposed revisions to the TMDL regulations in triplicate to the comment clerk for the TMDL program, Water Docket (W-98-31), EPA, 401 M St. S.W., Washington, D.C. 20460. Written comments on the revisions to the NPDES program and water quality standards regulations must be sent in triplicate to Water Docket (W-99-04) at the address listed above.

Comments also will be accepted via the Internet at www.ow-docket@epa.gov. Electronic comments must be identified by the appropriate docket number (see above).

Contact EPA’s Hazel Groman at (202) 401-4078 for information on the TMDL proposal; Kim Kramer at (202) 260-9541 for information on the NPDES provisions; or Susan Gilbertson at (202) 260-7301 for information on the water quality standards provisions.

Storm Drain Markers May Keep Water Clean.

Storm drain markers are four inch polyurethane circles with the message “No Dumping, Drains to River,” “No Dumping, Drains to Lake,” etc. These markers are glued to storm drains to inform people that wastes dumped into the storm drain will flow directly into nearby waters, and not to a sewage treatment facility.

Some facilities and communities use stenciled messages to warn citizens and employees about dumping. According to Das Curb of Valrico, Fla., which designs and manufactures UV resistant, plastic storm drain markers, painted stencils may wash off within a year, while drain markers may last up to 30 years. The company’s products are distributed by Secor, located in Houston, Texas. For more information, or to order stormwater markers, contact Secor at (800) 733-2455 or Wayne Alexander at (972) 494-2469.

Maryland Looks at Commercial Stormwater Facility Maintenance. The Maryland Department of Environmental Protection (DEP) has several stormwater management documents available on its web site at www.co.mo.md.us/dep, including a brochure targeted at stormwater facility maintenance in the commercial sector.

The brochure reminds owners and operators of gasoline stations, auto repair shops, office parks and other commercial properties to be aware of the maintenance requirements of stormwater management structures located on their sites. These facilities usually store stormwater runoff under parking lots in large corrugated metal pipes or concrete vaults. Some properties have surface structures (wet ponds or dry ponds) where land is available. Other structures, such as sand filters, are used to pretreat stormwater before it is discharged into a pond or underground structure.

All of these structures require regular inspection and annual maintenance to ensure they function as originally designed. Other ways to reduce polluted stormwater runoff include: checking dumpsters and property daily for litter; covering and elevating outside storage of chemicals; and making employees aware of all stormwater management structures and their functions.

For more information, contact Maryland DEP at (301) 217-2177.

GI Stormwater Discharge Regulations Course.

Government Institutes (GI) conducted a two-day course on stormwater compliance strategies and techniques on Sept. 23-24 in Arlington, Va. Discussion focused on stormwater laws and regulations, permit options—including a detailed examination of federal permit forms and what items are required, how to develop and implement a stormwater pollution prevention plan (SWP3) as well as suggested best management practices (BMPs).

(Continued on page 6)

Database

(Continued from page 1)

BMP data and store information. The data retrieval module currently contains 71 BMP studies collected over the last 10 to 15 years.

These data can be used to improve BMP design and to better match BMP selection to the stormwater problem being addressed. Representative information provided for BMPs includes: test site location; researcher contact data; watershed characteristics; regional climate statistics; BMP design parameters; monitoring equipment types; and monitoring data, such as precipitation, flow and water quality.

The database will continue to grow as new BMP data become available. Eventually, it will include information collected nationwide on the characteristics of structural and nonstructural BMPs, data collection efforts using sampling and flow gauging equipment, climatological characteristics and watershed characteristics, among other things.

EPA encourages BMP designers, owners, and operators to submit their BMP performance evaluation data and associated BMP watershed characteristics for potential entry into the database. All data entered into the database will be subject to stringent quality control review.

ASCE and EPA are offering grants to local jurisdictions, states and other organizations to transfer stormwater BMP data into the database. The

grants are expected to range from \$3,000 to \$15,000, and last from three to 12 months. For an application packet, contact ASCE's Carol Bowers at (703) 295-6352.

For additional information relating to the database, contact Jane Clary at Wright Water Engineers Inc. at (303) 480-1700. ■

Storm Warnings

(Continued from page 5)

Course participants demonstrated their knowledge by designing an SWP3, which was critiqued by the class. Stormwater program managers were encouraged to evaluate their existing SWP3s during this exercise.

The course also covered stormwater treatment options such as oil/water separators, chemical oxidation and activated carbon adsorption. These treatment options may be a "bandaid for the symptom" warned GI's Gerald J. Collert, course instructor and director of the on-site training group. Facility managers need to identify all pollutants present in stormwater runoff, determine how they got there and then establish appropriate BMPs, according to Collert. If facilities follow their BMPs, they will meet water quality standards, he said.

The Stormwater Discharge Regulations Course will be held again in May 2000 in Arlington, Va. For more information, contact GI at (301) 921-2345. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
• monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$379
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Ozone Depleter Compliance Guide \$498

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group Inc.)
- Please bill me (add \$5.50 postage and handling for each publication ordered; \$14.50 for Environmental Compliance Tool Kit and Ozone Depleter Compliance Guide.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group Inc., Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789 or visit our web site: www.thompson.com

Stormwater Permit Manual

Bulletin

Volume 9, Number 3

October 1999

EPA Determines Pollution Controls in Municipal Permits, Says Court

The U.S. Environmental Protection Agency (EPA) has the authority to determine what pollution controls are appropriate when issuing National Pollutant Discharge Elimination System (NPDES) stormwater permits to municipalities, according to a recent opinion by the U.S. Court of Appeals for the 9th Circuit (*Defenders of Wildlife v. Browner* (No. 9871080, Sept. 15, 1999)).

The lawsuit began when the Defenders of Wildlife challenged EPA's decision to issue NPDES stormwater permits to five Arizona municipalities (for their separate storm sewer systems) without requiring numeric limitations to ensure compliance with the state's water quality standards.

Following a request to review EPA's decision, the 9th Circuit found it is within EPA's discretion to include either best management practices or

numeric limitations to provide for the attainment of state water quality standards.

Background

In 1992 and 1993, the cities of Tempe, Tucson, Mesa and Phoenix and Pima County, Ariz., submitted applications for NPDES stormwater permits. In response, EPA prepared draft permits that "did not attempt to ensure compliance with Arizona's water quality standards," the opinion states. (Arizona's water quality standards are located in Ariz. Admin. Code, tit. 18, ch. 11, effective April 24, 1996.)

Defenders of Wildlife and the state of Arizona objected to the municipal stormwater permits, arguing that they must contain numeric limitations to ensure strict compliance with state water quality standards.

(Continued on page 4)

Georgia's Construction Permit Appealed by Regulated Community; Deemed Too Onerous

Thirteen parties have joined together to file three separate administrative appeals challenging Georgia's National Pollutant Discharge Elimination System (NPDES) permit for stormwater discharges from construction activities, according to a recent Georgia Environmental Protection Division (EPD) press release.

"With this appeal, EPD's seven-year effort to issue an NPDES permit for construction activity continues," said Harold Reheis, EPD director. "We will move as quickly as possible to get a decision from the administrative appeals process," he said.

Georgia's NPDES permit provides guidelines and regulations for the effective control of silt, sediment and other pollutants that are carried from construction sites to rivers and streams by stormwater runoff. The permit was developed with input from the environmental community, which appealed four previous versions of the permit.

This time, representatives of the regulated community have sided with environmental groups to challenge the permit, objecting to its strict monitoring

(Continued on page 3)

Inside This Issue ...

Storm Warnings	2
EPA Joins Partnership Aimed at Promoting Dairy Waste Management	3
New Database Offers Stormwater Management Strategies	5
EPA Plans To Focus on Water Quality While TMDLs Are Developed	5
Updated Alabama, Colorado, Florida State Pages	Tab 800
New Information on Monitoring Requirements for Ore Mining Facilities	Tab 500

Storm Warnings

Stormwater-Related News in Capsule Format

Washington State Department of Ecology Revises Stormwater Manual. The Washington State Department of Ecology (DEC) is requesting comments on the public review draft of its *Stormwater Manual*.

In 1992, DEC published the *Stormwater Management Manual for the Puget Sound Basin*. Local jurisdictions and businesses used the manual to design stormwater programs to protect Washington's waters from stormwater runoff. Over the past several months, Washington's Water Quality Program staff has been working with five technical advisory committees to review, update and expand the manual for state-wide use.

The 700-page manual now is divided into five volumes: Volume I—Minimum Technical Requirements; Volume II—Construction Stormwater Pollution Prevention; Volume III—Hydrologic Analysis; Volume IV—Source Control Best Management Practices (BMPs); and Volume V—Runoff Treatment BMPs. The first three volumes of the revised *Stormwater Manual* currently are available on the Internet at www.wa.gov/ecology/biblio/wq.html. DEC plans to hold public workshops on Volumes I through V during October and November.

The comment period on the public review draft will end Dec. 15. DEC expects to publish a revised manual by April 2000. For questions on the public review process, contact Tony Barrett at (360) 407-6467 or via e-mail at tbar461@ecy.wa.gov.

EPA Issues Action Against Hawaii Department of Transportation. Since 1994, the Hawaii Department of Transportation (DOT) has failed to sufficiently reduce pollutants in stormwater runoff from its facilities and roadways on the island of Oahu, according to a recent U.S. Environmental Protection Agency (EPA) press release.

DOT's National Pollutant Discharge Elimination System (NPDES) stormwater permit expired Sept. 6, and the permit has not been renewed. In the interim, any stormwater runoff from DOT facilities will violate CWA, the press release states.

EPA issued an order requiring DOT to continue to implement its existing stormwater management program until a new NPDES permit is approved. The department also must submit an NPDES permit application within 30 days and "take steps to further prevent contamination of stormwater," according to the press release. "Every storm dumps pollution into waterways and undermines our collective efforts to keep our waters clean. We expect Hawaii DOT to fully comply with the Clean Water Act," said Alexis Strauss, EPA's Water Division director.

SSO Committee Meeting Rescheduled. A meeting of the Sanitary Sewer Overflow Advisory Subcommittee—previously scheduled for Sept. 27-30—will be held on Oct. 18-20 in Williamsburg, Va. (64 FR 50810, Sept. 20, 1999). Discussions will focus on the draft NPDES regulations and policy for municipal sanitary sewer collection systems. The meeting is open to the public, but advance registration is required before Oct. 8. To find out more, contact EPA's Sharie Centilla at (202) 260-6052. Background information is available on EPA's web site at www.epa.gov/own/wet.htm.

EPA Initiative Aimed at Improving Environmental Performance. EPA recently announced that it will set up a new system to reward business and other organizations that excel in environmental management. This action was presented in a new EPA report—*Aiming For Excellence: Actions to Encourage Stewardship and Accelerate Environmental Progress*. Copies of the report may be obtained by calling the National Service Center for Environmental Publications at (800) 490-9198. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Senior Managing Editor, Licia Ponzani; Managing Editor, Andrea Hall; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott, P.L.L.C.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1999 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought."—from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

EPA Joins Partnership Aimed at Promoting Dairy Waste Management

U.S. Environmental Protection Agency (EPA) Region 9 awarded a \$443,740 grant to the California State Water Resources Control Board to fund a course on dairy waste management, thereby marking the agency's enrollment in a unique government-dairy industry partnership, according to a recent press release.

The California Dairy Quality Assurance Program (CDQAP) is a joint effort of state and federal agencies, the California dairy industry and the University of California to assist dairy operators in meeting federal, state and local clean water requirements, the press release states. The program's core components include an educational workshop, the creation of a farm management plan and an onsite evaluation by a third party.

EPA's grant will fund a waste management course to instruct dairy operators on how to comply with environmental laws requiring the: containment of contaminated rainfall, even during rainstorms; protection of waste storage ponds from inundation or washout; and prevention of surface runoff when manure is applied to croplands.

Another component of CDQAP is the development of a farm management plan. Dairy producers will be required to, among other things:

- calculate their current wastewater storage capacity and the storage capacity needed to prevent discharge from the dairy during a 25-year, 24-hour storm event;
- demonstrate that their existing wastewater capacity is capable of storing contaminated runoff from a 25-year, 24-hour storm (and maintain at least two feet of freeboard);
- indicate where inappropriate surface discharge could occur at their dairy operation (i.e., in a stormwater pollution prevention plan); and
- describe how surface discharges will be prevented at their facilities.

Participation in CDQAP is voluntary, according to the press release. Dairy producers completing the program will become "certified," informing government agencies of their effort to achieve compliance with environmental laws.

Water pollution from dairy waste is a serious problem in California, the press release states. The state's estimated 2,400 dairies produce approximately 30 million tons of cow manure each year. Dairies must properly manage this waste to keep it from polluting the state's waterways. ■

Georgia Permit

(Continued from page 1)

and reporting requirements, according to Larry Hedges, manager of EPD's nonpoint source program.

Under the construction permit, land developers are required to monitor turbidity in receiving waters, or in some instances outfalls, after every half-inch of rainfall. In addition, permittees must submit a summary of monitoring results to EPD each month.

Representatives of the regulated community argue that these monitoring and reporting requirements are "too onerous" and may result in a "significant increase in the number of citizen suits brought in Federal Court," Hedges explained. Similar objections were raised in 1972, when the NPDES permit program was introduced, Hedges notes.

The three appeals were filed by the following members of the regulated community on Aug. 18: Georgia Power Co.; Home Builders Association of Georgia; Associated General Contractors of America Inc., Georgia Branch; Atlanta Gas Light Co.; Colonial Pipeline Co.; Council for Quality Growth; Georgia Transmission Corp.; Georgia Highway Contractors Association; Plantation Pipeline Co.; Georgia Utility Contractors Association Inc.; Southern Natural Gas Co.; Georgians for Responsible Growth Inc.; and Transcontinental Gas Pipeline Co.

Although EPD admits that Georgia's stormwater construction permit—if upheld—would be the "most stringent in the country," similar requirements already exist under Georgia's Erosion and Sedimentation Act, which regulates many of the same construction activities, said Hedges.

Georgia's stormwater construction permit was issued by EPD July 19 and was scheduled to take effect on Sept. 1. As a result of the appeals, the permit is on hold until a decision is reached by the Office of State Administrative Hearings, according to the press release.

Despite the pending appeals, EPD is encouraging all owners and operators of construction activities to implement the best management practices that are specified in the NPDES permit, the press release states. A recent decision by the U.S. Court of Appeals for the 11th Circuit appears to make this advice mandatory (*Driscoll v. Adams* (No. 98-8532, July 23, 1999)). In that case, the court concluded that land developers wishing to avoid liability under the Clean Water Act must minimize stormwater discharges and make a good faith effort to comply with local pollution control requirements, even when no NPDES stormwater permit is available to cover the discharge (see *Bulletin*, Sept. 1999, p. 1).

Georgia's NPDES permits can be viewed on the Internet at www.dnr.state.ga.us/dnr/enviro/permits. ■

Water Quality

(Continued from page 1)

Thereafter, EPA modified the permits to require a stormwater management program with monitoring and reporting requirements and other structural controls such as stormwater detention basins and infiltration ponds. It also required permittees to remove illegal discharges from their stormwater.

EPA believed that "best management practices" [would] ensure compliance with state water quality standards," the opinion states. The Arizona Department of Environmental Quality agreed with this conclusion, finding that "adherence to provisions and requirements set forth in the final municipal permit[s] will protect the water quality of the receiving water."

Procedural History

In 1997, EPA issued final NPDES permits to the five Arizona municipalities. Following this action, the Defenders of Wildlife requested an evidentiary hearing with the regional administrator, questioning whether the Clean Water Act (CWA) requires the inclusion of numeric limitations in all stormwater permits to ensure strict compliance with state water quality standards.

The regional administrator denied the request, and the Defenders of Wildlife subsequently challenged EPA's decision with the environmental appeals board (EAB). EAB rejected the challenge and refused reconsideration, holding that the permits need not contain numeric limitations to ensure strict compliance with state water quality standards. Once again, Defenders of Wildlife challenged EPA's decision, this time in the Court of Appeals for the 9th Circuit.

Generally, an NPDES permit imposes effluent limitations on the discharge of pollutants from a point source into the waters of the United States. Under CWA, a permittee "shall ... achieve ... effluent limitations ... which shall require the application of the best practicable control technology currently available" (33 U.S.C. 1311(b)(1)(A)).

Furthermore, CWA provides that a permittee "shall ... achieve ... any more stringent limitations, including those necessary to meet water quality standards, treatment standards or schedules of compliance, established pursuant to any state law or regulation" (33 U.S.C. 1311(b)(1)(C)).

9th Circuit's Opinion

Both EPA and the Defenders of Wildlife have argued that CWA is ambiguous regarding whether Congress intended for municipalities to comply strictly with

state water quality standards under 33 U.S.C. 1311(b)(1)(C).

The appellate court focused on two different standards established by CWA: one for industrial discharges and one for municipal discharges. Permits for discharges associated with industrial activity must meet the provisions of 33 U.S.C. 1311 (33 U.S.C. 1342(p)(3)(A)).

Permits for discharges from municipal storm sewers must require "controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods and such other provisions as the Administrator ... determines appropriate for the control of such pollutants" (33 U.S.C. 1342(p)(3)(B)(iii)).

Congress expressly required industrial stormwater discharges to comply with the requirements of 33 U.S.C. 1311, the opinion states. Thus, industrial stormwater dischargers must achieve more stringent limitations, including those necessary to meet water quality standards established by state law. However, Congress chose not to include a similar provision for municipal storm sewer discharges, the court said.

The court notes that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Accordingly, the 9th Circuit found that "Congress' choice to require industrial stormwater dischargers to comply with 33 U.S.C. 1311, but not to include the same requirement for municipal dischargers must be given effect."

The court also points out that "CWA is not merely silent regarding whether municipal dischargers must comply with 33 U.S.C. 1311." Instead, Section 1342(p)(3)(B)(iii) states that "permits for discharges from municipal storm sewers ... shall require ... such other provisions as the Administrator ... determines appropriate for the control of such pollutants."

Under this discretionary provision, EPA has the authority to determine when strict compliance with state water quality standards is necessary to control pollutants, the court states.

Similarly, the agency also has the authority to require less than strict compliance with state water quality standards. Based on this finding, the 9th Circuit rejected Defenders of Wildlife's position that municipal stormwater permits must contain numeric limitations and allowed EPA's use of best management practices in municipal stormwater permits to provide for the attainment of Arizona's water quality standards. ■

New Database Offers Stormwater Management Strategies

The Center for Watershed Protection (CWP) is putting together a network of resources for watershed managers and facilities required to control pollutants through stormwater management, nonstormwater discharges, and erosion and sediment control.

The database—called the U.S. Environmental Protection Agency Models, Technologies and Practices (MTP) Database—will be organized according to methods, technologies and practices unique to each tool of watershed protection.

Stormwater management practices are used to delay, capture, store, treat or infiltrate stormwater runoff. Although specific design objectives for stormwater management practices are unique to each watershed, the general goals for stormwater management often are the same, according to the center.

CWP outlined these goals as follows: maintain groundwater recharge and quality; reduce stormwater pollutant loads; protect stream channels; prevent increased overbank flooding; and safely convey extreme floods.

When selecting the best stormwater management strategy, there are several issues that watershed managers should address. The MTP Database will provide answers to common questions such as:

- What is the most effective mix of structural vs. nonstructural stormwater management practices to meet subwatershed goals?
- Which hydrologic variables should be managed in the subwatershed (recharge, channel protection, flood reduction, etc.)?
- What are the primary stormwater pollutants of concern (phosphorus, bacteria, sediment, metals, hydrocarbons, or trash and debris)?
- Which stormwater management practices should be used or avoided in the subwatershed because of their environmental impacts?
- What is the most economical way to provide stormwater management?
- Which stormwater management practices are the least burdensome to maintain with local budgets?

CWP works with local, state, and federal government agencies, environmental consulting firms, watershed organizations and the public to provide information on effective techniques to protect and restore urban watersheds.

For more information, visit CWP's web site at www.cwp.org. This site will provide a link to the MTP Database in the coming months. ■

EPA Plans To Focus on Water Quality While TMDLs Are Developed

The U.S. Environmental Protection Agency (EPA) said it plans to clarify and strengthen the existing program for restoring polluted waters and implement procedures to promote the attainment of water quality standards pending the development of new cleanup plans.

To achieve these goals, EPA proposed regulatory revisions to the total maximum daily load (TMDL) regulations (64 FR 46012) and associated revisions to the National Pollutant Discharge Elimination System (NPDES) program and water quality standards regulations (64 FR 46058) on Aug. 23.

Despite tremendous progress in the quarter-century since the Clean Water Act (CWA) was passed, 40 percent of America's surveyed waterways remain too polluted for fishing and swimming, according to EPA. More than 20,000 rivers, lakes and estuaries have been identified as polluted even after point sources of pollution have installed the minimum required levels of pollution control technology, EPA said.

"To address the remaining water pollution challenges we must now focus our efforts river by river; lake by lake; beach by beach; community by community," said EPA Administrator Carol M. Browner. The proposed

TMDL program utilizes a watershed-based cleanup approach to regulate all pollutant sources regardless of whether they originate from point or nonpoint sources.

A TMDL is an approach for restoring polluted waters. It is developed in two steps: 1) calculating the maximum amount of a pollutant that a waterbody can take in and still meet water quality standards; and 2) distributing that amount among all point and nonpoint sources that discharge that pollutant. Using this framework, states will develop tailored restoration plans for each polluted waterbody identified by the state.

Under proposed changes to the TMDL program, states would have a maximum of 15 years to establish TMDLs for all waterbody and pollutant combinations. In the meantime, states need to focus on what can be done to achieve cleaner waters while new cleanup plans are being developed, EPA said in announcing the rule.

Proposed revisions to the NPDES program and water quality standards regulations would achieve further progress toward attaining water quality standards in impaired waterbodies while the TMDLs are under development and provide greater assurance

(Continued on page 6)

Proposed Rules

(Continued from page 5)

that completed TMDLs will be adequately implemented, the agency said.

NPDES Program Changes

Large new dischargers or existing dischargers that significantly expand their pollutant loadings would be required to obtain an offset of 1.5 times their proposed discharge before beginning to release the pollutants. The offset could be obtained from an existing point and/or nonpoint source. A significant expansion of an existing discharge is defined as a 20 percent or greater increase in pollutant loadings above the current permitted levels. Offsets would be required until a TMDL is established and implemented, according to the proposal.

States with approved NPDES programs are responsible for issuing permits to point sources within their jurisdiction. In some instances, the state fails to reissue expired permits and the permittee continues to operate under a permit that is inconsistent with water quality standards. This frustrates the goals of CWA by delaying implementation of needed water quality-based effluent limitations, EPA said. Under the proposed rule the regional administrator would be allowed to reissue expired NPDES permits to be consistent with water quality standards for impaired waterbodies when the state fails to do so.

In allocating pollutant reductions to nonpoint sources, states would have to provide reasonable assurance that those sources will implement the reductions. To enhance the state's ability to establish reasonable assurance, the proposed changes would allow states to decide that these currently unregulated nonpoint sources are causing significant water quality problems and require them to obtain an NPDES permit.

If the state is not authorized to administer the NPDES program or if the state fails to provide reasonable assurance, EPA would be allowed to take action to designate the sources as point sources and require an NPDES permit. This authority would be limited to: animal feeding operations; aquatic animal production facilities; and certain discharges from silvicultural operations.

While TMDLs are being established, NPDES permits may be issued to dischargers provided the discharge will not cause or contribute to a water quality violation. After TMDLs are established, NPDES permits may be issued to new dischargers and reissued to existing dischargers if the permit limitations are consistent with the new TMDL, EPA said.

Additional information is available on the Internet at www.epa.gov/owow/tmdl. Contact EPA's Hazel Groman at (202) 401-4078 for information on the TMDL proposal; Kim Kramer at (202) 260-9541 for information on the NPDES provisions; or Susan Gilbertson at (202) 260-7301 for information on the water quality standards provisions. ■

EPA Proposes To Improve TMDL Program by Providing Public With Better Information

In its Aug. 23 proposal, EPA described 10 minimum elements of a TMDL:

- name and location of the impaired or threatened waterbody;
- identification of the pollutant and the amount that the waterbody can receive and still meet water quality standards;
- the excess amount of the pollutant that keeps the waterbody from meeting water quality standards;
- identification of the source or sources of the pollutant;
- a determination of the amount of pollutants that may come from point sources;
- a determination of the amount of pollutants that may come from nonpoint sources;
- a margin of safety in case the modeling or monitoring techniques are not adequate;
- consideration of seasonal variation to account for water levels, temperature, etc.;

- an allowance for future growth and reasonably foreseeable increases in pollutants; and
- an implementation plan with on-the-ground actions to ensure that the TMDL will result in a healthy watershed.

An approved TMDL would be required to contain an implementation plan consisting of eight elements:

- list of actions needed to reduce pollutant loadings;
- timeline describing when these actions will occur;
- reasonable assurances that the wasteload allocations for point sources and the load allocations for nonpoint sources will be implemented;
- description of the legal authorities to be used;
- estimate of the time needed to meet water quality standards;
- monitoring or modeling plan to determine if reductions are being achieved;
- milestones for measuring progress; and
- plans for revising TMDLs if progress is not made. ■

Stormwater Permit Manual

Bulletin

Volume 9, Number 2

September 1999

Court Enforces CWA Discharge Standard, Though Permit Unavailable

Land developers wishing to avoid liability under the Clean Water Act (CWA) must minimize stormwater discharges and make a good faith effort to comply with local pollution control requirements, even when no National Pollutant Discharge Elimination System (NPDES) stormwater permit is available to cover the discharge, according to a recent decision by the U.S. Court of Appeals for the 11th Circuit (*Driscoll v. Adams* (No. 98-8532, July 23, 1999)).

The lawsuit was initially filed in December 1996 in federal district court in Georgia. In their complaint, David and Barbara Driscoll and Ruel and Patricia Galbreath alleged that Ross Adams, a developer, had discharged polluted stormwater into the Spiva Branch stream running from his property to ponds on the plaintiffs' properties. According to the plaintiffs, approximately 64 tons of mud, silt, sand and other materials were deposited into their ponds when Adams began harvesting timber and developing

his property. Adams never obtained the required NPDES permit, which allows a permittee to discharge limited quantities of pollutants under prescribed conditions, the appellate court's opinion states.

The appellate court noted that the CWA Section 1311(a) zero-discharge standard prohibits the discharge of any pollutant by any person except in limited situations. However, an exception to the rule applies where the discharge is made according to the terms of an NPDES permit issued by EPA or a delegated state.

Although Georgia is a delegated NPDES state with general permitting authority, the state currently does not have a stormwater permit to cover discharges from construction activities. In 1995, Georgia issued a construction general permit, but it was repealed due to legal challenges brought by two environmental

(Continued on page 4)

Proposed Revisions to TMDL Regulations Clarify and Strengthen Program, EPA Says

Proposed revisions to the existing total maximum daily load (TMDL) regulations were issued by the U.S. Environmental Protection Agency (EPA) Aug. 23 (64 FR 46012). A related proposal issued the same day includes changes to the National Pollutant Discharge Elimination System (NPDES) program and water quality standards regulations (64 FR 46058).

Under the proposed TMDL regulations, state 303(d) listing methodologies would become more specific and subject to review by EPA and the public. The proposal also includes a new format for state 303(d) lists and clarifies what elements must be included in a TMDL and the newly required implementation plan. In addition, states would be required to establish TMDLs for high priority water bodies first and submit to EPA schedules for establishing their TMDLs, with a maximum 15-year time limit.

The proposed revisions to the NPDES and water quality standards regulations would require specified permittees to offset new or increased

(Continued on page 4)

Inside This Issue ...

Storm Warnings	2
Region 4 Permittees Face New Monitoring, Reporting Requirements	3
Discharges From Mass. Dairy Farm Limited by Novel NPDES Permit	3
Updated Delaware, Hawaii, Iowa, Kansas, Michigan and Mississippi state pages	

Tab 800

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Region 1 Takes Action to Stop Polluted Stormwater Discharges. Under a recent U.S. Environmental Protection Agency (EPA) Region 1 compliance order, the city of Haverhill, Mass., must develop a long-term plan to address 16 combined sewer overflow (CSO) pipes that discharge millions of gallons of untreated stormwater into the Merrimack River each year.

The city's wastewater collection system carries both sewage and stormwater. Rainstorms and wet weather events cause the system to overflow, thereby discharging untreated sewage and stormwater through the CSO outfall pipes.

The Clean Water Act (CWA) prohibits CSOs that cause water quality standards violations in rivers and other water bodies. The administrative order requires Haverhill to complete a long-term CSO control and abatement plan within 16 months, among other things, to bring the city into compliance. For more information, contact EPA's Peyton Fleming at (617) 918-1008.

Government Groups Resign from EPA Committee On Sewer Overflows. Five national organizations recently announced that "they have walked away from talks intended to result in new federal regulations for sanitary sewer overflows (SSOs)," according to a combined press release. The organizations, including members of the National League of Cities, the Association of Metropolitan Sewerage Agencies and the Water Environment Federation, were concerned that the process was headed toward "huge public expenditures with little or no environmental public health gains," the press release states. However, the organizations plan to continue to work on developing reasonable national policies to prevent

SSOs that occur during heavy storm events. For more information, contact John Millett at (202) 833-4651.

EPA Seeks Comments on Draft Guidance for CAFO Permits. To facilitate and improve implementation of the National Pollutant Discharge Elimination System (NPDES) permitting program for concentrated animal feeding operations (CAFOs), EPA published a draft guidance manual and a sample NPDES permit for permitting authorities. Once finalized, they will provide EPA and state permit writers with a framework for issuing NPDES permits to CAFOs.

Earlier this year, the U.S. Department of Agriculture and EPA announced their Unified National Strategy for Animal Feeding Operations, which will require an estimated 20,000 CAFOs to develop comprehensive nutrient management plans and comply with CWA requirements as part of NPDES permits. (See related story, p. 3.)

The draft guidance provides information on topics such as: types of NPDES permits that may be issued to CAFOs; key elements of an NPDES permit for CAFOs; and monitoring and reporting requirements.

EPA is providing the draft guidance manual and sample permit for public review during a 60-day comment period. A notice of availability will be published in the *Federal Register* soon. Interested persons may send comments to Gregory Beatty at 401 M St. N.W., Mailcode 4203, Room 2304 NEM, Washington, D.C. 20460 or via e-mail at beatty.gregory@epa.gov. Copies of the draft guidance manual and permit may be obtained from the Internet at www.epa.gov/own or by calling EPA's Water Resource Center at (202) 260-7786. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Senior Managing Editor, Licia Ponzani; Managing Editor, Andrea Hall; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath, L.L.P.; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott, P.L.L.C.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1999 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought."—from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Region 4 Permittees Face New Monitoring, Reporting Requirements

Certain facilities in the southeastern United States that discharge stormwater from construction activities to waters impaired by sediment or silt and that are on Clean Water Act (CWA) Section 303(d) lists will face new monitoring and reporting requirements, according to a July 21 *Federal Register* notice (64 FR 39136).

CWA Section 303(d) and U.S. Environmental Protection Agency (EPA) regulations require states to identify waters that do not meet water quality standards, despite adherence to technology-based effluent limits. States must submit lists of impaired waters—called 303(d) lists—to the federal agency. Proposed permit modifications would expand monitoring and reporting requirements under the existing EPA Region 4 construction general permit, issued March 31, 1998, to prevent the discharge of stormwater from construction activities from contributing to the impairment of Section 303(d)-listed waters.

EPA Region 4 defines “stormwater discharges from construction activities” to include activities such as clearing, grading and excavation that result in the disturbance of five or more acres of land, the notice states.

According to the notice, monthly monitoring requirements for settleable solids, total suspended

solids, turbidity and volume flow would be added to the general permit. Collecting data would allow permittees to determine if a discharge was contributing to the impairment of the water body.

The notice further states that all qualifying storm events would be monitored, either by taking a grab sample within the first 30 minutes of the event or by monitoring a discharge that was previously collected. A “qualifying event” is one-half inch of rain over a 24-hour period, according to the notice. In addition to effluent monitoring, upstream monitoring would be required.

Other modifications would direct permittees to report monitoring results on a monthly basis and other data such as the slope of the drainage area of each outfall. The notice also states that permittees would be required to disclose in a pollution prevention plan the process for determining whether or not their facilities discharged into a 303(d)-listed water body.

The draft modification of the National Pollutant Discharge Elimination System general permit would apply to construction sites in Florida as well as Indian lands in Florida, Alabama, Mississippi and North Carolina. For more information, contact EPA’s Floyd Wellburn at (404) 562-9296. ■

Discharges From Mass. Dairy Farm Limited by Novel NPDES Permit

U.S. Environmental Protection Agency (EPA) Region 1 has proposed a “first-of-its-kind discharge permit” requiring a large dairy farmer in Westport, Mass., to eliminate manure and other pollutant discharges, according to the agency.

EPA and the Massachusetts Department of Environmental Protection issued the draft permit under the agency’s National Pollutant Discharge Elimination System (NPDES) program to Pimental Farm, a 450-cow dairy operation that has been targeted for contributing to water pollution problems in both the Snell Creek and the Westport River. The farm generates approximately 11,000 tons of manure each year, less than half of which is collected, according to EPA. As a result, significant amounts of manure are discharged into surrounding waters, primarily during wet weather events.

Typically, EPA issues NPDES permits for point sources such as industrial facilities and wastewater treatment plants. However, under Section 502(14) of the Clean Water Act, concentrated animal feeding operations (CAFOs) also are specifically included in the definition of point source, and discharges from CAFOs require an NPDES permit.

EPA has the authority to designate an animal feeding operation as “concentrated” if specific

requirements are met. The agency deemed Pimental Farm a CAFO, concluding that “given the inadequate farm management, the farm’s proximity to the creek and the river and the proven impacts the discharges are having on water quality, EPA has no choice but to regulate this operation,” said John DeVillars, EPA Region 1 administrator. Once implemented, the permit will prohibit manure and wastewater discharges into the creek and river, except during a major 25-year, 24-hour rainfall event.

The permit requires the farm owner to take a series of actions within 120 days, such as designing and constructing a manure pit for collecting and disposing of cow manure generated on the property and installing vegetative buffer strips around the farm’s open lots where the cows reside to prevent manure from reaching the surrounding waters. The permit also requires the farm to develop and implement a comprehensive nutrient management plan. Key components of the plan include a manure and wastewater handling storage strategy and comprehensive recordkeeping. In addition, the permit includes monitoring and discharge notification requirements.

Following the close of the comment period, DeVillars will issue a final permit decision. For additional information, contact Bruce Rosinoff, Massachusetts Office of Ecosystem Protection, at (617) 918-1505. ■

Discharge Standard

(Continued from page 1)

groups. The Georgia Environmental Protection Division worked with these groups to reach an agreement and a modified construction permit was finalized earlier this year. On July 19, 1999, however, the modified permit was appealed by the regulated community. Consequently, the permit is stayed until an administrative law judge rules on its validity.

Because Georgia's stormwater construction permit was not in effect at the time Adams began construction on his property, Adams argued that he was not subject to liability under CWA, stating that the requirement of an "NPDES permit was an impossible condition." The district court agreed with this premise and found that there were no approved federal standards for how much sand, silt and mud could be present in released stormwater. Adams also maintained that his stormwater discharge was outside the scope of CWA because it was not a point source discharge of a pollutant into a navigable water as defined by the act.

On appeal, Judge Edward Carnes of the 11th Circuit rejected both of Adams' arguments, reversed the district court's grant of summary judgment and sent the case back to the district court for further proceedings.

11th Circuit Opinion

The appellate court focused on two issues: whether CWA's prohibition on pollutant discharges, known as the zero-discharge standard, applies where the required NPDES permit is not available; and whether Adams' discharge was within the scope of prohibited discharges under the act.

The 11th Circuit previously addressed the implications of an unavailable NPDES permit in *Hughey v. JMS Development Corp.* (78 F.3d 1523 (11th Cir. 1996)). In that case, the court established a narrow exception to the general rule of liability for discharges without an NPDES permit where:

- compliance with the zero-discharge standard is factually impossible because there will always be some stormwater runoff from an area of development;
- there is no NPDES permit available to cover such discharges;
- the discharger is in good-faith compliance with local pollution control requirements, which substantially mirror the proposed NPDES discharge standards; and
- the discharges are minimal.

While recognizing the zero-discharge standard, the *Hughey* decision created an exception where no NPDES permit is available, allowing a developer to

avoid liability for any minimal stormwater discharge that occurs despite his best effort to comply with applicable law and reduce the discharge amount.

In the current instance, the court was unable to grant Adams this exception. According to the opinion, Adams did nothing to limit erosion or stormwater discharge before beginning construction. He sought none of the required permits until after considerable damage had been done to the Driscolls' and Galbreaths' property. In addition, the amount of Adams' stormwater discharge and the resulting damage were substantial, the opinion states. In light of these findings, the court ruled that the exception recognized in the *Hughey* case did not apply and rejected Adams' position that the CWA Section 1311(a) zero-discharge standard does not apply where the required NPDES permit is not available.

Adams also argued that the material he discharged was not a "pollutant" under CWA. In addition, he maintained that there was no "discharge of a pollutant" within the meaning of CWA, both because the stormwater runoff did not come from a point source and because the Spiva Branch stream is not a navigable water.

According to the 11th Circuit, the definition of "pollutant" in CWA is broad, including, among other things, rocks and sand. In addition, the court found that Adams collected stormwater by pipes and other means and discharged it into the stream, thereby making it a point source. Furthermore, the court determined that the Spiva Branch stream is a "navigable water" within the meaning of the act. ■

TMDL Regulations

(Continued from page 1)

discharges into an impaired water body. In addition, EPA would have the authority to object to and reissue expired and administratively-continued, state-issued NPDES permits in specific situations. The proposal also would allow EPA to designate various operations such as concentrated animal feeding operations, concentrated aquatic animal production facilities and certain silviculture operations as point sources, thereby requiring them to obtain NPDES permits. Next month's issue of the *Stormwater Permit Manual* will discuss these changes in detail.

Written comments to either proposal must be submitted by Oct. 22. The proposed TMDL regulations are available at www.epa.gov/owow/tmdl. For more information on this rule, contact EPA's Hazel Groman at (202) 401-4078. Contact EPA's Kim Kramer at (202) 260-9541 for more information on the NPDES provisions or Susan Gilbertson at (202) 260-7301 for more information on the water quality standards provisions. ■

Stormwater Permit Manual

Bulletin

Volume 8, Number 12

July 1999

Upcoming EPA Regulation Will Change TMDL Program Under CWA

Fundamental changes to the existing total maximum daily load (TMDL) program under the Clean Water Act (CWA) are scheduled to be introduced in a U.S. Environmental Protection Agency (EPA) proposed rule due out this summer. Municipal waste water officials, worried about how states will manage a complex and expensive TMDL program, say they hope to see their concerns addressed in the agency's rule.

The existing program and EPA's proposal were discussed in several sessions of the 1999 National Environmental Policy Forum sponsored by the Association of Metropolitan Sewerage Agencies (AMSA), held in May.

A TMDL is the greatest amount of a pollutant that a water body can receive without violating water quality standards. CWA Section 303(d) and EPA's regulations require states to identify waters that do not meet water quality standards, despite adherence to technology-based effluent limits. A state must then calculate how much pollution can be put in the impaired water without violating water quality standards, and allocate that quantity among all

sources of pollution. This process is referred to as load reduction allocation.

States are required to submit lists of impaired waters, called 303(d) lists, and develop TMDLs for EPA to review and approve. The ultimate goal of the program is to bring the water body into attainment with the water quality standard for its designated use.

EPA estimates that states are required to develop 37,000 TMDLs for the approximately 40 percent of U.S. waters that have been assessed and found to be impaired, said David Katz, divisional deputy city solicitor for the Philadelphia Water Department. Moreover, an additional 50,000 or more TMDLs may be required once EPA evaluates the remaining U.S. waters, Katz told conference attendees.

Proposed Revisions to TMDL Program

EPA officials openly discussed details of the upcoming regulatory action at the AMSA conference. According to Geoffrey Grubbs, director of EPA's

(Continued on page 4)

EPA Announces New Test Procedure For Measuring Mercury at Low Levels in Water

An additional test method for measuring mercury in water was approved for use in National Pollutant Discharge Elimination System (NPDES) permits, under a recent U.S. Environmental Protection Agency (EPA) final rule (64 FR 30417, June 8, 1999).

The new procedure—EPA Method 1631, Revision B: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence Spectrometry—can detect mercury below one part per trillion and is approximately 200 times more sensitive than currently approved methods for determining mercury levels, according to EPA.

EPA Method 1631 is performed by purging mercury vapors from a water sample onto a gold trap to concentrate the mercury, and then thermally

(Continued on page 3)

Inside This Issue ...

New York Proposes Stormwater Program Revisions 2

EPA To Change Economic Benefit Calculation Used In Enforcement Cases 2

NRDC Reports on Community Response to Runoff Pollution 3

Revised information on SWP3s and MSGP Tab 600

California and Arizona State Pages Updated Tab 800

**Thompson
Publishing
Group**

Storm Warnings

Stormwater-Related News in Capsule Format

Federal District Court Redefines Point Source under CWA. Four large dairy farms were designated as point sources, under a recent federal district court ruling (*Community Association for Restoration of the Environment v. Henry Bosma Dairy et al.*, CY98-3011-EFS (E.D. Wash., May 17, 1999)). The case involved allegations by a community farm group that manure used by the dairy farms to fertilize fields ran off and polluted nearby waters. The court sided with the plaintiff, finding that the four dairies are concentrated animal feeding operations and point sources under the Clean Water Act. Judge Edward Shea also said the lagoons used for storing liquefied manure, the equipment used for transporting the waste to the fields or other locations, and the fields themselves are point sources.

UWWF Advisory Committee Charter Renewed. The U.S. Environmental Protection Agency (EPA) is renewing the charter for the Urban Wet Weather Flows Advisory Committee and subcommittees for an additional two-year period, according to a June 10 *Federal Register* notice (64 FR 31219). The purpose of this committee is to provide advice and counsel to EPA on issues associated with urban wet weather discharges, including municipal and industrial stormwater runoff, combined sewer overflows and sanitary sewer overflows, the notice states. For more information, contact EPA's Kevin Weiss at (202) 260-9524.

New York Proposes Stormwater Program Revisions. A state Department of Environmental Conservation (DEC) proposed rule may lead to several changes in New York's program for the control of wastewater and stormwater discharges. The proposal would develop procedures for the administration of general permits, incorporate EPA

criteria for revising permit limits, and clarify a 10-year delay on more stringent performance standards. In addition, the proposal would provide procedures for flow reduction and planning at publicly owned treatment works, and revise general conditions under the state pollutant discharge elimination system. Comments are due July 5. For more information, contact DEC's Angus Eaton at (518) 457-8858.

Workshop on Unified Watershed Assessment for Tribal Governments Announced. To enhance the participation of tribal governments in the activities of the President's Clean Water Action Plan, EPA and several other government agencies are conducting a series of workshops for tribes on unified watershed assessments. The workshops will provide tribes with a handbook of key natural resources data, instructions for assembling unified watershed assessment documents and a matrix of federal programs for watershed management and restoration. For more information, contact EPA's Richard Regan by e-mail at regan.richard@epa.gov.

EPA To Change Economic Benefit Calculation Used in Enforcement Cases. EPA is requesting comment on how it calculates the economic benefit that regulated entities obtain as a result of violating environmental requirements, according to a June 18 *Federal Register* notice (64 FR 32948). EPA plans to change its benefit recapture approach and its BEN computer model, which the agency now uses to calculate economic benefit. Comments must be submitted in triplicate by July 30 to EPA, Office of Enforcement and Compliance Assurance, Economic Benefit Docket Clerk, Mail Code 2248-A, 401 M St. S.W., Washington, D.C. 20460. For further information, contact EPA's Jonathan Libber at (202) 564-6102. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Executive Editor, Jill S. Talbot; Senior Managing Editor, Licia Ponzani; Managing Editor, Andrea L. Hall; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, Director, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1999 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

NRDC Reports on Community Response to Runoff Pollution

Despite the fact that large metropolitan areas, certain industries and large construction sites have, since 1992, been required to develop and implement stormwater plans, "stormwater from significant portions of the nation's populated areas is not being addressed," according to a recent Natural Resources Defense Council (NRDC) report.

According to NRDC, the problem of polluted stormwater runoff has two main components: the increased volume and rate of runoff from impervious surfaces and the concentration of pollutants in the runoff. Both components are directly related to development in urban areas, and together, cause dramatic changes in hydrology and water quality. The result is problems such as increased flooding, stream channel degradation, habitat loss, changes in water temperature, contamination of water resources and increased erosion and sedimentation, the report states.

The U.S. Environmental Protection Agency (EPA) is expected this fall to promulgate what are known as the Phase II stormwater regulations, which will require smaller municipalities with populations of less than 100,000 in urbanized areas to develop stormwater plans. In light of these upcoming regulatory changes, NRDC set out to document some of the most effective existing stormwater strategies from around the country. The report is intended to encourage municipal action and build community capacity to address this issue, it states.

NRDC chose programs for the report based on three broad areas of success: environmental gains; economic advantages and collateral benefits. The group assessed environmental gains by looking at biological, hydrological (flow) or chemical improvements. The types of economic advantage seen in the report include cost savings to a municipality or real estate developer, programs providing a key stormwater service within the confines of a small budget, or those facilitating long-term cost avoidance. NRDC also looked at collateral benefits, such as buffer zones that also provide land for outdoor recreation and for wildlife habitat.

The case studies are divided into programs that address stormwater in new development and redevelopment; promote public education and participation; control construction site runoff; detect and eliminate improper or illegal connections and discharges; or implement pollution prevention for municipal operations. In selecting the case studies, NRDC found several critical elements throughout the programs that appeared to underlie their effectiveness, such as: advance planning; broad participation; preventing pollution first; accountability; dedicated funding sources and tailored strategies.

One example of a successful municipal program is that of Staten Island, N.Y., which has acquired parcels of land in the Staten Island Bluebelt, a large

(Continued on page 4)

Mercury Test

(Continued from page 1)

desorbing the mercury from the trap into an atomic fluorescence spectrometer, the preamble to the rule explains. The new procedure was developed to reliably measure mercury at the low levels associated with ambient water quality criteria, according to EPA.

The quality control (QC) in EPA Method 1631 is more extensive than in currently approved methods for mercury detection. The rule requires an initial demonstration of laboratory capability consisting of a method detection limit (MDL) study to demonstrate that the laboratory is capable of achieving the MDL and the minimum level of quantification specified in Method 1631.

It also must include an initial precision and recovery test, consisting of analyses of four reagent water samples spiked with mercury to demonstrate the laboratory's ability to generate acceptable precision and recovery.

The rule further requires ongoing QC tests—which are outlined in the rule—for each analytical batch.

In addition, data that fails to meet QC acceptance criteria should not be reorted or used for permitting or regulatory compliance purposes.

The final rule contains several changes not included in the May 26, 1998, proposal. Significant modifications include a change in the sample holding time—from six months to 28 days; a change in the matrix spike/matrix spike duplicate performance criteria—from 75 percent to 125 percent recovery to 71 percent to 125 percent; and several changes in reporting requirements.

The preamble also notes several minor technical improvements that were made to Method 1631 to clarify implementation. The final version of Method 1631 also includes two measures that address and clarify health and safety monitoring and waste management.

Regulators may require the use of Method 1631 in NPDES permits. EPA intends that permit writers specify the use of Method 1631 when measurement of mercury at very low levels is required, the preamble states.

The rule takes effect on July 8. For more information contact EPA's Maria Gomez-Taylor at (202) 260-1639. ■

TMDL Program

(Continued from page 1)

Assessment and Watershed Protection Division, the new TMDL regulations will address controversial issues, such as how much and what kind of data are needed to place waters on the 303(d) list, how to get waters off the list and what elements to include in a TMDL.

According to an AMSA summary of its meeting with EPA officials, the agency is heading for a more comprehensive listing process. EPA plans to propose that the 303(d) list be "segmented" into four separate parts: waters impaired by pollutants requiring TMDLs; waters for which TMDLs have been completed, but water quality standards have not been met; impaired waters that do not require the development of TMDLs; and waters where best practicable technology will result in meeting water quality standards.

EPA also hopes to address several National Pollutant Discharge Elimination System issues in the proposal, including: provisions to allow permits to be re-issued or extended in cases where they are not consistent with a TMDL allocation; expanded authority to designate animal feeding operations and fishery and forestry operations as point sources; and offsets for new or expanded discharges where no TMDLs exist.

Concerns

Even though EPA officials are willing to discuss the status and content of the forthcoming TMDL regulation, anxiety among water officials remains high. In Katz's opinion, states lack the resources to develop the TMDLs, which are complex from a regulatory, legal and scientific point of view. Many attending the AMSA conference agreed that problems will arise if states rely on old, inaccurate or small sets of data as a basis for their 303(d) listing and load reduction

allocation decisions. Furthermore, in light of the large number of TMDLs that need to be established, some states appear to believe "that a bad TMDL is better than no TMDL," warned Chris Westhoff, assistant city attorney for the Los Angeles Department of Public Works.

Another area of concern for point source dischargers is that load reduction allocations are proportionate among all sources of pollution. In an ongoing TMDL lawsuit, farm groups are challenging the regulation of nonpoint source pollution under CWA Section 303(d) (*Pronsolino and the American Farm Bureau Federation v. Marcus and Browner*, No. C99-1828 (N.D. Cal.)).

The farmers contend that Section 303(d)(1)(A) "specifically limits the identification and listing of water segments to those that fail to meet water quality standards due to point sources of pollution." If nonpoint sources are exempt from TMDLs, point sources could bear the entire cleanup burden for waters primarily impaired by nonpoint sources, according to state and local water officials.

TMDL Tracking System

EPA recently announced that final state and territorial lists of impaired water bodies are now available in electronic format. The Total Maximum Daily Load Tracking System database includes current information from 44 state or territorial 303(d) lists in a single national database. Some information is based on draft or partially approved lists, EPA said. The database is designed to provide a clearer picture of how many waters have been listed as impaired and the cause of their impairment.

The tracking system can be downloaded from the Internet at www.epa.gov/owow/tmdl/trcksys.html. For further information, contact EPA's Chris Laabs at (202) 260-7030. ■

NRDC Report

(Continued from page 3)

tract of undeveloped land containing streams and wetlands. By preserving this land, "the city can forego construction of a traditional subsurface storm sewer system for the area," the report states, adding that the initial net savings for the program is in excess of \$50 million. In addition, use of nonstructural methods naturally cleans the runoff, preventing discharge of tons of harmful pollutants, the report states.

NRDC Surveys Reveal Progress in Municipal Stormwater Management

Two recent NRDC surveys indicate that municipalities are making advancements in their efforts to address stormwater pollution. The first study surveyed 78 Long Island Sound municipalities to assess local government

practices that affect the sound. The study provided a detailed look at local initiatives and implementation strategies (e.g., the presence of stormwater best management practices) that address water quality issues and stormwater runoff. The second survey examined stormwater outfall locations and management practices at 119 coastal and Great Lakes municipalities that have beaches. This study focused on the status of storm sewer outfalls and efforts to mitigate the effects of wet weather flows.

Based on the surveys, NRDC believes that many municipalities have made efforts to reduce stormwater pollution through used oil collection programs and street sweeping. The study also revealed that municipalities around the Long Island Sound appear to have more extensive stormwater programs than elsewhere.

A full copy of the community response report is available on NRDC's web site at www.nrdc.org. ■

Stormwater Permit Manual

Bulletin

Volume 8, Number 11

June 1999

Contemplated EPA Rule Would Standardize Construction BMPs

A rulemaking that would standardize minimum requirements for stormwater runoff best management practices (BMPs) used at construction sites to control erosion and sediment is currently being considered by the U.S. Environmental Protection Agency (EPA). A March 30, 1999, *Federal Register* notice explains the project, which was further discussed at a recent public meeting held in Washington, D.C. (64 FR 15158).

The regulations, known as "effluent guidelines," would apply to stormwater runoff associated with both new development and redevelopment construction activities. In addition, they would address construction site runoff occurring during the active phase of construction, as well as post-construction discharges.

Effluent guidelines are national technology-based standards that may include limits on discharge characteristics—numeric effluent limitations—or control measures and practices to prevent the discharge of

pollutants—BMPs. The contemplated regulations would require BMPs rather than numeric effluent limitations. These standards, developed pursuant to Title III of the Clean Water Act, are implemented in National Pollutant Discharge Elimination System (NPDES) permits. Entities potentially affected by the rulemaking would include land developers, home builders, builders of commercial and industrial property, and other private and public sector construction site owners and operators.

Existing Permit Requirements

Under the NPDES phase I rule, construction sites of five or more acres must be covered by a general or individual permit. Permittees are required to develop stormwater pollution prevention plans that include BMPs; however, the selection and design of the BMP is at the discretion of permittees (in conformance with

(Continued on page 4)

EPA Issues New Test Procedure for Analysis Of Oil and Grease in Discharged Water

A new procedure for determining the presence of oil and grease in discharged water was approved for use in the U.S. Environmental Protection Agency's (EPA's) Clean Water Act (CWA) programs, including the stormwater permitting program, under a new EPA final rule (64 FR 26315, May 14, 1999).

The procedure, EPA Method 1664, uses normal (n)-hexane as a solvent to extract oil and grease from discharged water. It is an alternative to a currently approved testing procedure, which uses chlorofluorocarbon (CFC)-113 as the extracting solvent, the preamble to the rule notes.

EPA estimates that more than 10,000 National Pollutant Discharge Elimination System (NPDES) permits place a limit on the amount of oil and grease that may be discharged from facilities, resulting in an estimated 25,000 measurements annually. The use of approved test procedures is required whenever a specific pollutant must be measured

**Thompson
Publishing
Group.**

(Continued on page 3)

Inside This Issue ...

Region 6 Issues Residential Construction Reminder Letter	2
Public Meeting of the SSO Advisory Committee	3
Deadline for National Watershed Award Application Approaches	3
UL Develops Standard for Oil/Water Separators	3
EPA Releases Summaries of Watershed Training Courses	3

New newsletter index added to the *Manual*

Region 6 Issues Residential Construction Reminder Letter

Many developers and builders in the residential construction industry are unfamiliar with the National Pollutant Discharge Elimination System (NPDES) storm water requirements, as revealed by a recent U.S. Environmental Protection Agency (EPA) Region 6 investigation. In response, the stormwater enforcement coordinator sent letters to 4,418 residential construction businesses in Texas reminding them of federal permitting requirements under the Clean Water Act.

"If you are an operator of a construction project that disturbs five or more acres, or your construction project is part of a common plan of development or sale that disturbs five or more acres, then you should have an NPDES permit," the letter warns.

Accompanying the letter were sample forms and an explanation of general construction storm water permit requirements. In summary, operators that need a permit must evaluate their eligibility for the construction general permit, prepare a stormwater pollution prevention plan (SWP3) and then submit a notice of intent (NOI) form to obtain permit coverage, the materials state.

According to EPA, there is confusion over who meets the definition of "operator," thereby imposing the need to obtain stormwater permit coverage. The operator is the party or parties that have: 1) operational control over the site specifications; and 2) day-to-day operational control over activities at the construction site. At a typical construction site, it is common for both the owner and general contractor to apply for permit coverage.

Although many parties may be required to apply for permit coverage, only one SWP3 is required for a given facility, the reminder states. This includes the development of best management practices

such as erosion controls and self inspections by qualified personnel. According to EPA, common problems with SWP3s found during inspections include not having upland controls and not having detention ponds for common drainage areas of 10 or more acres.

EPA also reminded residential construction professionals of the requirement to post a sign at the entrance of each construction lot or in the front window of each structure specifying a permit number, a contact name and phone number and a project description. In addition, operators need to indicate whether any endangered species may be in proximity to the construction site. EPA's Office of Wastewater Management maintains an endangered species web page at www.epa.gov/own/esalst2.htm.

The EPA Region 6 construction general permit has no fee. However, not having a permit may subject violators to civil penalties of up to \$27,500 per day per violation. Additional information on stormwater compliance may be found on the Internet at www.epa.gov/region6/sw. Questions about permit numbers or the application process should be directed to the NOI Processing Center at (301) 495-4145. ■

Contact the Editor

If you have any questions about the *Manual* or suggestions for articles, contact the Editor at: (202) 739-9580 or STRM@thompson.com

You also can find us on the Internet at: www.thompson.com

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Duntun; Executive Editor, Jill S. Talbot; Senior Managing Editor, Licia Ponzani; Managing Editor, Andrea L. Hall; Editor, Leah F. Wood. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Leah F. Wood at (202) 739-9580; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1999 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Public Meeting of the SSO Advisory Committee.

The Sanitary Sewer Overflow (SSO) Advisory Committee will hold a meeting July 28-29 to discuss the draft National Pollutant Discharge Elimination System (NPDES) standard permit conditions and NPDES regulations and policies for municipal sanitary sewer collection systems, according to a May 20 *Federal Register* notice. This meeting is open to the public. Advance registration is not necessary, but seating is limited. Materials from the meeting will be available on the Environmental Protection Agency's (EPA) website at www.epa.gov/owm/wet.htm. For further information, contact EPA's Sharie Centilla at (202) 260-6052 or via e-mail at centilla.sharie@epa.gov.

Deadline for National Watershed Award Applications Approaches.

The deadline to submit applications for the CF Industries National Watershed Award is July 30. The award, administered by The Conservation Fund, recognizes corporate and community excellence in watershed protection. The focus is on innovative, nonregulatory approaches to improving water quality. Particular emphasis is placed on local partnerships that demonstrate the success of economic and voluntary incentives, and education.

Each year, one corporation and three communities nationwide are recognized for their leadership in protecting water resources. The award was launched in 1996 as a partnership between CF Industries, The Conservation Fund and the National Geographic Society. This year, EPA has joined as a lead partner to help expand the reach of the program nationwide. For more information, send an e-mail to terrinst@aol.com or a fax to (703) 548-6299.

UL Develops Standard for Oil/Water Separators.

Underwriters Laboratories Inc. (UL) now lists or classifies stationary atmospheric type above- and below-ground oil separation systems. Testing standards include removal of oils with specific gravities of 0.83 to 0.94 at the maximum influent concentration and flow rate.

UL created an Outline of Investigation for Oil/Water Separators, documenting the requirements applied to listed units. The outline includes fire, electric, shock and casualty safety requirements, as well as separator performance requirements under various conditions. UL also tests all units to verify reliability of controls.

To date, UL has listed underground water separators for Xerxes Corp. and Fluid Containment Inc.

Other units are currently being tested. "Many local jurisdictions still use calculations to test oil/water separators," according to Roand Riegel, staff engineer at UL. "When they hear that UL listing qualifies the results and provides positive proof, there should be a high level of interest in our services." For more information, contact Riegel at (516) 271-6200 or by e-mail at riegelr@ul.com.

EPA Releases Summaries of Watershed Training Courses.

EPA recently published one-page summaries of 180 watershed-related training courses sponsored by federal and state agencies, as well as the private sector. The compilation, *Inventory of Watershed Training Courses*, was developed in response to a key action item in the President's *Clean Water Action Plan*. To obtain a free copy of the summaries, call (800) 490-9198 or visit EPA's Watershed Academy web site at www.epa.gov/OWOW/watershed/wacademy/catalog.html.

AMSA Conference Focuses on Integrating Wet Weather Programs.

The Association of Metropolitan Sewerage Agencies (AMSA) summer conference, Unifying Urban Wet Weather Programs, will focus on the status and future of the nation's wet weather programs. Highlights of the conference, to be held in Philadelphia, Pa., July 20-23, include featured speakers, technical panel discussions and roundtables that will examine the need and potential for integrating urban sanitary sewer overflow, combined sewer overflow, stormwater management programs and nonpoint source control programs. For more information, visit AMSA's web site at www.amsa-cleanwater.org. ■

Oil and Grease Test

(Continued from page 1)

for an NPDES permit. EPA predicts the new testing procedure will be incorporated into future permits, according to the preamble.

Although Method 1664's standard extraction technique is separatory funnel liquid-liquid extraction technique (LLE), EPA is allowing the use of solid-phase extraction (SPE) in the version of Method 1664 approved in the final rule. SPE uses a cartridge or disk for the removal of oil and grease from the sample of discharged water. EPA noted that although SPE may be used with n-hexane, it is the discharger's responsibility to assure that results produced using SPE are equivalent to results produced using LLE.

(Continued on page 4)

Construction BMPs

(Continued from page 1)

applicable state and local requirements). Under the phase II rule, scheduled to be finalized in October, EPA has proposed that construction sites of between one and five acres be subject to permits. The new effluent guideline regulations contemplated by EPA would apply to both phase I and phase II sites, according to Eric Strassler, project manager in EPA's Engineering and Analysis Division.

Current requirements for construction site BMPs vary around the United States, ranging from local erosion and sediment control programs with detailed site plan requirements and BMP specifications, to communities with few or no requirements. In EPA's opinion, many states have erosion and sediment control requirements that are "too general, unclear, outdated and [do not provide] an adequate level of receiving stream protection," as expressed at the public meeting. Thus, it is necessary to create enforceable regulatory standards, according to EPA.

Minimum Standards

EPA intends to "evaluate the inclusion of design and maintenance criteria as minimum requirements for a variety of BMPs which are used at construction sites to prevent or mitigate the impacts of stormwater runoff on surface water quality," the notice explains. Temporary control measures include sediment trapping and erosion control devices.

EPA also intends to "develop effectiveness and applicability criteria for BMPs that are used to manage post-construction discharges," the notice states. If adequate runoff controls are not permanently in place, construction sites can discharge large amounts of sediment, nutrients and other pollutants to receiving

waters, according to an EPA fact sheet. Post-construction measures may include structural BMPs—such as extended detention wet ponds, constructed wetland systems and sand filters—as well as non-structural, low-impact development controls, such as minimizing soil and vegetation disturbances. The agency does not intend to require use of particular BMPs at specific sites, but plans to assist builders in BMP selection by publishing data on the performance to be expected of various BMP types, the notice states.

According to Strassler, the agency won't require construction sites to meet numeric effluent limitations. Unlike wastewater discharges, the flow of stormwater runoff can "change drastically in minutes." As a result, strict monitoring on a regular basis "does not make sense" because it is very expensive and results can vary depending on when samples are taken.

EPA's Data Needs

EPA would like to build upon the successes of some of the effective state and local programs currently in place around the country, and establish nationwide criteria to drive BMP selection, design, implementation and maintenance, the agency said. EPA is asking municipalities for BMP performance data that it can employ in the rulemaking.

The agency said it welcomes suggestions on the development of the new effluent guidelines. Internet web pages will be provided to explain the rulemaking project and distribute technical documents for review and comment. The agency's report, *Preliminary Data Summary on Urban Storm Water Best Management Practices*, will be available at www.epa.gov/OST/stormwater within the next few weeks.

For further information, contact Strassler at (202) 260-7150 or by e-mail at strassler.eric@epa.gov. ■

Oil and Grease Test

(Continued from page 3)

In the rule, EPA did not withdraw approved use of the CFC-based testing procedure, as suggested in its proposal (61 FR 1730, Jan. 23, 1996). However, EPA noted that it strongly encourages dischargers, generators and industrial users to "substitute use of Method 1664 beginning on the [rule's] effective date," the preamble states. EPA intends to reduce dependency on the use of CFCs and help permittees prepare for their eventual phase-out, as required by the Clean Air Act.

The preamble lists several incentives for switching to Method 1664. For example, the cost of CFC-113 is much greater than the cost of n-hexane due to the phase-out of CFCs and increased tariffs on their use. EPA expects costs will continue to rise, because the United States and other industrialized

countries ceased production of CFCs as of Jan. 1, 1996, the preamble notes.

Additionally, EPA has made two changes to the quality control in Method 1664 since the proposal. First, the requirement for a matrix spike duplicate has been changed to a "suggestion." Also, the size of an analytical batch has been increased to a maximum of 20 samples.

Under the rule, Method 1664 may be used for the determination of non-polar material in EPA's CWA and Resource Conservation and Recovery Act (RCRA) programs. The rule also deletes Method 9070, adds revised Method 9071B and incorporates Method 1664 by reference for use in EPA's RCRA programs.

The rule takes effect June 14. For more information, contact EPA's Maria Gomez-Taylor at (202) 260-1639. An electronic version of Method 1664 is available via the Internet at www.epa.gov/OST. ■

Stormwater Permit Manual

Bulletin

Volume 8, Number 10

May 1999

Region 6 Enforcement Push Targets Texas Auto Salvage Yards

U.S. Environmental Protection Agency Region 6 (EPA) will initiate an enforcement action this month against auto salvage yards that will allow for expedited settlements. The program may serve as a model for future stormwater enforcement initiatives, officials at the region say.

EPA will send by certified mail a packet of information to auto salvage yards in the Galveston Bay watershed in Texas. The purpose of the packet is to help auto salvage yards evaluate their compliance under the Clean Water Act and to give them an opportunity to resolve any violations, according to a form letter that will go out to the yards.

"Auto salvage yards contribute to the impairment of water quality," the letter states. "EPA has performed numerous outreach activities for businesses, and it is our goal that all auto salvage yards comply with the [National Pollutant Discharge Elimination System] NPDES program," the letter states. Auto salvage yards are defined as establishments primarily

engaged in the distribution at wholesale or retail of used motor vehicle parts.

Taylor Sharpe, who heads up stormwater enforcement in Region 6, said eventually EPA will get to all auto salvage yards in Texas. "Right now we're focusing on the worst polluters in the most impaired watershed," Sharpe said. EPA will send out about 150 notices a week until it reaches all 4,000 salvage yards in Texas, Sharpe said.

Region 6 targeted auto salvage yards based on data from the group stormwater permit application process. Salvage yards, along with scrap metal recyclers, were found to be the most prolific polluters, Sharpe said.

Auto salvage yards have been the target of citizen lawsuits in California and have been identified by EPA for several years as an industry that causes water quality problems. But Sharpe pointed out that many salvage yards are in compliance with stormwater

(Continued on page 4)

Environmental Groups Challenge EAB's Decision To Allow Arizona Permits

Two environmental groups have challenged a U.S. Environmental Protection Agency (EPA) Environmental Appeals Board (EAB) decision to allow five Arizona communities to implement best management practices (BMPs) rather than numeric discharge limits (*Defenders of Wildlife v. Browner*, No. 9871080 (9th Cir.)).

Defenders of Wildlife and the Sierra Club challenged National Pollutant Discharge Elimination System (NPDES) permits issued by EPA to Phoenix, Tempe, Tucson, Mesa and Pima County. The permits authorize the municipalities to discharge stormwater from non-industrial municipal activities through their respective municipal separate storm sewer systems. The case is expected to be heard later this year.

Arizona's water quality standards require stormwater dischargers to achieve "all reasonable and cost-effective best management practices to

(Continued on page 2)

Inside This Issue ...

EPA Cites Nevada Landfill	3
DOJ Files Consent Decree Against Steel Mill	3
GAO Questions Nonpoint Source Control Estimates	3

Arizona Permits

(Continued from page 1)

control the discharge of pollutants to stormwater." They do not require numeric effluent limitations at stormwater outfalls.

The environmental groups claim that the communities have violated Arizona water quality standards. In particular, Phoenix has periodically violated state water quality standards for lead, cadmium, beryllium, zinc, copper, cyanide and selenium. Tucson and Pima county have had a number of similar violations, the groups claim.

Despite the alleged violations, EPA failed to take measures required by the Clean Water Act (CWA) to adopt whatever additional pollution controls are necessary, if technology based standards fail to protect designated uses, the environmental groups argue. Instead, EPA issued permits that did not contain effluent limitations to assure compliance with water quality standards in the receiving rivers. Moreover, the stormwater management plans did not lead to quantifiable reductions in stormwater discharges, the groups claim.

EPA defended the permits stating that the initial round of stormwater permits would focus on implementing the BMPs rather than applying numeric water quality-based effluent limitations.

The data EPA "possessed regarding the biological and chemical impacts of the stormwater discharges on the receiving water was inadequate as a basis upon which to establish rational numeric limits on the quantity of pollutants that may be present in such discharges," EPA said. "Therefore, EPA also established monitoring requirements in the NPDES permits to acquire the information necessary to determine if additional or modified permit limitations are required during the term of the permits or in future permits."

EAB sided with EPA, stating that the environmental groups failed to show that EPA Region 9 acted unlawfully when it elected to exclude numeric effluent limitations from the permit language (see *Bulletin* June 1998, p. 1).

There was also a procedural problem with the environmental groups' case, according to EPA and EAB. All the arguments made in the petition for review filed with EPA Region 9 and in the appeal before EAB stated legal, not factual grounds for the action.

However, when seeking a reconsideration of EAB's decision, the groups alleged for the first time that the permits would not as a factual matter ensure compliance with state water quality standards, EPA said. EAB noted that "the request for consideration consisted largely of new arguments not raised in the original petition and not properly raised in the form of a motion to reconsider."

Before the appeals court, the environmental groups will argue that nowhere in CWA does it allow permitting authorities to defer compliance with water quality standards. The permits issued to the Arizona communities, however, allow such a deferral, the environmental groups will argue. Furthermore, EPA cannot allow violations of water quality standards by claiming inadequate information, according to the brief filed with the U.S. Court of Appeals for the 9th Circuit by the environmental groups.

The groups asked the court to rule that EPA acted arbitrarily, capriciously and contrary to law in issuing NPDES storm sewer permits to the cities without including effluent limitations to assure compliance with state water quality standards. The groups asked that the existing permits be supplemented so as to ensure compliance with water quality standards. EPA and the communities merely want the terms of the permit to be upheld. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group Inc., 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1999 by Thompson Publishing Group Inc. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group Inc., Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Cites Nevada Landfill. The U.S. Environmental Protection Agency (EPA) April 27 cited operators of the Sunrise Mountain Landfill and the Clark County Public Works Department for violating federal law and ordered them to repair problems with the landfill.

"We believe this action is the surest way to guarantee that necessary repairs and improvements are made quickly to Sunrise Landfill to help protect the Las Vegas Wash and Lake Mead," said Laura Yoshii, EPA's deputy regional administrator. "The erosion and trash washout that occurred during last year's floods is entirely preventable," she said.

EPA cited landfill operator Republic DUMPCo and affiliated companies and the Clark County Public Works Department for violations of the federal Clean Water Act (CWA) and Resource Conservation and Recovery Act. The agency ordered the implementation of a stormwater control plan; interim repair of the existing drainage system; an upgrade of the landfill cap to federal standards; methane and groundwater monitoring and control; and a plan for maintenance and monitoring of the site.

Sunrise Mountain Landfill, a closed municipal landfill about three miles east of Las Vegas, contains about 25 million tons of waste. The landfill stopped receiving waste in the fall of 1993. Las Vegas Wash, which discharges into Lake Mead, is about two miles downhill from the landfill.

Last September, a series of storms washed out major portions of the landfill and sent solid waste and other pollutants into Las Vegas Wash. An EPA inspection of the landfill in November 1998 revealed significant environmental problems.

DOJ Files Consent Decree Against Steel Mill. The U.S. Department of Justice (DOJ) April 14 filed a proposed consent decree that calls for WCI Steel of Warren, Ohio, to pay \$1.14 million for alleged violations of effluent limitations (64 FR 19805, April 22). The proposed consent decree was lodged in the U.S. District Court for the Northern District of Ohio.

DOJ alleges violations of three National Pollutant Discharge Elimination System (NPDES) permits held by the facility that were discovered in WCI's self-monitoring reports. Investigators also found "numerous unpermitted discharges at both permitted outfalls and unpermitted point sources," DOJ said.

The proposed consent decree provides for injunctive relief consisting of an evaluation of WCI's blast furnace recycle system, a comprehensive evaluation of its wastewater systems, a visible oil corrective

action and monitoring plan, the removal of sludge, the lining of a wastewater pond, cessation of chlorine discharges except those authorized by an NPDES permit and various steps to improve compliance with stormwater effluent limitations.

In addition to the fine, WCI will spend a minimum of \$750,000 to conduct a sediment removal supplemental environmental project and a benthic invertebrate study in the Mahoning river.

GAO Questions Nonpoint Source Control Estimates. The United States General Accounting Office (GAO) published a report stating that EPA may have seriously misestimated the costs of eradicating nonpoint source pollution.

EPA has estimated annual costs of the three major sources of nonpoint source pollution to be \$9.4 billion. But GAO discovered a number of flaws in the methods used to arrive at that figure. The calculation does not include the costs of controlling some potentially significant sources of nonpoint pollution such as abandoned mines and airborne sources.

Secondly, the estimate includes capital costs associated with best management practices to address nonpoint source pollution, but excludes operating and maintenance costs. Furthermore, GAO found the estimates to be based on sketchy data. The methodology used by EPA also failed to account for the unique characteristics of individual watersheds.

To improve EPA's approach to cost estimates, the agency should address key limitations by disclosing the range of uncertainty and more fully documenting its methodology. GAO also recommends that EPA work with researchers at other federal agencies to obtain lessons learned, data sources and modelling approaches.

EPA Upgrades Watershed Indicators. EPA recently upgraded its Index of Watershed Indicators, an Internet-based compilation of 16 primary indicators used to characterize the health of the nation's waters.

The new version updates six of the original 15 indicators and adds atmospheric deposition estimates for nitrogen. The index provides watershed assessments through available information on surface and ground waters, drinking water sources, wetlands, runoff, fish advisories, contaminated sediments and other indicators.

EPA first released the index as a public right-to-know initiative in October 1997. The new version is available at: www.epa.gov/surf2/iwi/update/. ■

Salvage Yards

(Continued from page 1)

regulations, and in fact it is those salvage yards in compliance that have the greatest beef with those that don't comply.

The packet includes a consent decree that an auto salvage yard can fill out if it agrees to the terms established by EPA, including agreeing to pay a penalty. The base penalty is \$1,000 according to the penalty calculation form that accompanies the packet. In addition, the salvage yard will be required to pay \$5 for every vehicle body on site on the date of the response to the settlement offer. The maximum penalty is \$5,000. However, participating in the program does not assure the salvage yard that it will be free from citations for illegal stormwater discharges.

The salvage yard also is required to obtain an NPDES permit by submitting a notice of intent (which also is enclosed in the packet). As part of obtaining permit coverage, facilities will be required to prepare and implement a stormwater pollution prevention plan (SWP3).

"If you apply for a permit and erroneously state that you have an SWP3 and have implemented best management practices, you have falsified a government document. Then you won't be dealing with me, you'll be dealing with criminal officers," Sharpe said.

If a facility that is not an auto salvage yard or is out of business receives a notice, the owner can fill out an official declaration that the facility is not a salvage yard. If a facility already has an NPDES stormwater permit, it can fill out a declaration to that effect. Included in the declaration for existing permit

holders, is the permit number, the facility's legal name and address and the name of the owner.

"If a facility that should obtain a permit ignores an opportunity to comply voluntarily, then we will send out formal administrative orders, which can carry class II penalties of \$130,000," Sharpe said.

Sharpe said he talked to about 30 potential recipients of these notices and most of them said they would take advantage of the voluntary compliance option.

The Automotive Recyclers Association (ARA) offers detailed information on best management practices (BMPs) for this industry segment on its Internet web site. Among the activities the association recommends are: developing a stormwater management policy statement for employees; establishing an incoming vehicle inspection program, including checks for leaks and other unwanted material; and cleaning up debris and trash on a regular basis.

ARA also recommends a vehicle dismantling fluid management program that includes draining used oil, labeling storage containers, reclaiming antifreeze and reusing windshield washer fluid. In addition, ARA's suggested BMPs include parts cleaning programs, vehicle crushing activities, preventive maintenance, spill prevention and response and erosion and sediment control.

For more information about ARA's stormwater BMPs go to www.autorecyc.org/docs/govt/stormwater.html. General information to help automotive professionals can be found at www.ccar-greenlink.org. For details on EPA's auto salvage initiative, go to www.epa.gov/region6/sw. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
• monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$349
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

Check enclosed (payable to Thompson Publishing Group Inc.)

Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group Inc., Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789 or visit our website: www.thompson.com

Stormwater Permit Manual

Bulletin

Volume 8, Number 9

April 1999

EPA Issues Final Unified Animal Feeding Operations Strategy

The federal government has finalized a strategy intended to cut pollution from animal feeding operations (AFO). One principal element of the strategy is reducing animal waste that gets into surface waters as a result of stormwater runoff.

According to a U.S. Environmental Protection Agency (EPA) statement, the country has dramatically reduced pollution from factories and sewerage treatment plants, and it is now focusing on runoff from city streets and agricultural activities.

AFOs are agricultural enterprises where animals are kept and raised in confined situations. Approximately 450,000 AFOs in the United States congregate animals, feed, manure and urine, dead animals, and production operations on a small land area. AFOs can pose a number of risks to water quality and public health, mainly because of the amount of animal manure and wastewater they generate. Manure and wastewater from AFOs have the potential to contribute pollutants such as nutrients (e.g., nitrogen and phosphorus), organic matter,

sediments, pathogens, heavy metals, hormones, antibiotics and ammonia to the environment.

Charles Fox, administrator of EPA's Office of Water, said addressing AFOs is vital because although the number of AFO's has dropped, the size of existing operations has increased dramatically. This results in huge feeding operations being concentrated in smaller areas, Fox said. Many of these operations show no regard for water quality, said Brian Maas, head of water enforcement at EPA. "In many cases, we have found it to be so bad that it has crossed the line into criminal behavior," Maas said.

The strategy represents an attempt to work with AFO operators to improve their environmental performance. According to the strategy, AFO owners and operators are expected to develop and implement technically sound and economically feasible site-specific comprehensive nutrient management plans (CNMPs). A CNMP identifies actions that will be implemented to meet clearly defined nutrient management goals at an agricultural operation.

(Continued on page 2)

AMSA Drafts Legislation to Provide Autonomy, Funding to Municipalities

The U.S. Congress is considering a number of bills that would reduce pollution from nonpoint sources, including one that would give municipal permittees more discretion in addressing urban wet weather flows. Although it is unlikely that significant federal Clean Water Act (CWA) legislation will pass this session, lobbyists say they will focus on getting elements of their agendas addressed in minor legislation or environmental riders.

The *Urban Wet Weather Watershed Act of 1999* is a bill that would address combined sewer, sanitary sewer and municipal separate storm sewer system discharges. The bill, which is being crafted by the Association of Metropolitan Sewerage Agencies (AMSA), is significant because it tackles controversial issues in urban wet weather flows management. If enacted, it would authorize local governments and municipalities to unify the management of all urban wet weather flows within an urban watershed and give them funding and autonomy to allocate funding as they see fit.

(Continued on page 4)

Inside This Issue ...

GM Loses in Court of Appeals Ruling	3
Supreme Court To Rule on Citizen Suits	3
Federal Agencies Release CWAP Status Report	3
Updated State Stormwater Contacts	Tab 800



AFO Strategy

(Continued from page 1)

Among the actions recommended for the CNMPs are diverting clean water from contact with feed lots and holding pens, animal manure or manure storage systems. Clean water can include rainfall falling on roofs, runoff from adjacent lands, or other sources, the strategy states.

Construction and maintenance of buildings, collection systems, conveyance systems and permanent and temporary storage facilities also can be part of the CNMP. These actions are intended to prevent leaks of organic matter, nutrients and pathogens to ground or surface water.

Land application is the most common, and usually most desirable, method of utilizing manure because of the value of the nutrients and organic matter. Land application should be planned to ensure that the proper amounts of all nutrients are applied in a way that does not cause harm to the environment or to public health, the strategy states.

Voluntary Efforts

For the vast majority of AFOs, voluntary efforts will be the principal approach to assist owners and operators in developing and implementing site-specific CNMPs, and in reducing water pollution and public health risks associated with AFOs.

The U.S. Department of Agriculture (USDA) and EPA say they are committed to promoting locally led conservation efforts. As an example, environmental education can promote awareness of possible water quality problems and inform AFO owners and operators about practices that will address such problems, the strategy states. The strategy also spells out financial and technical assistance programs to provide AFO owners and operators with advice on developing CNMPs and implementing solutions. Assistance programs would help defray the costs of building structures (e.g., waste storage facilities for

small operations) or implementing other practices, such as installation of conservation buffers.

Impacts from certain higher risk AFOs are addressed through National Pollutant Discharge Elimination System (NPDES) permits under the authority of the Clean Water Act. AFOs that meet certain specified criteria in the NPDES regulations are referred to as concentrated animal feeding operations (CAFOs). NPDES permits will require CAFOs to develop CNMPs. NPDES permits will also ensure that the animal manure from CAFOs will be utilized properly and require reporting on whether the permittee has a CNMP that includes land application of animal manure and whether it is being implemented properly.

Smaller CAFOs that meet certain conditions may exit the regulatory program at the end of their permit term if they correct the problem(s) that caused them to be covered by the regulatory program. The strategy also describes a "good faith incentive" for some AFOs to avoid being covered by the regulatory program if they have and are implementing a CNMP. Finally, there are tax incentives that may be available to encourage AFO owners and operators to develop and implement a CNMP.

The unified AFO strategy addresses seven strategic issues. These are areas the agencies targeted as being vital to the strategy's success in response to public comments. They are: building capacity for CNMP development and implementation; accelerating voluntary, incentive-based programs; implementing and improving the existing regulatory program; coordinated research, technical innovation, compliance assistance and technology transfer; encouraging industry leadership; data coordination; and performance measures and accountability.

Printed copies of the Unified National Strategy for Animal Feeding Operations may be obtained by calling USDA at (202) 720-3210 or EPA at (202) 260-7786. An electronic version of the strategy is available on the Internet at <http://www.epa.gov/owm>. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group®, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1999 by Thompson Publishing Group®. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group®, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

GM Loses in Court of Appeals Ruling. A federal appeals court ruled that General Motors Corp. (GM) violated a state-issued stormwater permit by discharging metals the company claimed leached from a roof because of deposition of acid rain (*General Motors Corp. v. EPA*, D.C. CA, No. 98-1027, March 23, 1999).

GM contended that the permit terms were unfair and that it should not be responsible for metals in stormwater that were in the discharge as a result of acid rain. But the court sided with the U.S. Environmental Protection Agency (EPA), ruling that the company did not challenge the terms of the permit issued by Michigan regulators until too late.

The court decision affirms a December 1997, Environmental Appeals Board ruling and upholds the \$62,500 penalty assessed by EPA (see *Bulletin*, February 1998, p. 1). GM did not argue that EPA abused its discretion in assessing the penalty. The company instead argued that EPA should have relied upon state law, and not the Clean Water Act (CWA). As a fall back, GM argued against EPA's interpretation of CWA.

The appeals court disposed of these arguments, stating that federal law did indeed apply in this case. Furthermore, the court ruled that EPA was not unreasonable in interpreting CWA to preclude GM from attacking the validity of its state permit in the federal enforcement proceeding.

The court also rejected GM's claim that it did not get appropriate notice that metals present in the rainfall or leached from the roofs or gutters would be considered pollutants that were the responsibility of the permit holder. This is especially true since GM counted the ambient and leached metals in a discharge monitoring report to the Michigan Department of Natural Resources regarding its permit exceedances, the court ruled.

Supreme Court To Rule on Citizen Suits. The U.S. Supreme Court has decided to hear a case that could determine whether citizens can file for injunctive relief in cases where EPA fails to adequately enforce environmental permits. (*Friends of the Earth, et al. v. Laidlaw Environmental Services*, 98-822, March 1, 1999).

In the original lawsuit, the environmental groups alleged that Laidlaw violated its CWA discharge permit and allowed high levels of mercury to be deposited in the North Tiger River in South Carolina.

The 4th Circuit Court of Appeals decided in July 1998 that Laidlaw, which had paid \$400,000 in fines,

did not have to pay injunctive relief to the communities harmed by damage to the environment. By the time the case reached the appeals court, the facility had stopped violating its permit, the appeals court ruled.

In deciding the case, the appeals court referred to a Supreme Court ruling, *Steel Company v. Citizens for a Better Environment*, which found that citizens could not file suit for past environmental damages because penalties would go to the federal government, eliminating the citizens' legal standing.

However, environmental groups claim Laidlaw continued to violate its permit conditions after paying the original fine, and, therefore, it should be required to pay injunctive relief to the community. The Supreme Court is likely to hear the case this Fall.

Federal Agencies Release CWAP Status Report. EPA and eight other federal agencies have released a report on first-year accomplishments under the Clinton administration's clean water action plan (CWAP).

Announced by Vice President Gore in February 1998, the plan seeks to protect public health and restore waterways by setting strong goals and providing states, tribes, communities, farmers and landowners with the tools and resources to meet them. According to the report, accomplishments include the first national assessment of watershed conditions; a strategy to control runoff from animal feeding operations; an emergency plan to coordinate federal response to harmful algal blooms; and the first national Internet listing of beach water quality conditions. The report highlights the progress that has been made in implementing the plan and outlines the agenda for the coming year.

The action plan is a set of 111 actions designed to protect water quality by strengthening state and local programs. The four major objectives of the plan are to improve and expand information available to the public; address polluted runoff; enhance natural resources stewardship; and protect public health.

In the future, EPA and other federal agencies can be expected to curb urban sprawl by emphasizing "smart growth" and to reduce pollution from non-point sources. The primary focus of these initiatives will be farmers, particularly livestock farmers, and urban wet weather discharges, which could translate to restrictions on new development.

For copies of the clean water action plan and the First Anniversary Report from EPA, call (202) 260-5700. The plan and report also are available at: <http://www.cleanwater.gov>. ■

Stormwater Bill

(Continued from page 1)

AMSA executive director Ken Kirk acknowledged that getting the bill enacted in its present form will be difficult because it is unlikely to gain bipartisan support. "We've been told that there are a lot of good ideas and some inventive approaches to addressing urban wet weather issues, but that it's too controversial," Kirk said. "Without endorsement from environmentalists and Democrats in Congress, any bill is dead on arrival," Kirk said.

Still, Kirk was optimistic that he could find a sponsor for the bill. Congress is not going to make drastic revisions to CWA, but AMSA hopes Congress will revise parts of the 27-year-old law, particularly to address funding needs to control municipal discharges, Kirk said. AMSA may break up issues contained in the bill and attempt to get them through Congress individually.

The main issues that AMSA and other water treatment organizations are trying to advance are: decreased reliance upon quantitative water quality criteria; controls implemented only where use enhancements will result; allocation of responsibility for water quality proportionate to water quality impacts; and, most importantly, funding to implement regulatory programs, Kirk said.

If enacted, the bill would authorize permittees to unify management of all urban wet weather flows to allow prioritization and subsequent targeting of limited resources to localized problems. This element of the proposal would prevent the U.S. Environmental Protection Agency (EPA) from implementing "one

size fits all" programs. While federal officials have said they want to put more control in the hands of state and local government officials, the agency is reluctant to give permittees as much autonomy as this bill calls for.

The proposed bill also calls for more qualitative means for measuring the success of urban wet weather control problems. Proponents of the bill argue that the nature of wet weather flows is so variable that establishing numeric criteria is inappropriate. Instead, supporters of the bill want regulatory agencies to rely upon application of best management practices (BMPs) to determine compliance with water quality standards. If, after BMPs are implemented, "continuing water quality impairments directly associated with municipal wet weather discharges continue to occur ... adjustments to the plans and practices may be required in permits to further reduce the impacts of these discharges," the bill states.

Elimination of quantitative measurements for determining compliance with water quality standards is particularly unpopular among environmentalists, who believe that such measurements are generally appropriate for at-risk surface water bodies.

The bill would provide funding through the establishment of a national wet weather grants program to assist local communities in controlling wet weather flows. Funding is something EPA acknowledges is needed to address urban wet weather flows, but Charles Fox, EPA's water administrator said the agency is attempting to commit more funds to reducing pollution from other nonpoint sources, such as farms and animal feeding operations. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
• monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$349
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

**Call Us Toll-Free At 1-800-677-3789 or
visit our website: www.thompson.com**

Stormwater Permit Manual

Bulletin

Volume 8, Number 8

March 1999

EPA Issues Guidance on MSGP Monitoring, Recordkeeping

Stormwater permittees struggling with monitoring and reporting requirements of the multi-sector general permit (MSGP) may find help in a new U.S. Environmental Protection Agency (EPA) guidance document.

The document lists the industrial activities for which permittees are required to report stormwater discharge monitoring results under the MSGP; identifies parameters to be monitored; and spells out when to monitor, and when and where to report monitoring results. In addition, the guidance provides monitoring instructions for industries that transferred permit coverage from the 1992 baseline industrial general stormwater permit; provides instructions on how to record monitoring results on a discharge monitoring report; and lists additional state-specific requirements that facilities, depending on their geographic location, must meet in addition to EPA requirements.

Much of the information in the new guidance already exists in the *Stormwater Permit Manual*, but the

guidance is formatted differently and may provide permittees with answers to some particular questions. For those who already are familiar with the MSGP, the guidance may provide a quick refresher.

According to the guidance, grab samples may be used for all visual, analytical and compliance monitoring required by the MSGP, except in airports, where the agency requires a flow-weighted composite in addition to a grab sample. Visual examinations must be performed quarterly for all industry sectors throughout the permit term. Compliance monitoring must be performed annually by a limited number of permittees throughout the permit term, but certain mine dewatering activities must perform compliance monitoring quarterly. Analytical monitoring is required in this, the fourth year of the permit.

All grab samples must be collected from the discharge resulting from a storm event greater than 0.1 inches in magnitude and that occurs at least 72 hours after the previous measurable storm event. That interval may

(Continued on page 4)

Agency Spells Out FY 2000 Priorities

The U.S. Environmental Protection Agency (EPA) has targeted nonpoint sources of water pollution as a priority for fiscal year (FY) 2000 and it is relying on creative funding methods to help states address priorities in its agenda for next year.

EPA administrator Carol Browner said the agency's FY 2000 budget will fund the clean water action plan and state clean water projects while still reducing industrial pollutant discharges.

The budget, announced Feb. 2, 1999, requests \$7.2 billion for EPA. It calls for an \$850 million decrease in water quality funds from \$3.41 billion to \$2.56 billion. But the plan includes Better America Bonds, which ultimately will increase funds available for clean water projects and increased flexibility for how states use Clean Water State Revolving Funds (CWSRFs), Browner said. The Clinton administration's proposed budget will include a total of \$700 million in tax credits over five years for Better America Bonds. This funding will enable state and local governments to issue \$9.5 billion in bond authority over five years. Communities will have access to zero-interest financing because

(Continued on page 2)

Inside This Issue ...

Texas Group Posts Guidance on Nonpoint BMPs 3

Minor Revisions Made to WET Test Rule 3

EPA Studies Mercury Air Deposition into Water 6

Changes to Multi-sector General Permit Information Tab 500

FY 2000 Priorities

(Continued from page 1)

investors who buy these 15-year bonds will receive tax credits in lieu of interest, Browner said.

Better America Bonds can be used to preserve open space, protect water quality, and clean up brownfields. Vice President Gore calls this bond program, "the largest investment in smart growth and community planning in the nation's history."

The CWSRF is a significant financial tool for achieving clean and safe water, EPA said. With approximately \$14.9 billion worth of capitalization grants and \$28 billion in total assets, all 50 states and Puerto Rico have benefited from this and other wastewater funding. Under current law, the CWSRF is available in the form of low-interest loans, but not as grants.

Twenty-seven states currently are funding nonpoint source and estuary management projects with CWSRF loans. However, CWSRF programs across the country have indicated that more flexibility in funding options is needed to reach more agricultural and other nonpoint source projects. Often the potential recipients of CWSRF funding for nonpoint source and estuary management projects have difficulty repaying a loan. The opportunity for CWSRFs to mix grant and loan funding for these projects has been cited as desirable, EPA said.

Proposed changes for FY 2000 would increase the flexibility states have to direct CWSRF monies to nonpoint source and estuary management projects. The administration is requesting that 20 percent of FY 2000 CWSRF Capitalization Grants be authorized for use as grants, instead of loans, for nonpoint source and estuary projects. The entire allotment of the CWSRF appropriation would be provided to states and Puerto Rico as CWSRF capitalization grants.

Polluted runoff occurs when rainfall, snowmelt, or irrigation runs over land or through the ground,

picks up pollutants, and deposits them into surface or ground water. For instance, polluted runoff from agricultural sources is the leading contributor to water quality impairments in rivers, degrading over 60 percent of impaired river miles, EPA said. The CWSRF can fund virtually any type or category of polluted runoff control project that is included in a state approved Nonpoint Source Management Plan. Projects could include:

- implementation of agricultural best management practices to prevent and reduce runoff;
- conservation tillage equipment;
- soil erosion controls;
- animal waste facilities;
- manure storage facilities;
- dead chicken composters;
- rehabilitation of streambanks, riparian corridors and buffers;
- stormwater management facilities including sediment basins and constructed wetlands; and
- septic system improvements and replacement.

Among the agency's other goals for FY 2000 are reducing industrial discharges of toxic pollutants by four million pounds per year and conventional pollutants by 388 million pounds per year compared to 1992 discharges when growth is accounted for, EPA said.

Other priorities named by EPA include: assuring that states and tribes have effective, up-to-date water quality standards programs; improving the process for developing, adopting and approving water quality standards; strengthening the scientific basis for water quality policies, so that planners and regulatory officials can more accurately characterize receiving and recreational water quality and select appropriate control technologies; and undertaking 350 environmental improvement projects in high priority watersheds. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group®, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1999 by Thompson Publishing Group®. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group®, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Texas Group Posts Guidance on Nonpoint BMPs.

The Texas chapter of the American Public Works Association (APWA) has developed an Internet "SourceBook" to provide public works professionals and others with stormwater management and nonpoint source management information.

The site provides detailed information about urban runoff flow and water quality, which helps the user understand technical information about stormwater runoff including runoff/development relationships. It also helps users understand the statistical significance of data collection, emphasizing the need for adequate sample size.

The site makes an interesting correlation between land use and water quality. It concludes that management efforts should focus on flow because there is a strong functional relation between urban development and the total load of key parameters. This is particularly interesting because home builders and other development interests have argued that the U.S. Environmental Protection Agency (EPA) does not have the statutory authority to regulate flow under the Clean Water Act.

The web site also includes information on best management practices (BMPs) for urban stormwater management. The BMP section consists of guidance regarding the proper application of three types of BMPs: pollution prevention practices, source controls and treatment controls. The site addresses BMPs for construction sites during and after construction and for industrial and commercial activities. There is also an interactive BMP selector.

The site provides guidance on setting community stormwater management goals and offers a comprehensive listing of links to other sites, frequently asked questions and nonpoint source news. The SourceBook was developed by the Statewide Storm Water Task Force of the Texas Chapter, APWA, under a grant from EPA through the Texas Natural Resource Conservation Commission.

Minor Revisions Made to WET Test Rule. EPA Feb. 2 published final guidelines for whole effluent toxicity (WET) testing (64 FR 4975).

The final rule does not drastically alter WET testing methods. In fact, the main change corrects a typographical error in which EPA listed the maximum holding time for aquatic toxicity tests at six hours instead of 36 hours. The rule also revises three technical documents incorporated by reference. The documents are: Methods for Measuring Acute Toxicity of Effluents and Receiving Water to

Freshwater and Marine Organisms, Fourth Edition, August 1993 (EPA/600/4-90/027F); Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water of Freshwater Organisms, Third Edition, July 1994 (EPA/600/4-91/002); and Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Marine Estuarine Organisms, Second Edition, July 1994 (EPA/600/4-91/003).

EPA Studies Mercury Air Deposition into Water.

EPA will soon begin a \$400,000 pilot project in the Florida Everglades and Wisconsin to investigate the best methods for understanding and reducing mercury air emissions that may contaminate lakes, rivers and other water bodies nationwide.

Many states have identified mercury as a major cause of water quality problems. Mercury, emitted into the air by activities such as burning waste and fossil fuel, is a toxic pollutant that can cause health effects in humans and other mammals, with young children being at greatest risk.

This project will help states develop Total Maximum Daily Loads (TMDLs) for water bodies contaminated by mercury. TMDLs are a key requirement of the Clean Water Act, whereby a state identifies specific water bodies that do not meet water quality standards and establishes specific pollution reduction targets for meeting those standards.

For further information, contact Randy Waite at (919) 541-5447 (waite.randy@epa.gov), or Ruth Chemerys at (202) 260-9038 (chemerys.ruth@epa.gov). For general information on TMDLs and EPA's air quality programs, visit <http://www.epa.gov/OWOW/tmdl/index.html> or <http://www.epa.gov/oar/oaqps/>. ■

Calendar of Events

From April until December, the National Stormwater Center will host one-day training courses in 13 locations, including: Chicago; Denver; St. Louis; Portland, Ore.; Norfolk, Va.; Philadelphia; Los Angeles; Phoenix; Boston, San Juan, Puerto Rico and more.

The courses will cover stormwater permitting, state and local programs, enforcement, endangered species certification, stormwater pollution prevention plan maintenance, employee training, facility evaluations and visual and analytical monitoring.

The course costs \$395, with discounts for additional people from the same facility. For more information, contact the center at (561) 288-6852. ■

MSGP Guidance

(Continued from page 1)

be waived if the previous measurable storm event did not result in a measurable discharge from the facility; or where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is conducted.

Visual Monitoring

Visual examinations provide a simple, inexpensive means of obtaining a rough estimate of stormwater quality. Each examination should be taken in a well-lit area by the facility operator, who should collect the sample within 30 minutes of discharge, except at coal mines where samples are required within an hour. Visual examinations should be made for color, odor, clarity, floating solids, foam, oil sheen and any other possible indicators of stormwater pollution.

Facilities are not required to submit visual examination results unless they are required to do so by EPA. However, visual examinations should be documented in the stormwater pollution prevention plan (SWP3), including the date, name of the person conducting the examination, storm event data such as intensity and duration, and the results. Results should be used to identify any problems that need to be addressed, such as oil or grease in the stormwater discharge.

Analytical Monitoring

Analytical monitoring is required only for industry sectors or subsectors that have a high potential to discharge a pollutant at concentrations of concern (see ¶566 of the *Manual* for a list of industry sectors or subsectors that are required to perform analytical monitoring).

Permittees that have just transferred to the MSGP from the baseline industrial permit were required to begin sampling in the second quarter of year four (January-March). Like visual grab samples, analytical samples should be collected within 30 minutes of discharge. Analytical results must be submitted to EPA on a discharge monitoring report (DMR) form. Year four sampling results must be sent to EPA on DMR forms by March 31, 2000.

Results should be compared to benchmark concentrations to evaluate the effectiveness of the facility's SWP3. Facilities that had lower than benchmark values on a pollutant-by-pollutant basis in year two do not have to perform analytical monitoring for those parameters in year four. Facilities that had higher than benchmark values must conduct analytical monitoring in year four and also were required to review and revise their SWP3s to reduce the concentrations of those pollutants in their discharges. If their discharges still exceed benchmark values in year four, the SWP3 must again be revised.

A facility in an industry sector or subsector can obtain an exemption from monitoring from any particular pollutant if the facility operator can certify that no source of that pollutant is exposed or expected to be exposed to stormwater during the sampling period. This certification must be submitted as part of the DMR in lieu of monitoring data. The alternative certification is not available for compliance monitoring for effluent guideline limit certification purposes.

Visual and analytical sampling waivers can be obtained for adverse weather conditions or at unstaffed and inactive sites. These waivers are not available for compliance monitoring and they must be documented in the SWP3.

Compliance Monitoring

The multi-sector permit is available to a limited number of activities that have discharges subject to effluent guidelines. Activities covered are: phosphate fertilizer manufacturing; asphalt paving or roofing emulsion production; material storage piles at cement manufacturing facilities; coal piles at steam electric generating facilities; spray down of lumber and wood products in storage yards used by the timber industry; and coal pile runoff from all facilities covered by the permit.

Facilities listed above must conduct annual monitoring to determine compliance with stated numeric discharge limits. Each monitoring period extends from Oct. 1 to Sept. 30. Results from compliance monitoring must be reported annually and may be used to meet quarterly monitoring requirements for specified pollutants, where compatible.

Facilities with discharges subject to any other effluent limitation guideline may not seek coverage under the MSGP for those discharges. Those facilities must obtain individual stormwater permits.

For more information on procedural methods for conducting stormwater sampling, EPA recommends consulting the *NPDES Storm Water Sampling Guidance Manual* (EPA 833-B-92-001, July 1992), which can be obtained by contacting the Office of Water Resource Center at (202) 260-7786.

For other questions regarding MSGP sampling requirements, see Tab 500 of the *Stormwater Permit Manual*, or the permit itself at 60 FR 50804, Sept. 29, 1995. The Sept. 30, 1998, modifications to the MSGP were published at 63 FR 52480. The complete text of the modified MSGP appears in Appendix 1(e) of the *Manual*.

A draft of the guidance can be obtained now on the Region 6 stormwater home page at www.epa.gov/earth1r6/6en/w/formsw.htm. EPA expects to post a final version on the office of wastewater management's home page at www.epa.gov/owm. ■

Stormwater Permit Manual

Bulletin

Volume 8, Number 7

February 1999

NRDC, EPA Agree To Extend Phase II Deadline Until Oct. 29

Stormwater fans hoping the phase II rule would be issued on March 1 will have to wait an extra seven months, according to a revised court-ordered deadline.

The U.S. Environmental Protection Agency (EPA) and the Natural Resources Defense Council (NRDC) reached the agreement because the agency needed more time to complete the final rule. EPA had been under a court-ordered March deadline because the United States Court of Appeals for the 9th Circuit ruled in 1992 that EPA's decision to regulate construction sites of five acres or greater and to regulate certain industrial categories only if certain materials were exposed to stormwater was "arbitrary and capricious."

NRDC and EPA originally reached a settlement agreement in April 1995 that established the March deadline. However, an order issued Jan. 15 by the U.S. District Court for the District of Columbia stated

that EPA now has until Oct. 29 to complete the final rule.

As part of a consent agreement, EPA is required to meet several deadlines for provisions introduced in the phase II proposal. New deadlines have been established for developing a menu of best management practices (BMP) for municipal separate storm sewer systems (MS4s) and for providing guidance on how MS4s can develop measurable goals. The agreement also calls for EPA to issue model general permits to states authorized to run their own National Pollutant Discharge Elimination System (NPDES) permit program.

Stephen Sweeney, an attorney with EPA's Office of General Counsel, said specific information related to the provisions of the agreement will not be fully fleshed out until the final rule is issued. However, the proposed rule provides the most recent information

(Continued on page 5)

Environmentalists, EPA Settle California Lawsuit; TMDL Schedule Established

The U.S. Environmental Protection Agency (EPA) settled a lawsuit Jan. 20 brought by several environmental groups concerning pollution problems in over 100 water bodies in Los Angeles and Ventura County watersheds.

The Los Angeles Regional Water Quality Control Board, a state agency that was not a party to the lawsuit, already has made commitments to develop pollution reduction plans, known as total maximum daily loads (TMDLs), for many of these waters. In the settlement, EPA guarantees that TMDLs will be established on a specified schedule for named pollutants and water bodies over the next 13 years.

David Beckman of the Natural Resources Defense Council (NRDC) and lead attorney for the environmental groups, said the state would likely conduct the TMDLs with the help of EPA funding. NRDC, Heal the Bay and Santa Monica Baykeeper filed suit against EPA because the environmental groups claimed the agency was not enforcing the Clean Water Act's (CWA) TMDL requirement, Beckman said. Under CWA, TMDLs must be conducted in impaired waters if secondary treatment technology

(Continued on page 2)

Inside This Issue ...

Storm Warnings	3
Agencies Draft Protective Measures for Endangered Species	4
EPA Publishes Listing of Watershed, Stormwater Courses	6
Updated Modified Multi-sector General Permit Information	Tab 500

California TMDLs

(Continued from page 1)

based standards and best available technology at industrial sources have been implemented.

A TMDL is the amount of a pollutant a waterway can absorb — plus a margin of safety — and still meet water quality standards, including designated uses such as drinking water, aquatic life, and recreation. TMDLs include quantitative assessments of water quality problems, pollution sources, and pollution reductions needed to restore and protect a river, stream or beach.

The TMDL process under CWA provides a framework for assessing the environmental problems in a watershed and identifying pollution reductions needed to protect water resources. CWA gives states the primary responsibility for establishing TMDLs, but ultimately the burden for conducting TMDLs falls to EPA.

By agreeing to conduct these TMDLs, environmental groups hope the agency can isolate specific contaminants and identify their sources, Beckman said. Although sources of many pollutants are already known, TMDLs will provide data to support tighter restrictions in NPDES permits, he said. In some cases, state water control board permits have failed to adequately restrict pollutant discharges, Beckman added. The agreement commits EPA to establish TMDLs within one year if the regional board misses a deadline.

The schedule for adoption of TMDLs set by the consent decree is pending review by the U.S. District Court in San Francisco. The Association of Sewage Treatment Plants has filed an intervention in the case with the court. At press time, the court had not ruled on the intervention or on the consent agreement.

John Bishop, a senior water resource control engineer who is heading up the TMDL effort for the

Los Angeles water quality control board, said despite the holdup in approval of the consent agreement, the board was moving forward with the TMDLs.

However, to date the board does not have specific protocols in place for conducting TMDLs, Bishop said. Lack of specific guidance on TMDL protocol is a problem experienced by many state and local regulators. Bishop said that the Los Angeles water board would focus on non-point sources of both wet and dry weather flows as well as industrial point sources. But that there were no clear cut guidelines in place for conducting them.

"The lawsuit led to this emphasis on TMDLs, but it was something we've been concerned about," Bishop said. "Because of EPA funding that was made available as a result of the suit, we have been able to begin working on TMDLs," he added.

Nationally, there have been over 25 lawsuits related to the CWA TMDL program. This settlement is the third successful TMDL lawsuit in California. The first involved northern California coastal rivers, and the second involved the Newport Bay watershed in southern California, EPA said.

More information can be found on EPA's Internet homepage at <http://www.epa.gov/OWOW/tmdl/index.html>. ■

Correction

There were two errors in last month's article on the best management practices database being developed by the American Society of Civil Engineers (ASCE) and the U.S. Environmental Protection Agency.

The *Bulletin* incorrectly referred to ASCE as the American Society of "Chemical" Engineers. Also the web address should have read <http://www.asce.org/peta/tech/nsbd01.html>. We apologize for any inconvenience the errors may have caused. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group®, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group®, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1999 by Thompson Publishing Group®. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group®, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Proposes \$132,500 Fine Against N.H. Tanner. The U.S. Environmental Protection Agency (EPA) Jan. 7 proposed a \$132,500 penalty against a New Hampshire-based leather tanning facility for numerous environmental violations, including alleged illegal stormwater releases into the Suncook River.

The penalty stems from various violations at Suncook Leather Inc.'s tanning operation in Pittsfield, N.H. All of the alleged violations stem from Clean Water Act requirements, EPA said.

Among other violations, EPA cited the company for failing to apply for a stormwater discharge permit, for discharging stormwater without a permit and for failing to file semi-annual monitoring reports related to pretreatment of industrial wastewater. The operation's wastewater is discharged to a municipal wastewater treatment facility.

Suncook Leather also was cited for failing to maintain its 1974 spill prevention plan, which is required for the operation of the company's 15,000-gallon fuel tank situated five feet from the river. Federal law requires that the spill prevention plan be reviewed and evaluated every three years.

"Suncook Leather's environmental compliance performance has been lacking," said John P. DeVillars, administrator of EPA's New England office. "The stormwater discharge violations are especially disturbing considering that the company stores substantial quantities of hides, hide scraps and wastewater treatment sludge outdoors, where they are exposed to stormwater that eventually discharges into the river."

Suncook's President David Ossoff said the company would request an informal hearing "because we feel there is room for discussion on this case." But beyond that, he chose not to comment.

EPA inspectors discovered the alleged violations during a series of inspections in 1996 and 1997.

EPA Announces Stormwater Conference. EPA issued a conference announcement and call for papers for a meeting on urban water resource management and protection. The meeting will focus on a number of stormwater issues. Most notably, it will address the provisions in the phase II stormwater rule.

According to the announcement, all abstracts must be received by no later than March 1, with notification of acceptance/rejection scheduled for April 15.

The conference is set for February 7-10, 2000 in Chicago and is co-sponsored by the Northeastern Illinois Planning Commission.

The national conference is designed to promote the educational process, and to transfer state-of-the-art information to state, regional and local urban water quality practitioners, EPA said.

The timing of the conference coincides with the anticipated release of EPA's phase II national pollutant discharge elimination system (NPDES) stormwater program final rule later in 1999, according to the notice.

The conference will provide participants with practical, applied information on the most effective tools and technology for meeting NPDES permit requirements. Conference topics will emphasize the phase II program's six priorities: public education; public involvement; detection and elimination of illicit discharges; construction site runoff control; post-construction stormwater management; and pollution prevention for municipal operations.

To be considered for the conference program, authors should submit an abstract of 300 to 400 words that succinctly describes their project and approach.

To submit an abstract, or to be placed on the distribution list for future conference announcements and semi-final program mailings, contact: Bob Kirschner, Natural Resources Department, Northeastern Illinois Planning Commission, 222 S. Riverside Plaza, Suite 1800, Chicago, Ill., 60606; call (312) 454-0401, ext. 303; or email bobkirs@nipc.org.

EPA Publishes Guidance on Urban Nonpoint BMPs. EPA has made available over the Internet a guidance called *Techniques for Tracking, Evaluating and Reporting the Implementation of Nonpoint Source Control Measures*.

The guidance assists companies using best management practices (BMPs) to establish protocols for evaluating BMP effectiveness. It also helps in the implementation of erosion and sediment control programs. The guidance may be of particular use to municipalities and construction site owners that will be subject to the phase II stormwater regulation. In particular, the report covers monitoring programs, quality assurance and quality control and data management techniques.

To obtain a copy of the publication on the Internet, go to www.epa.gov/ow/news.html. The document can be found under the Jan. 10 heading of "Whats New" on the Office of Water web site. ■

Agencies Draft Protective Measures for Endangered Species

Three federal agencies have reached a draft memorandum of agreement (MOA) on how to coordinate Section 7 Endangered Species Act (ESA) provisions with Clean Water Act (CWA) permits (64 FR 2742, Jan. 15, 1999).

The draft MOA reached among the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (USF&WS) and the National Marine Fisheries Service (NMFS) addresses the protection of endangered and threatened species under the water quality standards and national pollutant discharge elimination system (NPDES) programs established by Sections 303(c) and 402 of CWA.

The agencies believe that a national agreement will help achieve the complementary goals of CWA and ESA. Section 101(a) of CWA states that the goal of the act is to restore and maintain the chemical, physical and biological integrity of the nation's waters. A water body whose quality is contributing to a species' risk of extinction is not fulfilling CWA's objectives or meeting the objectives of ESA. The goal of both statutes is to provide "a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved," the notice states.

No Immediate Impact on Stormwater

Tom Charlton, an EPA attorney who worked on the MOA, said existing provisions in stormwater permits are protective of endangered species, but he added that efforts to protect species in stormwater permits were early attempts "at figuring out how to incorporate ESA provisions into permits." The agency may make minor changes to stormwater ESA provisions when the permits are up for renewal, Charlton said.

Also, Charlton said that the agency could not force states to adopt provisions of the MOA in their permits, but to the extent that state permits must meet water quality standards, they already protect endangered species. When states reissue permits, they are required under CWA to send copies to USF&WS. If those permits are not sufficiently protective of endangered species, EPA could "get involved," Charlton said.

Friction among the agencies involved in coordinating ESA and CWA requirements has been no secret. But, in recent years, the three agencies have increased efforts to achieve greater integration of CWA and ESA programs, the notice states.

These activities have included ESA Section 7 consultations on EPA's actions approving state and tribal water quality standards and NPDES permitting programs. These consultations have generally been conducted by regional and field offices on a case-by-case basis.

The draft agreement is intended to accomplish the following:

- use a team approach at the national, regional and field office levels to restore and protect watersheds and ecosystems to meet the goals of ESA and CWA;
- improve the framework for meeting responsibilities under Section 7 of ESA;
- enhance the process for protecting and recovering endangered species and their ecosystems;
- improve methods for coordinating compliance with CWA and ESA;
- streamline the federal agency coordination process to minimize the regulatory burden;
- ensure a nationally consistent coordination process that allows flexibility to deal with site-specific issues;
- develop mechanisms for EPA participation in the development of recovery plans for federally-listed species threatened by water pollution; and
- identify a collaborative mechanism for planning and prioritizing future CWA/ESA actions and resolving potential conflicts through a structured time-sensitive process at the lowest possible level within the agencies.

In addition, the three agencies will look for opportunities to conduct studies in a coordinated manner so that resources are not wasted on piecemeal research projects, Charlton said.

A coordinated national approach would help ensure an appropriate level of protection for listed species and greater regulatory predictability for states, tribes and the public, the notice states. Enhanced cooperation among the agencies should also help avoid the need to list new species under ESA and facilitate recovery of species so that they no longer require protection under ESA.

The draft MOA also seeks to make ESA Section 7 consultations more timely and efficient. Some consultations among EPA and the other agencies have been protracted: the average water quality standards consultation has, for example, taken approximately eighteen months. By providing guidance to field offices, enhancing coordination and establishing procedures for resolving disagreements, the draft MOA seeks to streamline the consultation process.

The draft MOA describes several activities that EPA and the other agencies will undertake at the national level to facilitate consideration of endangered species issues in the water quality standards program. For example, the MOA states that EPA will propose to

amend its water quality standards regulations (40 CFR part 131) to codify existing protection for endangered and threatened species under CWA.

State and Tribal Permitting Programs

The draft MOA also establishes a framework for the participating agencies to work together on permits issued by states or tribes under Section 402 of CWA. All state and tribal programs must meet the same minimum requirements under Section 402, and EPA will assure that all permits meet state or tribal water quality standards, including those that have been the subject of consultation or have been determined to have "no effect" on listed species and critical habitats.

The three agencies have agreed to coordinate as follows in the review of EPA-issued permits.

1. The agencies will provide to EPA, when requested, information regarding the presence of federally-listed species, critical habitat, proposed species and proposed critical habitat, including species lists, maps, and other relevant information.

Phase II Deadline Delayed

(Continued from page 1)

about the menu of BMPs and the measurable goals discussed in the settlement.

According to the consent order, by Oct. 27, 2000, EPA must issue the menu of BMPs applicable to MS4s. This menu, originally due March 1, 2001, is intended to help MS4s meet the six minimum measures spelled out in the Jan. 9, 1998, phase II proposal.

The minimum measures are: public education; public involvement; detection and elimination of illicit discharges; construction site runoff control; post-construction stormwater management; and pollution prevention for municipal operations. The minimum measures menu was discussed in several federal advisory committee meetings. The purpose of the menu is to provide small MS4s with additional guidance to assist them in implementing stormwater programs, the phase II proposal stated.

The menu is supposed to be tailored to regionally appropriate BMPs and the proposal called for the permitting authorities to develop these menus, but the consent order states that EPA will be responsible for meeting the deadline for issuing the menu. Prior to the menu's issuance, the wet weather advisory committee will have an opportunity to provide review and comment on the menu. EPA also must complete a peer review of the technical components of the menu within six months of its issuance.

The agreement also calls for EPA to issue within one year of publication of the menu, a guidance docu-

2. EPA will review permit applications and other available information to determine if issuing a permit may affect any federally-listed species or critical habitat. If EPA makes a "no effect" finding, it will document this determination in the permit record before public notice.

3. If EPA determines that the permitted action may affect federally-listed species or critical habitat, the agency will initiate a consultation. If EPA determines that the permitted action is likely to jeopardize proposed species or adversely modify proposed critical habitat, a conference will be held.

4. The agencies will take measures to minimize incidental takings. USF&WS and NMFS will describe such measures and EPA may delegate the terms and conditions of the incidental take statement to permittees.

Submit comments by March 16, to W-98-32, ESA Comment Clerk, Water Docket (MC4101), EPA 401 M St. S.W., Washington, D.C., 20460. For further information, contact Barbara McLeod of EPA, at (202) 260-5681; Margaret Lorenz of NMFA at (301) 713-1401; or Richard Hannan with the USF&WS, at (703) 358-2171. ■

ment to assist MS4s in the development of measurable goals and to help them design and assess the effectiveness of these minimum measures.

Measurable goals are the specific goals related to implementing the minimum measures. An example of the measurable goals might be a targeted number of times that stormwater conveyances would be cleared of debris. The proposal states that where measurable goals are identified in a notice of intent, these goals would not constitute a condition of the NPDES permit unless EPA or the state has issued regionally appropriate BMPs that are cost effective. In cases where measurable goals are enforceable, they would be enforceable against municipalities, according to the proposal.

Also by Oct. 27, 2000, the new agreement calls for EPA to distribute to states authorized to administer their own NPDES programs, model general permits for the regulation of the categories of point sources designated for regulation under Section 402(p)(6) of the Clean Water Act.

The term "model general" permit was not used in the proposal. Section 402(p)(6) specifies municipal and industrial point sources. Model permits would apply to small MS4s and construction sites, but exactly how they would look will be spelled out "at some later time," Sweeney said.

An EPA source said the agreement was structured to speed up implementation of the rule in exchange for the extended deadline, but the source could not address specific issues in the settlement. ■

EPA Publishes Listing of Watershed, Stormwater Courses

The U.S. Environmental Protection Agency (EPA) has published a document to inform the public about watershed courses offered by state and federal agencies. According to the inventory of courses, agencies will hold 180 watershed-related training courses across the country as part of the Clinton administration's Clean Water Action Plan.

The inventory includes one page summaries on each course. The courses, which last between one day and two weeks, include on-site training as well as several learning modules available on the Internet.

Each course summary includes a brief description of the course, contact information for follow up, sponsoring organization and general guidelines on schedules and recommended target audiences.

Training courses are divided into the following categories:

- general watershed courses (includes general survey or overview courses);
- water quality courses (includes physical, chemical and geological processes);
- ecosystem management courses (includes biological and habitat issues);
- regulatory courses (includes training to satisfy various regulatory needs);
- data collection and management courses (includes field sampling procedures); and

- outreach and public involvement courses (includes outreach, stakeholder and partnership issues).

Among the courses specifically related to stormwater are: Stormwater Detention Basin Design; Planning, Implementing and Financing Stormwater Management Programs; Creating and Using Wetlands for Wastewater and Stormwater Treatment and Water Quality Improvement; Incorporating Water Quality into Stormwater Design; and Design of Stormwater, Sediment, and Erosion Control Systems.

For more information, go to www.epa.gov/OWOW/watershed/wacademy/catalog.html. ■

Calendar of Events

In 1999, the National Stormwater Center will be hosting one-day training courses in 15 locations throughout the United States.

The courses will cover stormwater permitting, state and local programs, enforcement, endangered species and historic preservation certification, stormwater pollution prevention plan maintenance, employee training, facility evaluations and visual and analytical monitoring.

The course costs \$395, with discounts for additional people from the same facility. For more information, contact the center at (516) 288-9914. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
• monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$349
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act . \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group®)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group®, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

**Call Us Toll-Free At 1-800-677-3789 or
visit our website: www.thompson.com**

Stormwater Permit Manual

Bulletin

Volume 8, Number 6

January 1999

MSGP Monitoring Not Required in First Quarter for Transferees

Stormwater dischargers that have switched from the industrial baseline general permit to the multi-sector general permit (MSGP) must begin monitoring their discharges in the second quarter of fiscal year 1999, according to a recent memorandum from Mike Cook, director of the U.S. Environmental Protection Agency's (EPA) Office of Wastewater Management.

This memorandum comes as facilities scramble to determine their monitoring responsibilities under the modified MSGP. The MSGP differs from the baseline permit with regard to the schedule for analytical monitoring. The now-expired baseline permit required monitoring for certain facilities once or twice each year during the term of the permit. The MSGP, however, requires that monitoring be performed quarterly.

For transferred facilities and other dischargers obtaining MSGP coverage after Sept. 30, 1997 (i.e., new dischargers, existing unpermitted dischargers and dischargers switching from an individual national pollutant discharge elimination system (NPDES) permit to the MSGP), monitoring will only be required in year four (Oct. 1, 1998, through Sept. 30, 1999).

Cook said permittees that transfer from the baseline permit were not required to conduct MSGP monitoring in the first quarter (i.e., October to December 1998) because the transferees' coverage under the MSGP begins in the middle of that quarter (63 FR 52440). Transferees from the baseline permit only are required to perform monitoring to cover their 1998 responsibilities under the baseline permit. All permittees that transfer from the expiring baseline permit

(Continued on page 4)

ASCE, EPA Ready BMP Effectiveness Database for Phase II Rule Promulgation

The U.S. Environmental Protection Agency (EPA) and the American Society for Chemical Engineers (ASCE) are soliciting information about the effectiveness of best management practices (BMPs) as part of a broader program to develop a database to help small communities cope with requirements under the impending phase II stormwater rule.

Although extensive literature on urban stormwater BMP design, maintenance and effectiveness exists, there has been no centralized, easy-to-use, scientifically-sound tool for assessing the appropriateness of BMPs under various conditions, according to ASCE. In addition, the information contained in the literature collected to date has not been collected and developed using consistent methods, reporting information and analysis techniques that would allow for the scientific assessment of the effectiveness of various BMP designs.

The BMP database will be used as a management tool for information needed to evaluate the effectiveness of urban stormwater runoff BMPs

(Continued on page 3)

Inside This Issue ...

EPA Publishes Water Quality Criteria	2
Municipal Numeric Limitations Unlikely in Phase II	2
EPA, USDA, Poultry Farmers Reach Agreement	2
Updated Georgia State Page	Tab 800

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Publishes Water Quality Criteria. For the first time, the U.S. Environmental Protection Agency (EPA) Dec. 7, 1998, published water quality criteria for 157 pollutants (63 FR 67548).

The compilation is designed to provide guidance to states and tribes in adopting water quality standards under section 303(c) of the Clean Water Act (CWA). The water quality standards are the basis on which permitting authorities make decisions about allowing discharges in national pollutant discharge elimination system permits.

CWA requires EPA to develop and revise water quality criteria periodically. Once new or revised criteria are issued, states are expected to adopt them in their water quality standards within five years

For more information, contact Cindy Roberts with the Office of Water's Health and Ecological Criteria Division at (202) 260-2787. The criteria can be downloaded from the Internet at: <http://www.epa.gov/ngispgm3/iris/irisdat>.

Municipal Numeric Limitations Unlikely in Phase II. According to a published report, EPA does not plan to issue effluent guidelines for municipal discharges as part of the phase II stormwater rule.

Inside Washington's *Environmental Policy Alert*, reported that preliminary findings evaluating the need for water quality standards to address urban stormwater concluded that numerical standards, in most cases, are not appropriate for stormwater discharges. This issue has been the subject of much debate in federal advisory committee meetings.

Environmentalists have called for some numeric limitations based on water quality standards. But many other participants support the conclusions of EPA's preliminary findings in the report stating that

the variability of storm events makes application of water quality standards inappropriate.

The report was developed as part of a settlement of a lawsuit by the Natural Resources Defense Council (see *Bulletin* November 1997, p. 1). The consent agreement called for EPA to conduct studies to assess the need for further application of effluent guidelines in a number of discharge categories, including municipal stormwater dischargers.

EPA could not be reached for comment, but more information on the report's conclusions will be provided as soon as it is available.

EPA, USDA, Poultry Farmers Reach Agreement. An agreement reached by EPA, the U.S. Department of Agriculture and a coalition of poultry farmers will lead to reduced runoff, according to signatories.

The agreement calls for poultry farmers to develop nutrient management plans that address nutrient value of poultry waste. Farmers generally dispose of this waste and bedding used in barns in fields where it provides nutrients for crops or augments soil.

The litter management plans would be developed in the context of "whole farm nutrient management," which considers chemical fertilizers, other animals, such as cows and types of row crops, according to a statement by the National Broiler Council, a participant in the agreement. Company owned farms and those contracting with companies since 1993 would have to have nutrient management plans in place by 2001, while smaller independent farmers would have more time.

Farmers also would have to submit annual reports to regulators on the amount of litter applied to land, the amount removed from poultry houses and the amount transferred for alternative use. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1999 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

ASCE Database

(Continued from page 1)

nationwide, according to ASCE. The long-term goal of the project is to promote technical design improvements for BMPs and to better match their selection and design to the local stormwater problems being addressed, ASCE said.

In 1995, under the first phase of this project, EPA and several stormwater professionals began developing a framework for the information needs of individual studies of BMP performance so that, when these studies were evaluated together, the factors that led to the reported performances could be used to improve BMP design and selection. In addition, an annotated bibliography on known BMP evaluations was compiled. This work resulted in a recommended work plan to develop the national database and BMP performance evaluation protocols.

The database has been designed with a user-friendly relational database software package to enable consistent storage, retrieval and use of BMP evaluation data, ASCE said. Initially, the database will be limited to a compilation of information on known BMP evaluation efforts over the last 15 years in the United States.

Eventually, the database will include the nationwide collection of information on the characteristics of structural and non-structural BMPs, data collection efforts (e.g., sampling and flow gauging equipment), climatological characteristics, watershed characteristics, hydrologic data, and constituent data. The data entered into this database will be subject to stringent quality control review. The database will continue to grow as new BMP data become available. The database software and initial data entries are expected to be completed in 1999. Both will be distributed by CD-ROM. Updates will probably be made available through the Internet, ASCE said.

John Jones, vice president of Wright Water Engineers Inc. in Denver, said about 50 test versions were sent out and that they are in the process of working out some kinks uncovered by the reviewers. The database itself will focus on BMPs for typical residential developments, commercial office parks and highways, but information also will be provided on industrial activities, Jones said. The beta-version will be available for widespread distribution in early summer, Jones added.

To make this effort successful, a large database is essential. Consequently, it is imperative that BMP designers, owners and operators from throughout the United States submit their BMP performance evaluation data and associated BMP watershed characteristics for potential entry into this database, ASCE said. In addition, researchers planning to conduct BMP performance evaluations in the future

should compile and collect the BMP reporting information as described in the BMP information needs listing developed during the first part of the project.

Development of the database will fall into four tasks. Task 1 will be to develop a BMP Information Management Database. This database will store, manage and facilitate the analysis of BMPs and their performance. This database system will have two major packages. The first, a stand-alone package for distribution by ASCE to its members and others testing BMPs, must be a user-friendly, menu-driven system that will permit needed data from individual investigation efforts to be entered and then transferred to a national database in a seamless fashion. The second package, a national data server and management package, will allow operation of a nationwide data system to store, manage and retrieve for analysis information on BMP performance. The data server system also will make information accessible to the general public, possibly through the Internet.

Under Task 2, ASCE will evaluate the usefulness of each available study and extract the data from the studies in the reference database. These data will be entered into the database created under Task 1. Task 3 will be to conduct an evaluation of the BMP data to assess performance of BMPs and the factors that may have led to the observed performance. Based upon this analysis, ASCE will report on implications for the design and use of BMPs. It also will review the data collection protocols for future BMPs. Revisions to protocols will be made as necessary, ASCE said.

Using the assembled performance data and design and location factors, an analysis will be conducted to quantify those factors that affected BMP performance. "We will clearly identify which factors contributed to BMP performance, which factors did not contribute, and which need further study to determine linkage," ASCE said. Potential factors include hydrologic, hydraulic, physical and geographic. The findings will be presented at a workshop to which experts will be invited to comment on the findings before the evaluation is finalized.

Task 4 will be to develop a long-term work plan to carry out future tasks under this cooperative agreement to link the BMP performance data with receiving water quality and physical data. An important aspect of this task will be to conduct a workshop with experts to evaluate BMP performance data and receiving water quality and physical data. Linking BMP performance with water quality results will improve future BMP design and implementation, which will in turn improve receiving water quality, ASCE said.

For more information about this database, contact Eric Strassler with EPA's Office of Water at (202) 260-7150; or go to ASCE's web site at <http://www.asce.org/peta/tech>. ■

MSGP Monitoring

(Continued from page 1)

are required to conduct any applicable analytical monitoring that the modified MSGP requires in the second quarter (January to March 1999), Cook wrote.

Permittees must perform all required monitoring regardless of whether they have fully implemented their stormwater pollution prevention plans (SWP3s). Because the permittees must begin to implement their SWP3s before the end of the second quarter monitoring period, permittees may elect to perform the second quarter monitoring either before or after they begin to implement the SWP3s.

The baseline general permit required grab and composite sampling for most parameters. As an alternative, the baseline permit also provided for one grab sample to be taken from a holding pond with a retention period greater than 24 hours. The requirements of the MSGP have been simplified in that only a grab sample is required for all sectors except Sector S (air transportation) where grab and composite samples are required. Both the baseline permit and MSGP require that the grab sample be taken within the first 30 minutes of the discharge, unless this is impractical, in which case sampling is required within the first hour of discharge.

MSGP Visual Examination Requirements

The MSGP requires quarterly visual examinations of stormwater discharges for all sectors except Sector S. It requires that grab samples of stormwater discharges be taken and examined visually for the presence of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen or other obvious indicators of stormwater pollution. The sampling must be conducted quarterly during the following time periods: January-March, April-June, July-September and October-December of each year. The reports summarizing these quarterly visual stormwater examinations must be maintained onsite with the SWP3.

The baseline general permit did not include requirements for visual examinations and facilities that transfer to the MSGP will have to comply with these additional sampling requirements. For transferred facilities, these sampling requirements would begin in the first full calendar quarter of coverage of the MSGP. EPA believes that this type of sampling provides an inexpensive means for permittees to quickly assess the effectiveness of their SWP3s and to make any necessary modifications to address the results of the visual examinations.

Exemptions from Analytical Monitoring

Both the MSGP and the baseline general permit include certain provisions for exemptions from

analytical monitoring. Both permits provide that facilities need not monitor if they certify that no significant materials or industrial activities are exposed to stormwater. For the MSGP, however, the certification is on a pollutant-by-pollutant, outfall-by-outfall basis; i.e., if there are no exposed sources of a particular pollutant, then monitoring for that pollutant at that outfall does not need to be conducted. For the baseline permit, monitoring had to be conducted for the entire suite of pollutants required by the permit if any industrial materials or activities were exposed.

The MSGP also includes an exemption from monitoring (again on a pollutant-by-pollutant basis) in the fourth year of the permit if the monitoring results of the second year are below certain benchmark values (63 FR 52440).

The baseline permit required continued analytical monitoring for certain categories of facilities throughout the term of the permit regardless of sampling results. For facilities that transfer to the MSGP from the baseline industrial permit, monitoring is not required in year four for individual listed pollutants if the average of the two most recent monitoring results conducted for the baseline permit was below the benchmarks. However, if monitoring was not conducted for the appropriate pollutants, then the exemption would not be available. In addition, the exemption would not be available if the industrial activities at a facility have changed to the extent that the most recent monitoring results do not reflect discharges from current activities.

It should also be pointed out that a monitoring exemption based on the absence of exposure at a facility is available in year four of the MSGP regardless of past monitoring results. This exemption is available for facilities already covered by the MSGP and those that have transferred to the MSGP from the baseline permit. EPA believes that the exemption provides an incentive for facilities to eliminate exposure of materials and activities to stormwater, thereby reducing pollutant discharges. Discharges that are subject to numeric effluent limitations are not eligible for any of the exemptions from monitoring.

The MSGP requires that monitoring results be submitted to the permitting authority at the end of 1999 (postmarked by March 31, 2000, for the year four monitoring period). The results of the quarterly visual examinations need not be submitted but must be retained onsite with the SWP3.

All new transferees from the baseline permit have until March 29, 1999, to amend and implement their SWP3s. If stormwater control measures need to be constructed per the pollution prevention plan, permittees are allowed until October 1, 2000, to implement those measures (63 FR 52439). ■

Stormwater Permit Manual

Bulletin

Volume 8, Number 5

December 1998

Special Report

Paper Details Structural BMPs in Road Building, Development

The following excerpted version of a paper published by North Carolina State University analyzes structural best management practices for road building and other development projects. The paper details the pros and cons of each method and the expected level of pollution reduction.

All stormwater permits require dischargers to minimize, or if possible, eliminate, potential sources of stormwater pollution by following best management practices (BMPs). BMPs may take many forms, depending on the conditions present at a given site and the type of activity—industrial or construction—that the discharger is undetracting.

Following is a discussion of eight different structural BMPs for controlling or preventing contamination of stormwater runoff during road building and new construction.

Dry Detention Basins

Dry detention basins release stormwater slowly after a storm to reduce flooding and remove pollutants. They are referred to as "dry basins" because they are meant to dry out between rain events. Overall pollutant removal in dry detention devices is generally low. Important reasons for using dry detention basins are reducing peak stormwater discharges, controlling floods and preventing downstream channel scouring.

The major failure of dry detention basins is that they often release water too slowly to empty the basin before the next storm. Since the basin is partially full, only a portion of the runoff from the next storm is detained and the remainder runs directly into the stream. With little or no detention, few pollutants are

(Continued on page 4)

California Stormwater Enforcement Law Raises Efforts To Identify Non-filers

Outgoing California Gov. Pete Wilson recently signed into law a measure to increase enforcement of stormwater regulations (see *Bulletin* June 1998, p. 2).

The law, sponsored by state assembly member Sheila Kuehl, requires the State Water Resources Control Board to send letters requesting information from facilities it suspects should have filed for a stormwater discharge permit. Facilities that do not respond could be subject to fines.

According to a press statement issued by Kuehl, there "may be as many as 34,000 facilities that have not yet obtained permit coverage for stormwater discharges."

The Stormwater Enforcement Act of 1998 was issued for three primary reasons. According to the Act, unregulated stormwater runoff is a leading cause of contamination of the state's surface water and groundwater.

(Continued on page 2)

Inside This Issue ...

EPA Publishes Regulatory Agenda 3

Rittenhouse Maps Out MSGP Future 3

Changes made to information on types of stormwater permits Tab 200

Modified multi-sector general permit language integrated into original permit

Appendix 1(e)

California Law

(Continued from page 1)

Second, noncompliance with existing federal and state stormwater regulations hinders the state's ability to attain its water quality objectives. Third, it is necessary to establish a state stormwater enforcement scheme that ensures fair, predictable, and consistent state enforcement of stormwater requirements by the State Water Resources Control Board, the law states. The measure also ensures that useful information is available to help protect the environment from the harmful effects of polluted stormwater.

Under the law, stormwater fees will be reduced for facilities that submit a no exposure certification. These fees will drop to \$250, and to \$50 per year thereafter.

By Feb. 1, 2000, and on each Feb. 1 thereafter, the state board, will issue a report that includes:

- a list of those notified of their duty to comply with a stormwater permit and a description of the responses received to those notifications (including notices of intent (NOI) to obtain coverage or notices of nonapplicability, returned mail and no response, appeals of filing or permitting requirements, site inspections, enforcement actions taken and penalties assessed); and
- a list of those dischargers that, during the previous calendar year, failed to submit an annual report or construction certification required by a regional board, and any penalties assessed.

According to the law, each year the regional boards must attempt to identify dischargers that have not obtained coverage under an appropriate stormwater permit. The regional board will send notices to any facility "that discharges, proposes to discharge, or is suspected by a regional board or the state board of

discharging stormwater associated with industrial activity that has not obtained coverage under an appropriate stormwater national pollutant discharge elimination system (NPDES) permit." Facilities will have 30 days to submit an NOI to obtain coverage or a notice of nonapplicability that specifies the basis for not needing to obtain coverage under an NPDES permit.

If a targeted facility fails to submit either an NOI or notice of nonapplicability the board will send a second notice to that discharger. If the entity fails to respond to either notice within 60 days the regional board will impose penalties.

An industrial stormwater discharger that fails to submit an NOI will be subject to fines of at least \$5,000 per year, unless there are mitigating reasons for reducing or eliminating the fine, the law states.

An industrial discharger that fails to submit a notice of nonapplicability or a construction discharger that fails to submit an annual report or construction certification will be fined at least \$1,000 per year, the law states

The regional board may allow a violator to reduce penalties by up to 50 percent by undertaking a supplemental environmental project (SEP). An SEP is an environmentally beneficial project that would not normally be undertaken in the absence of an enforcement action.

Money generated from fines will be deposited in the Waste Discharge Permit Fund and will be used for carrying out stormwater programs, the law states.

By May 1, 2000, and each year thereafter, the state board will submit a report to the legislature summarizing the enforcement actions undertaken in the previous calendar year and the results of those actions. Included in the report will be an assessment of compliance rates with stormwater regulations in California, the law states. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Duntin; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1998 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Publishes Regulatory Agenda. According to the U.S. Environmental Protection Agency's (EPA) latest regulatory agenda, the phase II stormwater rule is still scheduled for a March 1999 release. However, the agency has a long history of not meeting dates on the agenda.

EPA's regulatory plan and agenda were published Nov. 9 in the *Federal Register* (63 FR 61340 and 62348). Among the priorities listed in the plan are providing the public with greater access to information; more regulatory flexibility; stronger partnerships with states and industries; and more compliance assistance.

One example of a water program item for which the agency has repeatedly failed to meet its regulatory schedule is the plan to streamline parts of the National Pollutant Discharge Elimination System (NPDES) program. The round II NPDES streamlining rule has been in the works for years. In the previous regulatory agenda, it was scheduled for completion in April 1998. In this agenda, the rule is slated for March 1999. Among other things, the rule was supposed to consolidate regulatory definitions, remove the group permit language and streamline permit termination.

The schedule on the regulatory agenda provides no assurance that the phase II rule will be on time. According to the regulatory agenda, EPA is reevaluating the cost-benefit analysis and assessing alternative options raised in the comment process.

Other significant water related issues raised in the regulatory agenda are effluent guidelines for a number of industry sectors including animal feeding operations, coal mines, metal products and machinery, industrial waste combustors, oil and gas point sources and ore mining point sources. The agency is also trying to develop proposals to regulate the total maximum daily load program and to establish electronic reporting for NPDES permittees.

Rittenhouse Maps Out MSGP Future. Stormwater Permittees may be wondering what happens when the multi-sector general permit (MSGP) expires in September 2000. According to Bryan Rittenhouse, who runs the phase I program at EPA's Office of Wastewater Management (OWM), when the MSGP expires, the agency will issue a new permit that closely resembles the existing MSGP.

Among the changes being contemplated by the agency are reformatting the permit to make it more user-friendly, potentially reducing the monitoring burden and requiring modern BMP technologies in some cases. OWM also hopes to issue a new guidance on monitoring for discharge monitoring reports.

EPA MSGP Deadline Looming. Facilities in states not delegated by EPA to run their own NPDES program must switch from the baseline industrial general permit to the MSGP by the end of this month. Covered facilities must fill out a notice of intent, and should be preparing stormwater pollution prevention plans and implementing best management practices where necessary.

EPA, Pork Producers Agree to Compliance Initiative. As part of President Clinton's Clean Water Action Plan, EPA and the National Pork Producers Council (NPPC) announced a voluntary compliance program to reduce environmental and public health threats to the nation's waterways from runoff of animal wastes from pork-producing operations.

Under this initiative, participating pork producers will have their operations voluntarily assessed for Clean Water Act (CWA) violations by certified independent inspectors. Producers who promptly disclose and correct any discovered violations from these audits will receive a much smaller civil penalty than they might otherwise be liable for under the law.

"This program is an example of government and industry working together to find common-sense solutions to protect public health and the environment," said EPA Administrator Carol M. Browner. "The National Pork Producers Council is to be commended for working with us to address one of our nation's most serious environmental problems."

The compliance audit program provides an incentive for pork producers to take the initiative to find and correct CWA violations and prevent discharges to waterways without compromising the ability of EPA or states to enforce the law. Pork producers who undergo the assessment and promptly report and correct violations will receive seals from the NPPC.

The NPPC, a national association representing all state pork producers, plans assessments for more than 10,000 pork production facilities. NPPC developed the assessment program at a cost of \$1.5 million, and will fund the training of independent inspectors and the program's oversight. EPA has provided a \$5 million grant to America's Clean Water Foundation to assist with the assessments.

The compliance audit program does not extend to slaughterhouses, pork-processing and packing facilities or other ancillary operations.

Additional information about the compliance audit program can be found at: <http://www.epa.gov/oeca/ore/porkcap>. ■

NCSU Report

(Continued from page 1)

removed from the runoff. Such failures can be prevented through adequate design and maintenance to keep the inlets and outlets open.

Design of dry detention basins includes locating good sites for the basin, calculating the appropriate detention time, treatment of the expected range of stormwater volumes from storms and maintenance procedures and schedules. The stormwater should be held for at least 24 hours for maximum pollutant removal. Soils should be permeable to allow the water to drain from the basin between storms and the water table should be more than two feet below the bottom of the basin to avoid a permanent pool of water in the basin during wet weather.

Dry basins can be unsightly, especially if floating and other debris accumulate in them. Basins should be located where they are not easily seen or where they can be concealed with landscaping. Because they take up large areas, dry detention basins are generally not suited for high-density residential developments. Sites must allow easy access for equipment to maintain and clean the basin. Otherwise pollutants that settle out may be resuspended in the next storm flow and discharged into the stream. The appearance of dry detention basins can be improved by planting hardy wildflowers in the bottom.

Infiltration Devices

Infiltration refers to the process of water entering the soil. There are a number of devices used to treat stormwater that make use of infiltration to remove pollutants and to recharge or replenish the ground water. Infiltration devices include infiltration basins, infiltration trenches and dry wells.

Properly designed infiltration devices can closely reproduce the water balance that existed prior to development, which protects streambanks from erosion due to high flows.

Infiltration devices remove pollutants through adsorption onto soil particles, and through biological and chemical conversion in the soil. Infiltration basins with long detention times and grass bottoms enhance pollutant removal by allowing more time for settling. Vegetation also increases settling and adsorption of sediment and pollutants. Poorly installed or improperly located devices fail easily. Infiltration devices should only be used where the soil is porous and can absorb the required quantity of stormwater.

Some infiltration devices such as infiltration trenches, dry wells, and catch basins can be constructed under parking lots and roads, thus taking very little land away from other uses. Other infiltration devices take up considerable area. These devices require perme-

able soils and reasonably deep water tables. Smaller infiltration devices such as dry wells or basins can be located near buildings to capture the runoff from roofs and other impervious surfaces.

Oil and Grease

A number of devices are used to remove oil and grease from stormwater. One type, commonly known as an oil-water separator, employs various mechanisms to separate oil from stormwater, which is then discharged to a treatment plant or to a receiving water. Oil-water separators usually require support from the manufacturer and are best used where they can be properly maintained and frequently inspected, such as at industrial sites.

A second device, the oil and grease trap catch basin, is an underground device used to remove oils, grease, other floating substances and sediment from stormwater before the pollutants enter the storm sewer system. They are usually placed to catch the oil and fuel that leak from automobiles and trucks in parking lots, service stations and loading areas.

A popular design for the oil and grease trap catch basin uses three chambers to pool the stormwater, allow the particulates to settle and remove the oil. As the water flows through the three chambers, oils and grease separate and either rise to the surface or settle as sediments and are skimmed off and held in the catch basin. The stormwater then passes on to the storm sewer or into another stormwater pollution control device.

Because these devices are relatively small and inexpensive, they can be placed throughout a drainage system to capture coarse sediments, floating wastes and spills of hazardous wastes. Oil and grease trap catch basins can reduce maintenance of infiltration systems, detention basins and other stormwater devices. Since these catch basins detain stormwater for only short periods, they do not remove other pollutants as effectively as devices that retain runoff for longer periods.

Oil and grease trap catch basins require regular inspection and must be cleaned at least twice a year to remove sediment, accumulated oils and grease, floatables and other pollutants. The wastes may be hazardous; therefore, maintenance costs should be budgeted to include disposal at a proper site.

Porous Pavement

Porous pavement is an alternative to conventional pavement. It is intended to reduce imperviousness and minimize surface runoff. The porous pavement itself functions less as a treatment BMP and more as a conveyance BMP to the other necessary component of the design: the underlying aggregate chamber, which functions as an infiltration device.

As with other infiltration devices, treatment is provided by adsorption, filtration, and microbial decomposition in the sub-soil surrounding the aggregate chamber, as well as by particulate filtration within the chamber. Operating systems have been shown to have high removal rates for sediment, nutrients, organic matter, and trace metals. These rates are largely due to the reduction of mass loadings of pollutants through transfer to groundwater.

The big disadvantage of porous pavement is that sites have a high failure rate, due to clogging either from improper construction, accumulated sediment and oil, or resurfacing. Excessive sediment will cause the pavement to rapidly seal and become ineffective.

Porous pavement may be most beneficial in watersheds with high percentages of impervious surface and high volumes of runoff. Its use is typically recommended for lightly trafficked satellite parking areas and access roads. Increased infiltration at the source (parking lots, etc.) will reduce both the volume of runoff and the delivery of associated pollutants to water bodies.

Sand Filters

Sand filters are a type of stormwater control device used to treat stormwater runoff from large buildings, access roads and parking lots. As the name implies, sand filters work by filtering stormwater through beds of sand. Small sand filters are installed underground in trenches or pre-cast concrete boxes. Large sand filters are above ground, self-contained sand beds that can treat stormwater from drainage areas as large as five acres.

Both above ground and underground versions use some form of pretreatment to remove sediment, floating debris, and oil and grease to protect the filter. After the stormwater passes through the pretreatment device, it flows onto a sand filter bed. As the stormwater flows through the filter bed, sediment particles and pollutants adsorbed to the sediment particles are captured in the upper few inches of sand.

Because of the construction techniques used to build above ground sand filters, large filters are proportionately less expensive than small filters.

Pollutant removal for sand filters varies depending on the site and climate. Overall removal for sediment and trace metals is better than removal of more soluble pollutants because the filter functions by straining small particles out of the stormwater.

Vegetation

Vegetation can be used to reduce the velocity of stormwater, which helps stormwater better infiltrate the soil and settle particulates, and it helps prevent erosion.

One example of a vegetation BMP is a filter strip. Filter strips are typically bands of close-growing vegetation, usually grass, planted between pollutant source areas and a receiving water. They can include shrubs or woody plants that help to stabilize the grass strip, or can be composed entirely of trees and other natural vegetation. Filter strips do not provide enough runoff storage or infiltration to significantly reduce peak discharges. For this reason, a filter strip should be viewed as only one component in a stormwater management system. At some sites, filter strips may help reduce the size and cost of downstream control facilities.

Filter strips reduce pollutants such as sediment, organic matter and many trace metals. Although studies indicate that effectiveness varies, trees in strips can be more effective than grass strips alone because of the trees' greater uptake and long-term retention of plant nutrients. Properly constructed forested and grassed filter strips can be expected to remove more than 60 percent of the particulates and perhaps as much as 40 percent of the plant nutrients in urban runoff.

Grassed swales are another vegetation BMP. Grassed swales are earthen channels covered with a dense growth of a hardy grass such as Tall Fescue or Reed Canary Grass. Because swales have a limited capacity to convey runoff from large or intense storms, they often lead into concrete-lined channels or other stable stormwater control structures. Swales may provide some reduction in stormwater pollution through infiltration of runoff water into the soil and filtering of sediment or other solid particles, and by slowing the velocity and peak flow rates of runoff.

Research on grassed swales has found varying levels of pollutant removal ranging from 30 to 90 percent reduction in solids and 0 to 40 percent reductions in total phosphorus loads.

Vegetative practices require flat areas that are large in relation to the drainage area, and deep water tables. Swales should have as little slope as possible to maximize infiltration and reduce velocities. Filter strips should not be used where slopes exceed 15 percent. The height of grass in filter strips and swales can affect the pollutant removal. Taller grass will slow velocities more but grass cut to a short length may take up more plant nutrients.

Wetlands

Constructed wetlands are engineered systems designed to simulate natural wetlands. Constructed wetlands consist of former upland environments that have been modified to create poorly drained soils and wetlands flora and fauna to remove contaminants from wastewaters or runoff.

(Continued on page 6)

NCSU Report

(Continued from page 5)

Constructed wetlands vary widely in their pollutant removal capabilities, but can effectively remove a number of contaminants. Among the most important removal processes are the purely physical processes of sedimentation via reduced velocities and filtration by hydrophytic vegetation. These processes account for the strong removal rates for suspended solids, the particulate fraction of organic matter and sediment-attached nutrients and metals.

However, constructed wetlands may contribute to thermal pollution and cause downstream warming. This may preclude their use in areas where sensitive aquatic species live.

Wet Retention Ponds

Wet retention ponds maintain a permanent pool of water. These ponds fill with stormwater and release most of it over a period of a few days, slowly returning to their normal depth. There are several mechanisms in wet ponds that remove pollutants including: settling of suspended particulates; biological uptake or consumption of pollutants by plants, algae and bacteria in the water; and decomposition. Wet ponds have some capacity to remove dissolved plant nutrients, which is important for protecting of lakes, rivers and estuaries from eutrophication.

The large volume of storage in the pond helps to reduce peak stormwater discharges which, in turn, helps control downstream flooding and reduces scouring and erosion of streambanks.

Wet ponds should be designed to displace older stormwater with newer stormwater. Poor design will short-circuit this process by causing the newer stormwater to flow directly to the outlet, bypassing the main part of the wet pond. Basic considerations for the installation of wet retention ponds are location, the inflow runoff volume, hydraulic residence time, permanent pool size and maintenance.

Volumes of stormwater runoff and normal discharge available for the permanent pool must be calculated before constructing a wet pond. Long, narrow ponds or wedge-shaped ponds are preferred shapes to minimize short-circuiting. These shapes also will lessen the effects of wind, which can stir up sediment and sediment-bound pollutants. Marsh plants around the pond help remove pollutants, provide habitat and hide debris.

Preventive Measures

Before going to the expense of installing structural BMPs, project managers should look for opportunities to implement source controls to reduce pollutants captured by stormwater runoff. Source controls are preventive measures that do not require new construction or land area. Examples of source controls are improving management of animal wastes, eliminating curbs where possible, removing debris, cleaning parking lots and streets and reducing road salt application.

A copy of the full paper can be obtained from the Internet at <http://h2osparc.wq.ncsu.edu/descprob/roads.html>. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
• monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$349
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

**Call Us Toll-Free At 1-800-677-3789 or
visit our website: www.thompson.com**

Stormwater Permit Manual

Bulletin

Volume 8, Number 4

November 1998

Region 6 Pilot Project Intended to Speed Enforcement Process

U.S. Environmental Protection Agency (EPA)
Region 6 is testing a program to expedite settlement agreements in stormwater enforcement cases.

The expedited enforcement pilot project (EPPP) will apply primarily to facilities committing stormwater violations in Texas and New Mexico. It establishes preset fines for a variety of stormwater violations and can be used in cases where penalties total less than \$11,000. According to a draft EPPP guidance, Region 6 inspectors will issue citations—much like traffic citations—that the regulated facility can pay expeditiously. The program will save both parties time and money spent on court battles.

Taylor Sharpe, Region 6 stormwater enforcement coordinator, said the project will be expanded to other regions if it is successful. It should be implemented in November, Sharpe added.

The number of violations that warrant enforcement far exceeds the region's capacity to conduct traditional

enforcement actions, according to a draft guidance that explains the pilot program. The aim of the project is to get better compliance at less cost, but it is not the agency's intent to just pump up enforcement numbers for stormwater violations, the guidance states. Sharpe implied that it could increase stormwater enforcement, however, saying "it will make my job a whole lot easier, by speeding up the processing of citations and avoiding lengthy litigation."

Cases in which a facility is unquestionably lacking a required element of its stormwater management program are best suited for the policy, Sharpe said. "Easily identifiable violations require the least amount of inspector judgment in the field," the guidance states. "On the other hand, some clear-cut violations cause serious environmental harm and require a more formal enforcement response," it states.

The project is modeled after a similar program in Region 6 that deals with violations of the Oil Pollution Act (OPA). The project will speed appropriate

(Continued on page 4)

Court Prevents Cincinnati From Collecting Stormwater Fees From Federal Facility

A federal appeals court has upheld the dismissal of a lawsuit brought by Cincinnati to force a federal facility to pay a fee for stormwater runoff management. But the city, backed by a number of municipal groups, has vowed to fight what it sees as an unfair effort to avoid financial responsibilities. (*City of Cincinnati v. United States* No. 98-5039 Fed. Cir., Sept. 1, 1998).

The decision arose from the city's effort to collect \$46,190 from the National Institute for Occupational Safety and Health (NIOSH). The appeals court ruled in favor of the federal government because it agreed that the city's formula for assessing the stormwater fees constituted a tax against the federal government, which is unconstitutional. "Among the oldest principles of constitutional law is that a state may not tax the United States. That principle, which has been extended to municipalities and subdivisions of states, is simple and absolute: A state or local government-

(Continued on page 3)

Inside This Issue ...

Sector AD Established for Orphaned Facilities 2

EPA To Propose Electronic DMR Filing 2

Modifications To the multi-sector general permit are added to the Manual Appendix 1

Storm Warnings

Stormwater-Related News in Capsule Format

Sector AD Established for Orphaned Facilities.

Under modifications to the U.S. Environmental Protection Agency's (EPA) multi-sector general permit (MSGP), facilities that had been covered by EPA's baseline permit, but do not match a specified sector, will automatically fall into Sector AD.

Sector AD was added as part XI.AD of the MSGP. The stormwater pollution prevention plan requirements for this sector are the same as in the baseline general permit. Also, no analytical monitoring requirements are included for Sector AD, but quarterly visual monitoring is required. In addition, the requirements common to all sectors of the MSGP, which are set forth in parts I-X and XII of the MSGP, apply to all facilities in Sector AD.

Sector AD also provides a readily available means for covering some phase II dischargers designated for permitting prior to the to the Aug. 7, 2001, permit application deadline, EPA said. Sector AD enables designated phase II facilities to obtain MSGPs instead of having to file for individual permits.

Under the January proposed phase II rule, permitting authorities can require facilities to file permit applications or notices of intent by giving them 180 days notice. The phase II rule would require dischargers that contribute to a violation of a water quality standards or are significant sources of pollution to file for a stormwater permit upon notification by the permitting authority. However, Sector AD, and the MSGP in general, applies only to sources that are determined to be a significant source of pollutants. Facilities that contribute to a violation of water quality standards still would have to get individual or alternative general permits.

EPA To Propose Electronic DMR Filing. The U.S. Environmental Protection Agency (EPA) said it will

propose this fall a rule to allow electronic reporting of discharge monitoring reports (DMR).

The proposed rule would establish criteria for electronic reporting and a specific process and conditions for electronic DMRs as required under the National Pollutant Discharge Elimination System (NPDES) program. The proposal will address electronic signature, certification and recordkeeping requirements that permittees would follow when submitting forms electronically, EPA said.

Robin Danesi, with EPA's Office of Wastewater Management, said EPA was still trying to work out certain details of the proposal and could not say when it would be published. But, she added, if electronic submission of DMRs is successful, other NPDES forms will be filed electronically in the future.

EPA Proposes \$137,500 Penalty Against Builder.

EPA Sept. 30 announced that it has cited Allied Properties Inc. for discharging stormwater runoff without a permit. The agency seeks a \$137,500 penalty for this alleged Clean Water Act violation, which occurred at the company's 65-acre construction site in New Castle County, Del.

According to EPA, the company failed to get an NPDES permit and did not have a stormwater pollution prevention plan. It also ignored repeated violation notices and stop-work orders from New Castle County inspectors and the Delaware Department of Natural Resources, EPA said. The company may contest the violations and proposed penalty.

Clarification. In reference to last month's article on the modified MSGP, permit holders in EPA-delegated states do not have to switch to the MSGP. Such a switch would only be required if the state adopted the permit. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1998 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Cincinnati Case

(Continued from page 1)

tal body may not tax a federal entity in the absence of congressional consent," the appeals court ruled.

However, John Williams, an attorney with Cincinnati's solicitors office, said the fee does not constitute a tax because it is required of all property owners in Cincinnati. No other federal facility has refused to pay the fee, Williams said, and the lost fees from NIOSH have not had a significant financial impact.

But the city plans to continue the fight, either by refileing the case with the U.S. District Court for the Southern District of Ohio or by pursuing political avenues to reach a resolution, Williams said.

Cincinnati officials are unlikely to appeal the case to the U.S. Supreme Court because it can get a more sympathetic hearing in the district court, Williams said. Furthermore, negotiating with the U.S. Environmental Protection Agency (EPA) or other federal facility managers could result in a resolution.

Dianne Shea, of the National Association of Counties, said the decision is narrow and expressed confidence that Cincinnati would get a favorable ruling by rephrasing the claim. Claiming an implied agreement to pay for stormwater treatment is difficult because it requires the federal facility to acquiesce. But Cincinnati may prevail if it rephrases the claim to say that fees are collected from all property owners, and federal facilities should not be exempted, Shea said.

Shea added that it would be a bad move politically if federal facilities tried to avoid paying stormwater fees. "EPA is helping local government set up utilities so they can collect fees for stormwater dischargers. How can [EPA Administrator] Carol Browner justify exempting federal facilities?" Shea asked.

Scott Tucker, with the National Association of Flood and Stormwater Management Agencies (NAFSMA), echoed Shea's sentiments "there is a credibility issue if the federal government imposes the phase II rule on municipalities and then won't pay fees for their own facilities within those municipalities." The ruling is a "real concern for people in municipalities," Tucker said. NAFSMA is looking into ways it can provide legal support for a potential Cincinnati appeal, Tucker added.

Cincinnati operates a stormwater management system, that is designed to control stormwater runoff within the city. A city ordinance provides for a "storm drainage service charge" to be imposed on property owners within the city to pay the expenses of the stormwater management system. The amount of the assessment against each property owner is a function of the size of the property and its "intensity of development."

The general goal of the assessment formula is to impose higher assessments on properties that are expected to produce more stormwater runoff, such as commercial or industrial properties.

The city contends that NIOSH now owes more than \$60,000 in storm drainage service charges. NIOSH declined to pay the assessments, contending that the storm drainage service charge amounts to an unconstitutional tax on a federal entity. The city had filed suit in the Court of Federal Claims in 1996 to recover the assessed charges, arguing that the storm drainage charge is not a tax, but a charge for services that the United States, like any other user of city services, is required to pay.

The Court of Federal Claims dismissed the complaint for failing to state a claim upon which relief could be granted. In its opinion, the claims court noted that the federal government can properly be charged for services that it purchases from local governmental entities, such as water or other utility services. The court held, however, that the storm drainage charge, which was imposed on all property owners within the city and was not the product of a voluntary purchase decision by the federal government, constitutes a tax, not a fee for services, and therefore could not be exacted from a federal entity such as NIOSH.

The relationship between the city and NIOSH with respect to the storm drainage service charge did not result in an implied-in-fact contract, the claims court said. The storm drainage service charge was not imposed as a result of a consensual arrangement between the city and the United States. Instead, the stormwater drainage service charge was an assessment imposed on the United States involuntarily, by virtue of its status as a property owner.

"We do not hold that Cincinnati's storm drainage service charge is a tax that cannot constitutionally be imposed on a federal entity," the claims court said. However, Cincinnati "failed to provide any basis for concluding that there was an implied-in-fact contract between the city and the United States. The complaint therefore fails to state a claim upon which the Court of Federal Claims is empowered to grant relief."

This statement opens the door for Cincinnati to reword the claim in a different venue and potentially to get a ruling requiring NIOSH to pay stormwater fees, according to Williams and municipal officials.

Shea added that the ruling is unlikely to result in federal facilities in phase II communities being able to avoid stormwater fees. However, the failure of federal facilities in phase II municipalities to pay stormwater fees would represent a potentially devastating unfunded mandate, she said. ■

Expedited Enforcement

(Continued from page 1)

cases by allowing EPA stormwater inspectors to present a stormwater inspection findings and expedited settlement form to a facility representative on site after an inspection. The EPA water enforcement branch chief will mail a copy of the form to the facility after reviewing the inspection results. The form will state the nature of the violations and the set fine to be paid if the expedited settlement is accepted.

Standard penalty amounts are specified to ensure consistency. (For a list of some of the fine amounts, see box below.) Under the project, the violator is given an opportunity to correct deficiencies and settle for a lesser amount than might be assessed according to the traditional administrative penalty policy. If the violator does not agree to the terms within the time spelled out in the citation (usually 30 days), the citation will be withdrawn, and EPA will pursue more stringent enforcement actions. The region will conduct follow-up inspections at some facilities that take advantage of this pilot project to ensure that it is meeting its goal of bringing more facilities into compliance at less cost, the draft guidance states.

The region might allow an extension for a facility to agree to the settlement and correct the violations if the owner or operator files a request for the extension and demonstrates that uncontrollable factors necessitate an extension, and if the region believes compliance will be achieved within the specified period. "Merely neglecting to seek expert assistance or equipment in a timely manner should not in itself justify an extension, the guidance states.

"The experience of the OPA program has shown that owners and operators who receive EEPP citations see a clear advantage in focusing their energy and economic resources on achieving compliance, rather than on contesting the larger penalties typical of more formal enforcement actions," the draft EEPP states.

Expedited settlements give facilities an opportunity to correct violations quickly and avoid large fines, Sharpe said. But if facilities don't meet the terms of the expedited settlement, they could be subject to civil enforcement, he said. If a facility is notified and still doesn't comply, the agency could pursue a criminal action. "Most people, once they learn they are out of compliance, tend to comply," Sharpe said. ■

Penalties for multi-sector general permit violations:

- Failure to have a stormwater permit—\$8,000;
- Failure to prepare a stormwater pollution prevention plan (SWP3)—\$3,000;
- SWP3 not signed—\$500;
- SWP3 does not include a site map—\$400;
- SWP3 signed by unauthorized person, lacking proper certification statement, or lacking pollution prevention plan team identification—\$250 each;
- Training not performed or documented—\$250;
- Roofs and covers not addressed in SWP3—\$250;
- Best management practices not in place—\$250;
- Missed required monitoring parameters—\$250 each;
- Material storage area does not have control features to minimize discharges not in SWP3—\$250.

Statement of Ownership, Management and Circulation

1. Title of Publication: **Stormwater Permit Manual** 2. Publication No. 008-384 3. Filing Date: October 1, 1998

4. Frequency of Issue: Monthly 5. No. of Issues Published Annually: 12 6. Annual Subscription Price: \$398.00

7. Complete Mailing Address of Known Office of Publication: 1725 K St. N.W., Suite 700, Washington, D.C. 20006

8. Complete Mailing Address of Headquarters of General Business Offices of the Publisher: 1725 K St. N.W., Suite 700, Washington, D.C. 20006

9. Name and Address of Publisher, Editor, Managing Editor:

(a) Daphne Musselwhite, 1725 K St. N.W., Suite 700, Washington, D.C. 20006

(b) Daniel Whitten, 1725 K St. N.W., Suite 700, Washington, D.C. 20006

(c) None

10. Owner: Thompson Publishing Group, Richard E. Thompson, 1725 K St. N.W., Suite 700, Washington, D.C. 20006

11. Known Bondholders, Mortgages, and other Security Holders: None

12. Tax Status (For completion by nonprofit organizations authorized to mail at special rates): None

13. Publication Title: Stormwater Permit Manual

14. Issue Date for Circulation Data Below: October 1998

15. Extent and Nature of Circulation

	Average No. Copies Each Issue During Preceding 12 Months	Actual No. Copies of Single Issue Published Nearest to Filing Date
A. Total No. of Copies Printed (<i>Net press run</i>)	1,133	1,100
B. Paid and/or Requested Circulation:		
1. Sales through dealers and carriers, street vendors and counter sales (<i>Not mailed</i>)	0	0
2. Paid or Requested Mail Subscriptions (<i>Include advertiser's proof copies and exchange copies</i>)	844	785
C. Total Paid and/or Requested Circulation (<i>Sum of 15b(1) and 15b(2)</i>)	844	785
D. Free Distribution by Mail (<i>Samples, complimentary, and other free</i>)	19	19
E. Free Distribution Outside the Mail (<i>Carriers or other means</i>)	0	0
F. Total Free Distribution (<i>Sum of 15d and 15e</i>)	19	19
G. Total Distribution (<i>Sum of 15c and 15f</i>)	863	804
H. Copies not Distributed:		
1. Office Use, Leftovers, Spoiled	270	296
2. Return from News Agents	0	0
I. Total (<i>Sum of 15g, 15h(1) and 15h(2)</i>)	1,133	1,100
Percent Paid and/or Requested Circulation (<i>15c/15g x 100</i>)	98%	98%

16. Publication of Statement of Ownership

Publication required. Will be printed in the November 1998 issue of this publication.

17. I certify that the statements made by me above are correct and complete. Daniel Whitten, Editor.

Stormwater Permit Manual

Bulletin

Volume 8, Number 3

October 1998

Phase II Rule Behind Schedule; Changes Expected, Says EPA

The U.S. Environmental Protection Agency's (EPA) phase II stormwater rule is unlikely to be finalized by the March 1999 deadline, and agency officials are contemplating a number of changes to the proposal.

At the sixth annual stormwater coordinators' national meeting, Charles Fox, the administrator of EPA's water office, said the final rule would be issued "sometime in 1999, most likely in the latter part of the year." The court-ordered March deadline arose from a lawsuit filed by the Natural Resources Defense Council (NRDC) in 1995. An NRDC staffer said EPA had not approached the environmental organization about getting an extension of the court order, but was not surprised that the agency was behind schedule.

Fox said the agency was trying to develop a rule that "meets the common sense tests, but that also effectively controls pollution." According to the new water administrator, the phase II rule will rely heavily on general permits, attempt to reduce unnecessary burden and reduce backlogs in NPDES programs. Fox replaced Robert Perciasepe as head of the water program in August when Perciasepe was appointed administrator of EPA's air program.

As part of this rule and in other water initiatives, the agency is attempting to use total maximum daily loads (TMDLs) to quantify how best management practices (BMPs) and water quality control techniques help meet water quality standards, Fox said.

(Continued on page 4)

Late Breaking News

Modified Multi-sector Permit Published; Baseline Permittees Must Make Switch

With little fanfare, the U.S. Environmental Protection Agency (EPA) released the modified multi-sector general permit (MSGP) Sept. 30, a move that will affect stormwater programs for many facilities that had been covered by the baseline industrial stormwater permit (63 FR 52430).

The modified permit will not change requirements for existing MSGP permittees and it will not immediately alter requirements for states that run their own programs. But most facilities previously covered by the baseline industrial general permit must submit by Dec. 29 a notice of intent (NOI) for stormwater coverage under the MSGP using the NOI form from the original MSGP (60 FR 51265, Sept. 29, 1995). Baseline permittees not eligible for the MSGP must submit an application for an individual permit. In addition, transferred facilities must revise and implement their stormwater pollution prevention plans (SWP3) by April 1, 1999, and implement control measures for construction by Oct. 1, 2000.

The final modified MSGP gives new permittees 90 days to submit an NOI and 180 days to implement an SWP3. EPA had proposed to allow 30 days for NOI submittal and 90 days for SWP3 development, but the agency relented to public commenters who said that more time was needed.

(Continued on page 2)

Inside This Issue ...

Plan to Cut Livestock Waste
Runoff May Affect 300,000
AFOs 3

Storm Warnings 5

Updated Delaware and New
York state pages

Tab 800

Modified MSGP

(Continued from page 1)

New dischargers that have not been able to obtain coverage under the expired baseline permit may obtain MSGP coverage immediately, EPA said. Unless otherwise specified, in areas where EPA is the permitting authority, the agency will terminate the baseline permit on Dec. 31. Facilities that were covered by a baseline permit, but that were eligible for the original MSGP will be required to switch to the MSGP.

EPA provided a table in Appendix B of the modified MSGP that details monitoring and SWP3 requirements, performance standards and limits, and inspection requirements that must be met by all multi-sector permittees.

The agency added 29 new SIC codes to the modified MSGP. The new industries fall into six industry sectors. The agency decided that rather than creating new sectors for the permit, it would fit the newly added industries into existing MSGP sectors. After a permittee previously covered by the baseline permit transfers to the MSGP, the effluent limitations, monitoring requirements and other conditions of the MSGP apply to the permittee based on the appropriate sector or subsector into which the facility falls (see table, page 6). EPA also added a new sector (Sector AD) that covers any regulated stormwater discharge associated with industrial activities not covered by existing sectors.

Much of the information in the modified permit is provided with the intent of seamlessly integrating new facilities into the existing MSGP, so a number of references to the original permit are made. For example, EPA referred new permittees back to the September 1995 *Federal Register* notice for information about sector-specific activities such as sampling and best management practice (BMP) requirements.

In addition to providing information about deadlines and use of the NOI form, EPA made clarifications

and interpretations regarding how the MSGP will apply to permittees transferring from the general permit. Among the issues addressed are:

- MSGP sampling schedules and sample types;
- how to submit sampling data;
- applicability of certain limitations;
- the applicability of the Endangered Species (ESA) and National Historic Preservation Acts (NHPA);
- applicability of co-located activities requirements;
- non-stormwater discharges;
- releases of reportable quantities of hazardous substances and oil; and
- exemptions from analytical monitoring.

To comply with ESA requirements, a permittee must certify that discharges and BMP construction are unlikely to affect species identified in Addendum H of the permit, or it can implement appropriate measures as required by the permitting authority to address adverse impacts. If the applicant's activity has received previous authorization under ESA and the environmental baseline is unchanged, further certification is not needed. To meet NHPA requirements, the permittee must certify that runoff and BMP construction will not affect historic properties, or obtain and comply with a written agreement with the state historic preservation officer (listed in Addendum I of the modified permit) that outlines all measures to be taken by the applicant to mitigate or prevent adverse effects to a historic property.

BMPs for facilities subject to reporting requirements under Section 313 of the Emergency Planning and Community Right-to-know Act (EPCRA) will cover more substances because several "water priority chemicals" have been added to the list of reportable substances. Unlike the baseline permit, the MSGP does not require certification by a professional engineer. In addition, it allows an exemption from

(Continued on page 6)

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1998 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Plan To Cut Livestock Waste Runoff May Affect 300,000 AFOs

The U.S. Environmental Protection Agency (EPA) issued a draft strategy last month addressing waste runoff from animal feeding operations (AFOs) (63 FR 50192, Sept. 21).

The strategy outlines potential regulations that would require all AFOs to have comprehensive nutrient management plans in place by 2008. Larger operations would need to apply these plans sooner. The plans would include manure handling and storage, application of manure to the land, recordkeeping, feed management, integration with other conservation measures and other manure utilization options. It is estimated that 300,000 feeding operations would need to develop or revise comprehensive nutrient management plans to comply with any new regulations.

The strategy represents the combined effort of EPA and the U.S. Department of Agriculture (USDA) to improve the nation's water quality and reduce public health risks associated with AFOs. The strategy was developed in accordance with recommendations made earlier this year in President Clinton's Clean Water Action Plan (see *Bulletin*, March 1998, p.1). The president's plan identified polluted runoff as the most important remaining source of water pollution and called on EPA and USDA to develop a unified national strategy.

AFOs congregate animals, feed, waste, dead animals, and production operations on a small land area. Manure and wastewater from AFOs have the potential to contribute pollutants such as nutrients (e.g., nitrogen and phosphorous), sediment, pathogens, heavy metals, hormones, antibiotics and ammonia to the environment. These pollutants can cause several types of water quality and public health impacts.

Under current regulations and effluent guidelines in effect since 1974, AFOs with more than 1,000 "animal units" are prohibited from discharging livestock waste directly into waterways except in the event of a big storm, explained Jeff Lape with EPA's Water Quality and Industrial Permit Branch. The prohibition applies to process wastewater and stormwater.

Charles Fox, administrator of EPA's Office of Water, implied that point sources may aggressively seek stricter regulations against nonpoint sources in hopes that they will be relieved of some of the burden of meeting water quality standards. "Point sources could be going upstream and trying to get some enforceable nonpoint source controls," Fox said.

Although EPA is unlikely to ease existing stormwater regulations, the agency's attention to nonpoint

sources shows that it is directing more attention to farms and urbanized areas and is unlikely to impose new regulations on industrial permittees.

The draft strategy establishes a national performance expectation that all AFO owners and operators develop and implement technically sound and economically feasible comprehensive nutrient management plans (CNMPs) that would be similar to regulations under the federal stormwater program requiring the development of stormwater management plans. CNMPs would address feed management, manure handling and storage, land application of manure, land management, and recordkeeping.

EPA estimates that 95 percent of the nation's AFOs would be encouraged to implement voluntary CNMPs. An estimated 15,000 to 20,000 livestock operations would be required to develop plans as part of permits issued under the Clean Water Act. The regulatory program intends to focus permitting and enforcement activities on the largest concentrated AFOs (those with more than 1,000 animal units), AFOs with unacceptable conditions such as direct discharge into waterways, and AFOs that are significant contributors to water quality impairment within a watershed.

A copy of the draft strategy is available on the Internet at: <http://www.nhq.nrcs.usda.gov/cleanwater/afo> or <http://www.epa.gov/owm/afostrat.htm>. The 120-day public comment period for the draft strategy ends Jan. 19, 1999. Comments should be addressed to: Denise C. Coleman, Program Analyst, USDA, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013-2890, ATTN: AFO. ■

Senators Tell EPA To Reevaluate Grant Funding

Eight U.S. Senators sent a letter to Charles Fox objecting to an EPA plan to use Clean Water Act Section 106 grant funding to reduce nonpoint source impacts on water quality

The Sept. 22 letter said using Section 106 grants for nonpoint sources unfairly reduced the grants available to states with greater point source needs. The letter also stated that EPA did not provide some states with an opportunity to review and comment on the formula developed to provide grants.

"In recognition of the growing problem presented by nonpoint source pollution," the letter said, "funding under Section 319(h) is expected to increase to \$200 million." States may also seek limited funding from the State Revolving Loan Fund under Section 205(j)(5), the letter said. ■

Phase II rule

(Continued from page 1)

But several meeting attendees said EPA was pushing the TMDL approach too quickly.

Fox exhorted water quality regulators to support TMDL programs, saying the water quality program is maturing, and improving data through TMDLs is an important step in the maturation process. "We have an impatient public that expects us to meet water quality standards, and we need to push ourselves," Fox said.

Utting Discusses Changes

George Utting, EPA's matrix manager for the phase II rule, provided some details about changes to the proposal being contemplated by the agency. Among those changes are a planned revision to the construction waiver. EPA plans to increase the rainfall erosivity factor to five and eliminate altogether the waiver that could be obtained for low annual soil loss, Utting said.

Federal advisory committee members had complained that no one would be able to obtain a waiver under the proposed provisions and that the annual soil loss provision included too many complicated variables. Those variables include soil type, slope, rainfall and vegetative cover. EPA still will grant a construction waiver where a TMDL assessment addresses the pollutants of concern.

Several meeting attendees argued that not considering soil loss variables and only considering total rainfall oversimplifies the impacts of construction. State regulators took exception to EPA's plans to have them calculate the rainfall erosivity factor, rather than the construction site owners seeking the waiver. These state regulators said this was another example of EPA requiring resource intensive stormwater program oversight without providing funding.

Also expected to undergo revisions from the proposal is the interaction between municipal construction requirements and NPDES construction site requirements. According to the proposal, municipalities would be required to develop, implement and enforce a program to reduce stormwater pollution from all construction activities. In addition, they would be required to ensure that construction sites implement appropriate BMPs and permit preconstruction review of site plans. The municipalities also would have to make provisions for public involvement; conduct regular inspections during construction; and assess penalties to ensure compliance.

Individual construction sites between one and five acres would have to apply for a permit unless they were eligible for waivers. Permitting authorities

could require permits from sites smaller than one acre or grant waivers where appropriate.

Site owners or operators could reference a qualifying local program (QLP) to minimize overlap and duplication, but under the proposal if there was no QLP addressing stormwater, site owners or operators would be required to develop their own measures for minimizing their stormwater impacts. Sites outside a covered municipal separate storm sewer system (MS4) might be forced to develop site management plans and stormwater pollution prevention plans, while sites covered by MS4 provisions might not have to.

"There was an awful lot of discussion about this issue and the proposal wasn't as clear as it could have been," Utting said. The agency is trying to draft a rule that has the same requirements for all phase II construction sites, whether or not they are within an urbanized area and therefore subject to municipal regulation, he noted. But he did not specify how the construction provisions would be altered in the final rule.

In addition to construction site stormwater runoff and control, Utting also discussed the six other minimum control measures that would be required under a phase II MS4 permit. Those minimum measures are public education and outreach; public involvement and participation; illicit discharge detection and elimination; post-construction stormwater management in new development and redevelopment; and pollution prevention and good housekeeping for municipal operations.

Public Education Boosts Municipal Programs

Several meeting attendees said that communities with good public outreach and education tended to have more public involvement and that increased public involvement leads to better stormwater management.

EPA has made dissemination of information to the public and public involvement a high priority in the last several years. The thinking in the agency is that because it is difficult and time consuming to promulgate stringent environmental rules, EPA must rely on the public to leverage improved environmental performance on the local level. "The public will be the eyes and ears and motivators for a strong municipal program," Utting said.

The phase II regulation has state permit writers and MS4 operators uneasy about the costs and time required to administer the rule. "We understand that this can be a very expensive proposition," Utting said. The agency is "conducting an outreach effort to educate phase II municipalities as to what they can do in preparation for the new rule, but whatever efforts they can make now would be a good idea," Utting said. ■

Storm Warnings

Stormwater-Related News in Capsule Format

Texas Gains NPDES Permitting Authority. The U.S. Environmental Protection Agency (EPA) announced that it granted Texas authority to run its own national pollutant discharge elimination system (NPDES) program (63 FR 51166, Sept. 24).

The Texas Natural Resource Conservation Commission (TNRCC) now has limited permitting authority, EPA said. It is approved by EPA to regulate discharges from all industrial facilities except those related to oil and gas facilities, which must continue to obtain both a Railroad Commission of Texas permit and a federal permit.

EPA retained jurisdiction over existing general stormwater discharge permits until either the EPA permits expire or Texas issues a replacement permit. The modified multi-sector permit is included in the existing permits referred to by EPA.

"EPA does not retain, even in the short-term jurisdiction over discharges from individual stormwater permit holders; stormwater outfalls in wastewater permits; or stormwater discharges designated by the state in accordance with 40 CFR 122.26(a)(1)(v)," the *Federal Register* notice stated.

Nearly 4,000 public and private facilities have permits to discharge into Texas' 15 major river basins and eight coastal basins. Until now, Texas companies had to obtain both a state and a federal wastewater permit. Companies faced two separate application processes and double paperwork to receive a wastewater permit.

Removing the necessity of a second permit will reduce paperwork. It also will lighten the burden on businesses and allow EPA to focus on the state's most significant water quality problems, EPA said. Under the Clean Water Act, EPA is required to continually oversee the state program via permit reviews, audits and inspections to ensure water quality of the 200,000 miles of streams and rivers in Texas.

"While TNRCC has assured EPA of its resource commitment and has successfully answered questions on a broad range of issues, there continues to be intense public concern and scrutiny of its program," EPA Regional Administrator Gregg Cooke said.

New Delaware Permits Effective Sept. 1. The Delaware Department of Natural Resources and Environmental Control (DNREC) last month issued final regulations that added 13 industrial categories to its baseline industrial permit. The new regulations took effect Sept. 1.

Permittees that conduct activities in any of the new categories will be required to implement best management practices (BMPs) to protect and improve water quality in the state.

"The permits are self implementing," said Chuck Schadel, who authored the new rule. "Although there is a soft enforcement mechanism, if a facility is out of compliance over a significant period of time, it will be required to get an individual permit which costs more and has a shorter BMP implementation period." Individual permits include more specific language making it easier to prove noncompliance, Schadel said.

The regulations cover industrial activities in the following categories—concrete manufacturing; land disturbing; asphalt manufacturing; automotive salvaging; chemical manufacturing; solid waste; scrap recycling; watercraft maintenance; air transportation maintenance and deicing; rail transportation maintenance; automotive transportation maintenance (motor freight transportation and warehousing maintenance activities, including U.S. Postal Service transportation maintenance); food processing; and metals manufacturing and associated industries.

Annual fees for Delaware's industrial permits are \$150. The permits are issued for a maximum of five years, but if renewal is delayed by the state, the permit stays in place until the state responds. For more information on Delaware's permit program, contact Schadel at (302) 739-5731.

APWA Conducts Phase II Workshops. The American Public Works Association in cooperation with EPA is conducting nine workshops to help phase II communities comply with EPA's upcoming phase II rule.

Each of the workshops are tailored to the communities in which they are held, said APWA environmental programs manager Stephanie Osborn. Some of the elements expected in the phase II rule will take a long time to implement, including system mapping, increasing public awareness, building consensus for funding, addressing new organizational needs, and developing frameworks for regional cooperation, Osborn said. The workshops will be held for public health officials, stormwater managers, regulators and monitoring and enforcement personnel

The first workshop was held in Denver Sept. 22. The others are scheduled for Oct. 28 in San Antonio, Texas; Dec. 7 in Macon, Ga.; Jan. 20, 1999, in Worcester, Mass.; Feb. 16 in New York; March 2 in Monterey, Calif.; April 21 in Novi, Mich.; April 22 in Kansas City, Mo.; and May 20 in Corvallis, Ore. ■

Modified MSGP

(Continued from page 2)

EPCRA Section 313 requirements for situations where an operator certifies that water priority chemicals are only in a gaseous or non-soluble form.

The permit requires transferred facilities to monitor quarterly for the year between Oct. 1, 1998, and Sept. 30, 1999. Permittees must take grab samples only, except in Sector S where both grab and composite samples are required. If practical, the grab sample must be taken within the first 30 minutes after a discharge. Grab samples must be examined visually for the presence of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of stormwater pollution. Quarterly monitoring results must be submitted to the permitting authority and postmarked by March 31, 2000. The results of the quarterly visual examinations need not be submitted, but must be retained on site in the SWP3.

Certain monitoring exemptions also are included in the MSGP. Facilities need not monitor if they certify that no significant materials or industrial activities are exposed to stormwater. If there are no exposed sources of a particular pollutant at a particular outfall, then monitoring for that pollutant at that outfall need not be conducted. However, benchmark

exemptions for existing MSGP permittees are not applicable to transferred facilities unless they had sampled for the specified parameters.

The MSGP authorizes limited non-stormwater discharges such as fire hydrant flushings, potable water sources, routine external building washdown water, uncontaminated groundwater and certain other discharges, provided they are covered in the SWP3. In case of a release of a reportable quantity of hazardous substances or oil, the permittee must report the release to the National Response Center and the permitting authority, and the SWP3 must be amended to prevent future discharges.

The baseline industrial general permit will be extended for federal facilities and Indian lands in Colorado; Ute lands in New Mexico; Indian lands in Montana, North Dakota, South Dakota, most of Utah and Wyoming; and Pine Ridge lands in Nebraska. The agency said it was not practical to modify the MSGP to cover these lands.

Where EPA has approved state NPDES programs that are covered by the baseline permit, the state permit will remain in effect until it is superseded by either a state-issued NPDES permit or an EPA permit is issued under Section 402(d)(4) of CWA, which would be used only if EPA objects to a state permit. ■

Placement of Additional Facilities into the MSGP

MSGP Sector/Subsector	Standard Industrial Classification Code
Subsector i (Drugs) of Sector C—Chemical and Allied Products Manufacturing	2833-2836—Medicinal chemicals and botanical products; pharmaceutical preparations; <i>in vitro</i> and <i>in vivo</i> diagnostic substances; biological products, except biological substances.
Sector I—Oil and Gas Extraction	2911—Petroleum Refining.
Sector V—Textile Mills, Apparel and Other Fabric Products	3131—Boot and shoe cut stock and findings; 3142-3144—House slippers; mens, dress, street and work shoes; women's dress street and work shoes; 3149—Footwear, except rubber, including athletic shoes; 3151—Leather gloves and mittens; 3161—Luggage and cases; 3171—Womens handbags and purses, leather; 3172—Personal leather goods, e.g., billfolds key cases, coin purses, checkbooks, etc.; and 3199—Leather goods not elsewhere classified.
Subsector 1 (Glass products) of Sector E—Glass, Clay, Cement, Concrete and Gypsum Product Manufacturing	3231—Glass products made of purchased glass; 3281—Cut stone and stone products, benches, blackboards, table tops, pedestals, etc.; 3291—Abrasive products; 3292—Asbestos products, tiles, building materials, except paper, insulating pipe coverings; 3296—Mineral wool, insulation; 3299—Nonmetallic mineral products not elsewhere classified.
Subsector 3 (Structural Clay Products, Pottery and Non-clay Refractories) of Sector E	3261—Vitreous china plumbing fixtures and china earthenware fittings and bathroom accessories.
Subsector 4 (Concrete, Gypsum and Plaster Products) of Sector E	3274—Lime, agricultural/building lime, dolomite, lime plaster.
Subsector 3 (Motor Freight Transportation and Warehousing) of Sector P—Land Transportation	4221-4225—Warehousing facilities without trucking services.
Sector L—Landfills and Land Application Sites	LF—Open dumps.

Stormwater Permit Manual

Bulletin

Volume 8, Number 2

September 1998

DIA Settles With Colorado Over Propylene Glycol Discharges

The Colorado Department of Public Health and Environment's (CDPHE) Water Quality Control Division (WQCD) has reached agreement with Denver International Airport (DIA) on a compliance order resulting from the improper discharge of propylene glycol in stormwater.

This is one of a number of cases against airports across the country involving discharges of the de-icing compound (See *Bulletin*, February 1998, p. 5).

According to the order, DIA must pay a \$29,000 cash fine and perform \$489,600 worth of supplemental environmental projects (SEPs). The SEPs will include a detailed study and evaluation of the airport's industrial waste management system. The first SEP is due to be completed by Oct. 1.

The compliance order requires that an initial study focus on identifying, quantifying and solving problems

associated with the management of stormwater runoff contaminated with airplane de-icer. Only the portion of the study focusing on potential contamination of stormwater from other sources qualifies as an SEP.

A second study will include the review, inspection, analysis and evaluation of stormwater drainage in First, Second, Third and Box Elder Creeks, the drainage basins that receive stormwater from DIA. As part of this study, Denver will evaluate existing stormwater management practices at the airport and develop stormwater isolation recommendations.

The order is an outgrowth of stormwater permit violations discovered at DIA. The first documented violation was on April 7, 1996, when small quantities of propylene glycol were found in Third Creek. During a subsequent investigation, officials determined that the de-icer had dripped off airplanes as they taxied from de-icing pads and approached

(Continued on page 2)

EPA Agrees To Revise WET Test Methods To Achieve More Consistent Results

On July 24, the U.S. Environmental Protection Agency (EPA) agreed to a settlement with the Western Coalition of Arid States (WestCAS) and Edison Electric Institute (EEL) to resolve litigation over a rulemaking to standardize procedures for measuring whole effluent toxicity (WET).

EPA promulgated the WET Test Methods rulemaking in October 1996. WET is the total toxic effect of either a wastewater discharge or ambient water as directly measured by the health of aquatic organisms; it has been used since 1984 as the basis for permit limits under the national pollutant discharge elimination system (NPDES) permitting program.

"Though EPA still strongly supports and is prepared to defend the reliability of the standardized WET test procedures in court, the agency engaged in settlement negotiations because highly complex matters, such as the WET test procedures, are better addressed by agencies, rather than courts," EPA said in a press release.

However, WestCAS said because requirements based on WET test results "can trigger harsh consequences like penalties and imprisonment, the analytical

(Continued on page 2)

Inside This Issue ...

Storm Warnings	3
MSGP Modification Covers Some Additional Mining Activities	4
Revised Multi-sector General Permit Due in September	4
New and revised state pages	Tab 800

Airport

(Continued from page 1)

taxiways and runways for takeoff. The de-icer then drained into the airport's underground drainage system located along the edges of the runways and taxiways and washed into Third Creek.

As a result, Denver initiated a \$2.5 million project to modify the storm drainage system so that runoff from the underdrain system in the vicinity of the de-icing pads would be diverted to DIA's dirty stormwater system and then into the local wastewater treatment system. The project was completed in December 1997.

A second incident occurred on March 5, 1997, when 102 gallons of de-icer fluid spilled after a valve failed. Some of the de-icer fluid mixed with 3,000 gallons of stormwater, and made its way to Third Creek. Inspectors observed "a lack of insect and invertebrate life,

and ... a black tarry substance in the stream bed," said J. David Holm director of CDPHE's WQCD. However, subsequent observations by division staff indicated that the damage was not permanent, he added.

As part of the compliance agreement, Denver is to conduct quarterly monitoring for propylene glycol at domestic groundwater wells near Third Creek between DIA and Barr Lake, located seven miles northwest of the airport. Reports on the results of the monitoring are to be provided regularly to the Water Quality Control Division.

"Denver has been forthcoming and responsive in addressing the glycol problem at the airport. CDPHE appreciates that cooperation and is anxious to see all necessary work completed so that there is greater overall environmental protection for the area surrounding the airport," Holm said. ■

WET Tests

(Continued from page 1)

tests used to measure WET must be reliable. EPA failed to determine the validity of the various WET test methods it added to 40 CFR Part 136 in 1995."

For many permittees, the settlement agreement will have several positive implications, WestCAS said. Under the agreement, EPA will:

- evaluate the reliability of all of its WET test methods by conducting studies involving multiple laboratories;
- remove from 40 CFR Part 136 any test methods that are not sufficiently reliable to be used in the NPDES process;
- publish information describing the amount of variability each test method is expected to exhibit (including false positive rates);
- issue guidance informing permit writers about how to account for test variability in deciding

whether or not WET limits are justified, and, if so, at what level these limits should be set;

- clarify that permittees may adjust the hardness of their dilution water to reflect receiving water conditions and thereby avail themselves of natural toxicity attenuation;
- clarify that WET test results are invalid unless a concentration-response relationship exists; and
- issue guidance that will reduce the likelihood of false positive toxicity test results.

After evaluation of results of the multilaboratory testing, the agency will propose either to ratify or withdraw each of the WET test methods. In addition, the agency may later propose modifications to improve any of the test methods.

Prior to and as a result of the settlement agreement, however, the WET test methods initially promulgated by the agency in 1995 remain in full force and effect. EPA fully supports the WET test methods as drafted, the agency said. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1998 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Maine Aims for NPDES Permitting Authority. The Maine Department of Environmental Protection (DEP) plans to petition the U.S. Environmental Protection Agency (EPA) for national pollutant discharge elimination system (NPDES) permitting authority, according to state and EPA officials.

Stormwater permitting for the state is currently handled by EPA Region I. However, during the last year, DEP began implementing its Stormwater Management Law which was enacted by the state legislature in 1996. The law established stricter provisions for individuals and businesses seeking coverage under the baseline general permit for stormwater discharges from construction sites.

According to the Maine law, a state stormwater permit is required for construction projects that include 20,000 square feet or more of impervious area. This is much stricter than the federal permit, which requires coverage for sites that disturb five or more acres of land. State officials found it necessary to have a more stringent law in order to address increased pollution in the state's many lakes.

We are working toward protecting lakes that have already been damaged or destroyed, said DEP's Bill LaFlamme. Combined runoff from small construction projects has contributed to pollution in many water bodies. As a result, we need to regulate stormwater to treat it before it gets into the lakes, he said.

State officials indicate that implementation of the new stormwater law is a step toward eventually obtaining NPDES permitting authority from EPA. Until then, stormwater permitting will continue to be handled by Region I officials with the exception of those construction projects under five acres, but that include 20,000 square feet of impervious area.

Chile Processor in Hot Water. A family-run chile processing plant in southern New Mexico was fined \$100,000 because the owner mistakenly believed a stormwater permit would cover wastewater discharges.

The fine is part of a plea agreement signed by EPA and Cervantes Enterprises Inc., for violations of the Clean Water Act (CWA). The company was cited for not having an NPDES wastewater permit when it discharged water used to clean chile peppers into a drainage ditch that feeds into the Rio Grande.

Neighbors complained of strong odors emanating from Cervantes' wastewater discharges. During the investigation, EPA officials observed reddish-colored discharges that appeared to contain chile seeds and pulp.

The New Mexico Environmental Improvement Division (EID) collected samples of the plant's wastewater discharges in October 1994, and in August, September and October 1996, according to an EPA press release. Chile seeds, pulp and pieces of chile, as well as other biological and chemical constituents were found in the discharges, all of which are regulated pollutants under both CWA and the New Mexico water quality regulations, EPA said.

A review of lab results showed high levels of biochemical oxygen demand (BOD) and chemical oxygen demand (COD) in the samples.

Dino Cervantes, general manager and vice president of the chile processing company said EID officials told him he needed a permit to discharge the chile wash water. However, rather than getting a wastewater permit, the company received a stormwater permit in August 1994, Cervantes said. Until EID told him otherwise, he thought his company had the correct permit to cover the plant's discharges, he added.

"We use only tap water to clean the chiles, no synthetic chemicals," he said, adding that other contributing factors caused the water to become polluted. The general condition of the ditch most likely contributed to the problem, he explained. The ditch is littered with old, used tires, empty detergent bottles and other trash that has been there for years and did not result from any activities conducted by Cervantes.

In addition to the litter problem, Cervantes contended that his company made a good faith effort to apply for and obtain an NPDES wastewater permit, but that misinformation and miscommunication between his company, New Mexico's EID and the EPA resulted in his current legal difficulties.

Phase II Stormwater Rule Under Development.

Staffers in EPA's Office of Wastewater Management are preparing sets of policy options based on comments from the phase II stormwater proposal for EPA decision makers, according to Steve Sweeney, with EPA's Office of General Counsel.

Stormwater insiders have been murmuring about significant changes to the construction portion of the rule, but Sweeney insisted that the options have not even been developed and that no decisions have been made. It has been speculated that EPA will ask for an extension of its court-ordered deadline.

The agency is required to provide a progress report on the rule's development this fall, Sweeney said. EPA is still planning to meet the March 1999 deadline, he added. ■

MSGP Modification Covers Some Additional Mining Activities

The U.S. Environmental Protection Agency (EPA) Aug. 7 published a modification to the multi-sector general permit (MSGP) making some ore mining and dressing operations eligible for coverage and allowing certain mining operations to avoid meeting numeric effluent limitations (63 FR 42534).

EPA modified the MSGP in response to a lawsuit by the National Mining Association (NMA) (*NMA v. EPA*, No. 95-3519, 8th Cir.). The modification will allow mine operators to file for an MSGP for discharges from waste rock and mine overburden piles that are not in an active mining area and are composed entirely of stormwater.

It will save some facilities from having to follow effluent guidelines and obtaining individual national pollutant discharge elimination system permits for certain activities for the ore mining and dressing point source category under 40 CFR 440. EPA does not consider discharges from waste rock or from haul roads constructed with waste rock or spent rock at active ore mining and dressing sites to be subject to the guidelines under 40 CFR 440, unless the discharges combine with mine drainage subject to those guidelines and the resulting stormwater flows drain into a point source, the *Federal Register* notice states.

If overburden piles or waste rock are outside the active mining area and result in diffuse stormwater runoff, the operation may now be covered under the MSGP, under EPA's new interpretation. The modification to the MSGP are spelled out in a revised Table G-4, which is included in the Aug. 7 *Federal Register* notice.

The altered a Oct. 22, 1997 proposal by adding monitoring requirements as a condition of MSGP

coverage. Stormwater discharges from waste rock and overburden sources may be covered by the MSGP, if permittees sample at least once for a variety of mining related pollutants. Permittees will be required to sample and measure for specific pollutants twice annually at iron mining and at uranium/vanadium/uranium mining operations.

Permittees will have to sample stormwater discharges for the following metals: antimony, arsenic, beryllium, cadmium, copper, iron, lead, manganese, mercury, nickel, selenium, silver and zinc. Covered sites have the option of monitoring for total recoverable metals, although the agency expressed a preference for measurement of total dissolved metals. Permittees also will be required to sample pH, hardness, total settleable solids and turbidity.

According to Steve Sweeney of EPA's Office of General Counsel, if a site exceeds benchmark values for any pollutant it will have to monitor twice annually. EPA could require these operations to apply for individual permits if there is a pattern of benchmark value exceedances, Sweeney said, but it seems unlikely that such a pattern could be established before the MSGP expires in September 2000.

The agency does not consider such discharges from waste rock or spent ore overburden piles or roads to be subject to the guidelines on a categorical basis, EPA said. However, numeric effluent limitations may be appropriate for the discharges based on the best professional judgment of a permit writer, or if the discharge would cause or contribute to a violation of water quality standards, the agency added. Permit writers also have the discretion to require specific best management practices. ■

Revised Multi-sector General Permit Due In September

According to Brian Rittenhouse, with the U.S. Environmental Protection Agency's Office of Wastewater Management (OWM), the final modified Multi-sector General Permit (MSGP) should be sent to the Office of the *Federal Register* sometime in the first week of September.

The new permit will replace the baseline general industrial permit, and bring all industrial stormwater permit holders into the MSGP fold.

Any permit holder who has not already changed over to the multi-sector permit should be prepared to do so soon after it is published in the *Federal Register*. In some cases, this may involve revising stormwater pollution prevention plans, implementing new best management practices, and altering monitoring schedules (See *Bulletin*, August 1997, p. 1).

At press time, OWM was still waiting for a couple of signature sheets from regional administrators, Rittenhouse said.

It is customary for the agency to notify the public that the permit has been finalized sometime prior to publication. Rittenhouse said the agency would likely issue a press release in advance of a *Federal Register* notice. Also, the agency has sometimes posted final versions of permits or rules on its website prior to *Federal Register* publication.

The *Bulletin* will provide full coverage including explanations and analysis of the MSGP modification as soon as it is available. However, subscribers wishing to get a jump on the permit's provisions can periodically check EPA's OWM website at www.epa.gov/owm. At press time, no information on the final modified MSGP had been posted. ■

Stormwater Permit Manual

Bulletin

Volume 8, Number 1

August 1998

Region 6 Issues Last of Revised Construction General Permits

The U.S. Environmental Protection Agency (EPA) completed the reissuance of the construction general permit as Region 6 published its version of the long-awaited permit July 6 in the *Federal Register* (63 FR 36489). With the exception of some minor changes to provisions for protecting endangered species, the permit is identical to the general permit for construction-related stormwater discharges that was issued by EPA last February (see *Bulletin* March 1998, p. 1).

The permit was delayed while officials worked on adjusting permit language to meet requirements under the Endangered Species Act (ESA) for protecting wildlife and critical habitats, explained Brent Larsen, a Region 6 Office of Water official. Under the ESA requirements, dischargers must certify that their stormwater discharges will not affect listed endangered species and their habitats. Region 6 officials were concerned about how these provisions would affect construction projects that are already underway.

"We have several thousand ongoing construction projects that would have had to cram in inspections before the deadline for submitting a notice of intent (NOI) under the new permit," Larsen said. As a result, Region 6 officials worked with regional U.S. Fish and Wildlife Service officials to streamline the documentation process.

Under the Region 6 permit, dischargers from construction sites where work began prior to the publication of the new permit do not have to provide certification that their discharges will not affect listed endangered species and their habitats. They still must comply with ESA requirements, commented Larsen, but they do not have to provide documentation unless requested by EPA or Fish and Wildlife personnel.

Stormwater dischargers from construction activity that began on or after the July 6 publication of the

(Continued on page 5)

GM Appeals EAB Ruling of Stormwater Permit Violations at Pontiac-Fiero Plant

Oral arguments are scheduled for Oct. 19 in General Motors' (GM) continuing battle against U.S. Environmental Protection Agency (EPA) allegations that the company violated a stormwater discharge permit (*GM v. EPA*, 98-1027 CA D.C. Cir.).

The company is appealing EPA's Environmental Appeals Board (EAB) decision that upheld a fine for permit violations that GM claims were caused by corrosion of building materials and by air deposition of acid rain (see *Bulletin*, February 1998, p. 1). The EAB conclusion affirmed an earlier ruling by an EPA administrative law judge.

The facts of the case are not in dispute. GM was issued a permit to discharge zinc, lead and copper from an outfall at its Pontiac-Fiero plant in Pontiac, Mich., by the Michigan Department of Natural Resources. The complaint, issued by EPA Region 5 in 1993, charged that GM exceeded

(Continued on page 2)

Inside This Issue ...

Storm Warnings	3
EPA Issues Water Quality Standards ANPRM, Eyes Revisions	4
'Tool Box' Guidance Will Help With Phase II Compliance, EPA Says	6
Updated Information on Alabama, Montana and Ohio	

Tab 800

GM Case

(Continued from page 1)

the limits set forth in its Clean Water Act (CWA) national pollutant discharge elimination system (NPDES) permit on 92 different occasions between 1989 and 1993. EPA initially levied a \$125,000 fine against GM, but that was reduced to \$62,500.

The EAB held that GM failed to exhaust its administrative remedies by not arguing that the state could not regulate stormwater discharges at the time Michigan issued the permit. EPA acknowledged that CWA Section 402(p)(1) prohibited states from requiring certain stormwater permits before 1994, but did not bar states from issuing permits to applicants who requested them, as GM did. Similarly, GM should have argued against the permit limitations, when they were established by the state, the EAB ruled. "GM may not now collaterally attack their inclusion in the context of this enforcement proceeding," the EAB opinion stated.

Industry Groups Voice Support for GM

A number of industry groups, including the American Automobile Manufacturers Association, the National Association of Manufacturers, the American Iron and Steel Institute and the American Zinc Association have filed an *amicus curiae* brief supporting GM's appeal to the federal court.

The GM decision "is a troubling precedent that jettisons twenty-five years of interpretation of the Clean Water Act," the groups argued. "Metallic particles present in rain as it falls on an industrial site, or which enter stormwater runoff from a building's structural components due to the acidity or erosive effects of rain, are not pollutants within the meaning of the Act," the *amicus* brief states.

The decision places those facilities in jeopardy of enforcement actions based on the new legal position underlying the case, the *amicus* brief states. The

impact of the decision "far transcends this case and will pose serious and unintended consequences for thousands of facilities throughout the United States," the industry groups say.

In the brief indicating its intention to appeal, GM argued that under Michigan law, it was entitled to assert all defenses even though it did not challenge its state permit at the time it was issued. The company said that the discharges were not in violation of the permit because they did not occur as a result of industrial activity. Furthermore, GM said that the state permits setting the discharge limits were invalid because in 1987, Congress forbade the issuance of stormwater-only NPDES permits until 1992.

EPA Says State Permitting Authority Jeopardized

EPA responded in a brief that "adoption of GM's approach would undermine the concept of permit finality emboldened in the Act as well as significantly erode the state's authority to make permitting decisions in the first instance."

The GM brief also said that GM neither added nor discharged metals, which the company insists came from building and roofing materials. "Because the alleged violations arise from ambiguous provisions of CWA not interpreted by EPA with clear notice to the public, EPA's enforcement action lacked fair notice to GM and violated GM's due process rights," the company will argue in its appeal.

EPA responded that at the time of the alleged violations, both GM and the state were operating as if the permits were in effect, and that GM continued to submit discharge monitoring reports as required by its permit for over three years. "There is no merit to GM's claim that it lacked fair notice," EPA said. "Whether or not GM had notice of EPA's interpretation of its own regulations is totally irrelevant to the due process question, which is whether GM had notice of the terms and conditions of its permit." ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1998 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (978) 750-8400.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Cinema Cited for Stormwater Violations. The U.S. Environmental Protection Agency (EPA) Region 1 office has reached a settlement on alleged stormwater violations with Hoyts Cinema Corp. and Whiting Turner Inc. According to the settlement, the companies will pay a \$51,000 penalty for failing to fully implement a stormwater runoff pollution prevention plan for a building site in Stoughton, Mass.

Whiting-Turner, on behalf of Hoyts, had begun building a cinema complex on a 23-acre site on Technology Center Drive without obtaining a permit or fully implementing a stormwater pollution prevention plan, EPA said. The site is next to a wetland that drains into Great Bear Swamp.

EPA officials first became aware of the Stoughton construction site problems in February 1997. A subsequent site visit confirmed that the companies did not have the required stormwater plan. Construction of the cinema complex has since ceased, and Hoyts and Whiting-Turner abandoned the site without taking necessary steps to stabilize it, EPA said. The owner of the property is in the process of bringing the site into compliance.

"In their haste to build, many developers and contractors often overlook their environmental obligations in terms of stormwater runoff plans. This penalty and the initiative we are launching behind it should send a message to others in the construction business that we are quite serious about doing everything we can to stem the potential environmental threats posed by stormwater runoff," said John DeVillars, Region I administrator.

In the coming year, EPA will investigate other construction sites in New England, and take action against developers and contractors who have failed to comply with federal stormwater permitting requirements, EPA said. On a parallel track, the agency will expand its education and outreach campaign to inform the regulated community about stormwater issues at construction sites.

This is the second commercial sector that EPA's New England office has investigated to ensure compliance with stormwater requirements. The agency assessed several penalties against auto salvage yards in New England over the past two years, EPA said.

Multi-sector Permit Gains Region 6 Approval. On July 20, Region 6 officials signed off on the multi-sector general permit (MSGP), said Brent Larsen, head of permits in the region. Two other EPA regions are still reviewing the permit, but Larsen expects it to be published in the *Federal Register* this month.

According to several sources, the permit was initially delayed because the agency had to focus its limited resources on completing the construction permit. As with the construction permit, resolving issues related to national historic site preservation and endangered species took longer than expected (see *Bulletin*, December 1997, p. 1).

When the modified MSGP is completed, it is expected that EPA will terminate the baseline industrial general permit. The *Bulletin* will have full coverage of the MSGP when it is released.

TMDLs Key to Meeting Clean Water Goals. According to a draft final report by the total maximum daily load (TMDL) federal advisory committee, states should be required to implement the national pollutant discharge elimination system program in impaired waters until TMDLs are completed for these waters.

The committee set a goal of eight to 15 years for completion of TMDLs for all water bodies that show nonattainment with water quality standards under Section 303(d)(1) of the Clean Water Act. "EPA regulations should also provide that, generally, high priority TMDLs be completed within five years after listing," the report stated. If parameter-specific net progress is made, however, the committee said state and stakeholder developed stabilization plans may offer flexibility.

According to the report, states should have discretion in allocating pollutant loads among sources as long as the allocations will meet TMDL targets, but EPA should provide guidance. EPA and the states should ensure that future growth is considered in all allocation decisions. "States may consider such factors as cost-effectiveness, technical and programmatic feasibility, relative source contributions and certainty of implementation," when allocating pollution reduction responsibilities.

Special challenges addressed in the report include water bodies impaired by "extremely difficult historical problems," water body impairments due to atmospheric deposition and water impaired by modifications to flow. "Federal agencies should help solve flow related nonattainment problems within their jurisdiction," the draft report states. The issue of whether EPA has authority to regulate flow has been a hot topic in phase II stormwater rule discussions.

The report states that EPA must improve technical guidance and support to improve program efficiency and to help states develop effective TMDLs. EPA should provide sound analytical tools and methods to assess state resource and staffing needs, it states. ■

EPA Issues Water Quality Standards ANPRM, Eyes Revisions

The U.S. Environmental Protection Agency (EPA) is considering revising water quality standards for the first time since 1983.

On July 7 the agency published an advance notice of proposed rulemaking (ANPRM) seeking comments from interested parties on possible revisions to the national water quality standards program that are intended to improve the effectiveness of water quality standards (63 FR 36742).

Among the specific areas EPA is seeking comment on are use designations and how use attainability analyses should be administered; ambient water quality criteria, including site-specific criteria procedures and the codification of a Clean Water Act requirement to adopt numeric toxic criteria; antidegradation implementation procedures; mixing zone policy and implementation procedures; applicability of water quality standards to wetlands; and increased use of toxicological, physical and biological data.

According to the notice, the agency would specify that states and tribes must have regulatory procedures in place for establishing site-specific water quality criteria. The agency would direct states and tribes to develop methods for establishing numeric values for pollutant levels in the absence of criteria and require or recommend that states or tribes adopt numeric or narrative criteria for biological indicators of aquatic ecosystem health.

To prevent degradation, EPA said it may revise the regulation to explicitly say that state and tribal antidegradation implementation procedures must be submitted to the agency every three years.

In recent years, states and Indian tribes as well as the environmental and regulated communities have commented on the importance of revising the focus of the water quality standards regulation. A key issue brought up by stakeholders is the degree of flexibility states and tribes should have in developing their own water quality programs. Industry groups have argued that in proportion to the amount of water pollution caused by manufacturing facilities, too much of the burden for maintaining water quality falls on them.

Many stakeholders support a more flexible regulation to allow states and tribes to address changing circumstances. Under such a regulation, states and tribes could more easily tailor their programs to deal with local water quality restoration and protection needs. Others support a regulation with more specific regulatory requirements. The latter would promote a more consistent minimum level of protection in state and tribal water quality standards, provide more clarity on standards issues, and serve as a stronger tool in encouraging states and tribes to take appropriate restoration and protection actions, EPA said.

The ANPRM is being issued in line with EPA's Feb. 14, "Clean Water Action Plan," which is a blueprint for restoring and protecting the nation's water resources. "A key element of the plan is advancement of the watershed approach to water quality protection," the agency said. EPA believes that refining designated uses and implementing better, more integrated water quality criteria, "are essential steps in carrying out the blueprint," it said.

EPA contends that "the current regulation is not broken. Rather, with the renewed interest in watershed management combined with improved methods for water quality assessment, a comprehensive evaluation for the purpose of strengthening the regulation is appropriate at this time." A review of the regulation will also complement similar outreach discussions EPA is currently undertaking as part of its review of the water quality planning and management and total maximum daily load programs as well as aspects of the national pollutant discharge elimination system program.

The ANPRM also stresses the need for better data, and new types of data, to support a more refined approach to water quality protection. For a new, data-intensive, watershed-specific approach to succeed, it must be workable for the states and tribes that will have to implement it, EPA said.

"At a minimum, any revisions to the water quality standards should result in a regulation that can be used to render protective, tailored, site-specific water quality-based decisions that bear reasonable compliance costs for the regulated community, as well as reasonable implementation costs for states, tribes and EPA," the notice stated. At the same time, the regulation should allow sufficient flexibility to states and tribes to implement water quality standards programs in a manner that is no more burdensome than under the existing regulation.

EPA will hold a series of public meetings to discuss the issues presented in the notice. The first will be held in Philadelphia in conjunction with the agency's National Water Quality Meeting Aug. 26 and 27. Dates, times and locations of other public meetings will be announced to the public.

Written comments must be submitted by Jan. 4, 1999. Send comments to W-98-01, WQS-ANPRM Comment Clerk, Water Docket, MC 4101, U.S. EPA, 401 M Street S.W., Washington, D.C. 20460. Comments may also be submitted electronically to OW-Docket@epamail.epa.gov.

For more information, contact Rob Wood at U.S. EPA Standards and Applied Science Division (4305), 401 M Street S.W., Washington, D.C. 20460; Wood.Robert@EPA.Gov; or (202) 260-9536. ■

Region 6 Construction Permit

(Continued from page 1)

new permit, are required to certify that their discharges will not affect listed endangered species and their habitats. The certification requirements also apply to any facility identified by EPA as having an impact on endangered species. The permit provides a six-step process to help applicants obtain certification. Those steps are:

- 1) determine if the construction site is found within a designated critical habitat for a listed species;
- 2) determine if listed species are located in the county(ies) where the construction activity will occur;
- 3) determine if any federally listed endangered and threatened species may be present in the project area;
- 4) determine if listed species or critical habitats are likely to be adversely affected by the construction activity's stormwater discharges or stormwater discharge-related activities;
- 5) determine if measures can be implemented to avoid any adverse effects; and
- 6) if a determination has been made that construction activity will affect endangered species, then the applicant must receive clearance from the Fish and Wildlife Service and/or the National Marine Fisheries Service to obtain permit coverage.

In addition to the ESA requirements, the permit includes a few other changes from the original 1992 permit. (The changes are the same as those included in the EPA general permit issued last February.)

Among the changes are the following:

- Construction sites under five acres that are designated as causing an impact to surrounding waterways may be covered under the general permit rather than an individual permit.
- Permittees must post at the construction site either the permit number, or a copy of the NOI if a permit number has not been assigned, along with a brief description of the project.
- Stormwater pollution prevention plans must include performance objectives.

With the exception of the performance objectives, the content of stormwater pollution prevention plans are the same as EPA's general permit and they are essentially the same as the original 1992 permit. The plan should focus on two major requirements—providing a site description that identifies sources of stormwater pollution and identifying and implementing appropriate measures to reduce pollutants in stormwater discharges. Plans must be prepared before submittal of an NOI, and must be made available upon request by regulatory authorities.

The Region 6 permit applies to stormwater discharges associated with construction activity in New Mexico and Texas, as well as Indian lands in Louisiana, Oklahoma, Texas and New Mexico (except Navajo Reservation Lands and Ute Mountain Reservation Lands), and oil and gas construction in Oklahoma. Other Region 6 states (Arkansas, Oklahoma and Louisiana) conduct their own stormwater permitting programs.

The permit covers construction activity that disturbs at least five acres, or disturbs less than five acres but is part of a larger common plan of development or sale with the potential to cumulatively disturb five or more acres. The previous general permit expired last year.

For more information on the national pollutant discharge elimination system (NPDES) construction general permit, call the EPA Region 6 stormwater hotline at (800) 245-6510 or visit the Region 6 web site at: <http://www.epa.gov/earth1r6/6en/w/sw>. ■

Calendar of Events

EPA will hold its annual meeting on water quality standards and water quality-based permitting in Philadelphia Aug. 24-28.

The meeting will cover: existing chemical specific criteria; nutrient policy; an overview of the advance notice of proposed rulemaking for water quality standards; bioassessments and biocriteria; and a national program update.

There is no registration fee, but preregistration is required. For more information contact the Cadmus Group at (703) 998-6862, or by e-mail at mrm98@cadmusgroup.com. EPA also has posted registration information and an agenda at www.epa.gov/ost/announce/watrqlty.html.

Government Institutes is sponsoring a stormwater discharge regulations course Sept. 24-25. The course, which will be held in Arlington, Va., covers: legal requirements and objectives of stormwater permits; requirements for stormwater pollution prevention plans; case studies; and information on how to coordinate pollution prevention plans with other facility programs. The course costs \$999. For more information, call (301) 921-2345.

The Water Environment Federation is sponsoring its 71st annual program for technical development in Orlando, Fla., Oct. 3-7. The conference will cover: wastewater treatment research; municipal wastewater treatment; surface water quality and ecology; facility operations; industrial issues and treatment technology; management; and current issues. The conference costs vary. For more information, call (800) 666-0206. ■

'Tool Box' Will Help With Phase II Compliance, EPA Says

Among the tasks yet to be completed by the U.S. Environmental Protection Agency (EPA) in preparing the final phase II stormwater rule is development of a tool box to support implementation of the rule.

EPA's Office of Wastewater Management has distributed a draft tool box to stormwater phase II federal advisory committee members in an attempt to get feedback "on topics that should be included and which ones should be a priority." Several members have said that a clear and detailed tool box that offers guidance, but that isn't prescriptive, is crucial to implementation of the phase II rule.

The tool box will consist of fact sheets, guidances, a menu of best management practices (BMPs) and other technical and educational materials. It is intended to spell out in simple terms who is covered, what is required and when and provide guidance on how to comply with the regulations.

According to the draft tool box, EPA plans to have an Internet site up by March 1999 when the rule is to be finalized. The site will include press releases, no-exposure guidance and fact sheets. By July 1999, an information clearinghouse will be in place and training materials for permitting authorities—to include model general permits—will be completed. EPA also expects to begin training permitting authorities next July. By March 2000, EPA hopes to complete guidance for municipalities, construction site owners and developers. The agency also hopes to finalize guidances on how to obtain permit waivers, and on developing a

menu of BMPs. The agency does not expect to have a fully operational tool box until March 2002, when general permits are due to be issued.

According to the draft tool box, there will be 11 sets of fact sheets. Among the areas that will be covered are an overall framework of program implementation, including a discussion of the watershed approach; permitting authority roles and responsibilities; the industrial no-exposure exemption; and information on the public's role in the phase II rule.

There also will be a municipal and a construction series of fact sheets. The municipal series will include information on who is covered, including jurisdictional issues; a definition of urbanized areas; a fact sheet on each of the minimum control measures; effectiveness of urban stormwater controls; the permitting process; reporting requirements; and financing options. The construction program guidance will consist of fact sheets on construction waivers; the permitting process; program requirements; appropriate BMPs for small construction sites; and post-construction stormwater controls.

One challenge that EPA has identified is how to inform smaller entities that they are covered by the rule, and what they must do to comply. The agency is planning a campaign that will include announcing available materials in association newsletters; providing associations with materials to distribute at conferences and including information on its stormwater phase II rule internet page. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
• monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$349
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

**Call Us Toll-Free At 1-800-677-3789 or
visit our website: www.thompson.com**

Stormwater Permit Manual

Bulletin

Volume 7, Number 12

July 1998

EPA, FACA Hammer Out Details of Phase II Stormwater Rule

Just eight months short of the court-ordered deadline for publishing the phase II stormwater rule, U.S. Environmental Protection Agency (EPA) officials admitted that a number of unresolved issues remain.

Office of Wastewater Management (OWM) staff went through comments and provided a set of questions and issues to be discussed at the latest stormwater phase II federal advisory committee (FACA) meeting, held in Arlington, Va., June 25 and 26. Two "issue areas" the agency is struggling with are state alternatives to the national pollutant discharge elimination system (NPDES) approach, and waivers for construction projects and the overlap between phase I and phase II construction requirements.

At the conclusion of the FACA meeting, these issues and several others remained unresolved. George

Utting, the FACA matrix manager and one of the authors working on the final rule said that although the FACA process is coming to a close, the job of finalizing the rule is just beginning. The agency is trying to find answers to clarify deficiencies in the proposal that were pointed out in public comments and by FACA members.

The proposed construction provisions were among the most controversial. Commenters stated that the waivers were too difficult to apply. Under the proposal, construction sites could get waivers if there was low predicted rainfall; where the rainfall erosivity factor was less than two. A second waiver would be granted for low soil disturbance. Site operators also could get a waiver if total maximum daily loads (TMDLs) addressed pollutants of concern.

(Continued on page 4)

Urban Stormwater Targeted in EPA's Latest Proposed Effluent Guidelines Plan

The Environmental Protection Agency (EPA) recently issued its proposed plan for developing new or revised effluent guidelines for industrial discharges. Urban stormwater discharges and airport deicing operations are among the activities that could be subject to new or revised regulations.

The Clean Water Act requires EPA to publish a biennial effluent guidelines plan that sets a schedule for review and revision of existing regulations and identifies categories of dischargers to be covered by new regulations. The most recent proposed plan was published in the May 28 *Federal Register* (63 FR 29203). Effluent guidelines currently are under development for the following industries: pulp, paper and paperboard; centralized waste treatment; pharmaceutical manufacturing; metal products and machinery; landfills; incinerators; industrial laundries; transportation equipment cleaning; iron and steel manufacturing; coal mining and animal feedlots.

According to the proposed plan, EPA intends to complete preliminary studies on urban stormwater, airport deicing and feedlots. The effluent guidelines studies, which will be used to help develop future effluent

(Continued on page 2)

Inside This Issue ...

Water Office Issues 1998-1999 Agenda	3
Texas Seeks To Administer NPDES Program	3
EPA to Propose Electronic NPDES Reporting	3
Revised Manual Index	Index Tab

Effluent Guidelines

(Continued from page 1)

guidelines plans, are being initiated as a result of a 1992 consent decree between EPA and the Natural Resources Defense Council (NRDC). The consent decree commits EPA to schedules for proposing and taking final action on effluent guidelines, and also for conducting preliminary studies.

Urban stormwater is one of several new categories that could be subject to effluent guidelines in addition to those listed above. The other industrial categories being considered are: petroleum refining; textile mills; inorganic chemicals; steam electric power generating; photographic processing; chemical formulators and packagers; airport deicing; fish hatcheries and farms; and other categories that were suggested in comments to the May 28 proposed effluent guidelines plan.

The consent decree requires EPA to begin two rulemaking projects by December 1998, and two more by December 1999. EPA began its preliminary study on stormwater last year. When completed, the study will provide information on available literature addressing urban stormwater and best management practices (BMPs) for effective stormwater management, explained Eric Strassler, EPA's project manager for the study. "In general, the study will discuss what is known about the effectiveness and costs of BMPs that have been used over the last 10 to 20 years," Strassler said. The study will also provide information on watersheds and examine the similarities or differences among pollutants found in urban vs. rural watersheds.

A major part of the study is the creation of a database of information available on BMPs for urban stormwater discharges. Strassler's group has been working on the database for about a year and hopes to have the database available on CD-ROM sometime next year.

The urban stormwater study must be completed by the end of this year. At that time EPA will have to decide whether to subject urban stormwater discharges to additional regulations.

Although airport deicing is listed as a potential category for regulatory action, it is unlikely that a rulemaking project would begin this year. Instead, EPA officials will continue to work on a study that began earlier this year as required by the agreement with NRDC.

Most airports already have effluent monitoring programs in place to comply with stormwater permit regulations, according to Shari Zuskin, project manager for the deicing study. As a result, the deicing study will take a look at some of the monitoring practices in place at airports to determine if they are adequate in addressing effluent discharges or if additional regulations are needed, Zuskin explained. "We are going to look at the implementation of stormwater regulations and the effect of collection and discharge of certain chemicals from deicing fluid," she said. Specifically, the study will examine the collection and discharge of chemical compounds such as ethylene glycol and propylene glycol, as well as biochemical oxygen demand rates.

The study will try to assess whether facilities that produce these pollutants are having an affect on publicly owned treatment works, Zuskin said. Much of the data for the study will be collected through site visits to airports of differing sizes and geographic locations. The visits will include airports that employ pollution prevention, on-site recycling or alternative deicing technologies. The 1992 consent decree requires that this study be completed by December 1999. At that time, EPA will determine whether additional regulations addressing airport deicing activities are needed. Recently, a number of airports have been sued by environmental groups alleging violations of stormwater regulations (see *Bulletin* February 1998, p. 5). ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1998 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Water Office Issues 1998-1999 Agenda. Robert Perciasepe, assistant administrator for the water office at the U.S. Environmental Protection Agency (EPA), June 18 issued the agency's national water program agenda for 1998 and 1999.

The agenda, sent to employees of the national water program, reiterates the agency's goal to restore water quality on a watershed-specific basis. The most pressing water quality problems are caused by polluted runoff, the Perciasepe memo stated. In the last several years, EPA and many states have promoted the watershed approach as a way of implementing Clean Water Act (CWA) responsibilities and restoring waters not meeting clean water goals, the memorandum stated.

The key elements of the next phase of the watershed approach are unified assessments, strong state and federal standards, watershed restoration action strategies, watershed pollution prevention, and watershed assistance grants. These elements are described in the Clean Water Action Plan, Perciasepe said (see *Bulletin*, March 1998, p. 1).

The Clean Water Action Plan relies on a state-led process to identify priority watersheds. EPA's work with states to support the process of identifying common watershed priorities among all interested parties will be key to making this process effective, the memo states.

Among the strategies EPA is encouraging are: strengthened standards programs; total maximum daily load implementation through permits and other actions; polluted runoff reductions; source water protection programs; and water quality and other natural resource restoration goals implemented through coordinated local, state and federal support (including wetlands grants and other mechanisms).

As part of the agenda, the agency also hopes to improve coordination with state agencies and Indian tribes; protect the Great Lakes; increase the amount of information on watersheds available on the Internet, including the Index of Watershed Indicators; and develop consumer confidence reports for drinking water.

Focusing on measurable environmental results is the core of the agency's efforts to build a planning and accountability system. "We must continue to develop outcome measurements based on sound science. ... We need to use this information to manage our programs and inform our decisions about changes to our programs, our budget and the assistance we need to provide to our partners," the memo states.

Texas Seeks to Administer NPDES Program. The state of Texas recently submitted a request for approval of the Texas pollutant discharge elimination system (TPDES) program (63 FR 33658, June 19).

If approved, Texas will have partial authority to issue permits for point source discharges. However, to gain such authority, the state has to demonstrate compliance with Section 402 of CWA and show that its program will minimize effects on endangered species and national historic sites. EPA would retain its authority under Section 402(d) of CWA to object to the TPDES permit and, if necessary, to issue federal NPDES permits. EPA also retains the authority to take enforcement actions when it determines the state's enforcement is not adequate.

As proposed, Texas would eventually get authority to administer most national pollutant discharge elimination system (NPDES) programs including the baseline construction stormwater general permit, the baseline industrial stormwater general permit and the multi-sector general permit. "Jurisdiction over these stormwater discharges, including primary enforcement responsibility, would be transferred to the Texas Natural Resource Conservation Commission (TNRCC) at the earlier of the time the EPA-issued general permit expires or TNRCC issues a replacement TPDES permit, whether general or individual," according to the proposal.

With a few exceptions, TNRCC would get jurisdiction over discharges from individual stormwater permits; stormwater outfalls in wastewater permits, and stormwater discharges designated by the state in accordance with 40 CFR 123.26(g)(1)(l). EPA temporarily would retain primary NPDES enforcement responsibility for those facilities that have outstanding compliance issues until resolution of these issues is accomplished.

The public comment period ends Aug. 3 and there will be a public meeting in Austin July 27. For more information, contact Wilma Turner at (214) 665-7516.

EPA To Propose Electronic NPDES Reporting. EPA plans to propose changes to its NPDES program regulations to allow electronic submissions of reports and other information.

The proposed rule would establish criteria for electronic reporting and a specific process and conditions for electronic reporting of discharge monitoring reports to EPA. The proposal will address electronic signature, certification and recordkeeping requirements. The agency expects to publish the proposal in the Fall. ■

Phase II

(Continued from page 1)

FACA members representing construction interests complained that the TMDL provision is too confusing and that the erosivity factor is unrealistically restrictive. Utting said that obtaining the construction waiver would not be that burdensome and that sites could qualify for the waiver by self-certification. But Utting acknowledged that problems associated with regulating small construction sites remain. Utting solicited feedback on how EPA could communicate to small construction site operators that they may be eligible for a waiver, or even that small companies are expected to comply with storm-water regulations. He also questioned what states will do when they receive waiver certifications from site operators.

Jim Bauman, representing the National Governors Association and a staffer with the water resources division of the Wisconsin Department of Natural Resources, said "we don't want to take EPA's job by inspecting construction sites." States have complained that the phase II rule will cost them too much money to administer. The construction waiver is an example of the type of drain on state resources that state representatives have complained about.

Tom Mumley, with the San Francisco Regional Water Quality Control Board, said that a well-constructed "tool box" will help state regulators make well-informed decisions. "This way different regulators won't make different calls," and there will be more consistency among states in how the phase II rule is administered, Mumley said.

Environmental representatives acknowledged potential problems with communicating with small construction site operators, but said construction representatives were overstating burdens associated with acquiring waivers. Roy Hengerson of the Sierra Club, said, "I don't see what's so confusing about the TMDLs. The waivers seem pretty straightforward."

The construction element of the phase II rule drew additional criticism from some FACA members who argued that phase II requirements were more stringent than those imposed in phase I. In particular, FACA members said current municipal requirements for construction sites are not as stringent as the phase II requirements for sites between one and five acres.

Doug Harrison, representing the National Association of Towns and Townships, said phase I requires regulated entities to consider taking certain actions to prevent stormwater impacts, whereas the phase II rule has prescriptive measures that must be undertaken.

Facilities meeting municipal requirements under phase I are not subject to federal enforcement and therefore cannot be targeted in citizen suits, Utting said. Municipal sites under phase I also do not have

to prepare a stormwater pollution prevention plan. Instead, they must develop site management plans, which are subject to a preconstruction review by the municipality. Finally, construction sites subject to municipal requirements are only regulated for discharges to the municipal separate storm sewer system (MS4), whereas construction sites under phase II are regulated for discharges to all waters, Utting said.

This disparity is of concern because the proposed phase II rule states that construction sites can reference qualifying local regulations instead of meeting the phase II requirements. Therefore, construction sites covered by a qualifying local program may not have to do as much as those in areas where there isn't a local program. Representatives from rural areas in particular expressed concerns about this provision.

EPA did as much as it could to ensure that there was balance between phase II construction requirements and municipal construction requirements, Utting said. However, municipal construction sites fall under the umbrella of municipal permits, and therefore, in most cases, the municipality is responsible for ensuring that there are no water quality problems associated with stormwater discharges, Utting said. If construction sites are causing the MS4 to be out of compliance, the municipality will have to strengthen the requirements.

As for the state NPDES issue, state representatives say they want to develop a state equivalency program. The more progressive states want control over their own programs and do not want to be subjected to an NPDES framework. But Mike Cook, director of OWM, said states failed to provide details as to how EPA might implement such a program. In comments, most states said they wanted autonomy, but they did not specify how state equivalency could be written into the phase II rule, Cook said.

California's Mumley said the phase II proposal provides "plenty of opportunities for flexibility. States don't like to be told what to do, but the fact is this is one of the softest rulemakings you'll ever see." The proposal lists minimum measures and then just requires states to issue a permit that says "you shall manage stormwater," Mumley said. Beyond that, progressive states are still going to implement most of their own alternatives, he said. Some of the problems California faced in trying to get its own permit approved by EPA might have been prevented if EPA had a state equivalency program, Mumley acknowledged. Environmentalists vigorously oppose a state equivalency proposal because citizen suit provisions exist only in the federal Clean Water Act.

This FACA meeting was the last one scheduled before the rulemaking, but OWM will continue to work with members of the committee to resolve some of these issues before the rule is released. The rule is scheduled for release March 1, 1999. ■

Stormwater Permit Manual

Bulletin

Volume 7, Number 11

June 1998

Phase II Comments Focus On Construction, NPDES Approach

Players in the phase II stormwater rule debate raised questions about using the national pollutant discharge elimination system (NPDES) framework and whether to regulate small construction sites in comments submitted to the U.S. Environmental Protection Agency (EPA).

Among other points tackled by the nearly 600 commenters were whether EPA should regulate flow rates and volumes and how the agency should implement its proposed no-exposure exemption.

The final phase II rule, which would regulate construction sites between one and five acres and municipal separate storm sewer systems serving fewer than 100,000, is due to be published in March 1999 under a court-ordered deadline. The proposed rule was published in the *Federal Register* on Jan. 9 (63 FR 1536).

Not surprisingly, the National Association of Home Builders (NAHB) submitted lengthy comments stating that the "proposal is unfair to the construction industry." Smaller construction sites should not be regulated because they have shorter exposure times and use less heavy equipment, NAHB said. "EPA has not developed a record that supports the designation of smaller construction sites for coverage under the phase II stormwater program," NAHB stated.

If EPA insists on regulating small construction sites, NAHB said, the phase II requirements should be more lenient than phase I requirements. "Recognizing that the impacts from phase II sources, including small construction sites, are typically less significant than those resulting from larger-sized development and phase I industrial sources, it is only practicable to spend less time and energy regulating these sources."

(Continued on page 4)

Environmental Appeals Board Sides With EPA in Arizona MS4 Permit Decision

Permits for five Arizona communities will stand after the U.S. Environmental Protection Agency's (EPA) Environmental Appeals Board (EAB) ruled that the permittees could implement best management practices (BMPs) instead of meeting numeric effluent limits and testing discharges for whole effluent toxicity.

The board rejected a petition filed by the Defenders of Wildlife and the Sierra Club that sought review of national pollutant discharge elimination system (NPDES) permits issued by EPA's Region 9 office. The permits were issued Feb. 14, 1997, to the municipal separate storm sewer systems (MS4s) of Tucson, Phoenix, Mesa, Tempe and Pima County.

The environmental groups alleged that the permits fail to ensure compliance with state water quality standards and that the stormwater management programs incorporated into the permits fail to quantify pollution reductions estimated to occur as a result of the pollution control measures required by the permits. Furthermore, the groups said that the region

(Continued on page 5)

Inside This Issue ...

California Considers Tough Stormwater Enforcement Bill 2

Storm Warnings 3

New newsletter index added to the *Manual*

California Considers Tough Stormwater Enforcement Bill

Last month the California Assembly appropriations committee approved a bill that would strengthen enforcement of stormwater permit regulations and impose stiff penalties on facilities not in compliance with state and federal regulations.

The bill, AB 2019, also known as the Stormwater Enforcement Act of 1998, would require California's regional water quality control boards (RWQCBs) to identify stormwater non-filers, undertake a notification procedure urging non-filers to participate in the stormwater program, and prepare an annual report for the public in which non-filers are listed. Additionally, the bill would create a stormwater discharge account for the deposit of stormwater fines and would require an annual report to the state legislature on stormwater enforcement actions and their results.

AB 2019 was written in response to a January report by Heal the Bay, an environmental group based in Santa Monica. The report examined the enforcement program of the Los Angeles RWQCB—one of nine regional boards in the state. In particular, the report was critical of the Los Angeles board's enforcement of stormwater permits for industrial activities.

Among other things, the report identified at least 1,558 facilities without permit coverage that have the potential to discharge. Additionally, the report cited a minimum of 1,170 permittees that are late filing their 1995-96 annual reports as required by stormwater regulations. Although the numbers listed in the report are particular to the Los Angeles region, another study conducted by the University of California at Los Angeles estimates that there are as many as 34,000 potential polluters without permit coverage throughout the state.

In addition to tracking the number of non-filers, the report examined the board's record of enforcement actions against known violators. "Sometimes, years pass before violators are contacted for simple filing

violations," the report said. In the last six years, the Los Angeles board only issued one penalty for industrial stormwater violations.

"You can have all the laws on the books you want, but if you don't enforce them, they're not worth very much," said Sheila Kuehl, Speaker Pro Tem of the California General Assembly. Kuehl (D-Santa Monica) introduced AB 2019 to the General Assembly earlier this year after collaborating on the bill with representatives of Heal the Bay. "I grew up in California so I care about the quality of the water in the state ... [and] that interest expanded once I was elected," Kuehl said. The Stormwater Enforcement Bill is a "pretty reasonable bill," she said. "We want to get some attention on enforcement issues ... and have penalties for non-compliance."

Toward that end, the bill includes a number of requirements for the state and regional water quality control boards to enhance enforcement and impose penalties on those facilities not in compliance with stormwater regulations. The bill would require:

- by Feb. 1 of each year, the regional boards, or the state board on behalf of the regional boards, to publish a report listing all regulated dischargers that have not filed a notice of intent (NOI);
- by March 1 of each year, the regional boards to notify each discharger listed in the February report to inform them of their noncompliance and associated penalties; and
- by May 1 of each year, the regional boards to send a second notice to non-filers describing the penalties for continued noncompliance.

In addition, within 30 days from the date on which any required report or certification relating to stormwater is due, the regional boards would conduct a review of the reports or certifications submitted and

(Continued on page 6)

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Licia Ponzani; Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1998 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Cook Calls for Funding of Clean Water Action Plan.

A U.S. Environmental Protection Agency (EPA) water official told Congress May 13 that in order to solve many of the nation's water quality programs it should provide \$568 million in 1999 and \$2.3 billion through fiscal 2003 to fund President Clinton's Clean Water Action Plan.

Mike Cook, director of EPA's office of wastewater management told two subcommittees of the House Committee on Agriculture that while there have been improvements to water quality, the new threats to clean water are not being adequately addressed with existing programs. "Implementation of existing programs will not stop serious new threats to public health, living resources and the nation's waterways," Cook said.

While problems associated with point sources have been reduced, the major sources of water quality degradation are agriculture, polluted runoff from urban areas, construction sites and forest harvesting. Specific pollution problems evident in rivers and streams include siltation, nutrients, bacteria, oxygen-depleting substances, metals habitat alteration, pesticides and organic toxic chemicals, Cook said.

States report that agriculture is the most widespread source of pollution in the nation's surveyed rivers, Cook said. Fully 25 percent of all river miles surveyed were degraded by pollutants generated by agricultural activities, Cook said. Agriculture also contributes to 70 percent of all water quality problems identified in rivers and streams. Activities most responsible for impairment are crop production, animal feedlots, rangeland and pastureland, in that order.

EPA Audit Critical of Region 10 NPDES Enforcement.

EPA Region 10 needs to improve enforcement and monitoring of its national pollutant discharge elimination system (NPDES) permit program, according to a recent audit report published by EPA's Office of Inspector General. Among other things, the report said the region needs to improve its process for issuing and renewing permits, compliance monitoring of dischargers and enforcement of compliance for dischargers that have violated permit conditions.

The report, issued in March, focused on wastewater and stormwater dischargers in Alaska and Idaho, non-NPDES delegated states that fall under the jurisdiction of EPA Region 10. According to the report, the region has not issued or renewed most of the required NPDES permits for municipal and industrial dischargers in either state. In the past two years, regional officials have issued 33 permits. There

are 1,000 applications waiting to be processed, the report said.

"Some permit applications have been on file so long that the facilities no longer exist," said Region 10 official Joe Wallace. Wallace noted, however, that the audit report focuses more on wastewater permits and that very few of the shortfalls in Region 10's NPDES program have to do with stormwater permits.

Before EPA conducted the audit and issued its report, Region 10 was in the process of implementing a plan to address the backlog of permit applications. Under this three-year plan, the region prioritized permit applications according to the potential for environmental damage from an applicant's activities. The goal of the plan is to reduce the backlog by fiscal 1999.

However, Wallace said that the region had struggled in implementing the plan because of limited resources. It takes about six months for a permit to be issued, Wallace said, adding that the region does not have the resources to address the backlog of applications. As a result, many applications won't be processed.

In addition to the backlog of permit applications, the report cited problems with compliance monitoring and inspections. "The region did not perform some of the NPDES compliance inspections of major dischargers that it committed to in its Memorandum of Agreement with EPA," the report said. Without these inspections, there is an increased opportunity for permit violations. The report also cited a lack of enforcement action against significant violators. "The region did not take formal enforcement action as required against 19 of 25 dischargers in SNC [significant noncompliance] for one or more quarters during the period October 1994 through December 1996," the report said.

MSGP May Be Issued by Month's End. According to sources, EPA has reached agreement with the U.S. Fish and Wildlife Service over endangered species provisions in the modified multi-sector general permit (MSGP).

The agreement clears the way for the agency to issue a final MSGP as soon as regional administrators sign off on the final draft of the permit, sources say. Upon issuance of the modified MSGP, EPA will discontinue the use of the industrial general permit and bring all industrial permittees into the MSGP fold. Sources say the permit may be issued sometime in June. At that time, newly covered MSGP holders will have to ensure that stormwater pollution prevention plans and best management practices meet the requirements of the MSGP. ■

Phase II Comments

(Continued from page 1)

Hugh Archer, deputy secretary for water management for the Pennsylvania Department of Environmental Protection (PDEP), said PDEP objects to the rule because it imposes an additional workload on the state, particularly with regard to construction activities. Acceptance of the phase II rule should be "contingent on provision of adequate funds to the states to carry out the burdensome tasks imposed by the new regulations," Archer said.

Pennsylvania's argument is largely consistent with comments made by other state officials at federal advisory committee meetings held to discuss phase II issues. These state representatives have said that the NPDES permit program creates extra layers of administrative burden on top of existing state erosion and sedimentation plans.

Although EPA has said qualifying state, tribal and local erosion and sediment control plans may be incorporated by reference, PDEP and other state environmental agencies have argued that EPA should allow states the flexibility to regulate small construction activities without meeting EPA's terms for "qualification" and without the burdens of administering an NPDES permit program.

Chevron Calls for Permit-by-rule

Chevron Corp. and the American Petroleum Institute agreed with PDEP that the NPDES approach should not be used in the phase II rule. Chevron claimed that Section 402(p)(6) of the Clean Water Act (CWA) intended for EPA to regulate in phase II only those sources that had some meaningful impact on water quality.

Therefore, EPA should regulate phase II through a permit-by-rule so that only sources with discharges that can be proven to impact water quality would be required to apply for a permit, Chevron said. "We believe that EPA, by failing to identify impacts of sources they seek to regulate under phase II, is not fulfilling the statutory obligations or the will of the Congress."

Like other commenters, Chevron objected to EPA's plans to regulate flow rates and volume and said that designating construction sites between one and five acres was arbitrary. Additionally, Chevron said certain activities, such as pipeline and underground storage tank maintenance and petroleum exploration and production, should be exempt from the definition of construction.

Municipal representatives also took exception to EPA's plans to regulate flow. The American Public Works Association (APWA) said control of flow has to do with local land-use decisions and should not be

dictated by the federal government, which was directed in CWA to address water quality, not quantity.

The National Association of Flood and Stormwater Management Agencies (NAFSMA) concurred with APWA stating that "it is the pollutants in stormwater that are the subject of regulation, not flow rates or volumes *per se*."

Joint comments by over 30 environmental groups, however, stated that flow should be regulated in the phase II rule. The comments stated that EPA so far failed to require municipal systems and construction sites to "address the physical impacts of stormwater, particularly due to increased velocity and volume of runoff."

AMSA Takes Middle Ground

The Association of Metropolitan Sewerage Agencies (AMSA) was in opposition to industry and state representatives on many key issues. For example, AMSA said it supported EPA's plan to uphold the NPDES program and the inclusion of construction sites between one and five acres.

But AMSA's overriding concern was EPA's proposal to allow the use of numeric effluent limitations in municipal stormwater permits "where adequate information exists to develop more specific conditions or limitations to meet water quality standards." According to AMSA's May 1998 *Clean Water News*, narrative effluent limitations requiring the use of best management practices are the best means to reduce pollutants in stormwater discharges.

Municipal groups objected to EPA's co-permittee provisions. Under the proposal, phase II municipalities may join a phase I permittee to avoid duplicative and burdensome compliance activities. But NAFSMA said that two phase II communities also "might be interested in and benefit from co-permittee arrangements."

Enviros Call for NPDES-only Approach

Environmental groups voiced support for EPA's plan to apply a traditional NPDES approach to phase II sources. "We are pleased that EPA is proposing only an NPDES approach for stormwater phase II. Only an NPDES approach [that] complies with CWA will be effective in finally moving past the 25 years of inaction that has to date characterized the control of runoff." These groups also support the NPDES approach because they say it provides accountability.

A state proposal that would allow permitting authorities to individually develop non-NPDES programs to regulate stormwater was not acceptable to environmentalists. The state alternative does not allow for

adequate public participation in developing requirements and enforcing those requirements, environmental groups commented. "State stormwater enforcement is not only rare, it also may be counterproductive. Unfortunately states not infrequently file administrative or state court actions in order to protect a discharger from federal citizen suits, not to vigorously enforce pollution limits."

Environmental groups also objected to the state alternative because it would lead to "an unworkably disjointed program with even more arbitrary cutoffs and distinctions."

In addition, even though EPA would have to approve state programs, oversight would be difficult and "politically awkward," they said. They also urged EPA to require permit coverage 18 months after the rule is issued, not 40 months as now proposed. State representatives, on the other hand, said the proposal would not give them enough time to promulgate rules to comply with the federal standard.

Finally, environmentalists criticized the proposed no-exposure exemption as overly broad and said that no-exposure certifications should be directly available to all members of the public on request.

Arizona MS4s

(Continued from page 1)

improperly allowed the permittees to defer submission of certain components of their stormwater management programs and that the permits for Pima County and Tucson fail to address the pollution from areas of new development. Finally the environmental groups said the region improperly met with the permittees and the Arizona Department of Environmental Quality (DEQ) during the comment period to discuss the draft permits.

The Clean Water Act requires control of polluted stormwater to the "maximum extent practicable" through planning and permitting requirements. However, the act does not specifically require that permittees meet numeric effluent limits or test for whole effluent toxicity.

Therefore, EAB concluded that permits could use BMPs rather than specific limits without violating the act, especially where there is insufficient information on which to base such limits. The permits, which were issued under an interim basis, are subject to revision if the BMPs are insufficient to protect water quality, the board ruled.

"The region has determined that numeric effluent limits are not feasible at the present time in the context of the permits at issue, and petitioners have failed to show that the determination was in any way unlawful or inappropriate," EAB ruled.

The Stormwater Reform Coalition (SRC), an association made up of small businesses, said EPA should issue the no-exposure exemption as an independent, expedited rule. "The agency should not delay this action and waste environmental benefits that can be achieved today," SRC commented. The coalition also said the term "potential to leak" should not be included in the no-exposure provision because "no one can certify a future occurrence."

Of the proposed inclusion of construction sites between one and five acres, SRC said, "While studies and papers may support the need and provide justification for regulating construction, they do not provide a legal or factual justification for differentiating construction projects based upon the amount of land disturbed."

Commenters from both sides of the issue said they believed EPA's economic forecasts were off the mark. NAHB said the program would cost between \$463 million and just over \$1 billion, instead of the \$138 million to \$869 million the agency estimated. Environmental groups said the estimates were overly conservative and overstated the cost without including cost offsets. EPA also understated the benefits of the proposed rule, the environmental groups stated. ■

Also, EPA reasonably explained why whole effluent toxicity testing was not required in the permits, and the petitioners failed to meet the high burden of showing how the agency's conclusions about testing requirements were erroneous, EAB concluded.

The board also ruled that no improper *ex parte* communication occurred as a result of meetings between EPA Region 9, Arizona DEQ and the permittees. These meetings can prove beneficial in clarifying issues for the region, the permittees and the general public, the board said. "Further, notes from the meetings between permittees and the region were included in the administrative record for the permits, and the region's response to comments accurately reflected the permittee's comments, as well as any permit conditions changed as a result of the comments," EAB added.

Filing the petition was not fruitless for the environmental groups, however. On April 15 the region reissued the portions of the permits related to quantification of pollution reductions and pollution from newly developed areas in Pima County and Tucson. The region also withdrew portions of the permit dealing with deferred submissions.

Because of these permit revisions, the board ruled that these issues were not ripe for review. Petitioners will now have the opportunity to seek administrative review of the reissued versions of the permits by making an evidentiary hearing request, EAB said. ■

California AB 2019

(Continued from page 3)

identify the dischargers that have failed to submit the required paperwork in a timely manner.

The regional boards then would have an additional 30 days to notify dischargers of noncompliance with reporting requirements and penalties. If a discharger fails to submit the required paperwork to the regional board within 30 days from the date on which the first notice is sent, the board would send a second notice. If the discharger does not file the required paperwork within 30 days of the second notice, the regional board would impose the following penalties:

- \$500 for each day the discharger remains in violation of permitting requirements;
- \$250 for each day the discharger remains in violation of reporting or certification requirements; and
- reimbursement of the costs incurred by the regional board to enforce the provisions of the law.

The regional board may reduce the penalties imposed on a discharger by up to 50 percent if the discharger agrees to a supplemental environmental project. To receive the penalty reduction, the discharger must undertake an environmentally beneficial project that is approved by the regional board.

Starting in April 2000, the bill would require the state water board to prepare an annual report for the state legislature that summarizes the enforcement actions taken the previous year. The report would have to include an assessment of compliance with stormwater requirements.

In addition, the bill would create a stormwater discharge account for the deposit of stormwater fines and cost recovery. This money would be available to the pollution boards for implementing stormwater pollution prevention programs.

So far the bill has received bipartisan support in the general assembly and is expected to pass through the state Senate with little difficulty. The bill could be introduced to the senate as early as this month, said a spokesperson with Kuehl's office. Additionally, the bill has had some support from the business community, at least from facilities that have been in compliance with stormwater regulations and would like to see the regulations applied with more parity among industrial facilities.

The only negative feedback thus far has come from the state board, which has taken an "oppose unless amended" position with regard to the bill. "While the intent of AB 2019 is laudable, it would require the completion of an unattainable series of tasks within a short time schedule, in a prescriptive manner which would remove the state board and RWQCBs' flexibility within the stormwater program," the state board said in a letter to Kuehl.

One of the state board's biggest concerns with the bill is its requirement that the regional boards generate a list of non-filers. "This list does not exist and the [state board] has found it problematic to develop such a list through available databases and methods of investigation," the letter said. Additionally, the state board estimates that compliance with the proposed bill would involve extensive site investigation and inspection at a cost of about \$1.2 million per year. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
• monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$349
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

**Call Us Toll-Free At 1-800-677-3789 or
visit our website: www.thompson.com**

Stormwater Permit Manual

Bulletin

Volume 7, Number 10

May 1998

California Baykeepers To Launch New Enforcement Initiative

Officials with Santa Monica Baykeeper said they were poised for a second blitz against California auto dismantlers and scrap yards, which they believe contribute to water pollution in the Los Angeles area.

The new citizen suit initiative comes as the nonprofit environmental organization wraps up the last of the suits it initiated almost two years ago. According to industry sources, Baykeeper has reached an agreement with Samson Auto Dismantlers that calls for the owner of the yard to pay a fine, implement stormwater best management practices (BMPs), and conduct water monitoring to measure the effectiveness of these BMPs (see *Bulletin*, February 1998, p. 1).

Although Baykeeper officials refused to speak about the specifics of the Samson case, they did say that the BMPs they were demanding were not all that complicated or expensive. "Basically, we want these yards to

practice better housekeeping, such as sweeping and cleaning," said Terry Tamminen, an investigator with Baykeeper. "We want yards to drain fluids from cars and to dispose of the fluids properly," he said.

Baykeeper also wants roofs over areas where auto dismantlers drain fluids and berms to control leaking fluids, Tamminen said. In addition, Baykeeper has called for auto dismantlers to channel stormwater runoff to two or three outfalls so that their discharges can be effectively monitored, he added.

The biggest problem is with do-it-yourself scrap yards, Tamminen said, because there is a greater tendency for individuals to allow fluids to leak all over the ground. "For these yards, we ask the owners to supply customers with drip pans and to close the hoods of junked cars when they are done working."

(Continued on page 2)

Court Restricts EPA's Ability To Tie ESA to NPDES Permitting Authority Delegation

A recent decision by a federal appeals court may make it easier to obtain national pollutant discharge elimination system (NPDES) permits. In a March 30 ruling, the U.S. Court of Appeals for the Fifth Circuit said the Environmental Protection Agency (EPA) exceeded its authority when it tied approval of Louisiana's NPDES permit program to compliance with Endangered Species Act (ESA) requirements (*American Forest and Paper Association (AFPA) v. EPA*, No. 96-60874).

The AFPA lawsuit challenged EPA's authority to impose ESA requirements on states. AFPA members include permit holders in Louisiana. Although AFPA did not report that any of its members had applied for new permits or sought to modify existing ones, the group argued that compliance with ESA requirements would be costly and would cause delays in the permitting process.

The court sided with AFPA and ruled that EPA does not have "the statutory authority to require Louisiana, before it may issue a discharge permit,

(Continued on page 4)

Inside This Issue ...

EPA Issues Construction Permit For Region IV 3

EPA Battles ACHP Over Historic Preservation 3

Calendar of Events 4

Updated information added to the *Manual* on EPA's new construction permit

Baykeeper

(Continued from page 1)

Under the new initiative, which Baykeeper expects to kick off in late May or June, the organization will take two different approaches. To recalcitrant dismantlers who are consistently in violation of stormwater regulations, Baykeeper will send notices of intent to sue, said Terry Tamminen, a Baykeeper investigator.

In addition, Baykeeper will send letters offering assistance to a second group of facilities that have made an effort to comply, but have failed to meet all stormwater requirements. In those letters, Baykeeper will offer free compliance assistance, including training on filling out notices of intent, preparing stormwater pollution prevention plans and implementing BMPs, Tamminen said.

As part of this second enforcement sweep Baykeeper plans to go after other industries, but officials were reluctant to name those industries until the initiative was underway. "One area we're looking at is transportation-related industries, especially those that perform maintenance on large fleets of trucks," Tamminen allowed. They have a tendency to leak a lot of fluids in areas that are then exposed to stormwater, he added.

One of the reasons Baykeeper's actions have gotten so much attention in California is that they have been so successful. The Santa Monica office has initiated 432 cases, of which 113 were litigated. Of those 113, Baykeeper has reached a successful conclusion in all of them, Tamminen said. In San Francisco, the story is very much the same. Out of 72 cases, Baykeeper has lost only one, and that was because of a problem with how the case was filed, said Michael Lozeau, the executive director of San Francisco Baykeeper.

"Hopefully, facilities targeted in the new initiative will see that we have had success in our citizen suits and will work with us to come into compliance quickly," Tamminen said. Those facilities that have

had the most problems are those that have put up a fight. "Small yards have been doing the same thing for a long time and it's hard for them to change without a fight," Tamminen said sympathetically. "It's hard for small yard owners to believe that the fluids and other pollutants on their lot pose an environmental problem," he added.

Katharine Wagner, an attorney with Downey, Brandy, Seymour and Royer in Sacramento who represents several auto dismantlers, pointed out that Baykeeper did not actually win these cases because they were all settled before trial. However, she said Baykeeper's plans to take a cooperative approach are a pleasant surprise to her. "One of the things that struck me in the Alameda corridor is in no case did they speak with site operators before taking a litigation course by sending out notices of intent to sue," Wagner said.

These notices all said the same thing, Wagner said. "They didn't tell my clients what they should do to comply, or what they were doing wrong." When you use these types of tactics, you don't build trust, and trust is integral to any kind of cooperative relationship, she added. Still, if Baykeeper is sincere about working with small dismantlers in a cooperative way to prevent stormwater pollution, Wagner said she would be happy to pursue such a relationship.

The Clean Water Act (CWA) allows any citizen to file suit when the regulatory authority has failed to enforce effluent standards or limitations. Industry representatives have complained that because CWA allows citizens to take legal action and recover attorney and expert witness fees, the statute provides financial incentives for citizen groups to take a litigation course, rather than providing compliance assistance, which is not reimbursed.

One industry representative speculated that Baykeeper eventually will lose in a precedent setting case because they will take on a company with the resources to fight them in court. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser &

McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1998 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Issues Construction Permit for Region IV. The U.S. Environmental Protection Agency (EPA) March 31 issued a new stormwater construction permit for areas in Region IV not delegated to run their own national pollutant discharge elimination system programs (63 FR 15622).

The Region IV permit applies to construction sites five acres or larger in the state of Florida and on Indian lands in Georgia, Alabama, Florida, Mississippi and North Carolina.

The new permit closely resembles the construction permit issued in February for all other EPA regions except Regions V and VI (see *Bulletin*, March 1998, p. 1). Among the few differences between the permits is that the Region IV permit will regulate discharge of stormwater runoff from the construction of unpaved roads.

These roads primarily consist of new logging roads built in the state of Florida. "EPA believes that the discharge of stormwater runoff from the construction of unpaved roads could be a significant source of pollutants to waters of the United States," the *Federal Register* notice stated.

Unlike the Feb. 17 permit, the Region IV permit does not require construction site operators that filed a notice of intent (NOI) to gain continued coverage under the 1992 permit to file a new NOI to be covered under this permit. Additionally, operators that filed an NOI for construction projects that started after the expiration of the 1992 permit will not have to file another NOI to be covered under the new permit.

The new permit requires operators to submit narrative statements certifying that their stormwater pollution prevention plan complies with permits, erosion and sediment control plans, and stormwater management plans required under the water policy of Florida.

EPA Battles ACHP Over Historic Preservation.

Evaluating whether stormwater discharges have an impact on historic sites was not a part of the Feb. 17 construction permit for most EPA regions because EPA and the Advisory Council on Historic Preservation (ACHP) could not agree on appropriate provisions, according to Brian Rittenhouse of EPA's Office of Wastewater Management.

But the new Region IV permit (see related story above) does contain provisions for historic site preservation. Under the Region IV permit, operators of construction sites must certify that stormwater discharges do not affect properties listed or eligible to

be listed in the National Historic Register. Alternatively, operators can work with state or tribal historic preservation officers to outline measure to mitigate or prevent adverse effects to historic properties.

According to Rittenhouse, state and tribal historic preservation officers did not feel confident that the sites would be adequately protected by the provisions in the Feb. 17 permit as proposed. These officers hoped that the permit would call for individual consultations between the officials and each permittee in an effort to reduce impacts of stormwater discharges on historic sites and Indian burial grounds. But Rittenhouse said that a case-by-case consultation with permittees would be unrealistic.

The squabble over historic preservation provisions delayed the issuance of the Feb. 17 permit, and after failing to reach a resolution, the agency decided it was best to go forward with a new permit, rather than hold it back any longer, Rittenhouse said. Even though Region IV was able to reach a consensus, the other regions are still working on an agreement with ACHP, Rittenhouse said.

The section on historic preservation was reserved in the Feb. 17 permit, and the subject will be addressed in a separate *Federal Register* notice if the two agencies reach agreement, Rittenhouse said. However, the Feb. 17 notice did state that under the National Historic Preservation Act, adversely affecting historic sites could jeopardize future permit coverage.

Rittenhouse said similar problems are unlikely to affect the modified multi-sector general permit (MSGP) because historic site provisions already exist in the original MSGP and industrial activities do not cause a lot of earth turning, which is likely to have a greater impact on historic sites that are near construction projects.

EPA To Publish Final NPDES Streamlining Rule.

EPA will publish a final national pollutant discharge elimination system (NPDES) streamlining rule in the *Federal Register* in late May or early June, according to Howard Rubin, who is working on the effort for the agency.

Among the actions EPA will take to streamline the NPDES program are: eliminating steps to terminate permits upon completion of discharge activities when no enforcement action or lawsuit is pending; issuing monitoring waivers when facilities can certify that a regulated pollutant is not part of their discharges; extending use of general permits; and officially putting an end to the stormwater group permits, Rubin said. ■

ESA Ruling

(Continued from page 1)

to consult with federal agencies regarding the impact on endangered species." The court pointed to Section 402(b) of the Clean Water Act (CWA) to support its ruling. CWA 402(b) requires that before EPA may approve a state permitting program, the program must meet nine specified requirements. The protection of endangered species is not one of those requirements, the court said. As a result, the court remanded the ESA consultation requirement to EPA for further consideration.

To obtain authority to run its own NPDES permit program, Louisiana had to come up with a memorandum of understanding to address the ESA requirements, said Cheryl Nolan of the Louisiana Department of Environmental Quality (DEQ). In the memorandum, state officials agreed to consult with the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to ensure that the state's permit program adequately protected endangered species, Nolan said. The memorandum also required the state to submit permit applications to the other agencies for review.

Under the terms of the memorandum, FWS and NMFS would review any proposed permit to ensure that it did not threaten endangered species. If the agencies found that the discharges authorized by the permit threatened endangered species, and if the state DEQ refused to modify the permit, FWS and NMFS would be able to compel EPA to reject the permit application.

Agreement in Louisiana Differed from Other States

Louisiana was delegated NPDES permitting authority in August 1996 on the condition that it abide by the terms of the memorandum. However, the agreement among EPA, DEQ and the wildlife agencies was slightly different than previous agreements with other NPDES-delegated states, explained Tom Charlton, an attorney in EPA's Office of Water.

In other states, EPA reserved the right to review decisions of the FWS and NMFS. In Louisiana, EPA did not retain that discretion, Charlton said. "With Louisiana ... EPA agreed to object to a permit if, [in the opinion of the agencies] there was a likelihood of jeopardy to endangered species and critical habitat," Charlton said.

It was EPA's failure in the case of Louisiana to retain the final say in approval of permits that the courts took exception to, Charlton said. The court's decision took a "very simplistic view of the CWA 402," Charlton said. Section 402(b) of the act does not specifically refer to the Endangered Species Act, but "CWA does refer to protection of wildlife," he said.

Although Charlton was not directly involved with the lawsuit, he indicated that EPA did not agree with the decision. However, the agency has not yet announced any plans to appeal the decision.

EPA was not alone in defending its position in the Fifth circuit. Several environmental groups represented by the Tulane Law Clinic in New Orleans filed amicus curiae briefs. "We wanted to encourage the court to honor the agreements which provided minimal protection to endangered species," said Elizabeth Teel, an attorney with the Tulane Law Clinic. Teel said she was disappointed with the court's ruling, but not surprised.

A similar case is pending in the 10th Circuit Court of Appeals concerning Oklahoma, which was delegated NPDES permitting authority in November 1996. EPA officials and environmentalists are curious to see how this case will be decided.

Cases Unlikely To Affect New Stormwater Permits

Neither case should have an effect on EPA's decisions to include ESA consultation in its recently issued construction general permit or in the multi-sector general permit. Both permits include provisions requiring states and permittees to certify that their discharges do not effect endangered species or consult with the two wildlife agencies regarding compliance with ESA, but neither requires states to include such a consultation as a condition of permitting authority approval. ■

Calendar of Events

EPA Sponsors Water Quality Conference. The U.S. Environmental Protection Agency (EPA) is hosting a free five-day meeting on water quality standards, water quality criteria and water-quality-based permitting programs. The meeting will take place at the Wyndham Franklin Plaza Hotel in Philadelphia Aug. 24-28. Pre-registration is required. For more information, contact the Cadmus Group at (703) 998-6862; or visit EPA's Web site at www.epa.gov/owm.

ASCE Sponsors Municipal Stormwater Course. The American Society of Civil Engineers (ASCE) is sponsoring a series of short courses on municipal stormwater management. The courses will cover the proposed requirements of the Phase II Stormwater rule and how they can be integrated within an overall comprehensive stormwater management program. Course instructors are Andy Reese, Vice President for Ogden Environmental and Dr. Tom Debo, Professor at Georgia Tech. The course is 2 1/2 days and will be held in: Charleston, S.C. (May 27-29); Nashville, Tenn. (June 24-26); Philadelphia (July 22-24); and Toronto (Aug 26-28). For more information contact Greg Mankevich at ASCE at (703) 295-6056. ■

Stormwater Permit Manual

Bulletin

Volume 7, Number 9

April 1998

EPA Publishes New Stormwater Construction General Permit

In an attempt to focus attention on previously under-regulated sources of water pollution, the Environmental Protection Agency (EPA) March 4 issued a draft strategy to reduce runoff from animal feeding operations (AFOs). The strategy is part of President Clinton's Clean Water Action Plan (see *Bulletin*, March 1998, page 1).

AFOs are agricultural facilities that confine feeding activities for livestock, thereby concentrating animal populations and manure. Animal waste, if not managed properly, can run off and pollute nearby water bodies, EPA said. In addition to contributing to nutrient over-loading problems, runoff from improperly managed AFOs can cause significant environmental and public health concerns, including water supply contamination, fish kills and odors, EPA said.

The agency believes the strategy will lead to reduced nutrient pollution, which it says is responsible for the Gulf of Mexico "dead zone" and is suspected in *pfisteria* outbreaks in Middle Atlantic states. EPA estimates that agricultural practices across the United States will contribute to the degradation of 60 percent of the nation's surveyed rivers and streams that are impaired. Feedlots alone are estimated to adversely affect 16 percent of waters that are impaired from agricultural practices, the agency said.

There are about 450,000 livestock operations in the United States. The largest 6,600 operations are categorized as concentrated animal feeding operations (CAFOs), of which only about one-fourth now have water discharge permits, according to EPA. Many of the facilities that do have permits do not

(Continued on page 2)

Boston's Charles River Target of Region 1 Stormwater Enforcement Initiative

Beginning next month, Environmental Protection Agency (EPA) officials from Region 1 will begin inspections of facilities along Boston's Charles River to determine if they are in compliance with stormwater permit and management regulations. Auto service and repair facilities, chemical laboratories, industrial manufacturing plants, pesticide storage sheds, and university and municipal facilities will be among the nearly 1,000 facilities targeted for inspection, according to EPA officials.

Last month EPA sent letters to about 200 facilities in the Charles River watershed to inform owners of the upcoming enforcement sweep. Officials hope this advance notice will encourage self-auditing for any problems before inspectors arrive. However, EPA intends to take enforcement action if it finds facilities that are not in compliance, said John P. DeVillars, EPA's New England administrator. The inspection sweep begins May 1.

"It is not our objective to launch an ambush. Our goal is to improve compliance, not to accumulate enforcement notches on our belt. My hope is that if these facilities are out of compliance with environmental laws, this heads up will motivate them to do something about it before we show up. I'll be a very happy man if when we hit the street, we don't find any violations," DeVillars said.

(Continued on page 6)

Inside This Issue ...

EPA Issues Construction Notice Of Intent Form	3
EPA Toiling with Development of Final MSGP	3
New Construction NOI and Instructions	4, 5
Copy of the General Stormwater Permit for Construction included in Appendix 1 of the Manual	

AFO Strategy

(Continued from page 1)

adequately employ effective management practices such as land application of animal waste.

"I'm afraid what we're going to have is inspectors that know nothing to speak of about livestock production coming out and telling us what we can do, how we should do it and when we should do it," American Farm Bureau President Dean Kleckner said. "These laws and regulations and inspections, if necessary, should be done on a state-by-state basis," he added.

Robbin Marks, senior policy analyst with the Natural Resources Defense Council, said the strategy will prevent AFOs from falsely claiming that they do not discharge pollutants. However, she took issue with EPA's time frame, stating that it offers "little immediate relief for communities suffering the pollution impacts of large scale confinement operations."

Under the draft strategy, the largest CAFOs must get national pollutant discharge elimination system permits by 2002 that include state of the art waste management practices. All 6,600 CAFOs and smaller AFOs in designated watersheds will have to obtain permits by 2005.

In addition to increasing the number of permitted facilities and upgrading permit conditions, the draft strategy was issued to improve data collection; expand research on effects and control measures; increase compliance assistance and enforcement with respect to applicable environmental laws and regulations; revise outdated regulations; and create incentives for voluntary implementation of measures to protect the environment and public health.

As part of this strategy, EPA is releasing a final enforcement strategy, the "Compliance Assurance Implementation Plan for Concentrated Animal

Feeding Operations." The plan provides for increasing the number of targeted CAFO inspections based on environmental risk. According to the enforcement strategy, states and EPA regions will inspect all high-priority CAFOs within three years and visit all other facilities within five years.

The enforcement strategy also provides for increased compliance assistance through EPA's Agricultural Compliance Assistance Center in Kansas City; increased enforcement, especially against those CAFOs that are discharging in violation of an existing permit; development of state-specific compliance and enforcement strategies; implementation of a national enforcement initiative; and increased support to regions and states in the form of inspector training, targeting assistance and development of enforcement tools.

According to the draft, in 1999 EPA will identify and list priority watersheds at greatest risk from AFOs. EPA and states will expand efforts to ensure that all permits include comprehensive waste management requirements, including land application conditions, and will revise regulations to support this effort by December 2001. In addition, EPA will revise national environmental guidelines for allowable levels of waste flowing from poultry and swine facilities by December 2001, and national guidelines for cattle and dairy facilities by December 2002.

Copies of the draft strategy are available from EPA's Water Resource Center at (202) 260-7786 or on the Internet at <http://www.epa.gov/owm>. Written comments will be accepted until May 1, and may be submitted to Ruby Cooper-Ford, U.S. EPA, Mail Code 4203, Washington, D.C. 20460, or by e-mail: Ford.Ruby@epamail.epa.gov.

Copies of the final enforcement strategy are available on the Internet at: <http://www.epa.gov/OECA/agbranch.html>, or by contacting Michelle Stevenson at (202) 564-2355. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Discounts for multiple subscriptions to this publication are available. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee;

John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1998 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Issues Construction Notice of Intent Form. The U.S. Environmental Protection Agency (EPA) issued a revised Notice of Intent (NOI) form to be used by owners or operators of construction sites, which is effective immediately (63 FR 11253, March 6).

The new NOI covers stormwater dischargers associated with industrial activity in Regions 1, 2, 3, 7, 8, 9 and 10. The new construction permit was issued Feb. 17 (see *Bulletin*, March 1998, page 1).

Construction permits for Regions 4 and 6 should be published within the next several months, according to EPA sources. It is expected that this new NOI will be used for coverage under the Regions 4 and 6 construction permit. However, a staffer at the Region 6 stormwater hotline emphasized that people seeking construction permit coverage in Regions 4 and 6 should continue to fill out the old NOI until a new permit is published for those regions.

According to the *Federal Register* notice, permittees that have previously filed NOIs extending coverage for the original baseline construction general permit must submit new NOIs by May 18.

A copy of the NOI and instructions is included on pages 4 and 5 of this *Bulletin*. The NOI is also available from EPA's Office of Wastewater Management (OWM) home page at: <http://www.epa.gov/owm> (under "what's new"). For administrative information, call the NOI Center at (703) 931-3230, or Angela Lee with EPA's Permit Division at (202) 260-6814. Applicants also may call their EPA Regional offices for further information.

EPA Toiling With Development of Final MSGP. According to *Wastewater News*, an OWM monthly newsletter, EPA headquarters staff and regional stormwater coordinators have completed the first draft of the agency's response to comments about the modified multi-sector general permit (MSGP).

This permit will replace the baseline industrial general stormwater permit. EPA has encouraged facilities currently eligible for the original MSGP to begin the process of switching from the baseline industrial stormwater permit to the MSGP. To do this, some facilities will have to revise their stormwater pollution prevention plans (SWP3s) and begin implementing new best management practices to come into compliance with MSGP requirements. After making any necessary revisions, facilities can submit NOIs (see *Bulletin*, August 1997, page 1).

Among the main issues the agency is attempting to resolve is how to incorporate Endangered Species Act

provisions into new MSGP provisions for SWP3s with minimal burden on the regulated community.

Although EPA has said that it hopes to complete the modified MSGP in May, there are still a number of hurdles before the permit can be finalized. The agency must complete the response to comments and get the permit into final form. The permit then has to be distributed to all 10 EPA regional offices for approval. Brian Rittenhouse with OWM said the main delay involves Endangered Species Act requirements. Given the steps in the process that remain, mid- to late summer seems a likely bet for publication of the modified MSGP in the *Federal Register*.

TPWA Issues Phase II Comments. The Texas Public Works Association's (TPWA) comments on EPA's phase II stormwater proposal reflect views expressed by municipal representatives nationwide during the official comment period. They were published in the Winter 1998 edition of *Thunderbolt*, the TPWA Stormwater Quality Task Force's newsletter. Among concerns expressed by TPWA were:

- EPA or the courts may interpret the clauses in the rule enclosed by brackets to be legal requirements.
- Municipal separate storm sewer systems (MS4s) have only 90 days to submit the NOI once a statewide general permit is issued. The general permit should be issued in late 2001 so that MS4s have 180 days to submit an NOI by May 31, 2002.
- EPA should continue to seek local examples to improve its cost and benefit data. For example, additional attention should be placed on realistic staffing expectations for small MS4s.
- EPA should require reporting after the 1st, 3rd and 5th years of the initial permit instead of annually as proposed.
- EPA should revisit the phase I rules to strengthen the prospects for cooperation in urbanized areas.
- Further refinement is needed in construction permit coverage, inspection duties, reporting, general vs. sub-contractors' roles, co-permittees, etc., so that a common approach for an urbanized area can be achieved.
- It is impossible for post-construction stormwater quality and quantity to match pre-development conditions on a site-by-site basis.
- MS4s should not be responsible for verifying facilities' qualification for the "no exposure" exemption.
- EPA should have consistent monitoring requirements among MS4s in urbanized areas to increase likelihood of cooperative agreements. ■

NPDES
FORM



United States Environmental Protection Agency
Washington, DC 20460

**Notice of Intent (NOI) for Storm Water Discharges Associated with
CONSTRUCTION ACTIVITY Under a NPDES General Permit**

Submission of this Notice of Intent constitutes notice that the party identified in Section I of this form intends to be authorized by a NPDES permit issued for storm water discharges associated with construction activity in the State/Indian Country Land identified in Section II of this form. Submission of this Notice of Intent also constitutes notice that the party identified in Section I of this form meets the eligibility requirements in Part I.B. of the general permit (including those related to protection of endangered species determined through the procedures in Addendum A of the general permit), understands that continued authorization to discharge is contingent on maintaining permit eligibility, and that implementation of the Storm Water Pollution Prevention Plan required under Part IV of the general permit will begin at the time the permittee commences work on the construction project identified in Section II below. IN ORDER TO OBTAIN AUTHORIZATION, ALL INFORMATION REQUESTED MUST BE INCLUDED ON THIS FORM. SEE INSTRUCTIONS ON BACK OF FORM.

I. Owner/Operator (Applicant) Information

Name: _____ Phone: _____
Address: _____ Status of Owner/Operator:
City: _____ State: [] Zip Code: _____

II. Project/Site Information

Is the facility located on Indian Country Lands?
Yes No

Project Name: _____
Project Address/Location: _____
City: _____ State: [] Zip Code: _____
Latitude: _____ Longitude: _____ County: _____
Has the Storm Water Pollution Prevention Plan (SWPPP) been prepared? Yes No
Optional: Address of location of SWPPP for viewing Address in Section I above Address in Section II above Other address (if known) below:
SWPPP Address: _____ Phone: _____
City: _____ State: [] Zip Code: _____
Name of Receiving Water: _____

_____ _____
Month Day Year Month Day Year
Estimated Construction Start Date Estimated Completion Date

Estimate of area to be disturbed (to nearest acre): _____

Estimate of Likelihood of Discharge (choose only one):

- 1. Unlikely 3. Once per week 5. Continual
- 2. Once per month 4. Once per day

Based on instruction provided in Addendum A of the permit, are there any listed endangered or threatened species, or designated critical habitat in the project area?

Yes No

I have satisfied permit eligibility with regard to protection of endangered species through the indicated section of Part I.B.3.e.(2) of the permit (check one or more boxes):

(a) (b) (c) (d)

III. Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage this system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name: _____ Date: _____

Signature: _____

**Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity to be Covered Under a NPDES Permit****Who Must File a Notice of Intent Form**

Under the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.; the Act), except as provided by Part I.B.3 the permit, Federal law prohibits discharges of pollutants in storm water from construction activities without a National Pollutant Discharge Elimination System Permit. Operator(s) of construction sites where 5 or more acres are disturbed, smaller sites that are part of a larger common plan of development or sale where there is a cumulative disturbance of at least 5 acres, or any site designated by the Director, must submit an NOI to obtain coverage under an NPDES Storm Water Construction General Permit. If you have questions about whether you need a permit under the NPDES Storm Water program, or if you need information as to whether a particular program is administered by EPA or a State agency, write to or telephone the Notice of Intent Processing Center at (703) 931-3230.

Where to File NOI Form

NOIs must be sent to the following address:

Storm Water Notice of Intent (4203)
USEPA
401 M. Street, SW
Washington, D.C. 20460

Do not send Storm Water Pollution Prevention Plans (SWPPPs) to the above address. For overnight/express delivery of NOIs, please include the room number 2104 Northeast Mall and phone number (202) 260-9541 in the address.

When to File

This form must be filed at least 48 hours before construction begins.

Completing the Form

OBTAIN AND READ A COPY OF THE APPROPRIATE EPA STORM WATER CONSTRUCTION GENERAL PERMIT FOR YOUR AREA. To complete this form, type or print, using uppercase letters, in the appropriate areas only. Please place each character between the marks (abbreviate if necessary to stay within the number of characters allowed for each item). Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response. If you have any questions on this form, call the Notice of Intent Processing Center at (703) 931-3230.

Section I. Facility Owner/Operator (Applicant) Information

Provide the legal name, mailing address, and telephone number of the person, firm, public organization, or any other entity that meet either of the following two criteria: (1) they have operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) they have the day-to-day operational control of those activities at the project necessary to ensure compliance with SWPPP requirements or other permit conditions. Each person that meets either of these criteria must file this form. Do not use a colloquial name. Correspondence for the permit will be sent to this address.

Enter the appropriate letter to indicate the legal status of the owner/operator of the project: F = Federal; S = State; M = Public (other than federal or state); P = Private.

Section II. Project/Site Information

Enter the official or legal name and complete street address, including city, county, state, zip code, and phone number of the project or site. If it lacks a street address, indicate with a general statement the location of the site (e.g., Intersection of State Highways 61 and 34). Complete site information must be provided for permit coverage to be granted.

The applicant must also provide the latitude and longitude of the facility in degrees, minutes, and seconds to the nearest 15 seconds. The latitude and longitude of your facility can be located on USGS quadrangle maps. Quadrangle maps can be obtained by calling 1-800 USA MAPS. Longitude and latitude may also be obtained at the Census Bureau Internet site: <http://www.census.gov/cgi-bin/gazetteer>.

Latitude and longitude for a facility in decimal form must be converted to degrees, minutes and seconds for proper entry on the NOI form. To convert decimal latitude or longitude to degrees, minutes, and seconds, follow the steps in the following example.

Convert decimal latitude 45.1234567 to degrees, minutes, and seconds.

- 1) The numbers to the left of the decimal point are degrees.
- 2) To obtain minutes, multiply the first four numbers to the right of the decimal point by 0.006. $1234 \times .006 = 7.404$.
- 3) The numbers to the left of the decimal point in the result obtained in step 2 are the minutes: 7'.
- 4) To obtain seconds, multiply the remaining three numbers to the right of the decimal from the result in step 2 by 0.06: $404 \times 0.06 = 24.24$. Since the numbers to the right of the decimal point are not used, the result is 24".
- 5) The conversion for 45.1234 = 45° 7' 24".

Indicate whether the project is on Indian Country Lands.

Indicate if the Storm Water Pollution Prevention Plan (SWPPP) has been developed. Refer to Part IV of the general permit for information on SWPPPs. To be eligible for coverage, a SWPPP must have been prepared.

Optional: Provide the address and phone number where the SWPPP can be viewed if different from addresses previously given. Check appropriate box.

Enter the name of the closest water body which receives the project's construction storm water discharge.

Enter the estimated construction start and completion dates using four digits for the year (i.e. 05/27/1998).

Enter the estimated area to be disturbed including but not limited to: grubbing, excavation, grading, and utilities and infrastructure installation. Indicate to the nearest acre; if less than 1 acre, enter "1." Note: 1 acre = 43,560 sq. ft.

Indicate your best estimate of the likelihood of storm water discharges from the project. EPA recognizes that actual discharges may differ from this estimate due to unforeseen or chance circumstances.

Indicate if there are any listed endangered or threatened species, or designated critical habitat in the project area.

Indicate which Part of the permit that the applicant is eligible with regard to protection of endangered or threatened species, or designated critical habitat.

Section III. Certification

Federal Statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means: (i) president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner of the proprietor, or

For a municipality, state, federal, or other public facility: by either a principal executive or ranking elected official. An unsigned or undated NOI form will not be granted permit coverage.

Paperwork Reduction Act Notice

Public reporting burden for this application is estimated to average 3.7 hours. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, OPPE Regulatory Information Division (2137), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Include the OMB control number on any correspondence. Do not send the completed form to this address.

Region I Inspections

(Continued from page 1)

The inspections are part of an aggressive pollution prevention and enforcement strategy for the Charles River designed to make the lower part of the river fishable and swimmable by Earth Day 2005. The lower part of the Charles River encompasses the last 12 (of 80) miles of the river, most of which is within the limits of the city of Boston.

To date, EPA has issued seven administrative orders to Charles River communities to eliminate illicit hookups to municipal sewer systems that discharge untreated sewage into the river when it rains heavily. As a result of these orders, 750,000 gallons per day of contaminated discharges that had been flowing to the river have been eliminated, EPA said. Also, during the past two years, EPA has brought substantial enforcement actions against Conrail and Boston University for numerous violations that resulted in oil spills to the river.

In addition to notifying facilities in the Charles River basin of the impending inspections, EPA officials, working in concert with the Massachusetts Department of Environmental Protection (DEP), have sent enforcement letters to 10 communities along the Charles. Among others things, these communities have been asked to identify their stormwater drains and any other stormwater issues, explained DEP's Paul Hogan.

The communities targeted for enforcement are Boston, Cambridge, Brookline, Newton, Weston, Wellsley, Needham, Dedham, Watertown and Waltham. Of those 10, only Boston is currently required to have a municipal separate storm sewer permit (MS4) under phase I of EPA's stormwater

program, explained Thelma Hamilton, EPA's Region 1 stormwater coordinator.

The other communities have been asked to develop stormwater pollution prevention plans (SWP3s) under the Phase I program. Although SWP3s are not currently required for the smaller communities, they are developing plans on a voluntary basis. "These plans are being reviewed by the region," Hamilton said. "Implementation should begin this summer. The communities have been on board with this for a couple of years." These communities have been asked to submit their SWP3s to EPA Region 1 by July 1.

Along with the letters warning of impending inspections, EPA also sent "user-friendly" materials to owners of auto service facilities in the Charles River watershed that clarify their obligations under environmental regulations and provide easy, cost-effective compliance recommendations. EPA also will conduct workshops and make numerous site visits to demonstrate low-cost technologies and plumbing alternatives so that owners can make drain improvements and take other pollution prevention steps to prevent contaminated runoff from reaching waterways.

Additionally, EPA is reaching out to public works directors and others grappling with stormwater management at construction sites, salvage yards, power plants and marinas. Toward that end, EPA is hosting a technology trade show for municipal and industrial operators of stormwater control systems on June 4, at the Hyatt Regency Hotel in Cambridge. Attendees will have the opportunity to view the latest technologies for addressing retrofits and to obtain information on system cost and performance. For more information on the trade show, contact EPA's Region 1 office at (617) 565-4592. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
• monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$349
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

**Call Us Toll-Free At 1-800-677-3789 or
visit our website: www.thompson.com**

Stormwater Permit Manual

Bulletin

Volume 7, Number 8

March 1998

EPA Publishes New Stormwater Construction General Permit

The U.S. Environmental Protection Agency (EPA) Feb. 17 issued a new construction general permit for stormwater discharges that adds several new requirements to the existing permit, including new conditions to protect listed endangered species (63 FR 7858; the permit itself begins at 63 FR 7901).

The national pollutant discharge elimination system (NPDES) permit applies only to construction sites disturbing five or more acres in non-delegated states in EPA Regions 1, 2, 3, 7, 8, 9 and 10. It replaces the baseline construction general permit issued by EPA in September 1992, and will not affect states that have permitting authority.

The permit is effective immediately. Anyone seeking coverage must send in a notice of intent (NOI) form to EPA no later than 90 days after the Feb. 17, 1998, effective date. The White House Office of Manage-

ment and Budget has not yet approved a revised NOI, so site operators should fill out the old NOI until a new one is published in the *Federal Register*.

During the 90-day interim period, permittees must comply with the terms and conditions of the 1992 permit, EPA said. NOIs for new construction sites must be filed at least two days prior to the commencement of any work at the site.

Several Changes Afoot in New Permit Requirements

In addition to the new provisions related to endangered species, this updated permit requires:

- expanded coverage to construction sites under five acres when designated by EPA;

(Continued on page 5)

President Unveils Clean Water Plan

President Clinton Feb. 19 announced a new initiative that enlists the broad support of state and local governments to restore and protect America's waters.

In a speech in Baltimore introducing the Clean Water Action Plan, the president spelled out a four-part strategy. "Forge partnerships ... that get everybody to focus on entire regions, not just on individual factories, or individual sewage plants or individual farms," Clinton said. Second, work closely with states to identify areas where the worst pollution problems exist. Third, provide incentives to farmers to take the actions that are needed to reduce polluted runoff. And fourth, "protect public health through new strategies to safeguard the water we drink and the fish we eat."

As part of the initiative, the president proposed to expand funding to support implementation of pollution controls and other measures identified in state watershed plans. President Clinton's fiscal 1999 budget requests \$568 million to fund this new initiative, and he has proposed a total increase in funding of \$2.3 billion over five years. The plan also

(Continued on page 4)

Inside This Issue ...

Poultry Farm Pleads Guilty in CWA, ESA Criminal Case	2
Commentors, FACA Voice Complaints Over Phase II	3
Storm Warnings	6

More Updated Information on the Phase II Proposal Added to Tab 700

Poultry Farm Pleads Guilty in CWA, ESA Criminal Case

California's largest poultry farm pleaded guilty in January to charges that it violated the Clean Water Act and Endangered Species Act (ESA).

The company was charged with negligent discharge of a water pollutant after stormwater polluted with chicken manure leaked into the San Luis National Wildlife Refuge in California's San Joaquin Valley between December 1994 and April 1995. Runoff from Foster Farms contained ammonia, nitrogen and other byproducts of the chemical decomposition of chicken manure, according to the U.S. Environmental Protection Agency (EPA).

Polluted water leaked through a broken aboveground pipe, which was used to pump water out of the company's stormwater retention basin at its manure stacking yard in Livingston, Calif., according to the plea agreement. The company was charged with illegally taking an endangered species because the polluted runoff killed vernal pool tadpole shrimp protected under ESA, EPA said.

The company was ordered to pay a \$500,000 fine and spend \$750,000 to improve its stormwater retention and distribution system, according to the plea agreement, which was filed in the U.S. District Court for the Eastern District of California in Sacramento.

Jim Marnatti, the plant's environmental affairs manager, said changes to the company's stormwater system had been completed before the plea agreement was filed. "Basically, Foster Farms voluntarily made \$750,000 worth of modifications. That was done prior to resolution of the investigation. We did it voluntarily when we realized that this issue was a problem," Marnatti said.

"When we started the investigation, [Foster Farms] saw the writing on the wall and installed a new

system," said Amy Sokolov, special agent with EPA's criminal investigations unit. "My understanding is that one of the problems was that the Foster Farms' system wasn't up to specifications. It was supposed to withstand a 25-year, 24-hour storm event, which it could not do," Sokolov said.

Marnatti said the stormwater retention pond was modified to increase capacity to better contain stormwater. "We enlarged it and deepened it and shored it up so essentially even in the worst storm, a 100-year storm, the stormwater would have no chance of escaping our property," Marnatti said.

Sokolov said one of the problems with Foster Farms' stormwater holding system was that the pipe was installed by the company's own maintenance workers. "There were some questions about what that pipe could do. Basically, it wasn't properly installed and began to blow apart at the seams," she said. "They had an employee try to fix it several times but when he finally asked for assistance, he was told to leave it. So not only was it a substandard system when it was installed, when it broke, they made a conscious decision not to correct it," Sokolov said.

A large portion of the \$500,000 fine will be paid to the National Fish and Wildlife Foundation, for use in the "creation, restoration, enhancement and acquisition of wetlands" in the San Joaquin Valley and for endangered species enhancement efforts. The Central Valley Water Quality Control Board will monitor changes to Foster Farms' stormwater system.

EPA opened its investigation into Foster Farms' system in April 1995. Employees of the wildlife refuge had discovered contaminated stormwater at the refuge and alerted the U.S. Fish and Wildlife Service, which in turn asked EPA for assistance in investigating potential water violations. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editors, Charlene Kerwin and Beth Reagan. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1998 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Commentors, FACA Voice Complaints Over Phase II Proposal

Only four people submitted oral comments at the first public meeting on the proposed stormwater phase II rule in Washington, but the issues raised could present challenges for the U.S. Environmental Protection Agency (EPA) as it attempts to develop a final rule (see *Bulletin*, January, 1998, p. 1).

Barry Edwards, director of utilities and engineering for Catawba County, N.C., said that roads in his county are controlled by the state department of transportation (DOT), and the new rule would require a joint effort between the county and DOT that would be costly and inefficient. "We have a history of not working well the North Carolina DOT," Edwards said.

EPA will have to iron out some of the details about who is responsible in areas where there are two controlling authorities, such as the state transportation department and the county government. Another similar problem exists in states like New Jersey that are governed by townships rather than counties. In the proposal, EPA lists towns and counties that would be covered by the rule, but counties in New Jersey are unincorporated and have no governing authority. In this case, the burden for compliance apparently will be placed on townships, but EPA did not mention this in the proposed rule.

At the Feb. 5 meeting of the stormwater phase II federal advisory committee (FACA), several committee members also said EPA failed to list a number of incorporated places that should be covered under the rule. Jim Bauman, with the Wisconsin Department of Natural Resources, said EPA "runs the risk of not notifying potential permittees that they need to seek coverage under the rule."

The proposal also puts smaller counties at a competitive disadvantage in relation to their larger neighbors, Edwards said. "If Catawba County has to do the same things as Charlotte, then our costs per citizen is much higher," he said. This represents an unfunded mandate, and smaller, less wealthy counties would have more difficulty attracting industrial development, he added. "No one truly knows the costs vs. the benefits of this rule," Edwards said. "I believe in protecting the environment, and clean water is a necessity, but so are our jobs," he stated.

Susan Asmas, the director of wetlands and water policy at the National Association of Home Builders, said the proposal was "unbalanced and inequitable," because it "attacks phase II permittees with more stringency than phase I sources."

In addition, the proposal is inequitable as it applies to small construction sites in comparison to small

municipalities, Asmas said. If small municipalities cannot meet the requirements, the proposal shows some flexibility, but if small construction sites are out of compliance, they could be targeted for enforcement, Asmas said.

Furthermore, none of the data accumulated by EPA addresses construction sites of less than five acres, Asmas said. "EPA is putting a program in place when it may not necessarily need to be there," Asmas said. "We haven't seen anything in the data to indicate that there is a problem with water quality contamination associated with small construction sites."

David Broocke, representing Reynolds Metals in Richmond, Va., said EPA should evaluate whether exemptions should be granted for facilities that already comply with Resource Conservation and Recovery Act and Spill Prevention, Control and Countermeasure regulations that are duplicative of, or more stringent than, stormwater regulations.

At the operations level permitting requirements add another layer of compliance burden, and for states it requires unnecessary administrative costs, Broocke said. In many cases, "states issue permits and then forget about them."

Broocke also called for no-exposure exemptions for facilities that temporarily store bulk metals or bulk plastics. These suggested changes can be implemented by simply adding to the existing no-exposure exemption form checklist, Broocke said.

State representatives at the FACA meeting argued that they were not getting enough detailed information about how they should administer their permitting programs. Robert Zimmerman, with the Delaware Division of Water Resources, said "its difficult to find what you're expected to do as a state regulator." Zimmerman was assured by George Utting, EPA's phase II team leader, that state permit writers will be able to rely on the assumption that if municipal permittees meet the six minimum measures that must be addressed while implementing best management practices, they will be considered in compliance.

Members of the FACA also asked whether statements in parenthesis or brackets within the rule would constitute requirements. Several FACA members complained that much of the bracketed information was not negotiated in FACA meetings. Utting responded that the bracketed information was "guidance to affected parties as to what is contemplated," and that all information within the brackets was, in fact, discussed during the FACA process. ■

Clean Water Action Plan

(Continued from page 1)

includes provisions to help control polluted runoff by offering more than \$120 million in assistance to state and tribal governments.

Money will go, in part, toward developing numeric criteria for nutrients in water bodies, also known as total maximum daily loads (TMDLs), and a new strategy to control runoff from animal feeding operations, with a goal of issuing discharge permits to the largest operations by 2005.

Finalizing phase II stormwater regulations also is cited as a key element of the plan. Further, the president supports the U.S. Environmental Protection Agency's (EPA) initiative to actively enforce phase I requirements. In particular, EPA will address phase I noncompliance by targeting priority watersheds where stormwater is of concern, the plan states.

EPA currently provides grants to states and authorized tribes of about \$100 million — states and tribes match 40-percent of these federal funds. State polluted runoff programs address nine key elements, including:

- establishing short- and long-term goals and objectives;
- strengthening working partnerships with all appropriate public- and private-sector groups;
- focusing on impaired waters and waters threatened by new sources and activities;
- implementing better-focused programs to address these problems;
- working to promote consistency of federal programs among state and tribal nonpoint source programs; and
- using monitoring and feedback loops to ensure continued progress.

In fiscal 1999, EPA and all states, territories and tribes will expedite incorporation of the nine key elements into approved Clean Water Act Section 319 Nonpoint Source Management Programs. Additionally, EPA will advise states and tribes that, beginning in fiscal year 2000, the agency will not award grant money exceeding the current \$100 million level to those states and tribes that have not incorporated all nine elements into approved Section 319 programs.

The action plan also proposes reducing nutrient loading levels in certain water bodies. During the last several years, increasing attention has been given to the problem of nutrient over-enrichment because of its potential public health risk. "State water quality reports indicate that over-enrichment of waters by nutrients (nitrogen and phosphorus) is

the biggest overall source of impairment of the nation's rivers and streams, lakes and reservoirs, and estuaries," the action plan said. "Agriculture is the most widespread source of these impairments, followed by municipal sewage treatment plants, urban runoff and storm sewers, and various other nonpoint pollution sources."

The plan proposes that EPA develop nutrient criteria by the year 2000 to reduce nutrient over-enrichment problems. TMDLs would indicate numerical ranges for acceptable levels of nutrients in water. "Unlike other criteria that EPA has developed, nutrient criteria will be established as a menu of different numeric values based on the type of water body and the region of the country in which the water is located," the plan said.

The plan further stipulates that within three years of issuing TMDLs, all states and tribes should adopt water quality standards for nutrients. If a state or tribe fails to adopt a water quality standard for nutrients within the three-year period, EPA will adopt and enforce nutrient criteria appropriate to that state or tribe's region and water body type. The EPA standard would apply until a state or tribe adopts a revised standard approved by EPA.

EPA also will focus on polluted runoff from animal feeding operations (AFO), according to the action plan. There are about 450,000 AFOs in the United States. In addition to contributing to nutrient over-loading problems, runoff from improperly managed AFOs can cause significant environmental and public health concerns, including water supply contamination, fish kills and odors. In an effort to curb such effects, the action plan proposes that EPA develop a discharge permit program for AFOs under the Clean Water Act.

EPA has developed a draft AFO strategy that is due to be published in the next few months. The draft strategy calls for improving data collection; expanding research on effects and control measures; increasing compliance assistance and enforcement with respect to applicable environmental laws and regulations; significantly expanding the number of Clean Water Act permits issued for AFOs (with emphasis on the largest, unpermitted facilities); ensuring that permits address such activities as land application of animal waste; and creating incentives for voluntary implementation of measures to protect the environment and public health.

Finally, the action plan proposes the development of an Internet site that would provide information on the health of aquatic systems in more than 2,000 watersheds nationwide and on watershed programs and services.

For more information on the Clean Water Action Plan, contact EPA's Robin Woods at (202) 260-4377. ■

Construction Permit

(Continued from page 1)

- permittees to post confirmation of permit coverage at the site;
- permittees to submit a notice of termination (NOT) when construction is completed; and
- stormwater pollution prevention plans (SWP3) to contain detailed performance objectives.

The permit also authorizes discharges from construction-support activities. These support activities include the operation of concrete or asphalt batch plants, equipment staging yards and material storage areas. To be covered by the permit, the support activity may not be a commercial operation serving multiple, unrelated construction projects, and appropriate controls must be identified in the SWP3.

Certain stormwater discharges from construction sites are not eligible for coverage under the new permit, including those that:

- originate from a site after construction activities have ceased, the site has been stabilized and an NOT has been submitted;
- are covered under an individual or other permit;
- are mixed with non-stormwater sources other than those identified and in compliance with the permit;
- could cause or contribute to violations of water quality standards; and
- are not protective of endangered species.

Endangered Species Provisions

To fulfill endangered species requirements, EPA said that developers should analyze impacts on endangered species during the planning stages of a project. Addendum A of the permit provides specific guidance for conducting such an endangered species review.

EPA recommends six specific steps that permittees should take to meet the endangered species requirements:

- determine if the construction site is found within a critical habitat for listed species;
- determine if listed species are located in the county or counties where the construction activity will occur;
- determine if any federally listed endangered and threatened species may be present in the project area;
- determine if listed species or critical habitats are likely to be adversely affected by construction stormwater discharges or related activities;

- determine if measures can be implemented to avoid adverse effects; and
- determine if eligibility requirements can be met through Endangered Species Act compliance activities.

Addendum A lists specific measures required to satisfy these six steps. In addition, the agency published with the permit a current list of endangered and threatened species and the areas in which they exist.

A fact sheet published along with the permit provides guidance on meeting specific permit requirements and a question-and-answer section. The fact sheet also includes detailed information about preferred best management practices (BMPs) at construction sites. The guidance on BMPs can be used to implement SWP3s at a site, EPA said.

Although the guidance was not included in the 1992 permit, the SWP3 requirements in the new permit are essentially unchanged. According to EPA, SWP3s focus on two major requirements: providing a site description that identifies sources of stormwater pollution, and identifying and implementing appropriate measures to reduce pollutants in stormwater discharges. SWP3s must be prepared before submittal of an NOI. SWP3s must be made available upon request to regulatory authorities.

The recommended BMPs are broken into two categories: sediment and erosion controls; and stormwater management measures. Sediment and erosion controls include stabilization practices such as seeding, mulching, vegetative buffer strips and preservation of trees; and structural practices such as earth dikes, silt fences, drainage swales, sediment traps, rock outlets, subsurface drains and pipe slope drains.

Stormwater management measures are intended to reduce pollutants in stormwater runoff, EPA said. Practices prescribed by EPA include on-site infiltration, flow attenuation by vegetation or natural depressions, outfall velocity dissipation devices, artificial wetlands and water quality detention structures.

The new permit allows an automatic continuation of coverage if a revised permit has not been issued by the time it expires in 2003. With this provision, EPA will not require permittees to submit NOIs for continuation of coverage, as it did when the September 1992 permit expired.

Separate construction general permits for EPA-regulated areas in Regions 4 and 6 are under development and will be available in the near future, EPA said. The new permit is available on the Internet at: www.epa.gov/owm/cgp.htm. Additional information is available from the appropriate EPA regional office. ■

Storm Warnings

Stormwater-Related News in Capsule Format

Browner Announces Proposed Fiscal 1999 Budget. U.S. Environmental Protection Agency (EPA) Administrator Carol Browner Feb. 2 announced a proposed EPA budget of \$7.8 billion for fiscal year 1999. The fiscal 1999 budget request is up 6 percent from the \$7.4 billion budget enacted in fiscal 1998. EPA also is hoping to increase its number of full-time employees from 17,975 to 18,375.

Congress must approve the final fiscal 1999 budget, and some of EPA's priorities are unlikely to be funded at the requested levels.

EPA's fiscal 1999 budget would provide funding for several administration priorities, including curbing the pollution that causes global warming, completing the clean up of America's waterways, implementing tough new clean air standards, and protecting children from environmental health threats, EPA said. The fiscal 1999 budget also would provide resources for ongoing administration commitments, including increasing information available to the public through right-to-know programs, continued clean up of the nation's worst toxic waste sites, and funding to clean up and redevelop urban "brownfields."

EPA also requested \$15 million for enforcement and compliance assurance. EPA plans to increase data collection to evaluate compliance trends and target high priority areas; increase the regulated community's use of compliance incentives; assist states with their enforcement programs; and deter non-compliance by maintaining an enforcement presence. The agency hopes to conduct 15,000 inspections and undertake 2,600 enforcement actions in fiscal 1999.

The president's 1999 budget for EPA also requests:

- \$145 million in new funding to implement the president's Clean Water Action Plan to speed the restoration of American waterways by protecting and restoring critical watersheds, preventing polluted run off and fostering watershed partnerships (see related article, p. 1);
- \$1.85 billion for the Clean Water and Drinking Water State Revolving Fund programs that provide financial assistance for the construction of drinking water and wastewater treatment facilities; and
- \$159 million to fund expansion of the community right-to-know program.

PIPES To Be Shut Down. EPA has announced that it plans to shut down its point source information provision and exchange system (PIPES) in the near future. Information currently on PIPES will be transferred to EPA's Office of Wastewater Management

home page. The agency is attempting to delete files that may be obsolete. Anyone wishing to make suggestions about the streamlining process should send ideas by e-mail to: brad_maguire@cpqm.saic.com.

MSGP Discharge Monitoring Reports Due March 31. Discharge monitoring reports (DMR) for some facilities covered by the multi-sector general permit (MSGP) must be sent to permitting authorities by March 31. MSGP holders should submit quarterly monitoring results obtained between Oct. 1, 1996, and Sept. 30, 1997, to either the state stormwater coordinator or the appropriate EPA regional office.

According to a letter from Taylor Sharpe, an enforcement officer in EPA Region VI, MSGP covered facilities must check the permit to determine if their industry is required to monitor and report results.

Primary metal industry facilities with coal pile runoff and battery reclaimers that are subject to the EPA baseline industrial permit also must submit DMRs for the sampling periods March through August 1997, and September 1997 through February 1998. The deadline for sending these DMRs to permitting authorities is April 28, 1998.

For more information on DMR requirements, check the EPA Region VI Website at: <http://www.epa.gov/earth1r6/6en/w/dmr.htm>.

PMAA Promotes Training Video. The Petroleum Marketers Association of America (PMAA) is offering a stormwater training video for the transportation industry. The video, which costs \$25, covers best management practices for vehicle fueling, stormwater pollution prevention plan development, sampling instruction and more. For more information, call (800) 300-PMAA. ■

Calendar of Events

National Stormwater Center Offers Seminars. The National Stormwater Center is taking its show on the road conducting a number of 1-day stormwater compliance training courses in March and April.

Courses will be held in Orlando, Fla., March 24; St. Louis, March 31; Atlanta, April 8; Austin, Texas, April 16; Boston, April 22; and Baltimore, April 29. The \$395 course will cover an overview of the national stormwater program, activities requiring permits, state and local programs, enforcement, the endangered species certification and more.

For more information, call the National Stormwater Center at (561) 288-6852. ■

Stormwater Permit Manual

Bulletin

Volume 7, Number 5

December 1997

EPA Struggles To Issue Phase II Proposal, Permits by Year's End

A large number of public comments and a lack of resources, combined with interruptions because of the holidays, are impeding the U.S. Environmental Protection Agency's (EPA) ability to issue new stormwater permits and the phase II stormwater proposal by the end of the year.

But officials at EPA's Office of Wastewater Management (OWM) are under a court order to issue the phase II proposal by Dec. 15, and they say they are trying to finish the baseline construction general permit for stormwater in December. Meanwhile, the modified multi-sector general permit (MSGP) is on the back-burner until EPA can finish the construction permit, according to an EPA official.

EPA Granted Extension for Phase II Proposal

EPA had been under a court order to issue the phase II proposal by Nov. 25, but were granted an extension until Dec. 15. Municipal and industrial representatives are still unhappy over language in parts of the

proposal (see *Bulletin*, September 1997, p. 1). Among the chief objections voiced by stakeholders at a stormwater phase II federal advisory committee meeting Oct. 6 and 7, was the concern that the waivers from coverage for certain construction projects were unclear. Stakeholders said it is difficult for them to determine if these waivers would grant useful relief to small construction sites.

Municipal representatives argued that the proposal is unfair because it would allow permit authorities to incorporate narrative effluent limits into their permits. Although EPA agreed that numeric effluent limitations were not appropriate because of variations in storm intensity and duration, the agency seems unlikely to eliminate effluent limits altogether.

Another issue for which construction and municipal representatives sought clarification was the agency's intention to incorporate total maximum daily load (TMDL) studies into permit decisions. Although

(Continued on page 4)

EPA Region 4 Cracks Down on Miami Facilities Without Stormwater Permits

At least 18 facilities in Miami have been cited and assessed fines totaling nearly \$100,000 for not having industrial stormwater permits and for other violations of the Clean Water Act (CWA).

The fines were the result of surprise inspections conducted by Environmental Protection Agency (EPA) Region 4 officials and representatives from several local enforcement agencies during the week of April 21, 1997.

The inspections and related penalties are part of a local initiative to improve the water quality of tributaries to the Miami River, explained Betty Fleming, executive director of the Miami River Coordinating Committee (MRCC). The overall goal of the committee, formed through a memorandum of agreement among Dade County, the city of Miami and state officials, is to enhance and revitalize the Miami River.

(Continued on page 5)

Inside This Issue ...

EPA Expands MSGP Coverage for Some Mining Activities	2
Gore Initiative Highlights Federal Clean Water Efforts	3
EPA Issues Estimates of State Revolving Fund Needs	3
Indiana, Kentucky, Missouri and Tennessee state pages	Tab 800

EPA Expands Coverage of MSGP for Some Mining Activities

Because of a 1979 U.S. Environmental Protection Agency (EPA) interpretation of what constitutes mine drainage, ore mining and dressing operations may be eligible to obtain coverage under the multi-sector general permit (MSGP) for certain stormwater discharges instead of meeting rigorous numeric effluent limitations.

EPA Oct. 22 proposed changes to the MSGP that would broaden the scope of permit coverage for mine dressing operations (62 FR 54950). EPA issued the proposal in response to a lawsuit by the National Mining Association (NMA) (*NMA v. EPA*, No. 95-3519, 8th Cir.).

The proposal would allow certain mining and dressing activities, such as discharges from waste rock and mine overburden piles that are not in an active mining area and are composed entirely of stormwater, and use of waste rock on mining roads, to be covered by the MSGP. It would save facilities from having to follow effluent guidelines and obtain an individual national pollutant discharge elimination system permit for discharges from certain activities within the ore mining and dressing point source category under 40 CFR 440.

In a 1979 court case, the U.S. Court of Appeals for the 10th Circuit decided that EPA had the authority to interpret "point source" broadly and that the agency could make case-by-case, site-specific determinations concerning the applicability of the effluent guidelines for the ore mining and dressing point source category (*Kennecott Copper Co. v. EPA*, 612 F.2d 1232, 10th Cir.).

At that time, EPA did not consider stormwater drainage from outside an active mining area to be subject to the effluent guidelines because it had not conducted an adequate technological and economic

analysis of the effects of diverting this drainage to a point source inside the active mining area.

Despite this 1979 determination, however, EPA excluded from MSGP coverage overburden piles, haul roads made of overburden, and other ancillary mine areas that the agency believed fell within the definition of "mine drainage" as spelled out in the effluent guidelines. NMA asserted that based on statements made by the agency concerning the Kennecott case, none of these ancillary mine areas are covered by the effluent guidelines.

In response to the NMA lawsuit, EPA issued the Oct. 22 proposal to clarify the multi-sector permit language. If overburden piles or waste rock are outside the active mining area and result in diffuse stormwater runoff, the mine would be subject to the stormwater regulations, and any discharges would be subject to best management practices, under the proposed MSGP modification.

However, if drainage from overburden piles or roads made from waste rock flows into the mining area and is discharged through a point source, the mine would be required to comply with the more stringent effluent guidelines. The proposed changes to the MSGP are spelled out in a revised Table G-4, which was originally published in the MSGP Fact Sheet (60 FR 50804, Sept. 29, 1995).

The agency does not consider such discharges from waste rock or spent ore overburden piles or roads to be subject to the guidelines on a categorical basis, EPA said. However, numeric effluent limitations may be appropriate for the discharges based on best professional judgment of the permit writer, or if the discharge would cause or contribute to a violation of water quality standards, the agency added. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longswan, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1997 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Gore Initiative Highlights Federal Clean Water Efforts. Vice President Al Gore issued a memorandum Oct. 18 aimed at reducing water pollution from nonpoint sources, and the U.S. Environmental Protection Agency (EPA) already is taking steps to implement parts of the vice president's Clean Water Initiative.

The memo represents a move by the U.S. government to focus enforcement and regulatory initiatives on polluted runoff, which "has for too long eluded control under conventional regulatory approaches." According to the memo, the U.S. Department of Agriculture and EPA, in consultation with other agencies, will develop an action plan by April 1998. The action plan will address three major goals: enhanced protection from public health threats posed by water pollution; more effective control of polluted runoff; and promotion of water quality protection on a watershed basis.

Gore directed EPA to expedite a strategy to address polluted runoff from concentrated animal feeding operations and stated that EPA must ensure that final regulations for polluted runoff from stormwater are in place by March 1, 1999. He also emphasized the need for public participation and watershed-based strategies instead of piecemeal regulation of water quality.

EPA's action plan is sure to include elements of the agency's Oct 14 draft strategy for nonpoint source control. The strategy, *Nonpoint Sources: Picking up the Pieces—EPA's Draft Proposal Strategy for Strengthening Nonpoint Source Management*, is designed to provide states with guidance about controlling nonpoint sources of pollution.

Among the actions EPA is encouraging states to take are: developing nutrient water quality standards; strengthening EPA's anti-degradation policy; developing air deposition reduction strategies; promoting state enforcement tools; strengthening national pollutant discharge elimination system regulations for animal waste discharges; and strengthening urban runoff controls through implementation of the phase II stormwater rule.

EPA Issues Estimates of State Revolving Fund Needs. EPA has issued its 1996 Clean Water Needs Survey, which provides estimates of the costs of capital projects eligible for funding under the state revolving fund (SRF) provisions of the 1987 Amendments to the Clean Water Act.

According to the estimates, satisfying all program categories eligible for SRFs will cost \$139.5 billion

over the next 20 years. According to these estimates the needs are broken down as follows: \$44 billion for wastewater treatment; \$44.7 billion for controlling combined sewer overflows; \$21.6 billion for new sewer construction; \$10.3 billion for upgrading existing wastewater collection systems; \$9.4 billion for nonpoint source pollution; and \$7.4 billion to control stormwater runoff.

According to the survey, the SRF-eligible portion of the phase I stormwater program consists of capital costs for developing and implementing municipal stormwater management programs. Capital costs include construction costs for structural controls and best management practices; program development costs; and program implementation costs. Examples of the latter costs include drafting new ordinances or regulations, preparing training materials, training staff, and producing public education materials.

Private entities are not eligible for SRF grants. Among the costs that are likely to be incurred by municipalities but were not included in the estimate were: costs associated with phase II regulations; costs associated with the industrial component of the stormwater program; costs associated with stormwater permits for construction activities; costs of future development; and costs of operations and maintenance activities. Some of these costs are eligible for SRF grants, but EPA was not able to develop an estimate of all SRF-eligible costs because of insufficient cost information.

President Signs EPA Budget for Fiscal 1998. The fiscal 1998 appropriations bill signed by President Clinton Oct. 27 will provide EPA with a funding increase of 8.5 percent over last year. But a large chunk of next year's \$7.36 billion allocation will go toward funding research projects and the Superfund program.

Although it is too early to determine how the money will be allocated among the program offices, funding in overall EPA programs and management will be cut by \$55 million. Given the agency's recent emphasis on nonpoint source runoff and wet weather flows, however, it seems unlikely that the stormwater program will sustain much of a cut.

Under the bill, the Clean Water SRF will receive \$1.35 billion and the Safe Drinking Water SRF will get \$725 million. The Rouge River national wet weather demonstration project will get \$14 million.

The overall allocation is \$500 million more than last year, but \$240 million less than what the president requested. ■

Phase II, Permit Status

(Continued from page 1)

these stakeholders agreed with allowing waivers to be based on a TMDL evaluation showing stormwater runoff had no adverse water quality impacts, they were concerned that TMDLs might lead to potential numeric effluent limitations.

EPA may make minor changes to the July 31 phase II draft it sent to the White House Office of Management and Budget to address these and other issues. But agency officials have maintained all along that major changes to the phase II proposal are unlikely. Remaining stakeholder objections will be addressed through the public comment process after the rule is proposed, according to a number of sources.

Baseline Construction General Permit

EPA received over 1,900 comments in response to its proposed revisions of the baseline construction general permit, said Brian Burgess, stormwater phase I team leader at OWM. The agency is developing a "very tight, very detailed coordinated response to these public comments," Burgess said. "An action of this magnitude and size needs to be resolved as clearly and explicitly as possible to offset any questions that might arise as far as implementation," he added.

Among the main issues raised in the public comments were concerns about the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA) provisions. The agency is required to issue permits that compel covered construction sites to address the impacts of stormwater runoff on endangered species and national historic sites. ESA and NHPA provisions are more rigorous for construction permittees than for industrial permittees because of the nature of the activity, Burgess said.

The clearing of land and demolishing of existing structures to build something new can cause more

impacts than industrial stormwater runoff, Burgess said. Because of the ESA and NHPA requirements the new construction permit will be slightly more burdensome than the last, but the agency is providing some flexibility in the permit that did not exist before, Burgess said. He declined to detail where in the new permit the increased flexibility would exist, however.

The agency had hoped to issue a final permit by Dec. 1, but because of the volume of comments, the holidays and resource limitations within OWM, it seems unlikely the agency will meet that goal. Furthermore, because the permit is administered by the EPA regions, the permit will have to be signed by eight different regional administrators. This could further delay publication of the final permit, Burgess said.

The general permit would apply only in those states that do not have authority to issue their own national pollutant discharge elimination system permits (see *Stormwater Permit Manual*, Tab 800, ¶810)

MSGP Progress Slowed

Because of the time it is taking to issue the final construction general permit, OWM has not been able to assign ample staff to finalize the modified MSGP. This permit will not be completed by the end of 1997. EPA is encouraging facilities currently eligible for the existing MSGP to change over from the baseline industrial general permit as soon as possible, so that they will not have to scramble to finalize and implement revised stormwater pollution prevention plans.

Facilities that do not fall within an existing MSGP category should continue to follow provisions of the baseline industrial general permit until the new MSGP is published. EPA expected facilities that wanted to extend coverage of the baseline industrial general permit to submit a notice of intent to get a permit extension by September, when the original permit expired. ■

Proposed Deadlines for the Phase II Rule

<i>Activity</i>	<i>Deadline</i>
Rule becomes final	3/1/99
NPDES-authorized states modify NPDES programs	3/1/00
NPDES-authorized states modify NPDES programs—if statutory change is required	3/1/01
Permitting authority issues a menu of measures for regulated small MS4s	3/1/01
Permitting authority issues general permits (if applicable)	3/1/02
Stormwater dischargers associated with "other activities" submit permit applications	5/31/02
Regulated small MS4 program developed and implemented	2007
Reevaluation of the rule by EPA	3/1/12
Submission of no-exposure certification	every 5 years
Sources designated for permit coverage by permitting authority	180 days after notice

Miami Enforcement Action

(Continued from page 1)

The river, which is the largest tributary to Biscayne Bay, has a history of water quality problems, Fleming said. Its pollution problems include the presence of fecal coliform bacteria and associated viral or pathogen contamination, as well as plumes that have high levels of turbidity and nutrients and low levels of dissolved oxygen, and periodic phytoplankton blooms.

MRCC Targets Nonpoint Sources

Much of the river's degradation has been caused by nonpoint source pollution, including stormwater runoff, sewage leaks and illegal dumping, Fleming said. As a result, one of the major initiatives of MRCC is to address problems related to stormwater runoff, she said.

Toward that end, the committee organized the Miami River Stormwater Subcommittee in 1994. The subcommittee includes representatives from several federal, state and local enforcement agencies, including Dade County Environmental Resources Management (DERM), the city of Miami, the Florida Department of Environmental Protection (DEP), the Florida Marine Patrol and EPA Region 4.

One of the goals of the subcommittee is to develop an action plan for reducing stormwater pollution and improving the surface water quality of Wagner Creek, which feeds into the river. The water quality of Wagner Creek was deemed among the worst in Dade County. After making observations and collecting data, the subcommittee determined that much of the creek's pollution problems originated in two areas: the produce market area in downtown Miami and an adjacent industrial area comprising many small businesses involved in recycling, scrap metal, auto parts and salvage.

Because the produce market area includes mostly commercial businesses and has a high population of homeless people, it was beyond the reach of CWA regulations, and more specifically, stormwater regulations. As a result, the industrial area became the subcommittee's target area.

One of the many problems in the industrial area is disposal and management of solid wastes, said Susan Markley, chief of DERM's natural resources division. Investigations of the area uncovered improper connections of industrial and sanitation lines to storm sewer systems as well as illegal discharges.

"The sanitary sewers are some of the oldest in the metropolitan area. As a result, they were built before some of the new technologies were available," Markley said. Nevertheless, businesses

discharging into the systems are responsible for what goes into them and are required to get a stormwater permit, she said.

The subcommittee decided to coordinate a multi-agency inspection of the facilities in the area to find out if they had permits and were complying with permit requirements such as developing and implementing a stormwater pollution prevention plan (SWP3). Region 4 officials took the lead in the unannounced inspections. They were joined by enforcement officials from DERM, the City of Miami, the Miami Marine Patrol and the state DEP. As a policy, EPA does not announce its inspections, said Susan Pope, a Region 4 enforcement officer involved in the inspections.

"Some facilities were a little taken aback" when the group of officials arrived, said Pope. "We looked for paperwork [such as permits or statements that no permit was needed], sources of stormwater ... where it could drain, and where it would go," she said. Among other things, officials conducted smoke and dye testing to follow the flow of stormwater through a facility's drainage system. "There are a lot of facilities that don't know where the drain leads," she added.

All of the facilities that were inspected were cited for not complying with stormwater regulations. None of the facilities had applied for a stormwater permit in the timeframe stipulated by the regulations. Facilities were given administrative orders to apply for permits and develop SWP3s within a 90-day timeframe. However, most of the facilities did not realize that they would also be financially penalized for their noncompliance. Several months after the administrative orders were given, the facilities were notified that they were liable for fines ranging from \$4,000 to \$12,000. CWA stipulates that fines up to \$25,000 can be levied against violators.

Only one facility, Atlas Incorporated, a recycling plant, was assessed a \$12,000 fine. This facility was cited for not having a permit and for illegal discharges of stormwater from its facility on three separate occasions documented by DERM officials. Representatives of Atlas could not be reached for comment.

Like the inspections, the fines came as a big surprise to most of the facilities cited, commented John Whitescarver, director of the National Stormwater Center in Stuart, Fla. Whitescarver is a consultant for six of the facilities. He has helped them apply for their stormwater permits and has assisted in the development of SWP3s.

"These were a lot of mom and pop organizations that didn't know they needed a permit. They did what they were told to [after receiving administrative orders], but they were still fined," he said. According

(Continued on page 6)

Miami Enforcement Action

(Continued from page 5)

to Whitescarver, many facility owners did not understand why they were being fined and some of the facilities are run by people whose first language is not English. Facility owners were very upset that they knew nothing of the regulations and associated fines, he said.

In addition to the language barrier, many of the facility owners do not belong to any trade organization that would have informed them of such regulations. Other sources of information, like the *Federal Register*, are not typical reading material for most businesses, particularly those outside Washington, D.C., and newspapers seldom cover regulatory matters until violations are reported, Whitescarver said.

Also, it is not a policy of Region 4 to inform regulated industries of their requirements to obtain a permit, Whitescarver said. For example, EPA Region 6 maintains a database of facilities that may need a permit. Officials periodically mail notices to facilities informing them of their requirements and the potential for penalties if they do not comply.

Dennis Baron, co-owner of Triangle Scrap Metals said he was aware of the stormwater regulations, but because his facility is a non-ferrous scrapyard and most of his inventory is stored under a roof, he did not think the rules would affect his business. Although there is a trade organization for scrapyards, Baron does not belong. Membership in a trade organization is expensive and time consuming

utilizing two resources, money and people, that many small businesses cannot spare, Baron said.

Baron was on vacation at the time of the inspection, but reported that officials found no violations and only ordered him to apply for a stormwater permit. Baron filled out the permit application and sent it in, but it was returned because of missing information. Before he was able to supply the missing information, he received notification of a \$6,000 fine.

At the moment, Baron's business is "technically fined," he said. After receiving notification, Baron worked with EPA officials to reduce the fine to \$1,600. "EPA has been extremely helpful, cooperative and understanding," he said.

During the negotiations with EPA, he discovered that his property is equipped with French drains. These drains are filled with sand and rock that filter runoff and allow water to seep back into the water table. The presence of a French drain can exempt a facility from requirements to obtain a permit, he explained. If Baron can get an engineer to certify that the drain is a French drain, his fine will likely be dropped. Other facilities have also been able to reduce their fines, said Whitescarver.

Undoubtedly, the MRCC initiative will lead to more inspections in the area. EPA will continue to be involved in the initiative, said Pope. "Next year we will probably focus on one or two more watersheds. We will look at the watersheds as a whole rather than just look at the pipes ... and we will evaluate available information to see which shed has a large stormwater impact." ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$349
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409

Call Us Toll-Free At 1-800-677-3789

J52STRM

Stormwater Permit Manual

Bulletin

Volume 7, Number 4

November 1997

North Carolina State Univ. Publishes Study On Industrial Runoff

North Carolina State University has published a study indicating that zinc and copper were the most common of eight heavy metals evaluated in samples of first-flush runoff from 20 industrial sites in North Carolina.

According to the authors, the study, which was published in the May/June issue of *Water Environment Research*, provides some of the background information needed in industrial stormwater permitting. In combination with total maximum daily load evaluations, regulators can use this information to trace primary sources of various contaminants, they said.

Twenty facilities in 10 different industry groups participated in the study. The researchers collected information on the size of the facility, area of the site, drainage area, percent of impervious area, slope and amount of exposed material. Because only one sample was collected at each facility, the authors cautioned that generalizations should be limited. However, they were able to find certain patterns.

Facilities evaluated in the study included a chemical repackager, two furniture manufacturers, two junkyards, two landfills, two metal fabricators, two paint manufacturers, three scrap and recycling yards, two textile manufacturers, two vehicle maintenance shops and two wood preservers. These industry groups were chosen because they are common in North Carolina.

Only first-flush runoff samples collected from storm events that met the U.S. Environmental Protection Agency National Pollutant Discharge Elimination System stormwater permit sampling criteria — rainfall accumulation of more than 2.54 millimeters after a 72-hour dry period — were analyzed. All sampling stations were located upstream of stormwater controls to reflect the quality of runoff coming directly from pollutant sources. The study authors noted, however, that several of the facilities did have stormwater controls in place that reduced the amount of runoff leaving the facilities.

(Continued on page 2)

EPA Evaluates Need for Numeric Effluent Guidelines in Regulation of Municipalities

The Environmental Protection Agency (EPA) has begun work on a preliminary study of urban stormwater discharges to help determine the need for effluent limitations for nonindustrial dischargers such as municipal separate storm sewer systems (MS4s).

The study is part of a consent agreement between EPA and the Natural Resources Defense Council (NRDC) that, among other things, directs EPA to develop new or revised rules for several industrial categories under its effluent guidelines program and select additional categories for inclusion in the program over the next few years (*NRDC v. EPA*, No. 89-2980 (D.D.C. Jan. 31, 1992)). NRDC originally filed suit because EPA was not developing effluent guidelines quickly enough under Clean Water Act requirements, according to NRDC attorney, Peter Lehner.

(Continued on page 4)

Inside This Issue ...

Category 11 Facilities With No Exposure Still Exempt	3
EPA Distributes Phase II Cost-Benefit Analysis	3
EPA Issues Report on U.S. Watershed Conditions	3
Delaware, Nebraska and Oregon state pages	Tab 800

Industrial Runoff

(Continued from page 1)

In addition to measuring for metals, researchers also collected information on levels of conventional water quality parameters including biochemical oxygen demand (BOD₅), chemical oxygen demand (COD), oil and grease, ammonia (NH₃), nitrate plus nitrite nitrogen, total Kjeldahl nitrogen (TKN), total phosphorous, dissolved phosphorous, and dissolved and suspended solids.

The researchers also measured for zinc, copper, arsenic, cadmium, lead chromium, nickel and mercury. Zinc and copper were found at every site. The researchers also tested for antimony, beryllium, selenium, silver and thallium, but they were not found in any of the samples.

Generally higher levels of metals were found at facilities with exposed metal stored on site. However, a couple of exceptions existed. Wood preservers that stored compounds containing arsenic, copper and chromium, but did not have exposed metals had high levels of the compounds in runoff. By contrast, junkyards probably had the most exposed metal, but runoff from these facilities did not contain the highest levels of metals.

These results indicate that exposed metal is not the only indicator of metals in runoff. Other factors, such as rust, amount of cut metal surfaces and hydrologic transport efficiency also can effect metal concentrations in runoff, the report concluded.

All 20 samples collected had concentrations of zinc greater than the state action level of 50 parts per billion (ppb), while only one sample exceeded the 88 ppb state standard for nickel. The state action level for mercury is lower than its method detection limit, which is the lowest level at which a contaminant can be detected. However, researchers were able to determine that at a minimum, one junkyard, one landfill and one scrap recycler exceeded the action level by at least 16 times.

Zinc was detected in the largest quantities at two of the three scrap recycling plants and at the metal fabricators plant. Copper levels were highest at wood preserver facilities and scrap recycling yards. One vehicle maintenance yard and one paint manufacturer had lower than the measurable action levels for all compounds except zinc.

The data show that metals are present in stormwater runoff from industrial sites, the authors said, but they were not able to reach a conclusion about the potential threat of such discharges to the designated uses of receiving waters.

With respect to concentrations of aggregate organic pollutants, runoff from scrap and recycling, landfill, metal fabricating, and vehicle maintenance facilities contained the highest concentrations, while runoff from textile manufacturing, chemical repackaging and wood preserving facilities had the lowest.

One vehicle maintenance shop and two scrap recyclers had the highest oil and grease counts. Runoff from several sites with relatively high COD levels also had elevated concentrations of NH₃, TKN and BOD₅, indicating that a significant proportion of COD may have originated from readily biodegradable products, the report stated.

The sites with the highest solids concentrations each had a significant amount of exposed, unstabilized soil in the sampled drainage area. The groups with the lowest concentration of solids had very little pervious area or had all the pervious area stabilized with grass. As with elevated levels of solids, researchers speculated that high phosphorous counts at some of the facilities in the study may be attributable to factors other than industrial activity, such as soil erosion.

Researchers also concluded that sites with consumer products, such as those found in one landfill and one scrap recycling facility tend to have higher BOD₅, COD and nitrogen concentrations. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Periodicals Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1997 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Category 11 Facilities With No Exposure Still Exempt. Despite a ruling by the Ninth Circuit Court of Appeals in 1992 that vacated an exemption for light industrial facilities, the U.S. Environmental Protection Agency (EPA) has not forced facilities in this category with no-exposure to stormwater to apply for a permit (*Natural Resources Defense Council v. EPA*, No. 91-70200 (9th Cir. June 4, 1992)).

The question of whether Category 11 facilities must get stormwater permits has come up again because some industries listed as Category 11 in the original stormwater rule are now specified in the proposed modified multi-sector general permit (MSGP), which is expected to be finalized by the end of this year.

In the original application rule, published in Nov. 1990, EPA required Category 11 facilities to get permits only if stormwater actually contacted materials, products, material handling equipment or activities, or other industrial equipment. This exception was struck down by the court because it found that EPA did not provide ample scientific evidence to support singling out Category 11 facilities for this limited exemption.

Under the phase I permitting program EPA still recognizes the exemption, even at facilities specifically listed in the MSGP. According to Gary Huideberg, head of EPA's permits division and a number of state officials, Category 11 facilities that do not have stormwater discharges do not have to apply for a permit.

As has been reported in the *Bulletin*, EPA is working on a no-exposure exemption for facilities in all covered categories. When it is finalized, the distinction between Category 11 facilities and all other facilities will no longer exist.

EPA Distributes Phase II Cost-Benefit Analysis. EPA Oct. 6 distributed an economic analysis of the proposed phase II stormwater rule. According to the "initial final draft" of the analysis, the rule would have a net cost of between \$200,000 and \$63 million.

EPA estimated that the proposed rule would have annual monetized benefits of \$66 million to \$495 million. These benefits were based on financial, recreational and health benefits associated with the proposal. The benefits calculation does not include improved aesthetic quality of waters, benefits to wildlife and to threatened and endangered species, cultural values, tourism benefits and biodiversity benefits. Notwithstanding any benefits, the total annualized cost of the rule ranges from \$131 million to \$494.2 million. These costs include paperwork costs such as application and report preparation and

generation, and recordkeeping. Nonpaperwork costs include erosion controls and public outreach activities. According to the analysis, municipalities will spend between \$94.1 million and \$269.3 million annually. Construction sites will spend between \$17 million and \$165 million. State governments will spend between \$2.8 million and \$9.9 million, and the federal government will spend between \$0.6 million and \$1.7 million each year.

EPA said it may have overestimated the total costs, and may not have included all the potential benefits associated with the proposal.

Peter Lehner with the National Resources Defense Council criticized the draft economic analysis for not adequately quantifying nonmarket benefits. Don Moe of the National Association of Home Builders said the added costs to homebuyers of new stormwater regulations for construction would discourage people from buying homes they otherwise could afford. This, he said, would stunt the homebuilding industry in ways that were not considered in the economic analysis.

EPA Issues Report on U.S. Watershed Conditions. EPA Oct. 7 released its first comprehensive assessment of U.S. watersheds.

The data, now available to all citizens on the Internet, indicate that 16 percent of watersheds have good water quality; 36 percent have moderate water quality; 21 percent have more serious problems; and sufficient data are lacking to fully characterize the remaining 27 percent.

The watershed data indicate that polluted runoff from urban and rural areas is a major contributor of water quality problems. Since the Clean Water Act was enacted in October 1972, requirements for discharges from factories and sewage treatment plants have been responsible for many water quality improvements, and such discharges are widely controlled when viewed nationally. In some local areas, however, such point source pollution remains a problem, EPA said.

EPA made the watershed assessments by combining into one index, 15 individual databases available from many public and private sources. The individual databases are "indicators" used to assess and score the watersheds, both for condition (quality) and vulnerability to degradation from pollution.

The watershed database, called the "Index of Watershed Indicators" is available on the Internet at: <http://www.epa.gov/surf/iwi>. ■

Stormwater Permit Manual

Bulletin

Volume 7, Number 4

November 1997

North Carolina State Univ. Publishes Study On Industrial Runoff

North Carolina State University has published a study indicating that zinc and copper were the most common of eight heavy metals evaluated in samples of first-flush runoff from 20 industrial sites in North Carolina.

According to the authors, the study, which was published in the May/June issue of *Water Environment Research*, provides some of the background information needed in industrial stormwater permitting. In combination with total maximum daily load evaluations, regulators can use this information to trace primary sources of various contaminants, they said.

Twenty facilities in 10 different industry groups participated in the study. The researchers collected information on the size of the facility, area of the site, drainage area, percent of impervious area, slope and amount of exposed material. Because only one sample was collected at each facility, the authors cautioned that generalizations should be limited. However, they were able to find certain patterns.

Facilities evaluated in the study included a chemical repackager, two furniture manufacturers, two junkyards, two landfills, two metal fabricators, two paint manufacturers, three scrap and recycling yards, two textile manufacturers, two vehicle maintenance shops and two wood preservers. These industry groups were chosen because they are common in North Carolina.

Only first-flush runoff samples collected from storm events that met the U.S. Environmental Protection Agency National Pollutant Discharge Elimination System stormwater permit sampling criteria — rainfall accumulation of more than 2.54 millimeters after a 72-hour dry period — were analyzed. All sampling stations were located upstream of stormwater controls to reflect the quality of runoff coming directly from pollutant sources. The study authors noted, however, that several of the facilities did have stormwater controls in place that reduced the amount of runoff leaving the facilities.

(Continued on page 2)

EPA Evaluates Need for Numeric Effluent Guidelines in Regulation of Municipalities

The Environmental Protection Agency (EPA) has begun work on a preliminary study of urban stormwater discharges to help determine the need for effluent limitations for nonindustrial dischargers such as municipal separate storm sewer systems (MS4s).

The study is part of a consent agreement between EPA and the Natural Resources Defense Council (NRDC) that, among other things, directs EPA to develop new or revised rules for several industrial categories under its effluent guidelines program and select additional categories for inclusion in the program over the next few years (*NRDC v. EPA*, No. 89-2980 (D.D.C. Jan. 31, 1992)). NRDC originally filed suit because EPA was not developing effluent guidelines quickly enough under Clean Water Act requirements, according to NRDC attorney, Peter Lehner.

(Continued on page 4)

Inside This Issue ...

Category 11 Facilities With No Exposure Still Exempt	3
EPA Distributes Phase II Cost-Benefit Analysis	3
EPA Issues Report on U.S. Watershed Conditions	3
Delaware, Nebraska and Oregon state pages	Tab 800

Industrial Runoff

(Continued from page 1)

In addition to measuring for metals, researchers also collected information on levels of conventional water quality parameters including biochemical oxygen demand (BOD₅), chemical oxygen demand (COD), oil and grease, ammonia (NH₃), nitrate plus nitrite nitrogen, total Kjeldahl nitrogen (TKN), total phosphorous, dissolved phosphorous, and dissolved and suspended solids.

The researchers also measured for zinc, copper, arsenic, cadmium, lead chromium, nickel and mercury. Zinc and copper were found at every site. The researchers also tested for antimony, beryllium, selenium, silver and thallium, but they were not found in any of the samples.

Generally higher levels of metals were found at facilities with exposed metal stored on site. However, a couple of exceptions existed. Wood preservers that stored compounds containing arsenic, copper and chromium, but did not have exposed metals had high levels of the compounds in runoff. By contrast, junkyards probably had the most exposed metal, but runoff from these facilities did not contain the highest levels of metals.

These results indicate that exposed metal is not the only indicator of metals in runoff. Other factors, such as rust, amount of cut metal surfaces and hydrologic transport efficiency also can effect metal concentrations in runoff, the report concluded.

All 20 samples collected had concentrations of zinc greater than the state action level of 50 parts per billion (ppb), while only one sample exceeded the 88 ppb state standard for nickel. The state action level for mercury is lower than its method detection limit, which is the lowest level at which a contaminant can be detected. However, researchers were able to determine that at a minimum, one junkyard, one landfill and one scrap recycler exceeded the action level by at least 16 times.

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Editorial Director, Kathy Duntzen; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Periodicals Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

Zinc was detected in the largest quantities at two of the three scrap recycling plants and at the metal fabricators plant. Copper levels were highest at wood preserver facilities and scrap recycling yards. One vehicle maintenance yard and one paint manufacturer had lower than the measurable action levels for all compounds except zinc.

The data show that metals are present in stormwater runoff from industrial sites, the authors said, but they were not able to reach a conclusion about the potential threat of such discharges to the designated uses of receiving waters.

With respect to concentrations of aggregate organic pollutants, runoff from scrap and recycling, landfill, metal fabricating, and vehicle maintenance facilities contained the highest concentrations, while runoff from textile manufacturing, chemical repackaging and wood preserving facilities had the lowest.

One vehicle maintenance shop and two scrap recyclers had the highest oil and grease counts. Runoff from several sites with relatively high COD levels also had elevated concentrations of NH₃, TKN and BOD₅, indicating that a significant proportion of COD may have originated from readily biodegradable products, the report stated.

The sites with the highest solids concentrations each had a significant amount of exposed, unstabilized soil in the sampled drainage area. The groups with the lowest concentration of solids had very little pervious area or had all the pervious area stabilized with grass. As with elevated levels of solids, researchers speculated that high phosphorous counts at some of the facilities in the study may be attributable to factors other than industrial activity, such as soil erosion.

Researchers also concluded that sites with consumer products, such as those found in one landfill and one scrap recycling facility tend to have higher BOD₅, COD and nitrogen concentrations. ■

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1997 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Category 11 Facilities With No Exposure Still Exempt. Despite a ruling by the Ninth Circuit Court of Appeals in 1992 that vacated an exemption for light industrial facilities, the U.S. Environmental Protection Agency (EPA) has not forced facilities in this category with no-exposure to stormwater to apply for a permit (*Natural Resources Defense Council v. EPA*, No. 91-70200 (9th Cir. June 4, 1992)).

The question of whether Category 11 facilities must get stormwater permits has come up again because some industries listed as Category 11 in the original stormwater rule are now specified in the proposed modified multi-sector general permit (MSGP), which is expected to be finalized by the end of this year.

In the original application rule, published in Nov. 1990, EPA required Category 11 facilities to get permits only if stormwater actually contacted materials, products, material handling equipment or activities, or other industrial equipment. This exception was struck down by the court because it found that EPA did not provide ample scientific evidence to support singling out Category 11 facilities for this limited exemption.

Under the phase I permitting program EPA still recognizes the exemption, even at facilities specifically listed in the MSGP. According to Gary Huideberg, head of EPA's permits division and a number of state officials, Category 11 facilities that do not have stormwater discharges do not have to apply for a permit.

As has been reported in the *Bulletin*, EPA is working on a no-exposure exemption for facilities in all covered categories. When it is finalized, the distinction between Category 11 facilities and all other facilities will no longer exist.

EPA Distributes Phase II Cost-Benefit Analysis. EPA Oct. 6 distributed an economic analysis of the proposed phase II stormwater rule. According to the "initial final draft" of the analysis, the rule would have a net cost of between \$200,000 and \$63 million.

EPA estimated that the proposed rule would have annual monetized benefits of \$66 million to \$495 million. These benefits were based on financial, recreational and health benefits associated with the proposal. The benefits calculation does not include improved aesthetic quality of waters, benefits to wildlife and to threatened and endangered species, cultural values, tourism benefits and biodiversity benefits. Notwithstanding any benefits, the total annualized cost of the rule ranges from \$131 million to \$494.2 million. These costs include paperwork costs such as application and report preparation and

generation, and recordkeeping. Nonpaperwork costs include erosion controls and public outreach activities. According to the analysis, municipalities will spend between \$94.1 million and \$269.3 million annually. Construction sites will spend between \$17 million and \$165 million. State governments will spend between \$2.8 million and \$9.9 million, and the federal government will spend between \$0.6 million and \$1.7 million each year.

EPA said it may have overestimated the total costs, and may not have included all the potential benefits associated with the proposal.

Peter Lehner with the National Resources Defense Council criticized the draft economic analysis for not adequately quantifying nonmarket benefits. Don Moe of the National Association of Home Builders said the added costs to homebuyers of new stormwater regulations for construction would discourage people from buying homes they otherwise could afford. This, he said, would stunt the homebuilding industry in ways that were not considered in the economic analysis.

EPA Issues Report on U.S. Watershed Conditions. EPA Oct. 7 released its first comprehensive assessment of U.S. watersheds.

The data, now available to all citizens on the Internet, indicate that 16 percent of watersheds have good water quality; 36 percent have moderate water quality; 21 percent have more serious problems; and sufficient data are lacking to fully characterize the remaining 27 percent.

The watershed data indicate that polluted runoff from urban and rural areas is a major contributor of water quality problems. Since the Clean Water Act was enacted in October 1972, requirements for discharges from factories and sewage treatment plants have been responsible for many water quality improvements, and such discharges are widely controlled when viewed nationally. In some local areas, however, such point source pollution remains a problem, EPA said.

EPA made the watershed assessments by combining into one index, 15 individual databases available from many public and private sources. The individual databases are "indicators" used to assess and score the watersheds, both for condition (quality) and vulnerability to degradation from pollution.

The watershed database, called the "Index of Watershed Indicators" is available on the Internet at: <http://www.epa.gov/surf/iwi>. ■

Effluent Guidelines

(Continued from page 1)

The study is expected to be completed by the end of next year, according to Eric Strassler, a project manager for the effluent guidelines program. The consent decree requires EPA to conduct such preliminary studies to help the agency determine what industrial categories will be selected for effluent guideline limitations. Effluent guidelines are technology-based end-of-pipe standards. They require sources subject to the guidelines to meet numeric effluent limitations by implementing the best available technology.

Besides evaluating the environmental impacts of stormwater discharges from municipal systems, EPA also is evaluating the need for effluent guidelines for several industries, including all discharges from the pharmaceutical manufacturing, metal products and machinery, aerospace vehicle manufacturing, aircraft equipment, electronic equipment, hardware, and mobile and stationary equipment industries, as well as industrial activities related to the manufacture of trucks and buses, household equipment, scientific instruments and office machines (see *Bulletin*, March 1997, page 3).

At the moment, EPA is still in the planning stages of the study. The agency is looking at existing data about the National Pollutant Discharge Elimination System stormwater program, as well as data on types and performance of various best management practices (BMPs), the environmental impact of stormwater discharges and cost considerations. Some of the information that EPA is collecting for its BMP database project will be used in conducting

this study, explained Strassler (see *Bulletin*, October 1997, p. 1). "We will try to fill in some of the gaps on BMP information from the database project," he said.

In addition to using existing data, officials expect to begin studying stormwater samples from the Washington, D.C. area this winter or early next spring, Strassler said. The sampling will be like that conducted for two previous EPA studies in 1979 and 1982 that resulted in a report on the Nationwide Urban Runoff Program. The report published findings of runoff samples from about 30 to 50 sites, Strassler said. During sampling, EPA will look at the number and size of dischargers, existing treatment practices, wastewater flows and pollutant concentrations, treatment costs and environmental impacts of current discharges.

After these studies are completed, EPA researchers will make recommendations to the head of the Office of Water about what course of action should be taken, said Jesse Pritts, a civil engineer with EPA's Office of Water.

Although NRDC typically likes to see regulations result from such studies, Strassler explained that regulations will not necessarily be developed. For one thing, "municipalities are more diffuse than industrial systems. It would be difficult to have end-of-pipe limits for such systems," he explained, adding that cities really don't want end-of-pipe limits. It is more likely that the study will result in the development of regionally appropriate BMP guidelines to help reduce the impact of stormwater discharges from MS4s, he said. ■

Statement of Ownership, Management and Circulation

1. Publication Title: **Stormwater Permit Manual**
2. Publication No.: 008-384
3. Filing Date: October 1, 1997
4. Frequency of Issue: Monthly
5. No. of Issues Printed Annually: 12
6. Annual Subscription Price: \$398
7. Location of Known Office of Publication: 1725 K St. N.W., 7th Floor; Wash. D.C. 20006
8. Location of the Headquarters of General Business Offices of Publisher: 1725 K St. N.W., 7th Floor; Wash. D.C. 20006
9. Name and Address of Publisher, Editor, Managing Editor:
(a) Daphne Musselwhite, 1725 K St. N.W., 7th Floor; Wash. D.C. 20006
(b) Daniel Whitten, 1725 K St. N.W., 7th Floor; Wash. D.C. 20006
10. Owner: Thompson Publishing Group, Inc.: Richard E. Thompson, 1725 K St. N.W., 7th Floor; Wash. D.C. 20006
11. Known Bondholders, Mortgages and other Security Holders: None
13. Publication Title: Stormwater Permit Manual
14. Issue Date for Circulation Data Below: October 1997

15. Extent and Nature During Preceding 12 Months	Avg. # Copies Each Issue Published Nearest to Filing Date	Act. # Copies of Single Issue
a. Total No. Copies (Net Press Run)	1906	1150
b. Paid and/or Requested Circulation		
(1) Sales through dealers and carriers, street vendors and counter sales (Not mailed)	0	0
(2) Mail Subscription (Paid and/or requested)	1492	889
c. Total Paid and/or Requested Circulation (Sum of 15b(1) and 15b(2))	1492	889
d. Free Distribution by Mail, Carrier or Other Means. (Samples, Complimentary and Other Free Copies)	25	25
e. Free Distribution Outside the Mail (Carriers or Other Means)	0	0
f. Total Free Distribution (Sum of 15d and 15e)	25	25
g. Total Distribution (Sum of 15c and 15d)	1517	914
h. Copies Not Distributed		
1. Office use, left over, unaccounted, spoiled after printing	389	236
2. Return from News Agents	0	0
i. Total (Sum of 15g, 15h(1), and 15h(2))	1906	1150
Percent Paid and/or Requested Circulation (15c/15g x 100)	98%	97%

16. Publication of Statement of Ownership: Will be printed in the November, 1997 issue of this publication.
17. I certify that the statements made by me above are correct and complete. Daniel Whitten, Editor

10/23/97

Stormwater Permit Manual

Bulletin

Volume 7, Number 3

October 1997

Stormwater Experts Team To Collect BMP Performance Data

The Environmental Protection Agency (EPA) and experts with the American Society of Civil Engineers' (ASCE) Urban Water Resources Research Council have teamed up in an effort to develop a national database on the effectiveness of stormwater best management practices (BMPs). The ultimate goal of the project is to promote technical design improvements for BMPs and to better match BMP selection and design to local stormwater problems.

One reason for embarking on this project is the lack of a single source of information on the performance of BMPs in various environments. The current literature on BMPs is "quite limited," explained Eric Strassler, EPA's project manager. As a result, state and local governments, highway departments and other organizations that must develop and use BMPs in their stormwater pollution prevention plans do not have any central source for information about the effectiveness of BMPs. In response to this information void, EPA signed a cooperative agreement with

ASCE's Urban Water Resources Research Council to create a centralized source of BMP information.

The agreement between the two organizations was signed in late 1995. Since then, ASCE has been compiling and evaluating all the known sources of information on BMP design and performance. The search has resulted in the discovery of about 800 journal articles and reports that have been published over the last 10 to 15 years. The articles and reports typically do not focus on a range of BMPs, measurements or design parameters, Strassler explained. Nevertheless, the project team is in the process of compiling this information and organizing it into a database of information that will eventually be available to the public in the form of a software package.

Initially, the software package will include only the information that has been collected from the articles and reports, but eventually it will include information on the characteristics of structural and non-

(Continued on page 4)

EPA Targets Individual Nonfilers in Draft National Stormwater Enforcement Strategy

The U.S. Environmental Protection Agency (EPA) is developing a stormwater-specific enforcement and compliance assurance strategy. But how that strategy is carried out will be left largely to the discretion of EPA regional offices.

According to a draft of the strategy, the focus of stormwater enforcement will move from major municipal storm sewer systems to industrial stormwater dischargers that have failed to seek coverage under the appropriate National Pollutant Discharge Elimination System (NPDES) general or individual permits. Under the strategy, EPA will attempt to identify facilities that are escaping regulation under the phase I industrial program. Identifying these "nonfilers" is a necessary first step before "inspections and other activities ... can be effectively initiated," EPA said.

(Continued on page 3)

Inside This Issue ...

EPA Issues Orders to Georgia Construction Firms	2
Federal Appeals Court Sides With Discharger	2
EPA Announces Availability of Guidance Manual	2
Maryland, Mississippi and New Jersey state pages	Tab 800



Storm Warnings

Stormwater-Related News in Capsule Format

EPA Issues Orders to Georgia Construction Firms.

The U.S. Environmental Protection Agency (EPA) and the Georgia Environmental Protection Division (EPD) issued administrative orders to six construction sites for stormwater permit violations.

The facilities were cited for discharging stormwater containing significant amounts of sediment resulting from inadequate use or lack of sediment and erosion control devices. The enforcement actions were initiated, in part, because of numerous citizen complaints to EPA and Georgia EPD regarding stormwater runoff from construction sites.

Susan Pope, an enforcement officer at EPA Region IV, said the administrative orders called for the six construction sites to cease discharge activities until they develop and comply with stormwater pollution prevention plans, including best management practices to prevent erosion and sediment runoff.

EPA is reserving judgement on fine amounts until the developers respond to the administrative orders, Pope said. The agency will consider how prompt and complete the companies are in addressing the problems uncovered during the inspection before it decides on appropriate fines, Pope said. The agency will reinspect the sites in early October, she said.

The Georgia companies cited were Genesis Land L.P., Quintas Corp., Herndon Properties Inc., Ultima Holdings, Willoughby and Sewell Development L.P., and Ford Lake Development Inc.

Federal Appeals Court Sides With Discharger.

A federal appeals court ruled that a Clean Water Act permit holder whose discharges pose no threat to receiving waters or public health cannot be held liable in citizens suits (*Public Interest Research Group of*

New Jersey v. Magnesium Elektron Inc., No. 96-5049 (3rd Cir., Aug. 5, 1997)).

The appeals court ruled that a citizen can file suit against any person who is alleged to be in violation of an effluent standard or limitation. However, Congress lacks the power to establish a private cause of action absent some actual or threatened injury.

"When a plaintiff claims that a defendant's threatened injury is the source of his standing [to sue], he must show that the threatened injury is so imminent as to be certainly impending," the court stated. In this case, the district court found that permit violations by Magnesium Elektron Inc. caused no harm and posed no threat to the Wickecheoke Creek, the waterway into which the company discharged its effluent. Because the district court determined that the "discharge violations posed no threat of harm whatsoever to the aquatic ecosystem," the appeals court concluded that the plaintiff environmental groups lacked standing to file suit in this case.

The appeals court vacated the decision by the United States District Court for the District of New Jersey in favor of the plaintiffs.

EPA Announces Availability of Guidance Manual.

The Watershed Management Institute has published a manual that provides information on successful urban runoff management programs. It was created to assist individuals responsible for developing and implementing urban erosion, sediment control and stormwater management programs.

The Watershed Management Institute is a nonprofit organization dedicated to protecting, managing and restoring natural resources by using an integrated

(Continued on page 3)

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Periodicals Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1997 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$5 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

EPA Enforcement Strategy

(Continued from page 1)

EPA said it will incorporate a risk-based component into the allocation of enforcement resources. The agency will focus resources on watersheds of greatest concern based on fish advisories, bioassessment survey data, or an index of watershed indicators. The watershed indicators are a set of 18 categories that indicate the health of water resources. Indicators include, among others, ambient water quality data for toxic and conventional pollutants, wetlands loss, pollution loads, urban runoff potential, and agricultural runoff potential.

Other criteria EPA will use in identifying facilities for enforcement action include proximity to outstanding natural resources, environmental justice localities, or resources heavily used for contact recreation or consumption fishing, EPA said.

Strategy is 'Part-of-Big Picture Approach'

"This is part of a national big-picture approach," said Donald Olson, chief of EPA's water enforcement division at the Office of Regulatory Enforcement. We are taking a look at critical watersheds and critical water bodies and focusing on polluters that pose the greatest risk."

This strategy fits in with EPA's memoranda of understanding (MOUs) with the regions, EPA said. MOUs typically call for regions to focus on regional wet weather concerns; address water quality impairment in targeted watersheds and stream reaches; and address priority industrial sectors or other specific concerns within a region.

EPA's draft enforcement strategy consists of six steps. The first step will identify nonfilers. The second step will identify standard industrial classification codes with a potential for highly contaminated stormwater runoff. These sectors include shipbuilding and repairing, auto parts and scrap recycling, and combined animal feeding operations. The agency will attempt to identify other industries with high levels of exposure of contaminants to rainfall or runoff, EPA said.

In step three, the agency will identify dischargers that are considered higher-risk entities. Step four will be to develop a list of construction site candidates for enforcement. Possible sources for this list include citizen complaints and lawsuits, local sediment and erosion control programs, and local building permit and land use agencies.

Step five will consist of verifying nonfiler status by sending out an information collection request letter under Section 308 of the Clean Water Act. Essentially these letters will ask potential dischargers to send to EPA either notice of intent to be covered under a

general stormwater permit or NPDES forms 1 and 2S. Forms 1 and 2S are required of individual stormwater permit applicants.

Finally, those facilities that continue to maintain nonfiler status after the above outreach efforts will be inspected and may be issued administrative penalty orders or face civil actions, EPA said. The agency emphasized that a stormwater discharge need not be observed to determine inclusion in the program, but evidence of a stormwater conveyance must exist.

Regions, States Encouraged To Adopt Strategy

"Although this strategy was developed for use by EPA regions, states are encouraged to adopt a similar approach to industrial stormwater nonfiler enforcement," EPA said. According to Olson, how the policy is implemented is largely up to the regions. "Some regions have gone further than others in enforcing stormwater regulations," Olson said. "This is not a one-size fits all policy," he added.

The regions that have been most active thus far in stormwater enforcement are Regions I, IV, VI and IX, according to several EPA officials. Brian Rittenhouse, with EPA's Office of Wastewater Management, said Region IV conducted no-notice inspections at several Miami industrial areas and sent out letters to boat and ship yards and to landfills. Region VI has sent out 57 compliance orders and 30,000 section 308 information request letters.

"We are not at the point of levying too many fines right now, the main thing is to identify nonfilers and bring people into compliance," Rittenhouse said.

Responding to suggestions from industry that EPA provide compliance incentive programs to states, Brad Mahanes, stormwater enforcement lead with EPA's Office of Enforcement and Compliance Assurance (OECA), said OECA does not give money to states for their compliance assurance programs. All enforcement funding goes to enforcement activities. "EPA does not have the kind of money to pay for inducements or financial incentives for compliance," Mahanes said. ■

Storm Warnings

(Continued from page 2)

watershed approach. The manual costs \$37 and can be obtained by sending a check, money order or purchase order to the Watershed Management Institute Inc., 410 White Oak Drive, Crawfordville, Fla., 32327. For more information, call authors Eric Livingstone at (850) 926-5310 or Earl Shaver at (410) 758-2731. The Institute plans to publish another guidance this month titled, "Operation, Maintenance, and Management of Stormwater Management Systems." ■

BMP Effectiveness

(Continued from page 1)

structural BMPs, data collection efforts (such as sampling and flow gauging equipment), climatological characteristics, watershed characteristics, hydrologic data and constituent data.

Work on the software package and data review began last spring, and the project team expects to have a software prototype ready for beta testing by the end of this year or early next year, Strassler said. The package that will be offered for beta testing will not be a complete database, but it should give testers an idea of what EPA and ASCE are trying to do, he said. It also should result in some useful feedback for the project team to further streamline their efforts.

"We are particularly interested in local governments [that] work with data and sampling to see what they think of the software product," Strassler said. The people who test the software will know what the right design parameters should be and they will be able to offer feedback on what information would be useful and how a search might be conducted for information about the design and effectiveness of particular BMPs given certain conditions, he added.

For example, a local government official might need information regarding the possible use of a retention pond in a subdivision that has been proposed by a developer. The official would probably want to find information on the effectiveness of retention ponds in environments with the same type of soil as that of the proposed subdivision or the same type of climatological characteristics. Ideally, the database could provide such information regarding other projects where this BMP was used and how effective it was.

Although a beta test version of the database software will be ready soon, EPA and ASCE officials still are

collecting BMP performance data, Strassler said. Because this is an ongoing project, any organization or individual who has done sampling or otherwise evaluated their BMPs is encouraged to share their information with the project team, he said.

The project team has compiled enough information to develop "BMP parameter tables." These tables list the various types of BMPs and attribute a level of significance to each parameter. They also provide guidance to field researchers about what data is useful to the creators of the database in evaluating BMP effectiveness. In the long run, this information could provide some certainty that required BMPs improve water quality. The regulated community has taken exception to specific BMP requirements because there is no data to prove that costly BMPs have the desired impact.

Parameters are labeled as: "Essn" for information that is essential for evaluating BMP test data; "Essn2" for information that is important, but not imperative to creating the nationwide database; "NTH" for information that would be "nice to have," but is not essential. For example, the table below lists the parameters necessary to evaluate the effectiveness of grass filter strips as a BMP.

Project leaders intend to distribute the database by CD-ROM and via the Internet. It could be more than a year, however, before these products are available to the public. The price of the package has not yet been determined, said Strassler. If development costs can be kept to a minimum, the cost to the public to obtain the information should be low, he added.

For additional information about submitting BMP data, or for more information on the data collection process, contact Eric Strecker with Woodward-Clyde Consultants in Portland, Ore., at (503) 948-7253. ■

Table of Data Points and Their Importance in Determining Effectiveness of Grass Filter Strips

Site Identification Code	Essn
BMP Facility I.D. Number	Essn
Grass Strip's Length - (The length of the grass strip along the flowpath, in feet.)	Essn
Grass Strip's Longitudinal Slope - (The slope of the strip along the flow path, in ft/ft.)	Essn
Design Depth of Flow During a Two-Year Storm - (Strip's depth at two-year flood's peak flow rate, in feet.)	Essn
Two-Year Peak Flow Velocity - (Design flow velocity at the two-year peak runoff rate, in feet per second.)	Essn
Grass Species and Densities in the Strip - (List grass species and their densities.)	Essn
Is the Grass Strip Irrigated?	Essn
Measured Manning's (flow capacity) at the two-year Flood Peak Flow Rate	NTH
Depth to Seasonal High Groundwater Table and/or Impermeable Layer - (In feet.)	NTH
Saturated Surface Infiltration Rate - (In inches per hour.)	NTH
Natural Resource Reclamation Service Hydrologic Soil Group - (percentage of infiltrating surface covered by Natural Resources Conservation Service Hydrologic Soil Groups A, B, C or D.)	Essn2



Stormwater Permit Manual

Bulletin

Volume 7, Number 2

September 1997

EPA Sends Phase II Stormwater Proposal to White House OMB

The U.S. Environmental Protection Agency (EPA) Aug. 1 sent a phase II stormwater proposal to the White House Office of Management and Budget (OMB) that includes a number of opportunities for potential permittees to avoid coverage.

The proposal revises a working version that was drafted Feb. 14. It would cover communities with separate storm sewer systems serving 100,000 people or fewer and construction sites of less than five acres. Under a court-approved extension of a Sept. 1 deadline, EPA administrator Carol Browner is expected to sign the proposal Nov. 25.

The new rule would give permitting authorities the power to regulate industrial or commercial sources. However, all references to specific industries have been stricken from the latest proposal.

Under the proposal, construction sites of one acre or greater will be required to obtain NPDES permits.

Smaller sites that are part of a larger common plan of development or sale also would be covered. This approach would eliminate phase I and phase II distinctions, EPA said. In addition, the permitting authority can regulate sites under one-acre if the site would have an adverse impact on water quality.

The proposal includes several waivers for municipalities and construction sites. It changes the word "exempt" to "waived" because exempt raises legal questions regarding the difficulty of bringing back under regulation an exempt discharger, EPA said.

Bob Klepp, staff attorney with EPA's Office of Wastewater Management, said the waivers were intended to "cut out the part of the world that doesn't cause water quality problems." Waivers also can serve as incentives for facilities to reduce their impacts on water quality, Klepp acknowledged.

(Continued on page 5)

Caltrans Target of EPA, NRDC Enforcement Action for Stormwater Permit Violations

The Environmental Protection Agency (EPA) has joined forces with San Diego BayKeeper and the Natural Resources Defense Council (NRDC) in a lawsuit filed against California's transportation agency (Caltrans) for alleged violations of state and federal stormwater regulations. The lawsuit seeks the maximum financial penalties allowed under the Clean Water Act — \$25,000 a day per violation — as well as development of a plan to help the state agency comply with the regulations.

Specifically, the lawsuit charges Caltrans with violating the state's general permit for stormwater discharges associated with construction activities and failing to apply for the required municipal separate storm sewer system (MS4) permit. The legal action began last August when NRDC filed suit on behalf San Diego BayKeeper, a citizens' environmental organization. EPA joined the action last December. The case has yet to reach trial. Instead, the parties involved have been holding private negotiations in the presence

(Continued on page 6)

<i>Inside This Issue ...</i>	
EPA Issues Draft of No-exposure Exemption for Stormwater	2
Storm Warnings	3
Florida Study Recommends 14-Day Detention Pond Residence Time	7
Hawaii, Iowa and Minnesota state pages	Tab 800



EPA Issues Draft of No-exposure Exemption for Stormwater

The U.S. Environmental Protection Agency (EPA) issued what it hopes will be a final no-exposure exemption policy for industrial stormwater dischargers. Under the policy, a facility owner or operator would not be required to obtain a National Pollutant Discharge Elimination System (NPDES) stormwater permit if the facility can show its discharges do not affect water quality.

The new policy will be published in the *Federal Register* as a proposed change to the phase I rule at the same time the phase II proposal is published, according to Bob Klepp, staff attorney with EPA's Office of Wastewater Management.

The latest draft of the policy, issued June 17, states that "no exposure" means that all industrial materials or activities at a facility are protected by a storm resistant shelter so that they are not exposed to rain, snow, snowmelt or runoff. Industrial materials or activities include, material handling equipment, industrial machinery, raw materials, intermediate products, by products or waste products, however packaged, EPA said. EPA emphasized that the party certifying no exposure "shall not allow any actions taken to qualify for this provision that would interfere with the attainment or maintenance of water quality standards and designated uses."

Jeffrey Longworth, an attorney with Collier, Shannon, Rill & Scott said that requiring the facility owner or operator to certify no impact on water quality standards and designated uses would be cost prohibitive. "The facility owner should be able to claim no-exposure and explain steps taken at the facility to prevent exposure. But the burden of proof of water quality standard and designated use impacts should then shift to the states," Longworth said.

To maintain the no-exposure exemption, an owner or operator must submit a certification once every five

years to the NPDES permitting authority. Any owner or operator certifying to no exposure must:

- notify the NPDES permitting authority at the beginning of each permit term or prior to commencing discharges during a permit term;
- allow the permitting authority, or municipality if the discharge is into a municipal separate storm sewer system, to inspect the facility and to make inspection reports publicly available upon request;
- upon request, submit a copy of the certification to the local municipality in which the facility is located or to any other person who requests the certification; and
- sign and certify the certification in accordance with 40 CFR 122.22 under the Clean Water Act.

If there is a change in circumstances that causes exposure of industrial activities or materials to stormwater, the owner or operator must immediately comply with all the requirements of the stormwater program including applying for and obtaining coverage under an NPDES permit.

The NPDES permitting authority may require the owner or operator of a facility that has submitted a no-exposure certification to apply for an individual or general permit if the authority has determined that the discharge: 1) is, or may reasonably be, causing or contributing to the violation of a water quality standard, or 2) results in hydrological modifications that would interfere with the attainment or maintenance of water quality.

The proposal represents a significant expansion in the scope of the no-exposure provision promulgated in the original 1990 stormwater rule, which applied only to light industry. The new policy would provide a strong incentive for all industrial facilities to eliminate exposure of potential contaminants to runoff or rainfall.

(Continued on page 4)

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Periodicals Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Raddliff & Restoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1997 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Notifies Permittees of Renewal Procedures. In August, the U.S. Environmental Protection Agency (EPA) sent out letters to National Pollutant Discharge Elimination System (NPDES) industrial and construction general permit holders informing them of procedures for retaining stormwater permit coverage after the 1992 permit expires.

The permits expire Sept. 9 in most states not delegated permitting authority under the NPDES program. In Massachusetts, the District of Columbia, Guam, American Samoa, non-Indian lands in Florida, Indian Lands in New York and federal facilities in Delaware, the permits expire Sept. 25.

Permittees will be required to submit a notice of intent (NOI) to the agency seeking extended permit coverage if, as expected, new permits are not finalized before Sept. 9 or Sept. 25. "Be sure to place your current NPDES stormwater permit number at the top of the NOI to indicate that you are applying to extend permit coverage," EPA said.

Permittees that have terminated industrial or construction activity and do not wish to remain covered need to send in an NOI, EPA said. Permit coverage will terminate automatically if EPA does not receive an NOI before the permit's expiration date, the agency said.

Once the new final permits are issued, permittees will have 30 days from the new effective date to send in an NOI. EPA is finalizing an NOI to go along with the new permit.

Construction applicants must submit the new construction NOI form when applying for coverage under the new construction general permit, EPA said. Industrial permittees will have to send in an NOI for the modified multi-sector general permit (see *Bulletin*, August 1997, p. 1).

EPA Issues Revised Watershed Policy. EPA recently issued a new draft of its watershed policy. The latest draft was expanded to encourage more involvement and interest from NPDES permittees as well as permitting authorities. Critics had complained that the old policy did not adequately consider the interests of people or agencies responsible for implementing a watershed policy (see *Bulletin*, February 1997, page 1).

The purpose of the policy is to guide decision-making on implementation of water quality control programs; increase involvement of NPDES permittees in watershed-based approaches to addressing water quality problems; describe actions NPDES authorities

may take to encourage NPDES permittee participation in comprehensive watershed planning and the implementation process; and identify where existing water quality programs can be more effectively utilized under a watershed alternative. Although the general goals are similar to the last draft, EPA spelled out in more detail its plans for developing cooperative implementation strategies.

Among key elements of the draft are: an emphasis on the need for specific environmentally relevant data; a stronger technical basis for addressing a broader range of watershed problems; basing water quality management responsibilities on a source's relative contribution to the watershed; and active stakeholder involvement including unregulated sources of water pollution, EPA said.

EPA Issues Draft Strategy To Improve Compliance. EPA said in a draft strategy on education and outreach to improve stormwater compliance that emphasis will be placed on compliance assistance over enforcement.

The draft issue paper, "The Use of Education and Outreach to Improve Compliance," reasons that noncompliance is often due to lack of knowledge about the requirements of the law. According to the paper, issued July 25, EPA will emphasize six elements that it believes will lead to a successful program. They include: consistent guidance; coordination with regions; coordination with affected industries; accessibility; outreach and awareness of the availability of the compliance assistance program; and sufficient detail and understandable language.

EPA is evaluating several different approaches to improving stormwater compliance. Among the approaches being considered are: setting up a stormwater hotline; opening a stormwater-specific compliance assistance center; establishing a stormwater compliance assistance Internet web site; publishing industry-specific guidance; coordinating with industry associations; conducting facility site visits to provide guidance; and hosting compliance assistance workshops and seminars.

"No one option will address the needs of the regulated community," EPA said. The agency will take a multilayered approach that evaluates economic feasibility, the draft policy paper stated. EPA will give priority funding to establish a compliance assistance center and a stormwater hotline. The agency has placed a priority on setting up an Internet site and hosting several workshops and seminars. ■

No-exposure Exemption

(Continued from page 2)

Based on the federal advisory committee's recommendations, EPA would require only minimal amounts of information from a facility claiming the no-exposure exemption. The NPDES permitting authority would maintain a simple registration list, which should impose minimal administrative burden, but which would allow a way of tracking which industrial facilities are exercising the exemption, EPA said.

In developing the policy, the agency made a number of determinations regarding what constitutes exposure. Emissions from roof stacks and vents that are regulated and in compliance with other environmental protection programs and do not cause stormwater contamination would be considered not exposed. However, "track out" or windblown raw materials would be deemed exposed, EPA said. Leaking pipes containing contaminants exposed to stormwater would be deemed exposed, as would past sources of stormwater contamination that remain on the site. General refuse and trash, not of an industrial nature, would not be considered exposed industrial materials.

Adequately maintained mobile equipment may be exposed to precipitation or runoff when in active use. Such activities alone would not prevent a facility from being able to certify no exposure under this provision, EPA said. In addition, other instances may occur where permanent no exposure of industrial activities or materials is not possible. Therefore, the agency said that under such conditions, materials

and activities can be covered with tarps between periods of permanent enclosure. Permitting authorities were delegated authority to decide the circumstances under which temporary structures meet the requirements for a no-exposure exemption, EPA said. Until permitting authorities determine otherwise, temporary coverage of industrial materials or activities is allowed during facility renovation or construction provided the temporary cover is achieving the intent of the policy. Exposure that results from a leak in protective covering is only exposure if it is not corrected prior to the next stormwater discharge event, EPA said.

Although the intent of the policy is to reduce the regulatory burdens on industrial facilities and government agencies, the permitting authority should establish a compliance assessment program to ensure that facilities certifying no exposure meet the applicable requirements, EPA said. Permitting authorities have discretion over enforcement of the no-exposure exemption, but EPA said it expects state and local regulators to inspect and take enforcement actions against entities that misuse the exemption.

To secure a no-exposure exemption, the facility owner or operator must supply the location of the facility, including address, longitude and latitude coordinates, and county. The applicant also must sign the certification statement and answer questions on a checklist (see box below). Answering "yes" to any of these questions indicates that potential for exposure exists, and the owner or operator cannot certify no-exposure. ■

Certification Checklist

Are any of the following items exposed to precipitation, now or in the foreseeable future, and is the drainage from these areas discharged from the site to surface waters of the United States or to a municipal separate storm sewer system?

- a. vehicles used in material handling (excepting adequately maintained mobile equipment)
- b. industrial machinery or equipment
- c. residue from cleaning of machinery or equipment
- d. materials associated with vehicular maintenance, cleaning, fueling
- e. materials or products during loading or unloading or transporting activities
- f. materials or products at uncovered loading docks
- g. materials or products stored outdoors (excepting products intended for outside use, e.g., cars)
- h. materials or products handled or stored on roads or railways owned or maintained by the certifier
- i. materials or spill or leak residues accumulated in stormwater inlets
- j. residuals on the ground from spills or leaks (including subsurface residuals from percolation)
- k. materials contained in open or deteriorated storage tanks, drums or containers
- l. industrial activities conducted outdoors
- m. materials or products from past outdoor industrial activity
- n. waste material
- o. process wastewater disposed of outdoors (unless otherwise permitted)
- p. particulate matter from roof stacks or vents not otherwise regulated (i.e., under an air quality control permit) and any quantities detectable in the stormwater outflow
- q. visible deposits of residuals near roof or side vents
- r. spills or leaks resulting from maintenance of stacks

Phase II Proposal

(Continued from page 1)

EPA removed a proposal to allow exemptions based on enforceable nonpoint source controls because some members of the federal advisory committee (FACA) stormwater phase II subcommittee thought enforceable nonpoint source controls were too stringent.

The proposal allows the permitting authority to waive the requirements for certain stormwater discharges from construction sites of less than five acres where low rainfall or low soil loss occurs. The proposal states that any construction site that loses less than two tons per acre per year of soil would be eligible for the waiver. A waiver also could be granted if it is determined based on a total maximum daily load (TMDL) evaluation or watershed plan that a site does not discharge pollutants of concern, EPA said. The owner or operator would be required to certify that the construction site meets the conditions of a given waiver.

Jeffrey Longsworth, an attorney with Collier, Shannon, Rill & Scott in Washington, said EPA also should exempt facilities that already hold industrial permits from getting separate construction permits for sites between one and five acres.

To avoid duplication of requirements, permitting authorities may include provisions that incorporate by reference qualifying state, Tribal or local sediment and erosion control programs, the proposal states.

New waiver options also were developed for municipalities of less than 100,000 in population that would be regulated by the phase II rule. A municipal separate storm sewer system (MS4) that is located in an urbanized area and serves a population fewer than 1,000 could gain a waiver if it is not contributing to pollutant loadings of a physically interconnected MS4 and if stormwater controls are not needed based on a TMDL or a watershed plan, EPA said.

In all cases where waivers are granted, EPA is proposing to allow permitting authorities to withdraw waivers if conditions at a site or facility warrant permit coverage of the stormwater discharges.

The proposal also includes a provision allowing municipalities that reach the 100,000 population threshold to remain covered under the phase II rule, rather than having to "drastically change permitting approaches midstream," Klepp said. Even though specific requirements are different, Klepp said, "EPA has a level of comfort that phase I and phase II are largely equivalent."

A small MS4 located outside an urbanized area would not be regulated unless the permitting authority determined that stormwater was being discharged to sensitive waters; there was high growth or potential for growth; there was high population density;

the MS4 was contiguous to an urbanized area; or the MS4 contributed to an exceedence of water quality standards. EPA is trying to prevent small municipalities in urbanized areas from avoiding coverage if they are contributing to water quality problems, Klepp said. But "nothing is granitized," Klepp said. The particulars of this, as well as a number of other specific provisions of the proposal, are open for public comment, he added.

Regulated small MS4s must establish best management practices (BMPs) and measurable goals for each of the following minimum control measures:

- public education and outreach on stormwater impacts;
- public involvement and participation;
- illicit connection and discharge detection and elimination;
- construction site stormwater runoff control;
- post construction stormwater management in development and redevelopment; and
- pollution prevention and good housekeeping at municipal operations.

The proposal also specifies a public role for participating in alternative dispute resolution; petitioning the permitting authority to act against unregulated stormwater discharges; or taking civil actions against violators of the stormwater program.

EPA also said that it is committed to providing technical assistance to permitting authorities on BMPs and measurable goals. This would include: providing monitoring protocols to identify sources of pollution; allowing access to the results of pilot projects and research; and providing strategies for states to help local governments.

John Whitescarver, president of the National Stormwater Center, said EPA missed a real opportunity by not regulating discharges from a number of commercial sites. "EPA said in the preamble that they didn't have the data to support the addition of commercial sites, but they didn't have the data to support regulation of industrial sites in phase I, but they did it anyway," Whitescarver said. "In all fairness to municipalities, construction sites and industrial facilities, commercial sites and agriculture should have been included," Whitescarver said. EPA did not have the authority under the Clean Water Act to regulate agriculture, Whitescarver acknowledged.

Otherwise the proposal is "pretty good," Whitescarver said. Construction sites were generally handled fairly, and the municipal component of the rule was fair. However, Whitescarver said that the provision allowing municipalities three and a quarter years from the final issuance of the rule gives them too much time to comply. ■

Caltrans

(Continued from page 1)

of a magistrate and are hopeful that a settlement can be reached before the case goes to trial. This particular case is one of several similar actions brought against Caltrans for stormwater permit violations in the Los Angeles area and in San Francisco.

The major difference between the San Diego action and those initiated in Los Angeles and San Francisco is that the EPA has gotten involved. "EPA always follows citizens' suits and what is going on in the states," explained Brad Mahanes, a senior technical scientist with EPA who specializes in stormwater enforcement. "We will pursue legal action in instances where there's a pressing need for enforcement." The alleged violations in the San Diego area were "important enough for EPA to take federal action," he said.

Enviros Want Pollution Prevention Projects

Although the lawsuit seeks the maximum financial penalties allowed under the Clean Water Act, environmentalists claim they are more interested in reaching an agreement with Caltrans that would result in the implementation of projects to prevent or minimize the pollution that has resulted from the alleged violations. "We are looking to see supplemental projects rather than a big financial penalty," said Everett DeLano, an NRDC attorney in San Diego.

Caltrans' failure to comply with stormwater regulations has been an ongoing problem of about four to five years, said DeLano. One of the major problems has been that Caltrans' compliance with its construction permits has varied from project to project, he explained. A stormwater permittee is required to develop a stormwater pollution prevention plan (SWP3) for activities covered by its permit. The SWP3s for Caltrans' projects, however, varied from site to site. Essentially, the practices at construction sites were "pretty poor," said DeLano, who blames some of the poor practices on Caltrans' inability to keep track of its contractors.

"Caltrans needs to have more authority over its contractors to make sure they comply with the [permits and the SWP3s]," he said. As a result, "we want to put together an organic document that maps out how Caltrans will do business in San Diego."

DeLano is hopeful that an agreement will be reached with Caltrans and that a trial can be avoided. Among other things, a settlement would help prevent the kind of legal wrangling that occurred in 1994, when NRDC filed suit, in conjunction with Santa Monica BayKeeper, against Caltrans for violations of stormwater regulations. "The Los Angeles suit was precedent-setting," said DeLano, who at the time of that lawsuit was affiliated with NRDC's Los Angeles

office. Caltrans argued in that case that it was doing all that could be done to comply with the regulations. NRDC and Santa Monica BayKeeper disagreed, as did the court, DeLano said. As a result, the court found Caltrans liable and issued a permanent injunction. An appeals court recently upheld the ruling, he said.

Jeff Joseph, Caltrans' deputy chief counsel, agreed with DeLano that a settlement is possible, particularly since the parties are in agreement on several significant issues. "We want clean water as much as anyone else," Joseph said. "We found [in negotiations] that there are a lot of things that we agree on."

Caltrans has been very proactive in addressing problems related to the supervision of contractors and contractor compliance with stormwater regulations, Joseph said. In response to the Los Angeles case, and in an effort to eliminate future problems, the agency developed compliance manuals for contractors, he said. The manuals are designed to "bring order to the process" and they have met the approval of environmentalists. Additionally, other public agencies have requested copies of the manuals from Caltrans to use as a model.

Caltrans' difficulty with keeping tabs on contractors is apparently not limited to the San Diego area. The Environmental Law Center has been negotiating with Caltrans in the San Francisco area for the past several months in an effort to help improve the agency's compliance with stormwater regulations and to bring it into compliance with SWP3s, explained Laura McKinney, an associate attorney with the center. In conjunction with the negotiations, the Environmental Law Center filed a lawsuit in March against one of Caltrans' contractors in the San Francisco area for violations of its stormwater construction permit and for failure to comply with its SWP3.

Caltrans: RWQCB Slow To Process Application

In response to the charges that Caltrans failed to apply for the required MS4 permit, Joseph explained that the agency had filed for the permit, but that the regional water quality control board had not issued it.

The law requires dischargers to apply for MS4 permits to discharge stormwater into municipal separate storm sewer systems. The law also requires the issuing agency — in this case, the regional water quality control board (RWQCB) for the San Diego region — to either issue the permit or request additional information from the applicant within 180 days from the date the application was filed. Caltrans did apply for the permits, but the application was incomplete and the regional board never notified Caltrans about the discrepancy, Joseph said. The permits were finally issued after the lawsuit had been filed. ■

Study Recommends 14-Day Detention Pond Residence Time

A three-part study of stormwater detention ponds concludes that longer residence times and a deeper permanent pool leads to improved stormwater pollution prevention and reduced flood control costs.

The report, *Three Design Alternatives for Stormwater Detention Ponds*, was conducted by the Southwest Florida Water Management District (SWFWMD) over three different years. The purpose of the study was to determine how much improvement in water quality could be expected by increasing residence time of the water in the permanent pool.

Other objectives of the study included measuring the hydrological response to rainfall, analyzing peak flow, measuring pollutant loading from rainfall, correlating relationships between constituents, determining compliance with state water quality goals, measuring pollutants in sediments, documenting vegetation and insect colonization, and making recommendations for improvements to stormwater systems. Findings were inconclusive in many of these areas. However, the study did clearly show that pollutant reductions were significant in the pond with greater residence time and permanent storage depth.

Betty Rushton, one of the study's authors and an engineer with SWFWMD, said one goal of the study was to establish a balance between a pond that was too stagnant and a pond that did not allow the proper residence time. The findings of the study are applicable to Florida as well as most coastal plain areas, Rushton said. But she cautioned that findings in other areas might be different.

"Residence time in the permanent pool has to be balanced with the amount of time needed to enhance sedimentation and ensure adequate nutrient uptake without the risk of thermal stratification and thermal bottom waters," the study report stated. "We found that two weeks is about the right residence time," Rushton concluded.

A stagnant pond gathers too much algae scum and duck weed and it becomes eutrophic, Rushton explained. An anaerobic pond releases metals back into the water column. It is important to have a little anaerobic activity in the littoral zone to ensure adequate nitrogen uptake and to prevent the proliferation of free floating algae by limiting the amount of nutrients available for phytoplankton, she said. The littoral zone is a shallow shelf around the perimeter of the pond which promotes a suitable environment for beneficial plants.

One pond was used for all three studies. It was located at the SWFWMD service office in Tampa. The drainage basin is 6.5 acres with about 30 percent of the watershed covered by roof tops and asphalt parking lots and 6 percent by crushed limestone. The remaining area is a grassed storage area. The impervious surfaces discharge to ditches which provide some pretreatment before stormwater enters the pond.

Each study was conducted over an eight month period. During the first year of the study (1990), the pond was completely vegetated and had a permanent pool of less than one foot deep. In 1993, the vegetated littoral zone covered 35 percent of the pond area and the pond was five feet deep with a five day residence period. For the final year of the study, the vegetated littoral zone was planted with desirable species in a pond that was kept at five feet deep with a permanent pool that was enlarged to achieve a 14-day residence time. This tested what researchers call the conservation wet design criteria, now required by the state of Florida.

Researchers tested for ammonia, nitrate and nitrite, organic nitrogen, ortho-phosphate, total phosphorous, suspended solids, zinc and copper. Another measurement was conducted to determine if water discharged from stormwater systems met state water quality goals.

The study found that the percentage load efficiency was at least 20 percent better in the final year compared to the first year. For all contaminants except total organic nitrogen, the mass loadings efficiency in the final year of the study always met the 80 percent reduction goal of the state water policy. Total organics are difficult to remove in wetland environments because high primary productivity generates organic matter, the study report stated.

(Continued on page 8)

Table 1— Pond Characteristics

study year	1990	1993	1994
fluctuating pool (in.)	8	10	10
area of pond (acre)	0.30	0.35	0.57
summer rainfall (in.)	20.36	24.50	34.12
residence time (days)	2	5	14
Permanent Pool			
maximum depth (feet)	1	5	5
average depth (feet)	0.22	1.3	2.8
volume (cubic feet)	2,796	19,487	70,907
Littoral Zone			
percent vegetation coverage	100	35	35
dominant vegetation	cattail	musk grass	torpedo grass

Wet Detention Pond

(Continued from page 7)

In 1993 and 1994, with the exception of iron in one sample, no metals were discharged from the wet detention pond that did not meet state standards. Yet, 5 to 69 percent of samples for metals at the inflow did not meet standards. "This demonstrates the effectiveness of wet detention ponds in removing pollutants to acceptable levels, before discharge" to surface waters, the study report stated.

The study also found that rainfall directly on the pond is a significant source of pollutants. Twenty percent of the nonorganic nitrogen and 9 to 10 percent of copper entered the pond directly in rainfall. As much as 38 percent of zinc entered the pond in rain during the 1993 sampling period. The study also found that contaminants were transferred at higher levels during smaller rain showers, indicating that rainfall traps pollutants in the earlier part of the storm, while longer events dilute samples.

The study also found that storing more water in detention ponds reduces the likelihood of floods in the survey area. This reduces the economic impacts on the community and it is cheaper for developers because they do not have to use as much fill for elevating building pads to assure flood protection.

Researchers recommended that future studies on stormwater include:

- a determination of which species of vegetation enhance pollutant removal processes;

- information about accumulation and methods of disposal of polycyclic aromatic hydrocarbons;
- impacts of pulses and extreme events on stormwater pollution;
- information on operation and maintenance of stormwater systems;
- ways to incorporate aerobic bottom sediments and circumneutral pH into stormwater systems; and
- bioaccumulation of toxic pollutants in species that inhabit wet detention ponds.

To obtain copy of this report, write to Betty Rushton at: SWFWMD, 2379 Broad St., Brooksville, Fla. 34609; or call her at (352) 796-7211. ■

Percent Reduction of Mass Loads

Contaminant	1990	1993	1994
Total Lead	---	---	92
Total Zinc	56	32	87
Total Cadmium	55	42	87
Total Iron	40	76	94
Total Copper	---	1	55
Ammonia-N	54	-31	90
Organic-n	30	15	51
Nitrate+Nitrite	64	61	88
Ortho Phosphate	69	39	92
Total Phosphorous	62	57	90
Suspended Solids	71	67	94

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$349
- Environmental Compliance Tool Kit \$349
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-879-3169

J52STRM

Stormwater Permit Manual

Bulletin

Volume 7, Number 2

August 1997

EPA Issues Draft MSGP Permit; Adds 20 New Industries

As anticipated, the U.S. Environmental Protection Agency (EPA) July 11 proposed to merge the National Pollutant Discharge Elimination System (NPDES) baseline general permit for industrial stormwater discharges into an amended multi-sector general permit (MSGP) (62 FR 37448).

The discontinuation of the baseline permit would represent a move to a second generation of stormwater permitting, EPA said. Instead of allowing generic pollution prevention practices for all facilities, as is the case with the baseline permit, the new approach would require facilities to tailor pollution reduction measures and monitoring to activities within their specific industry sectors.

EPA has proposed to place the 20 new industries into existing sectors for the most part. For example, the petroleum refining industry will be regulated under the existing oil and gas extraction sector (Sector I). Many of the best management practices (BMP) required of petroleum refineries under the MSGP

presumably would be identical to those currently required of Sector I facilities.

Types of facilities and the sectors to which they will be added include: various textile facilities (Sector V); glass, clay, cement, concrete and gypsum manufacturing facilities (Sector E); warehousing facilities (Sector P); and open dumps (Sector L) (for a complete list of new industries, see box on page 2). New industries make up 2 percent of all facilities that could be covered by the existing baseline industrial general permit, EPA said.

New MSGP permittees would be required to conduct quarterly stormwater monitoring during the period between Oct. 1, 1998, and Sept. 30, 1999. Quarterly visual monitoring would be required throughout the term of the permit. To be eligible for coverage, new permittees also will have to certify that stormwater discharges have no adverse impact on endangered species and national historic preservation sites. The MSGP still will expire on Sept. 29, 2001.

(Continued on page 2)

Release of MSGP Means Business as Usual For States With NPDES Permitting Authority

Several states that issue stormwater permits under the National Pollutant Discharge Elimination System (NPDES) program say they will not adopt the Environmental Protection Agency's (EPA) multi-sector general permit.

Additionally, although some of these states have in the past modeled their stormwater permits after those issued by EPA, officials say the agency's latest plans likely will not affect their programs. At the very least, these states are taking a wait-and-see attitude and, if necessary, will modify their permits when they expire.

"Permits are permits. What EPA does is not the gospel for what states do," said Will Salter, an environmental specialist with Georgia's industrial wastewater program. Georgia currently requires industrial dischargers in the state to have a baseline industrial general permit that resembles EPA's

(Continued on page 4)

Inside This Issue ...

EPA Requests Extension of Phase II Deadline	3
Region IV Revises Draft Construction Permit	3
EPA Issues Report on Water Pollution From Air Toxics	3
EPA Establishes Stormwater Website	3
Pennsylvania, Washington, Wyoming state pages	Tab 800

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Requests Extension of Phase II Deadline. The U.S. Environmental Protection Agency (EPA) has requested an extension of the Sept. 1 court-ordered deadline to issue a proposed phase II rule to regulate stormwater discharges of small establishments.

According to a July 18 memorandum sent to federal advisory committee members, EPA filed papers July 16 in the U.S. District Court for the District of Columbia to seek an extension to Nov. 25, 1997, of the deadline for issuing phase II regulations for stormwater.

In April 1995, the court entered a consent decree to resolve litigation brought by the Natural Resources Defense Council (NRDC) to compel the agency to issue regulations under Section 402(p)(6) of the Clean Water Act. NRDC supports this extension request, EPA said. As part of NRDC's agreement to join EPA in the motion to extend the deadline in the consent decree, EPA has also agreed to request a modification of introductory portions of the consent decree to explain that the agency intends to meet the March 1, 1999, date for issuance of the final rule notwithstanding a delay in the release of the proposal.

Chinh Pham, with EPA's Office of Wastewater Management, said that because NRDC does not oppose the extension, the court is likely to grant the request. EPA needs the extension to address a large number of issues raised by the federal advisory committee and because of administrative delays resulting from the Small Business Regulatory and Enforcement Fairness Act (SBREFA) review process, Pham said. A final report from the SBREFA review panel is due Aug. 18, he said.

There will not be significant changes to a Feb. 14 draft of the phase II rule, Pham said. However, EPA is considering increasing the opportunities for construction sites of between one and five acres to gain waivers from the phase II rule. In particular, the agency may grant waivers to construction sites that receive little or no rainfall. EPA may also propose a case-by-case waiver in which construction operators could claim a site should be excluded from regulation because of specific conditions related to the site, Pham said. Furthermore, EPA appears to be reducing its reliance on total maximum daily load evaluations as a significant mechanism in the phase II regulatory program.

Region IV Revises Draft Construction Permit. EPA Region IV June 27 published revisions to a draft construction general permit to include Indian country lands and to bring the permit more in line with the federal general permit for the discharge of stormwa-

ter from construction sites, which was revised June 2 (62 FR 35056).

The original draft of the Region IV permit, which was published in the *Federal Register* April 17, inadvertently omitted requirements that facilities covered by the permit consider impacts of stormwater runoff on endangered species and on sites protected by the National Historic Preservation Act (see *Bulletin*, May 1997, p. 1).

The amended draft also expands the eligibility provisions to include some construction sites of less than five acres. Smaller construction sites will be regulated on a case-by-case evaluation of stormwater-related conditions at the site.

EPA also has extended the comment deadline until Aug. 26. Comments can be sent to the Office of Environmental Assessment, U.S. EPA Region IV, Atlanta Federal Center, 61 Forsyth St. SW, Atlanta, Ga. 30303-3104. For more information, contact Floyd Wellborn at (404) 562-9303.

EPA Issues Report on Water Pollution From Air Toxics. EPA July 2 issued a report to Congress stating that air deposition has caused water pollution in numerous inland and coastal waterways.

The report, titled "Deposition of Air Pollutants to the Great Waters," states that air pollution has caused persistent and bioaccumulative toxic pollutant levels in the Great Lakes and an excess of algal growth in the Chesapeake Bay. EPA estimated that 27 percent of annual nitrogen concentrations in the bay are caused by air pollution, compared with 23 percent for water discharges from industry and other point sources.

For a copy of the report, call EPA's Air and Radiation docket and information center at (202) 260-7548. The report also is available on the World Wide Web at <http://www.epa.gov/oar/oaqps/publicat.htm>.

EPA Establishes Stormwater Website. Information about EPA's stormwater-related activities can be obtained from a new Internet website.

Although the site does not provide specific information about upcoming activities or plans for the stormwater program, it does provide fact sheets and other information about existing policy. For example, EPA has not posted specific plans for the phase II proposal, but the site contains a fact sheet on the recently issued draft multi-sector general permit. The website can be accessed at <http://www.epa.gov/earthelr6/gen/w/sw/40cfr122.htm>. ■

Delegated States

(Continued from page 1)

permit in many ways with a few exceptions. The permit is up for renewal next May. Although officials will look at the multi-sector permit, it is unlikely that the multi-sector approach will be adopted, Salter said. "What we do will be somewhat directed by what EPA does, but for us to try and issue the multi-sector permit would be a major undertaking. From what I've seen in the multi-sector permit, I don't see anything overwhelmingly different from the baseline permit."

Hawaii's current industrial general permit expires this October, according to Alec Wong, an official with the state's Department of Health. Wong said the state hadn't considered adopting the multi-sector approach, but would take a look at the permit when EPA publishes it to see what some of the requirements are for specific activities like monitoring.

In addition to its baseline industrial permit, Mississippi has permits that cover mining, coal pile, land disposal, oil and gas facilities; primary metal facilities; Superfund Amendments and Reauthorization Title III, Section 313 facilities; and wood treatment facilities. These permits are modeled after EPA's baseline industrial permit.

With the exception of the mining permit, all the other permits expired last month, said Louis Lavellee, of the state's Office of Pollution Control. The state has not yet renewed these permits, he said, and although there were no immediate plans to adopt the multi-sector approach, "it is certainly possible that we would consider it."

Although NPDES-delegated states sometimes issue permits that are similar to EPA permits, they are not required to adopt the agency's exact programs. As a result, EPA's plans to discontinue the baseline industrial permit in favor of the multi-sector permit should not have a direct effect on these states.

However, states where EPA administers the permit program will be affected. As such, dischargers currently covered by the baseline permit will have to transfer their coverage to the multi-sector permit.

The new permit, which was published in draft form July 11, will include greater sampling and monitoring requirements as well as requirements for the implementation of several industry-specific best management practices (BMPs) not included in the baseline permit (see related story p. 1).

Officials in California, which just revised and reissued its industrial permit last April, are "ambivalent" about the prospects of adopting a multi-sector approach, said Leo Cosentini, a spokesman for the State Water Resources Control Board. It really wouldn't be necessary for California to adopt the multi-sector permit since EPA is likely to include some of the increased monitoring requirements that California already included in its new industrial permit, he said.

"The multi-sector permit contains a lot more monitoring, sampling and analysis requirements as well as a lot of suggested BMPs, which are educational to the discharger," Cosentini said. "We could say that's a step closer to what we have in our permit." ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$349
- Environmental Compliance Tool Kit \$349
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-879-3169

J52STRM

Stormwater Permit Manual

Bulletin

Volume 6, Number 12

June 1997

EPA To Discontinue Baseline Industrial Permit; Expand MSGP

The U.S. Environmental Protection Agency (EPA) will not renew the baseline general permit for industrial stormwater dischargers and will require permittees to file notices of intent (NOI) to be covered under a revised multi-sector general permit (MSGP).

The agency is hoping to finalize the amended MSGP before the current baseline general permit in non-delegated states is set to expire. In some states, the permit expires on Sept. 9. In others, it expires Oct. 1. The modified multi-sector permit will bring in "orphan industries," those industries not previously covered by the MSGP, but that were covered by the baseline industrial general permit. These orphan industries include pharmaceutical makers, petroleum refiners, certain leather product manufacturers, and certain mineral products manufacturers. These industries opted not to participate in the group permitting process established in the late 1980s.

The modified MSGP will change the current NOI to account for orphan industries and to reflect the

discontinuation of the baseline industrial permit, according to Lowell Seaton, an environmental engineer with the National Pollutant Discharge Elimination System (NPDES) permit branch in EPA Region VI. Gary Hudiburgh, NPDES program branch chief at EPA headquarters, said it is likely that the agency also will include a catch-all category in the modified MSGP to account for facilities not specifically spelled out, but that had been covered by the original baseline permit.

The new MSGP will clarify sampling requirements for the orphan industries, Seaton said. Facilities newly covered by the MSGP will be required to sample stormwater discharges between October 1998 and September 1999, during the fourth year of the original MSGP. Newly covered facilities also may have to make changes to their stormwater pollution prevention plans (SWP3s), to comply with requirements imposed by EPA in the revised MSGP.

(Continued on page 2)

Phase II Hits SBREFA Snag; Agency Still Plans To Meet Sept. 1 Proposal Deadline

The phase II stormwater rules have met several stumbling blocks as the U.S. Environmental Protection Agency (EPA) continues its race against the clock to publish a proposal by Sept. 1.

EPA has backed down on plans to include specific industrial sectors for regulation under phase II. The agency has decided not to regulate school bus maintenance areas and heavy industrial equipment maintenance yards as it had planned. EPA will not specify industrial sectors for regulation under phase II because it could not find data to support the agency's belief that stormwater runoff from these potentially regulated facilities has an impact on water quality, according to several agency officials.

(Continued on page 4)

Inside This Issue ...

California Prop. 65 Provides Stormwater Enforcement Option	3
Toxic Release Inventory Form R Reminder	5
Storm Warnings	6
Updated California, Rhode Island, South Carolina and West Virginia state pages	Tab 800

Multi-sector Permit

(Continued from page 1)

The MSGP for both new and existing permittees will expire in September of the year 2000. At that time, EPA will likely issue a stop-gap permit that will last two years until phase II stormwater requirements are in place, Seaton said. EPA expects to issue a proposed permit by the middle of June. There will be a 30-day comment period, followed by several public meetings before the new permit is finalized. EPA is working on developing contingency plans in the event that the modified MSGP is not finalized before the baseline industrial general permit expires.

Any facility covered by the baseline industrial permit that currently is eligible for multi-sector permit coverage should fill out a notice of termination (NOT) of the baseline permit and an NOI to be covered under the MSGP at any time, Seaton recommended. EPA will send notices to facilities covered by the baseline industrial permit after the MSGP is finalized, stating that companies should fill out NOI's for the modified MSGP, he said. EPA will send out a second notice, possibly when the baseline industrial permit is discontinued, informing facilities that did not fill out NOIs for the MSGP that they are no longer authorized as stormwater dischargers, Seaton said.

Hudiburgh said he believed EPA would finalize the modified MSGP by early September. However, he said, orphan facilities should send in an NOI between Aug. 1 and Sept. 30 in most states, as required in the baseline industrial permit. This will enable permittees retain permit coverage, in case the MSGP is not released before the baseline permit expires.

The original MSGP states that new permittees should revise SWP3s before submitting an NOI to be covered under the permit. Ron Breton, practice leader for strategic environmental management with GZA GeoEnvironmental Inc. in Manchester, N.H., said EPA cannot expect permittees to change SWP3s prior to submitting an NOI to be covered under the multi-

sector permit without providing significant advanced notice.

Companies will have to implement several industry-specific best management practices (BMPs) that are not required under the baseline permit, Breton said. At a minimum they will have to do quarterly visual monitoring and semi-annual analytical monitoring, but they may have to do an evaluation of industrial areas to determine if there are new BMPs they must implement at different parts of their facility, Breton added.

EPA has given no indication of how much time they will allow for companies to update their SWP3s. Compliance managers may want to submit an NOI to be covered under the MSGP as soon as possible, but hold off on sending an NOT until they have implemented their SWP3s, Breton said. Orphan facilities should look for a finalized MSGP and prepare to revise their SWP3s as quickly as possible, he added.

EPA will provide more information on procedures for filing for a permit extension when it publishes the revised baseline general permit for construction, Hudiburgh said. That permit had not been published at press time, but a notice should be in the *Federal Register* in early June, he said. ■

Existing MSGP Holders Must Monitor This Year

Existing multi-sector permittees must conduct sampling during the second year of the permit, between October 1996 and September 1997. If the average annual value for any second-year monitoring parameter exceeds its cut-off concentration listed in the permit, facilities must revise their stormwater pollution prevention plans (SWP3) in the third year of the permit to reduce or minimize the potential sources of that pollutant's contact with stormwater. Between October 1998 and September 1999, existing multi-sector permittees must again monitor stormwater to evaluate the effectiveness of any changes to the SWP3 that they may have made.

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1997 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought."—from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

California Prop. 65 Provides Stormwater Enforcement Option

Stormwater dischargers in California could be subject to legal action under the state's Safe Drinking Water and Toxic Enforcement Act of 1986 even if they are in compliance with their stormwater general permit, according to environmental and corporate legal experts in the state.

The Safe Drinking Water and Toxic Enforcement Act of 1986, more commonly referred to as Proposition 65, prohibits the release of specific chemicals or other contaminants into state drinking waters. It also requires California businesses to warn the people who might be handling these chemicals before they are exposed to them.

There are several hundred chemicals on this list which is made up of substances "known by the state" to cause cancer or reproductive toxicity. The state is required to update the list of substances at least once a year. The law also allows "any person in the public interest" to bring a lawsuit against a person or company suspected of violating provisions of the law.

Until recently, citizen suits were most often filed to enforce the warning provision of the law, but a recent case in Northern California suggests that more emphasis could be placed on actual or potential dischargers including stormwater dischargers. "We are definitely looking at stormwater cases and using Proposition 65 as a tool for enforcing regulations," said Bill Verick, an attorney with the Pacific Justice Center, a law firm that represents grassroots citizen's groups.

One target of this effort is a Louisiana Pacific Corp. logging facility in Northern California that has been sued for the presence of a Proposition 65 chemical in its stormwater runoff. Although Proposition 65 has a one-year statute of limitations, and the chemicals allegedly released by Louisiana Pacific were leached into the ground at least 20 years ago, the law still applies in this case, explained Verick. "The runoff is happening now," he said. The Pacific Justice Center argues that this makes the company liable.

The information necessary to pursue the case was available to the public through the company's annual monitoring report submitted to the state in fulfillment of requirements under California's general permit for industrial stormwater discharges. Among other things, the permit requires companies to measure surface water runoff and list any chemicals or substances contained in the runoff. In this case, the runoff contained Proposition 65 chemicals.

"We know the kind of companies that use the chemicals we are interested in," Verick said. Because of its location in Redway, Calif., Verick's organization is

more likely to look at the runoff from lumber mills, underground storage tank facilities, and oil and gas pipelines, he said. But almost any industry is fair game under Proposition 65.

The potential for stormwater dischargers being sued under Proposition 65 has raised some industry concern. Stan Landfair, an environmental attorney with the Los Angeles firm McKenna & Cuneo, which represents the Coalition of Manufacturers for the Responsible Administration of Proposition 65, said, "There is an aspect of Proposition 65 that applies to all industries" and enables citizens' groups to file lawsuits regardless of whether a significant violation has occurred.

One of the major problems with the law is that once a lawsuit is filed, the burden of proof is on the defendant to show that a significant discharge has not occurred, he said. Plaintiffs merely have to allege the presence of a Proposition 65 substance to subject a company to a legal action. The information needed to pursue such action can be found in any one of a number of public filings companies are required to make to comply with such laws as the Clean Water Act or the Clean Air Act, Landfair explained. For stormwater dischargers, such information is contained in annual monitoring reports.

"Self-interested plaintiffs are quick to jump on such information," Landfair said. As a result, "Proposition 65 is subject to abuse and has put [a great deal of] leverage in the hands of environmental litigators," he said.

Civil penalties under Proposition 65 can be as much as \$2,500 a day and may be higher when combined with penalties under other environmental laws such as the Clean Water Act. Proposition 65 provides that 25 percent of the penalty collected from a defendant goes to the individual or group that initiated the suit.

Additionally, under general California statutes, "if you do something on behalf of the people of California, the attorney's fees will be paid by the defendant," explained John Hunter, executive director of the Environmental Working Group, an industry trade association.

The plaintiff-friendly penalty structure in combination with the ease with which a suit can be filed has angered industry. The problem with Proposition 65 is that it doesn't look at whether a company is in compliance and it requires companies to spend a lot of money for very little return, Hunter said. A number of companies have elected to settle cases out of court rather than endure protracted legal battles, even when there is no basis for the accusations, according to industry sources. ■

Phase II

(Continued from page 1)

Although no industries will be singled out for regulation under phase II, EPA has made it clear that NPDES permitting authorities can designate for regulation individual facilities or classes of facilities.

By not specifying industries, EPA gives permitting authorities more flexibility in developing regulations that make sense on a local level, but many observers believe that several industries have been let off the hook during EPA's development of phase II regulations.

This leaves construction sites larger than one acre and small municipalities as the only entities specifically subject to the phase II requirements.

The latest snag in development of the proposal is the Small Business Regulatory and Enforcement Fairness Act (SBREFA) (see *Bulletin*, April 1997, p. 3). Under SBREFA, EPA is required to conduct a review of the proposal's impacts on small businesses. A SBREFA review must provide information on four elements:

- a description of the number and types of facilities covered by the rule;
- projected reporting, recordkeeping and compliance requirements including the costs and types of professional skills that will be required by the rule;
- relevant federal rules that could duplicate, overlap or be redundant with the new rule; and
- a description of any alternatives that could be employed including using different reporting requirements; clarifying, consolidating or simplifying rules; imposing performance rather than design standards; or exempting small entities.

EPA held a meeting May 22 that was attended by interested parties from municipalities, the construction industry and industrial facilities to review the impacts on small entities as required under SBREFA. Also present at the meeting were representatives of the White House Office of Management and Budget (OMB) and the Small Business Administration (SBA).

Chinh Pham, with EPA's stormwater program, said the agency spelled out a number of areas in the phase II rule that were relevant to the SBREFA review requirements. The agency asked participants to submit comments on the issue by June 6. EPA will consider the comments and prepare a report for a SBREFA panel within 30 days of receiving the comments, Pham said. The SBREFA panel consists of representatives from SBA, OMB and EPA. When the panel receives EPA's report it will review it and possibly suggest changes to the phase II rule.

EPA is hoping to address any concerns of the SBREFA panel and send the proposal to OMB sometime in July, Pham said. "We take SBREFA very

seriously. This is not just another hoop to jump through" Pham said. "We are going to continue to work with representatives of the small business community and with OMB and SBA officials. A lot of the significant comments will be incorporated into the preamble and the proposal," he said. EPA still plans to meet the Sept. 1 deadline, but it is possible that the agency will ask the court for an extension, Pham said.

Although EPA officials have not released a new draft of the phase II proposal since Feb. 13, there are several changes in the works. In addition to eliminating any reference to specific industry sectors in the proposal, EPA plans to eliminate particular language regarding the use of watershed or total maximum daily load (TMDL) evaluations as a basis for exemptions for construction sites or municipalities. EPA instead will use more generic references to TMDLs as a way to gain an exemption, Pham said.

EPA may allow an exemption if TMDLs show that particular construction activities have no impact on the watershed. But the agency does not plan to tie the exemptions to "potential" to cause water quality impacts or the enforceability of nonpoint sources. Other exemptions for construction activities may be granted on a case-by-case basis, or if the site has negligible rainfall. The agency is unlikely to include the TMDL exemption as it originally planned because the specific language was too stringent and the idea did not have support from the federal advisory committee, Pham said. Furthermore TMDL methodology is still under development, Pham acknowledged.

Requirements for small municipalities serving 1,000 or fewer people located in urban areas could be waived if it is determined based on a TMDL that they cause no water quality impacts and if there is no direct or indirect connection to a regulated municipal separate sewer storm system (MS4), according to an EPA document detailing significant revisions to the Feb. 13 draft that the agency is considering.

EPA will regulate MS4s primarily using narrative best management practices (BMPs) and it will impose no additional requirements on municipalities beyond the minimum control requirements until it can complete research on receiving water impacts from stormwater and the effectiveness of BMPs, the revisions document stated.

EPA also plans to change the provision for no-exposure exemptions. The agency will clarify what it meant in the Feb. 13 draft when it stated that the certifying party will not make changes that result in hydrological modifications. The new draft language states that "the certifying party shall not allow any actions taken to qualify for this provision that would interfere with the attainment or maintenance of water quality standards, including designated uses." ■

Toxic Release Inventory Form R Reminder

Section 313 of the Emergency Planning and Community Right-to-know Act (EPCRA) requires facilities that meet reporting thresholds for any of over 600 chemicals to report releases of these substance by Aug. 1 for the 1996 reporting year. The deadline was extended one month this year by the U.S. Environmental Protection Agency (EPA). As part of the report, companies are required to calculate the amount of toxic chemicals contained in stormwater runoff from their facilities.

According to the EPA, if your facility has monitoring data on the amount of a toxic chemical present in stormwater runoff, you must report that quantity in the water release column of the Form R and indicate the percentage of the total quantity of the toxic chemical included in stormwater.

Rates of flow can be estimated by multiplying the annual amount of rainfall by the land area of the facility and then multiplying that number by the runoff coefficient. The runoff coefficient represents the fraction of rainfall that does not seep into the ground, but runs off as stormwater. Below is an example of how to calculate the weight of zinc discharges and the percentage of zinc discharges that is released. For more information, contact the EPCRA Hotline at (800) 535-0202.

Example

Your facility is located in a semi-arid region of the United States which has an annual precipitation (including snowfall) of 12 inches of rain. (Snowfall should be converted to the equivalent inches of rain; assume one foot of snow is equivalent to one inch of rain.) The total area covered by your facility is 42 acres (about 170,000 square meters or 1,829,520 square feet). The area of your facility is 50 percent unimproved area, 10 percent asphalt streets and 40 percent concrete pavement.

The total stormwater runoff from your facility is therefore calculated as follows:

<u>Land Use</u>	<u>% Total Area</u>	<u>Runoff Coefficient</u>
Unimproved area	50	0.20
Asphalt streets	10	0.85
Concrete pavement	40	0.90

Weighted-average runoff coefficient = $(50\%) \times (0.20) + (10\%) \times (0.85) + (40\%) \times (0.90) = 0.545$

$(\text{Rainfall}) \times (\text{land area}) \times (\text{conversion factor}) \times (\text{runoff coefficient}) = \text{stormwater runoff}$

$(1 \text{ foot}) \times (1,829,520 \text{ ft}^2) \times (7.48 \text{ gal/ft}^3) \times (0.545) = 7,458,221 \text{ gallons/year}$

Total stormwater runoff = 7.45 million gallons/year

Your stormwater monitoring data shows that the average concentration of zinc in the stormwater runoff from your facility from a biocide containing a zinc compound is 1.4 milligrams per liter. The total amount of zinc discharged to surface water through the plant wastewater discharge (nonstormwater) is 250 pounds per year. The total amount of zinc discharged with stormwater is:

$(7,458,000 \text{ gallons stormwater}) \times (3.785 \text{ liters/gallon}) = 28,228,530 \text{ liters stormwater}$

$(28,228,530 \text{ liters stormwater}) \times (1.4 \text{ mg. zinc/liter}) = 39,519.9 \text{ grams zinc} = 87 \text{ pounds zinc}$

The total amount of zinc discharged from all sources of your facility is:

250 pounds zinc from wastewater discharge

+87 pounds zinc from stormwater runoff

337 pounds zinc, total water discharge

Round to 340 pounds of zinc on Form R.

The percentage of zinc discharge through stormwater that should be reported in section 5.3 on Form R is:

$87/337 \times 100 = 26\%$

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Cancels Phase II FACA Meeting. The U.S. Environmental Protection Agency (EPA) cancelled the final scheduled phase II subcommittee meeting of the Federal Advisory Committee (FACA). The meeting had been scheduled for June 12-13.

According to a note from George Utting, phase II subcommittee matrix manager, the meeting was cancelled because the Small Business Regulatory and Enforcement Fairness Act review requirements are "taking quite a bit of time and attention on the part of agency staff" (see related story, p. 1). The agency also is in the process of trying to complete a cost-benefit analysis, Utting wrote.

"Due to these and other resource considerations, we would rather not focus our attention on implementation issues which were to be the main topic of discussion at the June meeting," the note stated. EPA is hoping to expand the Federal Advisory Committee charter and may schedule a meeting after the rule is proposed, Utting said.

House Holds Clean Water Act Hearing. The House Transportation and Infrastructure Subcommittee on Water Resources and Environment held hearings April 23 to discuss the Clean Water Act (CWA) and related water quality issues.

Representatives from EPA, the National Governors Association, the National League of Cities

and several state environmental agency officials provided testimony to subcommittee members on wastewater treatment, combined sewer overflows, sanitary sewer overflows and other wet weather issues.

Municipal representatives called for an increase in the amount of state revolving funds (SRF) that were allocated to water infrastructure projects. These funds are used to provide loans to disadvantaged communities for wastewater and drinking water projects.

According to several published reports, Rep. Sherman Boehlert, subcommittee chair, agreed that EPA should allocate more money to SRF, but Robert Perciasepe, head of EPA's Office of Water, said EPA's fiscal 1998 request of \$2.078 billion is ample. EPA was allocated \$2.3 billion in fiscal 1997.

These issues are likely to be addressed if Congress gets around to a CWA rewrite. Boehlert has said that Congress is taking steps to develop a bipartisan CWA rewrite. However, it appears unlikely that a new CWA is imminent, several sources indicate.

If a rewrite happens this congressional session, it will likely occur close to the end of the session so that incumbents can hit the campaign trail with an environmental accomplishment to talk about, one Hill insider said. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual
• monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$349
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

**Call Us Toll-Free At 1-800-677-3789 or
visit our website: www.thompson.com**

BJ86040

Stormwater Permit Manual

Bulletin

Volume 6, Number 11

May 1997

California Approves General Industrial Stormwater Permit

California's Water Resources Control Board (SWRCB) officially adopted a new general permit for stormwater discharges from industrial activities at a meeting of the state board April 17.

The new permit differs significantly from the original permit, which expired last November. Among the notable changes are more flexible requirements for receiving water limitations, stormwater pollution prevention plans (SWP3s), monitoring and group monitoring.

"We were trying to be sensitive to the concerns of business" by relaxing some of the requirements and adding some incentives for compliance, explained Leo Cosentini, SWRCB's stormwater assistant program manager. As a result, the new permit includes lower sampling requirements for facilities that meet certain conditions. The permit also allows for the development of alternative monitoring programs that provide equivalent or more accurate indicators of pollutants and the performance of best management

practices (BMPs) than programs based upon the minimum monitoring program requirements.

Under the new permit, facilities may be allowed to reduce their monitoring and sampling requirements for the remaining term of the permit if they meet the following conditions:

- 1) the facility operator has collected and analyzed samples from a minimum of six storm events from all required drainage areas;
- 2) all prohibited non-stormwater discharges have been eliminated or otherwise permitted;
- 3) the facility operator demonstrates compliance with the terms and conditions of the permit for the previous two years;
- 4) the facility operator demonstrates that the facility's stormwater discharges and authorized non-stormwater discharges do not contain significant quantities of pollutants; and

(Continued on page 4)

Region 4 Publishes Draft Construction Permit for Indian Lands, State of Florida

Florida will likely become the only state to have a state-specific permit issued by the U.S. Environmental Protection Agency (EPA) when the agency finalizes a draft National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from construction sites associated with industrial activity (62 FR 18605, April 16).

The draft, which also applies to tribal lands throughout Region 4, has changed little from the original Sept. 25, 1992, baseline general permit. It includes new requirements for rural unpaved roads and Endangered Species Act and Historic Preservation Act certifications. It also puts existing NPDES requirements, which had been in the preamble of the 1992 permit, into the body of the permit. These NPDES requirements include performance measures for stormwater pollution prevention plans, guidance on planned changes to stormwater pollution prevention plans, reporting of noncompliance that may endanger health or the environment, and use of bypasses.

(Continued on page 5)

Inside This Issue ...

RWQCB Hits Port of Stockton with \$500,000 Stormwater Fine	2
EPA TRI Rule To Affect Stormwater Permittees	3
Eight to 13 Year Deadline Set for TMDLs	3
Idaho, Illinois, Minnesota, South Dakota and Utah state pages	Tab 800

RWQCB Hits Port of Stockton With \$500,000 Stormwater Fine

The Port of Stockton California has appealed to the state a \$500,000 fine levied by the Central Valley Regional Water Quality Control Board (RWQCB) for alleged violations of its general permit for stormwater discharges associated with industrial activities.

According to the order, issued March 7 by the SWRCB, from Oct. 1, 1992, until Jan 16, 1997, the Port of Stockton "failed to implement an adequate facility-wide SWP3 and failed to eliminate the discharge of pollutants in stormwater runoff to comply with best available technology/best control technology discharge standards." Pamela Barksdale, RWQCB engineer, said under the terms of the permit, which applies to the port and its tenants, one stormwater pollution prevention plan (SWP3) was required for the entire facility. This plan was intended to apply to activities undertaken by the port as well as the port's tenants, Barksdale said.

But, Steven McDonald, with the law firm Luce, Forward, Hamilton and Scripps, which represents the port, said the port was not legally responsible for the discharges of its tenants. Every tenant that was required to have a permit, had one, McDonald said. "Every annual report we sent in since 1992 stated that the port would not take responsibility for the discharges of its tenants," McDonald said.

The order also alleged that the port failed to comply with the following conditions of the permit:

- identify significant sources of pollutants and describe and implement best management practices (BMPs) to control pollutants from these sources;
- establish an acceptable monitoring and reporting program;
- document visual dry and wet weather inspections and submit records for all visual inspections in an annual report; and

- control pollutants associated with industrial activities in quantities that could or threatened to adversely affect receiving waters.

According to the order, the port sampled at six discharge points during seven storm events (a total of 42 samples) between October 1993 and January 1996. The port did not meet the acceptable range for pH of between 6.5 and 8.5 in 50 percent of the samples, the order alleges. At two discharge points the pH was lower than 6.5 in all the samples collected, the order stated. The port also allegedly failed to meet water quality standards for total suspended solids in 67 percent of the samples, and for specific conductance in 47 percent of the samples, according to the order.

The order stated that the port failed to alter SWP3s when it received this sampling data, as required by the permit, and that it submitted annual reports certifying that it was in full compliance with the permit and with the SWP3.

The RWQCB issued a notice of violation on April 10, 1996. On Jan. 17, 1997, the regional board staff proposed a \$260,000 administrative civil penalty. But the board decided, based on the severity of the alleged violations and the economic benefit gained by the port from noncompliance, that it should pay \$500,000, the order stated. The port was ordered to pay \$325,000 to the state cleanup and abatement account and to spend "up to \$175,000 for investment in physical facilities, which may include sampling and monitoring of discharges at the port facility," the order stated.

"We agreed to grant the permit under the assumption that the port would be responsible for the discharge of its tenants," Barksdale said. "If they weren't going to be accountable for their tenants, we wouldn't have issued the general permit," she added. McDonald countered that the port's permit was issued by the state, and did not require it to enforce the BMPs of its tenants. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1997 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA TRI Rule to Affect Stormwater Permittees.

The U.S. Environmental Protection Agency (EPA) issued a rule that could require many stormwater general and multi-sector permittees to revise their stormwater pollution prevention plans (SWP3s). President Clinton announced on Earth Day that 30 percent more facilities will be required to comply with the toxic release inventory (TRI) reporting requirements under Section 313 of the Emergency Planning and Community Right-to-know Act (EPCRA).

The new rule will force stormwater permittees covered by EPCRA to account for Section 313 water priority chemicals in their SWP3s. Four industries listed in the multi-sector permit are affected. They are: metal mining (SIC code 10 (except 1011, 1081 and 1094)); coal mining (SIC code 12 (except 1241)); electric utilities (SIC codes 4911, 4931 and 4939); and commercial hazardous waste treatment (SIC code 4953). Chemical and allied products-wholesale (SIC code 5169); petroleum bulk terminals and plants-wholesale (SIC code 5171); and solvent recovery services (SIC code 7389) also are covered by the new rule.

The agency created minor exemptions within the mining industry, but did not provide exemptions for other industries as some experts predicted. EPA also broadened the definition of "otherwise use" to cover any use of toxic chemicals except most cases of stabilization or disposal. This change broadens the reach of TRI and could force permittees not currently accounting for Section 313 water priority chemicals to revise their SWP3s.

The effective date of the rule is Dec. 31, 1997, and the initial reporting deadline is July 1, 1999. The agency had proposed to make the requirements effective Jan. 1, 1997, but EPA agreed that a one-year delay was appropriate to allow affected parties time to understand and prepare to implement the change.

It could not be determined at press time when new provisions would come into play for stormwater permittees. John Whitescarver, director of the National Stormwater Center speculated that facilities newly covered by the rule would be required to account for the provisions during the annual review of the SWP3. More information about the significance of the rule to stormwater permittees will be provided in the *Bulletin* as it becomes available.

Information about EPCRA Section 313 can be obtained by calling the EPCRA Information Hotline at (800) 535-0202; in Virginia and Alaska, call (703) 412-9877. Specific information about the final rule is available from Tim Crawford of EPA at (202) 260-1715.

Cook Seeks To Extend Stormwater FACA Process.

The U.S. Environmental Protection Agency will attempt to extend the federal advisory committee process until it can finalize a proposal for the phase II stormwater rule, according to Michael Cook, director of the Office of Wastewater Management.

The final meeting of the phase II subcommittee is scheduled for June 12-13 at the Doubletree Hotel Park Terrace in Washington, D.C. Under the terms of a ruling in a Natural Resources Defense Council lawsuit, EPA has until Sept. 1 to issue a proposal.

"There are still some key issues that we would like to follow-up on," Cook said. There may not be any more plenary meetings, but EPA hopes to hold conference calls, caucus meetings and workgroup meetings, he added. The agency is struggling with issues raised in comments from a number of stakeholders, primarily regarding how the phase II rule will be implemented and administered, Cook said.

For more information about federal advisory committee meetings, contact Sharie Centilla at (202) 260-6052.

Eight to 13 Year Deadline Set for TMDL Completion.

According to a U.S. Environmental Protection Agency draft policy, states will have eight to 13 years to conduct total maximum daily load (TMDL) evaluations.

The draft policy from Robert Perciasepe, assistant administrator of the Office of Water at EPA, directed EPA regions to secure a written agreement with states establishing an "expeditious schedule for completing TMDLs." These schedules should extend from eight to 13 years, but the time could vary based on the number of river miles for which TMDLs are needed, proximity of listed waters within a watershed, complexity of TMDLs, availability of monitoring data or models, and relative significance of environmental harm or threat. All approved TMDLs are to be implemented for point and nonpoint sources alike, using all available federal, state and local authorities, the draft policy stated. Implementation of TMDLs would involve providing a reasonable assurance that the load allocations for nonpoint sources will be achieved.

Essentially the draft policy gives states a lot of leeway in determining when they should complete TMDLs. The studies are expected to result in tighter regulation of sources that are primarily responsible for water pollution. The upshot is that existing stormwater permittees that follow their stormwater pollution plans will not be subject to tighter regulation, although nonpoint sources and small unregulated point sources will be more closely scrutinized. However, EPA has made it clear that existing point sources will be subject to anti-backsliding provisions. ■

California Permit

(Continued from page 1)

5) conditions 2, 3 and 4 above remain in effect for a minimum of one year after filing the certification.

"If someone is up to speed [with permit requirements], it makes sense to lower some of their monitoring costs," Cosentini said. Despite the state's good intentions, these new requirements have raised the ire of environmental groups who have criticized the more flexible requirements as being too broad.

These new requirements are the equivalent of saying, "if you pay your taxes for three years, you don't have to pay anymore," said Danny Cooper, an environmental attorney with San Francisco BayKeeper. Less sampling means less certainty that facilities remain in compliance, he said. Additionally, these reduced requirements are inconsistent with the U.S. Environmental Protection Agency's (EPA) tiered regulatory process, said Libby Lucas of the Environmental Health Coalition in San Diego.

In addition to adding flexibility for individual facilities, the new permit also reduces group monitoring requirements. These requirements have been modified "so that the same facilities are not always doing the sampling," Cosentini said. Additionally, monitoring will be required over a five-year period as opposed to the annual requirement under the previous permit.

With regard to receiving water limitations, the new permit stipulates that facilities that have implemented all of their BMPs will be considered in compliance with receiving water limitations, provided the facility obtains approval from SWRCB. Under the original permit, facilities that violated receiving water limitations were considered in violation even if they had fully implemented BMPs.

Environmental groups have criticized this provision as being too lenient. The permit language "makes the assumption that if facilities implement their BMPs, then they will be in compliance with receiving water limitations. That is just not acceptable," Lucas said. Having implemented BMPs is "not functionally equivalent to meeting receiving water limits. There is a concerted effort afoot among dischargers to completely disassociate water quality standards with stormwater," she said. "Limitations are appropriate. To be more and more lax is not the way to be going."

New requirements for SWP3s are slightly more detailed than the previous general permit in an effort to bring the requirements more in line with other stormwater permits in effect throughout the country and to "generally follow a more logical path," Cosentini said. Facility operators who have already developed and implemented SWP3s under the previous permit are required to review the SWP3s' requirements in the new permit to determine if any

changes are necessary. If the existing plan adequately identifies and assesses all potential sources of pollutants and describes the appropriate BMPs necessary to reduce or prevent pollutants, the plan will not need to be revised.

Essentially, content requirements for the SWP3 still follow those in EPA's baseline general permit except that the state requires the plan to include a site map extending approximately 0.25 miles beyond the facility's boundaries.

Additionally, the map must include an outline of all impervious areas of the facility, including paved areas, buildings, covered storage areas or other roofed structures; locations where materials are directly exposed to precipitation and the locations where significant spills or leaks have occurred; and areas of industrial activity, such as the locations of all storage areas and storage tanks, shipping and receiving areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and rinsing areas, and other areas of industrial activity that are potential pollutant sources.

The new permit applies to all new or existing stormwater discharges and to authorized non-stormwater discharges from facilities required by federal regulations to obtain a permit, including those facilities previously covered by the San Francisco Bay Regional Water Quality Control Board Order No. 92-011; facilities designated by the regional water quality control boards; facilities whose operators seek coverage under the general permit; and facilities required to obtain a general permit by future stormwater regulations issued by the EPA.

Stormwater discharges associated with construction activities are covered under a separate general permit. For a more detailed list of covered facilities (with Standard Industrial Classification codes), see 55 FR 48065 or attachment 1 of the new permit.

Current operators have until Aug. 1 to submit revised SWP3s and monitoring plans. The state will send these operators notice of intent (NOI) forms to renew their permits. Facilities not currently covered, but that are required by the state and the EPA to have a permit, must submit an NOI, a site map and the appropriate application fee to the State Water Resources Control Board, Division of Water Quality, P.O. Box 1977, Sacramento, CA 95812-1977, Attn: Stormwater Permitting Unit. New facilities must file an NOI at least 14 days before beginning operations. The annual permit fee is \$250 or \$500, depending on the location of the facility. Feedlots pay a one-time fee of \$2,000 for their discharge permit.

For more information on the new permit or to get a copy of the permit, call the SWRCB at (916) 657-0919. ■

Region 4 Permit

(Continued from page 1)

The new permit will become effective this October and apply to construction activities that result in the disturbance of five or more acres, the *Federal Register* notice stated. Individuals intending to be covered by the permit will be required to file a notice of intent (NOI) by Dec. 31. For construction jobs that begin after Oct. 1, permittees must submit an NOI two days before the project commences.

Floyd Wellborn, with the surface permits division of EPA Region 4, said the regional office worked independently of EPA headquarters in developing the permit for Florida. EPA developed this specialized permit because Florida, which has not been delegated NPDES authority, has its own water policy that is somewhat different than other non-delegated states. A draft construction permit for the rest of the country should be published sometime in May. Florida, however, will use the NOI from the federal general permit for construction, Wellborn said.

Region 4 added the requirements for unpaved rural roads because the agency believes that the discharge of stormwater runoff from the construction of unpaved roads could be a significant source of pollutants. Unpaved roads, except those constructed for agricultural or silvicultural uses, that disturb five or more acres would be covered by the permit. Permittees would have to comply with requirements regarding water turnout, which consist of drainage systems designed to reduce the volume and velocity of ditch flow. The draft permit would require turnout to flow into vegetated areas where flows can be adequately dispersed.

The unpaved roads provision is unlikely to be included in the revised national permit for construction activities, Wellborn said. This provision was added because Florida published a document on best management practices for constructing unpaved roads and because the U.S. Forest Service requested that EPA regulate stormwater runoff from these roads, Wellborn said.

Construction permittees in Florida and on Indian lands in Region 4 also would have to take specific steps to certify that their activities do not affect endangered species. These steps include: reviewing the county species list to determine if any endangered species are located in the discharging facility county; determining if any endangered species may be found "in proximity" to the facility; determining if listed species could be affected by the facility's stormwater discharges or by best management practices to control those discharges; and determining if any measures can be implemented to avoid any adverse effects.

The draft permit also includes performance standards for erosion and sediment controls. These

standards were required in 1992 under NPDES regulations, but were added to the body of the permit in this draft to make sure that potential permittees understood that the performance standards were applicable, Wellborn said.

Under this provision, permittees would be required to ensure that erosion and sediment controls are capable of removing 80 percent of settleable solids in stormwater discharges from the site to Class III waters and 95 percent from discharges to sensitive waters, such as potable water sources, shellfish harvesting waters and outstanding Florida waters. Erosion and sediment controls would be required to be in place as soon as practicable rather than within 14 days, as required under the original permit, EPA said.

Another NPDES regulation added to the body of the draft permit is a provision that permittees provide an oral report within 24 hours of any noncompliance event that could endanger health or the environment. If the draft is finalized, a permittee would be required to provide a written report within five days that details the noncompliance and its cause; the period of noncompliance, including exact dates and times; and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.

In addition, any planned changes to the construction site would have to be reflected in the pollution prevention plan as soon as possible, according to the draft. Coverage under the permit would not be transferable without notification and approval from the state Department of Environmental Protection.

Individuals may submit comments or seek a hearing on the permit from the Office of Environmental Assessment, United States Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama St., S.W., Atlanta, Ga. 30303-3104. Comments and requests must be submitted by June 16. For more information, contact Wellborn at (404) 562-9296, or Michael Mitchell at (404) 562-9303, or write to them at United States Environmental Protection Agency, Region 4, Water Management Division, Surface Water Permits Section, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Ga. 30303. ■

Calendar of Events

Nationwide Satellite Seminar To Take Place May 29. The American Bar Association and the Water Environment Federation, in cooperation with EPA are hosting a satellite seminar entitled *The Clean Water Act: The Next Step in New Directions*. The seminar will take place May 29 at over 75 locations nationwide. It will cover Clean Water Act reauthorization, total maximum daily loads, federal/state/local authorities, and compliance and enforcement programs. For more information, call (800) 285-2221.

EPA Estimates of Costs Associated With Various Best Management Practices

Sediment and Erosion Control Costs

Temporary seeding	\$1.00 per foot ²	Wind breaks	\$2.50 per lin. foot
Permanent seeding	\$1.00 per foot ²	Check dams-covered straw bales	\$50 per dam
Mulching	\$1.25 per foot ²	Level spreader-earthen	\$4.00 yard ²
Sod stabilization	\$4.00 per foot ²	Level spreader-concrete	\$65.00 per yard ²
Vegetative buffer strips	\$1.00 per foot ²	Subsurface drain	\$2.25 per lin. foot
Protection of trees	\$30 to \$200 per tree	Pipe slope drain	\$5.00 per lin. foot
Earth dikes	\$5.50 per linear foot	Temporary storm drain diversion	variable
Silt fences	\$6.00 per linear foot	Storm drain inlet protection	\$300 per inlet
Drainage swales-grass	\$3.00 per yard ²	Rock outlet protection	\$45 per yard ²
Drainage swales-sod	\$4.00 per yard ²	Sediment trap	\$500 to \$7,000
Temporary sediment basin	\$5,000 to \$50,000	Sump pit	\$500 to \$7,000
Drainage swales-asphalt	\$35.00 per yard ²	Entrance stabilization	\$1,500 to \$5,000
Drainage swales-concrete	\$65.00 per yard ²	Entrance wash rack	\$2,000 per rack
Check dams-rock	\$100 per dam	Temporary waterway crossing	\$500 to \$1,500

Annualized Costs of Several Storm Water Management Options for Construction Sites

Option	9 developed acres	20 developed acres
Wet ponds	\$5,872	\$9,820
Dry ponds	\$3,240	\$5,907
Dry ponds with extended detention	\$3,110	\$5,413
Infiltration trenches	\$4,134	\$6,359

Source 62 FR 18637, April 16, 1997

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

BJ86040

MOD AA-11414W- we will be affected by Phase II Regs. Also, see p. 131. Return to Cora when finished.

Dery

Stormwater Permit Manual

Bulletin

Volume 6, Number 10

April 1997

Phase II Delayed by Comments; EPA Vows To Make Deadline

Municipal representatives and U.S. Environmental Protection Agency (EPA) stormwater officials hashed out several contentious phase II issues during a meeting March 6, several sources said.

The meeting was held because municipal representatives took exception or sought clarification on several elements of a Feb. 14 draft of the phase II proposal. Municipal representatives issued to EPA Feb. 26 a consolidated set of comments in response to the draft proposal. These comments detailed "significant issues of concern," which were first aired Feb. 21 at the phase II federal advisory subcommittee meeting (see *Bulletin*, March 1997, p. 1).

According to George Utting, EPA's manager of the phase II subcommittee, EPA and the municipalities really weren't that far apart on many of these issues. However, he said the agency would clarify its position on two main areas of contention. The agency will

include language in the next draft that would further encourage dispute resolution techniques as an alternative to citizen suits; and it will more clearly state that it promotes the use of best management practices (BMPs) rather than numeric effluent limitations. One area yet unresolved is whether the agency should reduce emphasis on flow, which municipalities claim is outside the mandate of the Clean Water Act.

No concessions or agreements can be made outside the federal advisory committee process, Utting said. However, the meeting appeared to ease concern among municipalities that the proposal would be overly prescriptive, according to a number of municipal officials. The proposal provides local governments the flexibility to choose their own BMPs. Those BMPs would be accepted as long as the permitting authority (usually the state) does not reject the local government's BMP plans.

(Continued on page 2)

Phase I Baseline Permit Expected in April; Agency Will Adopt Multi-Sector Principles

The U.S. Environmental Protection Agency (EPA) is "working very hard" to issue proposed renewals for the baseline general permit for construction in April and for "other than construction" in June or July, according to Gary Hudiburgh, EPA's National Pollutant Discharge Elimination System program branch chief.

The proposed permit would look very much like the multi-sector general permit (MSGP), Hudiburgh said. "We consider the MSGP to be the second step in the evolution of stormwater regulation, so at a minimum, EPA will adopt many of the multi-sector permit's principals in the new baseline permits," Hudiburgh added.

EPA may even modify the MSGP to encompass the baseline general permits. Under this plan, EPA would add new industry sectors to the MSGP and completely phase out the baseline permit, according to Jeff Longworth, an attorney with Collier, Shannon, Rill & Scott. It is unclear

(Continued on page 4)

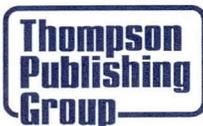
Inside This Issue ...

California SWRCB Set to Vote
On General Permit 3

Phase II Proposal May
Undergo SBREFA Review 3

Alaska, Arizona, Florida,
Michigan and Nevada
state pages updated Tab 800

New section on EPA's
voluntary audit policy Tab 900



Phase II

(Continued from page 1)

Stephen Jenkins, with the City of San Marcos, Texas, said the municipalities' concern that it was not appropriate to apply water quality standards to stormwater because of the variability of storm events was "well received" by EPA.

Tim Williams with the Water Environment Federation agreed with Utting that the parties weren't that far apart. EPA had no intention of establishing across-the-board numerical limits, and the agency will add a statement in the preamble to the phase II proposal that narrative effluent limits are the most appropriate way to regulate stormwater, Williams said. Essentially, this means that municipalities and industrial facilities would be encouraged to meet water quality goals by implementing BMPs.

However, numeric effluent limitations would still apply where "appropriately derived water-quality based limits were established," according to an August 1996 interim permitting approach for water-quality based effluent limits in stormwater permits (see *Bulletin*, October 1996, p. 1). This interim approach is the basis for EPA's phase II policy on use of BMPs and numeric water quality limits, Utting said.

EPA also will clarify its position on citizen suit liability and anti-backsliding requirements, Utting said. This provision was part of the Feb. 14 preamble, he said. But municipalities remained concerned that if they decided to change their BMP approach, they could be exposed to citizen suits, Jenkins said. The agency should develop a clear definition of "maximum extent practicable" so that municipalities know what is expected of them when altering BMPs, he said.

"Concerns over citizen suits arise if the performance requirements are so poorly defined, or if the prerequisite to filing suits are so minimal that frivolous litigation can be easily filed without serious effort

first being given to non-litigatory dispute resolution," the municipal comments to the Feb. 14 draft stated. Although EPA can encourage dispute resolution techniques in the preamble to the proposal, the Clean Water Act does not permit the agency to preclude citizen suits from the rule, Utting said.

Flow Issue Sparks Disagreement

EPA proposed to regulate stormwater flow because increased flow can carry contaminants into a stream and because sediments already in the stream bed can be reactivated by increased flow, Williams said. But he added, EPA does not have the authority to regulate flow because by doing so the agency would be attempting to control municipal land-use decisions. "As written, the preamble suggests that EPA's real agenda is laying a foundation for regulation of land-use," the consolidated comments from municipal representatives stated.

However, Utting countered, "to the extent you can't separate flow from pollution and water quality impacts, we have the authority to regulate flow based on its environmental impact. Still, Utting said, the agency was still working on that element of the proposal.

The agency scheduled a phase II federal advisory committee meeting for April 17 and 18, to discuss the phase II general permit and the tool box of BMPs. But the meeting was canceled because EPA needed more time "to resolve key issues and address comments on the draft rule and preamble," according to the cancellation notice.

The next stormwater phase II federal advisory committee meeting will be June 12 and 13 in Washington. EPA had hoped to send a proposal to the Office of Management and Budget (OMB) by May 1. Utting said the agency would not meet its self-imposed deadline to get the proposal to OMB, but that the proposal would be published by Sept. 1. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1997 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

California SWRCB Set to Vote on General Permit. The California State Water Resources Control Board (SWRCB) plans to adopt a general permit for industrial stormwater discharges on April 17, according to state officials. The board was scheduled to vote on the permit last month, but delayed finalization to allow for an additional comment period and to conduct a workshop to discuss some of the contentious issues involved in the rulemaking.

The permit will replace the original general permit that expired last November. Under the current draft, all dischargers would be required to follow best management practices (BMPs) that achieve a best available technology standard; increase the number of stormwater observations and their timing; and change the requirements for sampling carried out under group monitoring plans.

Some of the proposed changes have raised concerns within the regulated industry and among environmentalists (see *Bulletin*, January 1997, p. 1). In particular, the proposal would allow SWRCB to grant waivers for monitoring requirements to facilities that 1) have analyzed six stormwater samples, 2) can demonstrate "substantial compliance with the general permit for the last two consecutive years," and 3) can show that they are not discharging significant quantities of pollutants.

Another contentious issue concerns water quality limitations. Under the draft permit, if a discharger has implemented all BMPs, discharges of stormwater would be considered in compliance with receiving water limitations, provided the discharger obtains approval from the SWRCB. Industry groups have been supportive of this proposal, but environmentalists urged the state board to be more stringent.

Many of these issues were discussed and clarified during the March workshop, state officials said. Once the board reviews the second round of comments as well as testimony from the workshop, it will be ready to finalize the permit. Officials expect to have a final proposed permit available on the Internet by April 7 at: <http://www.swrcb.ca.gov>.

Phase II Proposal May Undergo SBREFA Review. The U.S. Environmental Protection Agency's (EPA) phase II proposal will likely be reviewed under the Small Business Regulatory and Enforcement Fairness Act (SBREFA), said George Utting, matrix manager for EPA's phase II federal advisory subcommittee.

The agency had assumed that because of the extensive federal advisory committee (FAC) process, the

rule would not be subject to SBREFA, Utting said. Under the law, enacted in 1996, the phase II stormwater proposal will be reviewed by panels from the Small Business Administration (SBA) and Congress. EPA is not overly concerned about the congressional review because the rule would have been reviewed by Congress anyway, but the agency is preparing for the SBA review.

The existence of SBREFA did not factor into the agency's plan not to include more industry sectors in the phase II process, Utting said. "The SBREFA requirements did not affect our decision to include or exclude specific industry sectors. We were at one point hoping that the FAC process would suffice for the SBA panel review aspects of SBREFA. We had industry folks and small municipal folks on the FAC panel," Utting said.

Utting said EPA was not able to regulate more industry sectors under phase II because it did not have ample data for specific industries to satisfy section 402(p)(6) of the Clean Water Act. "The limiting factor for us is data for nationwide determination of water quality impacts for any given sector," Utting said.

EPA Struggling with Wet Weather Flow Standards. The urban wet weather flows and sanitary sewer overflows federal advisory subcommittees have deferred to EPA's water quality standards workgroup on standards for wet weather flows, according to a March 11 letter from the Water Environment Federation (WEF).

The letter was sent to Robert Periassepe, head of EPA's Office of Water, by Tim Williams, WEF's director of government affairs. In the letter, Williams encouraged EPA to update water quality standards in a way that "better incorporates a watershed management approach." EPA plans to publish in late spring an advance notice of proposed rulemaking for the water quality standards, which have not been revised since 1983.

EPA has said establishing a clear wet weather flows policy and developing a watershed approach to regulating water pollution are Office of Water priorities. In addition to promoting it as the new policy approach of the water program, EPA's Office of Enforcement and Compliance Assurance is attempting to incorporate the watershed approach into its enforcement program. Robert Van Heuvelen, outgoing head of the Office of Regulatory Enforcement, said EPA was in the process of "figuring appropriate criteria for determining entities with serious wet weather flows issues, and bringing them into compliance." ■

Baseline Renewal

(Continued From page 1)

whether EPA would create sectors for the new industries or blend these industries into the existing 29 sectors in the MSGP. Both approaches would have significant drawbacks, Longworth said.

It seems more likely that the agency will adopt new baseline permits that would expire with the MSGP in the year 2000 so the agency can consolidate stormwater requirements into one permit at that time. Of the agency's dilemma over whether to reissue a new baseline permit or fold existing requirements into the MSGP, Hudiburgh said, "We want to adopt a permit that will result in fewer bureaucratic hoops to jump through."

The original baseline permits are set to expire Oct. 1, 1997. However, if EPA does not issue new permits by that date, the expired permit will remain in force. Currently, permits in 31 states are set to expire by the end of 1997. Hudiburgh said he did not expect states to wait to see what EPA was going to do because they are already aware of EPA's commitment to regulating stormwater primarily through the MSGP.

The agency will not include a no-exposure exemption in the revised phase I permit, Hudiburgh said. In a 1992 ruling, *Natural Resources Defense Council v. EPA*, 966 F.2d 1292, the Ninth Circuit Court of Appeals said that the no-exposure exemption to "Category 11" light industrial facilities and the five-acre threshold for regulated construction sites were arbitrary and capricious and remanded the phase I application rule to EPA.

In light of this ruling, EPA does not want to change the no-exposure provision in the phase I application rule before issuing a new baseline permit, Hudiburgh said.

EPA should reissue the baseline permit as it is with the addition of Endangered Species Act and National Historic Preservation Act provisions, if necessary, Longworth said. By reissuing a baseline permit that closely resembles the existing permit, it will give EPA time to consider input from the federal advisory committee process and to implement phase II requirements, without creating new implementation problems, he said.

Using data and information from the federal advisory committee process, EPA will be able to issue an up-to-date permit in 2000 that is more sensible and effective, Longworth said. At present, "neither the baseline or MSGP approach is the panacea to stormwater permitting. There are better ways to regulate stormwater," he added.

EPA wants to issue new baseline construction and industrial permits, and finish the phase II proposal all in the next several months, Longworth said. "You have to look at where you want to concentrate your efforts. In EPA's rush to do so many different things, they might not do a good job with any of them," Longworth said.

EPA also should fast track a no-exposure rule because it is consistent with Clinton administration plans to reduce unnecessary regulatory burdens, Longworth said. It would provide relief to regulated entities and there is basic consensus among stakeholders about what should be included in the no-exposure exemption, Longworth said. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

BJ86040

Stormwater Permit Manual

Bulletin

Volume 6, Number 9

March 1997

Phase II Draft Eases Construction Site, Industry Requirements

As the September 1997 court-ordered deadline nears for the U.S. Environmental Protection Agency (EPA) to issue a proposed phase II stormwater rule, the agency is pursuing options that would be more lenient on specific industry sectors and construction sites than previously envisioned.

The latest permutation of the phase II rule was issued as a draft proposal on Feb. 14. It reflects recommendations from federal advisory committees involved in the rulemaking process. However, the agency is having difficulty reaching consensus with several members of the committees (see related story, p. 1).

The proposal includes a number of revisions to the Nov. 15, 1996, preliminary concept paper (see *Bulletin*, December 1996, p. 1). Most notably, EPA has increased from one-half acre to one acre the cutoff for construction sites that must comply with phase II permitting requirements. According to the draft preamble, "categorical regulation of construction sites below this one acre threshold would overwhelm the resources of permitting authorities."

Furthermore, under the draft rule, the National Pollutant Discharge Elimination System (NPDES) permitting authority could grant an exemption to sites under five acres in size if pollutant discharges pose no threat to water quality, if the authority implements a watershed program, and if the program includes enforceable nonpoint source controls. "EPA intends that the permitting authority would consider such criteria as erodibility of the soil, percent of slope, slope length and proximity of water bodies when determining the potential threat to water quality," the draft preamble states.

Permitting requirements for construction sites between one and five acres would be similar to those for sites greater than five acres. The preamble states that EPA would allow compliance with qualifying local or state erosion or sediment control requirements to meet the erosion and sediment control provisions of the general permits for construction for both phase I and phase II construction sites.

(Continued on page 2)

In Protest of Phase II, Municipal Reps Are No-Shows on First Day of FACA Meeting

Municipal representatives boycotted the first day of the stormwater phase II federal advisory subcommittee (FACA) meeting because the latest draft of the phase II rule does not provide the flexibility local governments had hoped for.

On Feb. 21, the second day of the meeting, representatives showed up with a list of "significant issues of concern" and recommendations for an "acceptable" alternative process for implementing phase II. The rift threatens the relative harmony that previously had existed throughout the rulemaking process.

According to several sources, municipal representatives are concerned about the long-term costs local governments will incur under the current draft proposal. The capital outlay won't be bad because most of the costs of implementing stormwater management programs for development and new construction sites are covered by existing permit fees, said Jim

(Continued on page 4)

Inside This Issue ...

No-exposure Exemption Policy Under Development	3
EPA Granted Extension of Court Ordered Deadline	3
President's Proposed Fiscal 1998 Budget Issued	3
North Carolina, Virginia state pages	Tab 800

Phase II Draft

(Continued from page 1)

Under the draft proposal's provisions for industrial and commercial facilities, EPA said it would require individual permits or notices of intent to be covered under general permits only for facilities that maintain, fuel, clean and rehabilitate heavy industrial equipment and facilities owned or operated by a public or private educational institution that maintain, fuel, clean and rehabilitate school buses.

Although EPA evaluated 18 sectors including the automobile service sector, the agency determined that only these two sectors had a high likelihood of exposing water bodies to pollutants, or were not adequately regulated by other programs such as the Resource Conservation and Recovery Act or the Occupational Safety and Health Act. Sources that were not specifically designated in the draft proposal could be designated for regulation by the NPDES permitting authority, the preamble states.

Jeff Longworth, an attorney with Collier, Shannon, Rill & Scott, who represents independent gasoline retailers, said the criteria for determining what facilities EPA can regulate is more stringent than in the past because of the Small Business Regulatory and Enforcement Fairness Act, and because of closer Congressional scrutiny over EPA rulemaking. "EPA has to be able to explain to the regulated community why they are being included and what the benefits of their inclusion are," Longworth said. EPA does not have the data to prove that many of the industry sectors it evaluated were sources of stormwater pollution, he added.

Longworth noted that the two industry groups pegged for inclusion were not represented on the federal advisory committees and may not even know they are being included in phase II.

The draft proposal includes an amended no-exposure provision. Under this provision, the permitting

authority could exempt any industrial or other facility from coverage under the stormwater program if the facility demonstrated that it conducted its activities in a manner that does not allow exposure of materials to stormwater (see related story, p. 3).

The agency said it expects most, if not all, phase II industrial and construction permittees to be regulated under general rather than individual permits. This will reduce the regulatory burden on individual facilities and it will make the stormwater program easier to administer for permitting authorities, EPA said.

State and municipal representatives on the advisory committees pushed EPA to evaluate alternatives to the traditional NPDES approach. Options considered by EPA include establishing a national baseline scope of applicability and allowing states and Indian tribes to design their own programs. However, the agency is concerned that alternative programs would not provide "any level of national consistency or predictability," the preamble states.

Using an NPDES approach to phase II is consistent with phase I stormwater regulation and therefore would ease integration of the two programs, EPA said. The NPDES approach also ensures communication between the permitting authority and the regulated community. This communication exists because the permitting authority has specific permit requirements to enforce, which "is critical to ensuring that the regulated community is aware of what is being required," the draft preamble states. The NPDES approach also ensures that the public can gain access to information, EPA said.

According to the draft proposal, regulated phase II dischargers of stormwater that are not authorized by a general permit would have to file a permit application three years and 90 days after the publication of the final phase II rule. Under the terms of a Natural Resources Defense Council lawsuit, the final rule must be issued by March 1999. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Raddliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, The Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1997 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

No-exposure Exemption Policy Under Development.

The U.S. Environmental Protection Agency (EPA) is developing a policy to grant conditional exemptions to industrial facilities that can prove their activities result in no exposure of contaminants to stormwater flows.

According to the agency, the proposal represents a significant expansion in the scope of the original no-exposure provision. The intent of the provision is to provide a simplified method for industrial facilities to comply with stormwater regulations. The five-year no-exposure exemption would apply to industrial facilities that are entirely indoors, such as within a large office building, or at which the only items permanently exposed to precipitation are roofs, parking lots vegetated areas and other non-industrial activities or areas, EPA said.

To take advantage of the no-exposure exemption, an owner or operator of an otherwise regulated facility would have to submit to the National Pollutant Discharge Elimination System (NPDES) permitting authority a certification that the facility meets the no-exposure requirements, EPA said.

Under the policy, "no exposure" would mean that all industrial materials or activities are protected by storm resistant sheltering so that they are not exposed to rain, snow, snowmelt or runoff. Industrial materials or activities "include but are not limited to material handling equipment, industrial machinery, raw materials, intermediate products, by-products, or waste products, however packaged," EPA said.

Although the intent of the section is to reduce the regulatory burden on industrial facilities, EPA said it would establish an inspection program to ensure that facilities that have claimed the exemption meet the applicable requirements. These inspections would be conducted by the NPDES permitting authority in conjunction with other facility inspections, EPA said.

EPA Granted Extension of Court-Ordered Deadline.

As part of an agreement with the Natural Resources Defense Council (NRDC), EPA has agreed to conduct a study to examine the possibility of establishing effluent guidelines for urban stormwater runoff. In exchange, EPA will get more time to develop effluent guidelines for several industry sectors regulated under the Clean Water Act.

The agreement between the two organizations modifies provisions of a 1992 consent decree (*NRDC v. EPA*, No. 89-2980, (D.D.C. Jan. 31, 1992)) requiring EPA to develop effluent guidelines for several industries, including the pharmaceutical manufacturing, metal products and machinery, aerospace vehicle manufacturing, aircraft equipment, electronic equipment,

hardware, and mobile and stationary equipment industries, as well as industrial activities related to the manufacture of trucks and buses, household equipment, scientific instruments and office machines.

The latest agreement extends EPA's deadline for developing the guidelines—some of which were to be issued this month—in exchange for conducting studies on urban stormwater runoff, and on airport de-icing and runoff from animal feedlots. All three of these activities are "fairly significant," said Peter Lehner, and NRDC attorney. "We hope the result [will be] to have a more rigorous process with EPA to look at these issues."

EPA officials plan to get the studies underway in the next several months using data that is currently available. "We want to focus on evaluating performances of certain technologies and practices ... to decide whether to [issue] guidelines or regulations," explained Marvin Rubin, an official with EPA's Effluent Guidelines Program.

President's Proposed 1998 EPA Budget Issued.

President Clinton Feb. 6 requested a 12 percent increase in EPA's fiscal 1998 budget, but Republican lawmakers seem unlikely to approve such an increase in the final budget. Under the president's request, EPA would get \$7.6 billion, or \$846 million more than the approved fiscal 1997 allocation. The agency would be authorized to spend \$274.9 million on the water quality program, an increase of \$2 million over last year's budget.

EPA specified a number of budget priorities that would affect the stormwater program. The agency would spend \$2.3 million on urban revitalization, including implementing wet weather flow controls. Nearly \$9 million would go toward assisting states in developing watershed total maximum daily load (TMDL) assessments. The money would be used, in part, to provide tools and guidance for states on how to conduct TMDLs. In addition, the president requested \$5 million to bolster ongoing nonpoint source pollution control and prevention programs.

EPA Assesses Record Amount in Fines in 1996.

EPA assessed a record \$173 million in criminal, civil and administrative penalties in 1996, according to a Feb. 25 press release.

Although it could not be determined how much was assessed for stormwater violations, EPA assessed over \$85 million in penalties for Clean Water Act violations. Of that amount, over \$62 million was for criminal violations, nearly 20 million was from civil judicial penalties, and \$3.4 was administrative penalties. ■

Municipalities

(Continued from page 1)

Bauman with the Wisconsin Department of Natural Resources. However, the costs will increase if stricter requirements are imposed on existing towns, Bauman said. Management practices associated with reducing impacts from streets, sidewalks and parking lots are going to cost a lot of money, Bauman said. "Municipalities can't just tear down an office building and put in a retention pond in the middle of town to reduce stormwater discharges," he said.

If covered under phase II as proposed in the Feb. 14 draft rule, a municipality would be required to develop, implement and enforce a stormwater management program designed to reduce pollutants from municipal separate storm sewer systems (MS4) to the maximum extent practicable (MEP). Municipal representatives were dismayed that the U.S. Environmental Protection Agency (EPA) had not yet adopted a definition for MEP.

Municipalities would be required to submit to the National Permit Discharge Elimination System (NPDES) permitting authority either in a notice of intent for a general permit or in an individual permit application the best management practices (BMPs) to be implemented by the municipality and the measurable goals for six stormwater minimum control measures. The six minimum measures are public education and outreach; public involvement and participation; illicit discharge detection and elimination; construction site discharge control; post construction stormwater management; and pollution prevention and good housekeeping for municipal operation.

According to EPA's phase II matrix manager, George Utting, the measurable goals provision is an attempt to avoid performance standards, but there is no set definition for the term yet.

Early indications are that EPA will provide guidance on developing BMPs and measurable goals, and the permitting authority will establish specific measurable goals as appropriate. However, municipal representatives recommended that local governments be permitted to determine their own appropriate measurable goals.

Municipal representatives recommended that EPA require only those management practices specified under the six minimum measures and that the phase II requirements be unchangeable for 10 years. Bauman said restricting permitting authorities' ability to alter permit provisions and step up enforcement for 10 years is inconsistent with the law.

Bauman also said that states, and not municipalities, should have the discretion to require more than the six minimum measures and to determine what the measurable goals should be for stormwater management. The problem with restricting management

practices to the six minimum measures is that the measures "don't do anything to whittle away at existing water quality problems," he said.

Municipal representatives also objected to "any suggestion that numeric effluent limits are applicable to stormwater permits." EPA has tried to tailor the draft to deemphasize numeric effluent limits because they do not necessarily provide an indication of water quality, according to several committee members. However, in some cases, quantitative measurement of discharges is the only available tool for indicating pollutant levels in water bodies, these sources said. Municipal stakeholders argued that EPA's plan to delegate to them responsibility for water quality monitoring and assessment of the effectiveness of BMPs was unfair, saying it would unduly increase the regulatory burden and costs for local governments.

As an alternative to these traditional NPDES approaches, local governments are pushing for a "permit-by-rule" structure. These self-implementing rules would spell out specific requirements for municipal dischargers. Proponents of this approach say it would reduce the burden on the regulated community because it would not require permit applications.

An example of a permit-by-rule might be to require a specific, proven BMP at a specific type of facility. Opponents of this approach fear that self-implementing requirements would not hold permittees accountable and that the requirements would not be enforceable because without permits it is more difficult to track regulated facilities.

Although the permit-by-rule approach would provide national consistency, "it would not address site specific programs very well or foster coordination" with existing NPDES state programs, EPA said. Although EPA is leaning against the approach, it is accepting comments on this alternative and may yet consider it for the final proposal, according to the draft proposal preamble.

Under the draft proposal, phase II would regulate urbanized areas identified by the latest 10-year census conducted by the U.S. Bureau of Census. In addition, the permitting authority may designate any incorporated place, regardless of size, for regulation under the phase II rule. Any member of the public may petition the permitting authority to designate an MS4 for coverage.

The permitting authority may exempt an MS4 if: there is a comprehensive watershed plan or total maximum daily load (TMDL) evaluation and if relevant components of the plan are reflected in the NPDES permit; the watershed plan or TMDL demonstrates that the MS4 discharge does not cause or have potential to cause water quality impacts; and any necessary nonpoint source controls identified in the watershed plan or TMDL are enforceable. ■

Stormwater Permit Manual

Bulletin

Volume 6, Number 8

February 1997

Devil Is In Details of Wet Weather Flows Watershed Alternative

Stormwater discharge permit holders may face a reduced compliance burden if they can show their discharges have little impact on a watershed's quality, according to a Jan. 3 revised draft strategy issued by the U.S. Environmental Protection Agency (EPA).

However, several experts say the latest draft, which revises a November 1996 version, does not have the flexibility necessary to encourage states to adopt alternative approaches to water quality protection.

EPA hopes to finalize the draft, which is being prepared with input from the federal advisory committee on urban wet weather flows (UWWFAC), by the conclusion of the committee's term in July. The idea behind the watershed strategy is to involve industry representatives, the public and the permitting authority early in the process and to develop broad strategies for improving the quality of the watershed.

Participants along a stretch of a watershed would collect data on a broad range of environmental problems. Water quality management responsibilities would then be designated, presumably by the permitting authority, based on a source's relative contributions to watershed pollution.

According to the draft document, titled *A Watershed Alternative for the Management of Wet Weather Flows*, a review should be conducted to evaluate all aspects of water quality and ecosystem health, including chemical water quality, physical water quality, habitat quality and biological integrity.

If the results indicate that water quality and ecosystem integrity are being protected and no reasonable potential for future problems exists, only existing controls would be needed, the document said. If a facility can show that its stormwater discharges do

(Continued on page 5)

California and Region VI Launch Efforts to Track Down Non-filers of Notices of Intent

State and regional regulatory agencies have initiated campaigns to enforce stormwater permitting requirements. The efforts to track down non-filers is an important step towards compliance assurance, and is an area that many feel has been neglected since the onset of the stormwater program in 1992.

In September 1996, the California State Water Resources Control Board sent more than 1,500 letters to facilities in the state that do not have stormwater permits. The letters are the first phase of the state's "non-filer project," explained Leo Cosentini, assistant program manager for the state's stormwater program.

The state plans to send out another 1,500 in the next month or so, he said. Letters are being sent to facilities that the state believes may be required to have stormwater permits. At press time, about 100 facilities had

(Continued on page 6)

Inside This Issue ...

EPA Distributes Draft Issue Paper On Stormwater Enforcement	2
Court Watch	3
Storm Warnings	4
Delaware, Ohio, Oklahoma state pages	Tab 800
Update of EPA's penalty policies	Tab 900

EPA Distributes Draft Issue Paper on Stormwater Enforcement

Faced with an "inadequate level of compliance" with stormwater permitting requirements, the U.S. Environmental Protection Agency (EPA) has issued a document identifying ways to improve the stormwater enforcement and compliance assurance program.

According to the draft issue paper, *Stormwater Enforcement*, EPA's compliance and enforcement priorities are to identify and act against: municipal separate storm sewer systems (MS4s) that have failed to submit timely and complete permit applications; regulated industrial facilities that have failed to apply for permits and are outside the jurisdiction of a regulated MS4; and regulated industrial facilities that have failed to apply for permits and are within the jurisdiction of a regulated MS4.

The document includes several statistics to emphasize the need for a stronger stormwater enforcement presence. Under Phase I of the stormwater permitting program, EPA expects that 854 MS4s will be covered by 267 permits. However, for various reasons, including insufficient staffing and legal complications, only 61 percent of all MS4 permits have been issued. MS4s without permits are concerned that they will be liable for discharging without a permit because EPA has not yet processed their applications. EPA fears that it does not have adequate data to assess whether MS4s with permits are complying with the terms of the permits, the draft issue paper says.

According to the paper, EPA has identified three types of compliance problems at industrial facilities. First, many facilities that have a stormwater discharge associated with industrial activity have not filed a notice of intent (NOI) to be covered under general permit or an individual application. "Some facilities have not filed because they are unaware of their regulatory obligations; others have not filed because they do not see any repercussions associated with not filing due to lack of enforcement," the

document says. Several states and EPA regions have identified facilities that may be regulated under the stormwater programs and have sent letters informing them of their regulatory obligations, according to the paper (see related story p. 1).

Second, some facilities that have submitted NOIs have not complied with the requirements of the general permit, particularly the requirement for the development and implementation of a stormwater pollution prevention plan (SWP3), the paper says. Third, some facilities have submitted NOIs and developed SWP3s, but have not implemented them. The paper cites as reasons for this the lack of enforcement, high staff turnover at facilities, and the lack of sufficient resources.

In response to the draft document, Heal the Bay, a California non-profit group, recommends that EPA hold states accountable for bringing non-filers into compliance with stormwater regulations. This would trigger stepped-up enforcement activity in the states, the group said. It recommended that states concurrently offer rewards and incentives to regulated facilities if they comply. Incentives could include limited amnesty for non-filers, tax credits, or special recognition for facilities that comply, the group said.

According to recommendations from the federal advisory committee on urban wet weather flows, EPA may be able to improve compliance among industrial facilities by encouraging states to take the program more seriously, increasing EPA enforcement in non-delegated states to set an example, mailing notices to nonfilers and identifying state stormwater coordinators.

In general, the committee said EPA could improve stormwater compliance by offering more education on the benefits of compliance, providing credits or tax incentives for stormwater expenditures and increasing multi-media oversight. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. CEO, Richard Thompson; President of Publishing Operations, Daphne Musselwhite; Senior Publications Manager, Jill S. Talbot; Managing Editor, Daniel L. Whitten; Contributing Editor, Charlene Kerwin. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, the Environment Health & Safety Network; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1997 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Court Watch

The U.S. Supreme Court Nov. 18, 1996, refused to hear the appeal of a federal appellate court's holding that the New York State Thruway Authority is not immune from a citizen suit under the Clean Water Act (CWA) (*New York State Thruway Authority v. Mancuso*, 117 S. Ct. 481 (1996)). The plaintiffs alleged that the Thruway Authority violated CWA by discharging pollutants into a storm sewer that empties into Echo Bay in New Rochelle, NY.

The Thruway Authority argued that it was entitled to sovereign immunity under the 11th Amendment to the U.S. Constitution pursuant to the "arm-of-the-state" doctrine. After weighing the several factors for determining whether the doctrine applied, the U.S. Court of Appeals for the Second Circuit found that the Thruway Authority was not entitled to immunity because subjecting the authority to suit would not put the state's finances, sovereignty or dignity at risk (*Mancuso*, 86 F.3d 289 (2d Cir. 1996)).

•••

In a similar case, the U.S. Court of Appeals for the Ninth Circuit ruled Sept. 17, 1996, that the 11th Amendment does not shield state officials from a citizen suit for injunctive relief for alleged violations of CWA (*Natural Resources Defense Counsel (NRDC) v. California Dep't of Transp.*, 96 F.3d 420 (9th Cir. 1996)).

NRDC sued the director of the California Department of Transportation to force the department to comply with its stormwater permit for roadways and maintenance yards in Southern California.

In allowing NRDC's claim to proceed, the court reasoned that the U.S. Supreme Court's decision in *Seminole Tribe of Fla. v. Florida* (116 S. Ct. 1114 (1996)), which ruled that the 11th Amendment prohibits federal suits against a state or state officials, did not apply. The court explained that because Congress intended to authorize citizens to bring such suits against state officials who are responsible for complying with CWA regulations and permits, NRDC could sue under the Supreme Court's decision in *Ex Parte Young*, (209 U.S. 123 (1908)). In *Young*, the Supreme Court ruled that the 11th Amendment does not bar suits against a state official acting in violation of federal law.

•••

The 60-day notice filed by the plaintiffs in a citizen suit was sufficient to establish the court's jurisdiction under CWA, ruled the U.S. District Court for the Southern District of California (*NRDC v. Southwest Marine, Inc.*, No. 96-1492B (S.D. Cal. Nov. 4, 1996)).

Plaintiffs NRDC, San Diego Baykeeper Inc. and Kenneth Moser sued Southwest Marine Inc. for several alleged CWA violations, including among others the failure to develop and implement a stormwater pollution prevention plan and a monitoring and reporting plan. Southwest contended that the plaintiffs' notice letter did not provide sufficient information regarding the date, location or any activities that constituted violations of CWA.

Noting that challenging the failure to prepare and implement the plans was "far different than challenging specific instances of illegal discharge," the district court found that the plaintiff's notice letter was sufficient under 40 CFR §135.3(a). The court reasoned that the letter: (1) stated, for each violation, the prohibited actions and the regulations and permit provisions that were violated; (2) adequately identified the activity constituting the violations by stating that the plans violated the standards; (3) adequately alleged that Southwest is the person responsible for the alleged violations; (4) adequately described the location of the alleged violations because it identified the facility and the violations were within the plans themselves; (5) did not have to specify a date because the violations were ongoing; and (6) provided sufficient information to identify the parties and their counsel.

The court rejected Southwest's argument that the plaintiffs were required to satisfy all the technical requirements of §135.3(a). According to the court, "It is impossible to allege with specificity the actions taken, their location and date when dealing with inaction. ... Only what action should have been taken, who should have taken it, and that they have not taken the action, can be alleged."

•••

Knee Deep Cattle Co. can maintain a CWA citizen suit for violation of a National Pollutant Discharge Elimination System (NPDES) permit even though the permittee had previously entered into a compliance plan with the state, according to the U.S. Court of Appeals for the Ninth Circuit. (*Knee Deep Cattle Co. v. Bindana Investment Co.*, 94 F.3d 514 (9th Cir. 1996)).

The cattle company sued Bindana Investment Co., which owns an RV Park and sewage treatment facility in Lane County, Ore., alleging that Bindana was discharging pollutants in violation of its NPDES permit. Prior to Knee Deep's filing suit, the state Department of Environmental Quality (DEQ) had entered into a remedial agreement with Bindana resulting in a Stipulation and Final Order (SFO). The SFO outlined a plan to upgrade the treatment plant and established interim discharge limits and penalties for noncompliance.

The Ninth Circuit explained that for a citizen suit to be barred under CWA, a state must be diligently prosecuting an action under a state law that is comparable to CWA §309(g), the administrative penalty provision of the act; the state law must contain penalty provisions; and a penalty must actually have been assessed.

In holding that the suit was not barred, the court found that the SFO was entered into prior to the filing of the suit and, therefore, the state was not diligently prosecuting an action. In addition, the court found that DEQ's actions concerning the permit violation were not taken under a comparable state law because "the SFO expressly provides that the SFO was issued to settle past violation without penalty... ." The Ninth Circuit remanded the case to the district court for further proceedings. ■

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Details Plans for Phase I-Phase II Integration.

At the federal advisory committee meeting for urban wet weather flows Jan 9., a U.S. Environmental Protection Agency official provided insight into the future of stormwater regulation after the agency implements Phase II of the stormwater program.

George Utting, EPA's matrix manager for the stormwater phase II program, said the agency was committed to conduct research into the effectiveness of best management practices (BMPs) during the course of a 10-year sunset period.

With a better understanding of the effectiveness of BMPs, EPA will be able to select BMPs that are appropriate for different circumstances, Utting said. By collecting better information, permittees will be able to select BMPs that improve water quality, he said.

In the future, Utting said, EPA would attempt to integrate total maximum daily load (TMDL) requirements with best management practices. "If you have a TMDL that is relevant to a municipality, and the TMDL is not met by a BMP that has been identified under the maximum extent practical definition, then you would have to go to water quality based standards," Utting told committee members.

In a one-page discussion of phase I-phase II integration, EPA said that during the integration, it will identify opportunities to utilize existing programs, institutions or processes for both phase I and phase II. EPA also plans to utilize the experiences of phase I in the development of phase II requirements, the paper said.

For industrial and commercial phase II sources, EPA is planning to be consistent with phase I facilities. EPA will not relax requirements for phase II sources. However, the agency plans to make it easier for all facilities to gain a no-exposure exemption.

For the construction permits, EPA still plans to regulate all sites larger than one-half acre. However, the agency is hoping to coordinate permitting provisions with local and state erosion and sediment control requirements to avoid duplication.

For municipal separate storm sewer systems, the agency also is hoping for consistency between phase I and phase II. Decisions over permitting requirements will be based on potential to affect water quality, the use of TMDLs and implementation of the watershed approach. The criteria will not be different between phase I and phase II sites. However, the specific measures required might differ slightly, according to the paper.

Tennessee To Adopt EPA Multi-sector Permit.

Tennessee has issued a draft multi-sector permit that will use benchmark values as action levels to trigger changes in stormwater pollution prevention plans (SWP3).

The draft permit, which is modeled after EPA's Sept. 29, 1995, multi-sector general permit, is being proposed to replace the present Tennessee general stormwater permit for industrial dischargers. The present permit is set to expire Sept. 26.

Several differences exist between the Tennessee permit and EPA's. For example, the state permit would not provide coverage for all industries in EPA's metal mining sector. It also would not cover active coal mines. Monitoring requirements would be the same, but cutoff concentrations for some contaminants would be higher under the state permit.

Finally, if a facility exceeded its cutoff concentration on two consecutive sampling events it would need to notify the state within 30 days and would be required to modify the SWP3. For more information, contact Steve Letendre at (615) 532-0673 or Robert Haley at (615) 532-0669.

ATA Publishes Vehicle Washing Manual.

Citing the increased number of regulations associated with washing waste-hauling and other vehicles, the American Trucking Association (ATA) has published a Vehicle Washing Compliance Manual.

"Vehicle washing has come under increased regulatory scrutiny in stormwater and wastewater permitting programs," said ATA environmental specialist Steve Hensley. Copies of the manual are available for \$125. For more information, contact Diane Burr with ATA at (703) 838-1992.

Water Office Issues Agenda For National Program.

EPA's water office said that it will have four main priorities in 1997. They are: finishing promulgation of wet-weather requirements; implementing the new drinking water law; continued incorporation of watershed-based approaches in agency programs; and administrative improvements to the Clean Water Act.

In particular, the watershed approaches will focus on stormwater and other types of polluted run-off. The agency also will attempt to gain more information on total maximum daily loads of pollutants.

Administrative improvements will include streamlining existing water programs and reducing duplicative requirements. ■

Watershed Alternative

(Continued from p. 1)

not contribute to contamination of the watershed, it would not be subject to stricter permit requirements.

However, if problems are observed or anticipated, stakeholders can either choose traditional practices for improving water quality or employ the watershed alternative. The traditional approach consists of managing discharges from individual sources separately and distinctly from other discharges in the watershed. Individual dischargers typically work independently with regulators in the permitting process, EPA said. This approach would be used if the stakeholders within a watershed could not agree to pursue a watershed alternative.

Under the watershed alternative, if pollutant loading is traced to a specific facility or group of facilities, those dischargers would be subject to stricter requirements. For example, if a designated watershed contains high levels of copper, but is virtually free of all other contaminants, only the sources of copper contamination would be targeted for stricter permit requirements. This approach could lead to less stringent monitoring requirements for sources known to cause little or no contamination.

Municipalities Decry Lack of Flexibility

According to several members of the committee, municipal participants are unhappy with the latest draft of the strategy because they believe it is too prescriptive. Some believe that under the draft strategy, EPA would take a lot of the decision making out of the hands of local government.

Dan Schechter, of the Water Environment Federation and a member of the committee, said the draft does not provide enough incentive to encourage states to undergo the drastic changes in program administration that would be needed to switch from traditional approaches to the watershed alternative.

However if improvements are made, the draft document, along with stormwater permits that require watershed planning, could have a big effect on how water quality is regulated, he said.

UWWFAC member Jim Bauman, with the Wisconsin Department of Natural Resources, said there was agreement on the general goals of the draft, but that "the details started to change its essence." As an example, EPA placed too much emphasis on evaluating all aspects of water quality and ecosystem health, Bauman said. Assessments should not be required for characteristics that do not effect the potential uses of a watershed; what to include in the assessments should be up to the discretion of the states, he said.

The draft includes a few important elements, such as allowing permit holders to conduct ambient monitoring in lieu of effluent monitoring, Bauman said. But, he cautioned, EPA should make sure that the information in the strategy adds new and useful guidance to the numerous watershed documents being issued by EPA. One element that could be addressed is how municipalities can evaluate the impacts of storm events on the quality of an entire watershed, he suggested.

Lehner Calls Basic Concepts Sound

Peter Lehner, with the Natural Resources Defense Counsel, concurred that the concepts behind the draft were sound. Some people may have interpreted the language to be too prescriptive, but EPA didn't intend to remove the flexibility, he said. The draft is positive because it encourages people to look beyond simple water quality issues to the more complex issues of the overall watershed ecosystem, he said. It also does not permit backsliding from minimum technology-based standards, he added.

The watershed approach can be very successful if EPA develops sensible watershed monitoring guidelines and if the agency synchronizes permit terminology, Lehner said. He encouraged the agency to proceed deliberately to prevent "unenforceable chaos."

Several industry representatives view the watershed approach as preferable, in theory, to the traditional one-size-fits-all approach to regulating stormwater discharges, Bauman said. The watershed approach forces previously unregulated entities such as non-point sources to share in the responsibility for watershed protection, he added. Similarly, Lehner said, agricultural entities should be required to implement best management practices.

But committee member Sam Race, representing the National Association of Conservation Districts, said requiring farmers' participation in watershed protection would be overly burdensome for small farmers and, therefore, counterproductive. Race suggested that non-point sources would be more likely to participate voluntarily if there were an incentives program.

Overall, committee members seem to agree on the large issues. However, some members interviewed for this story did not think a worthwhile version of the strategy could be finalized before July because there are too many differences among committee members and within EPA's different divisions. Others said that even if the document were released in its current form, it would be useful in promoting the watershed approach. EPA could not be reached for comment. ■

Enforcement Initiatives

(Continued from page 1)

responded to the letter by sending Notices of Intent (NOIs) to apply for general permit coverage. "We are pleased with that response ... we might get more as time goes on," Cosentini said.

The first batch of letters was part of a random mailing with no specific industries targeted. "We have sent letters to a cross section of companies. We're hoping that the word spreads quickly and people come to us voluntarily to comply with permit regulations," Cosentini said. Additional mailings are likely to target specific industries once state officials determine if there is a pattern of noncompliance within certain industries.

The letter being sent to non-filers is non-threatening, explained Cosentini. Basically, it informs company officials that they may be required to apply for a permit based on the type of industry in which the company is involved and the industry's standard industrial classification code.

The letter includes an NOI form as well as a notice of non-applicability—allowing companies to inform the state that they are not involved in activities that require a permit. A handful of letters have been returned as undeliverable, Cosentini said.

As the next step in the project, regional boards will conduct random site visits to facilities that either have not responded or have submitted a notice of non-applicability, Cosentini said.

The state and regional boards are considering a strategy for site visits. It is likely that in instances where a particular region has 100 non-responders to

the letter, officials will randomly visit about 10 facilities, he said. "Ideally, we won't have to pursue any enforcement action. If someone from the state [Water Resources Control Board] shows up at a facility, [company officials] are likely to comply."

Region VI Spearheads Effort in Texas

Environmental Protection Agency (EPA) officials in Region VI, which covers Texas, Louisiana, Oklahoma, New Mexico and Arkansas, are involved in a similar enforcement project.

Last summer officials mailed about 15,000 letters to non-filers in Texas, explained Taylor Sharp, an enforcement officer with EPA's Region VI office in Dallas. Additionally, officials have pursued enforcement actions, including levying penalties, against a handful of companies. Region VI has collected fines from 10 companies. The most common violation was not having a stormwater permit, Sharp said.

The major thrust of the current program is to target facilities that do not have a permit. At the moment, the program is targeting auto salvage and scrap metal facilities, as well as construction sites, Sharp said.

Information compiled by the auto salvage and scrap metal industries indicates that they have the worst track records in terms of water quality. As a result, officials are focusing on these industries to make sure they have a permit and that they are complying with their permit requirements, he said.

Region VI officials do not anticipate sending more letters to non-filers until this summer, Sharp explained. At that time, officials will likely focus on non-filers in New Mexico and other states in the region. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

BJ86040

Stormwater Permit Manual

Bulletin

Volume 6, Number 6

December 1996

EPA Abandons Plan To Permit Construction Firms, Developers 'Supplemental' Phase II Rule Appears To Be on Track for September 1997 Release

The U.S. Environmental Protection Agency's (EPA) controversial plan to radically change the permit application process for stormwater discharges from construction activities was abandoned as a result of talks with members of an agency advisory committee on urban wet weather flows (UWWF).

EPA had suggested that all construction firms and developers obtain stormwater permits every five years—much like industrial dischargers—instead of permitting runoff from construction activities on a site-by-site basis (see *Bulletin*, November 1996, p. 3). This approach was an attempt to eliminate the distinction between large and small construction sites. Currently only discharges from construction sites greater than five acres are required to have permits.

In the latest draft of a document that ultimately will be used as a proposed rule for phase II stormwater

discharges, EPA returned to the traditional site-specific approach to construction permits, but lowered the permitting threshold from five acres to one-half acre. That means all construction sites larger than one-half acre that are not part of a larger plan of development eventually would have to be covered by a National Pollutant Discharge Elimination System (NPDES) stormwater permit.

This change in approach responds to complaints that EPA's earlier plan to permit individual construction contractors would have been unworkable and that it would be impossible to administer a construction permitting program without a *de minimis* exclusion of some sort. The revised phase II document excludes a specific exemption for homeowners, but EPA anticipates that most homeowners would benefit from the one-half acre *de minimis* exclusion.

(Continued on page 4)

State Officials Fine Tune Strategies For Clean Water Act Reauthorization

The National Governors Association (NGA) has tabled further discussion of Clean Water Act (CWA) reauthorization—including changes to the stormwater permitting program—until a federal advisory committee concludes its work on upcoming requirements for phase II stormwater sources.

Rather than proposing draft legislation, NGA officials plan to meet with CWA stakeholders before Congress convenes in January in an effort to reach a compromise on strategies for reauthorizing the act. Efforts to rewrite the nation's 24-year-old water law have failed for several years running. NGA officials hope to avoid "the divisive rhetoric that drove stakeholders apart in the Clean Water Act debate last year" by meeting with interested parties from all sides of the debate, including state and local officials as well as agricultural and environmental groups.

"We think that's a step in the right direction," said Robbin Marks of the Natural Resources Defense Council (NRDC). NRDC officials were concerned that NGA was "putting the finishing touches on a bill to be intro-

(Continued on page 2)

Inside This Issue ...

GM Assessed Civil Penalty for Stormwater Violations	3
Multi-sector Permit Status Report	4
Q&A on EPA's Policy on Using Water Quality-based Effluent Limits in Stormwater Permits	Tab 700

CWA

(Continued from page 1)

duced in the 105th Congress" that resembled HR 961. That bill, which was approved by the House last May but failed in the Senate, was known to environmentalists as the "Dirty Water Bill," Marks said.

HR 961 would have redefined stormwater as a "non-point source" and would have replaced the existing stormwater permitting program with a more flexible stormwater management program. NRDC officials would prefer that the current language in the act regarding stormwater permits be retained, Marks said.

Ted Michaels, a senior staff assistant with NGA's Natural Resources Group said the governors support a provision that would give states authority to determine if a permit is needed. Toward that end, NGA officials held a staff meeting in October at which they "kicked around" ideas concerning stormwater permit requirements that could possibly be included in future legislation. However, that meeting did not result in the development of draft legislation to reauthorize the act, Michaels said. Instead, participants produced a document that NGA officials intend to use as a basis for discussions with stakeholders.

The October staff meeting was held "to figure out how best to implement our policy," he said, referring to NGA's policy statement on water resource management. The policy statement, which was approved by the governors during their annual meeting last summer, includes recommendations for revising stormwater permit requirements.

The recommendations call for Congress to pass a bill that:

- allows for site-specific best management practices (BMPs) and appropriate economically and technologically feasible end-of-pipe control technologies;

- gives states direct authority to include certain stormwater discharges—or entire categories of discharges—in their nonpoint source programs, which will result in a stormwater program as stringent as the existing federal permit program;
- allows states to prioritize stormwater control activities based on water quality, cost-effectiveness and other criteria deemed relevant by the state;
- gives states and EPA flexibility to include with stormwater permits only provisions that are appropriate for the management of stormwater; and
- authorizes states and EPA to issue and enforce stormwater permits based on the success of controls and BMPs as an alternative to traditional end-of-pipe numeric limits.

NGA favors a prohibition on numeric effluent limits in municipal stormwater permits for 15 years after reauthorization, according to an NGA discussion document.

"NGA is not prepared to offer any proposal to Congress to introduce as legislation. We are merely at the information sharing stages of learning about and discussing possible solutions," said Tom Curtis, director of NGA's Natural Resources Group. "We believe this kind of inclusive approach to improving the management of our nation's waters is a responsible, pragmatic step toward achieving the goal of the Clean Water Act."

The phase II subcommittee of EPA's federal advisory committee on urban wet weather flows is expected to finalize by year-end a draft supplemental phase II rule. As the result of an NRDC lawsuit, EPA is under a court order to propose a supplemental phase II rule by Sept. 1, 1997, and issue a final rule by March 1, 1999. Phase II covers stormwater discharges from commercial, retail, light industrial and institutional facilities; construction activities under five acres; and municipal separate storm sewer systems serving fewer than 100,000 people. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. Chief Executive Officer, Richard Thompson; President of Publishing Operations, Daphne Musselwhite; Senior Editor, Licia Ponzani; Editors, Daniel L. Whitten and Charlene Kerwin. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Raddiff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Daniel L. Whitten at (202) 739-9534; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1996 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Enforcement

GM Assessed Civil Penalty for Stormwater Violations

General Motors Corp. (GM) probably will appeal a \$62,500 civil penalty stemming from violations of its National Pollutant Discharge Elimination System (NPDES) stormwater permit.

The penalty amount, which was set by a U.S. Environmental Protection Agency (EPA) administrative law judge (ALJ), was half the amount sought by EPA, according to the judge's Nov. 4 decision (*In re General Motors Corp., CPC-Pontiac Fiero Plant*, Docket No. CWA-A-0-011-93). The agency had urged the judge to impose the maximum penalty under the law; GM had argued against any financial assessment.

GM attorney James P. Walle said Nov. 25 that the decision was still under review but that the automaker is likely to appeal the penalty amount.

GM claimed that it was 'being sanctioned for stormwater discharges at a time when hundreds of thousands of other stormwater dischargers went without regulation.'

—Judge Hoya

In June the ALJ sided with EPA Region 5 in a complaint in which the agency alleged that GM had violated the Clean Water Act 92 times between 1989 and 1993 by discharging stormwater that contained excessive amounts of lead, copper and zinc from its Pontiac, Mich., plant (see *Bulletin*, August 1996, p. 5).

At that time, the judge directed EPA and GM to negotiate a penalty amount. After the two parties failed to agree on an appropriate penalty, the judge heard arguments from both sides and made the decision himself.

In his decision, Judge Thomas W. Hoya said the arguments of both sides had merit. EPA had argued that the number and severity of the violations supported the maximum penalty. According to the agency, GM exceeded limits set by its permit on 92 separate occasions over a four-year period.

Many of the violations were substantial—37 of the discharges exceeded permit limits by 100 percent, including three violations in excess of 500 percent—and all violations involved toxic pollutants. EPA also argued that GM waited nine months before addressing the violations and “ultimately took about five years to come into compliance.” EPA also argued that the maximum penalty was appropriate because GM enjoyed an economic benefit by postponing compliance. And, EPA said, if the case had been prosecuted

in a judicial forum, at the rate of \$10,000 for each day of violation, it could have sought a \$920,000 penalty.

GM, on the other hand, argued that it should be assessed no penalty at all, because its liability stemmed solely from violations of its NPDES permit, and, as the company earlier argued in defending EPA's charges, the permit was obtained in error.

GM also claimed that it was “being sanctioned for stormwater discharges at a time when hundreds of thousands of other stormwater dischargers went without regulation.” It further argued that the permit limits were “unduly stringent” when applied to rainfall because it said the exceedances of lead, mercury and zinc in its stormwater runoff were the result of atmospheric deposition of pollutants from rainfall on its property. Finally, GM said the environmental gravity of the violations was overstated by EPA, as demonstrated by the fact that numerous other facilities that do not have stormwater permits were discharging similar pollutants without repercussion from EPA.

Judge Hoya said that GM's argument would have been more compelling if it could have shown that it was being treated differently from other NPDES permittees, rather than from companies that discharge stormwater, but are not covered by NPDES permits. “Such other stormwater dischargers are beside the point when it comes to liability in this case,” Judge Hoya said.

'Its possession of the permit was a result simply of a good faith effort ... to comply.'

—Judge Hoya

“Because this case is an NPDES permit enforcement proceeding, [GM's] claim of treatment different from other stormwater dischargers falls short as a defense to liability. ... But it does merit consideration in determining the amount of the sanction,” he said.

The judge said it may be true that except for the fact that it possessed an NPDES permit, GM would have been left unregulated. “Its possession of the permit, from all that appears from the record, was a result simply of a good faith effort ... to comply with [CWA],” Hoya said.

Although the magnitude of GM's violations demanded a significant penalty, it would be “incongruous” to impose the maximum penalty as requested by EPA, which is the most that could be imposed for the most egregious violations, the judge said. ■

Multi-sector Permit Status Report

Of the nearly 40,000 companies presently covered by U.S. Environmental Protection Agency (EPA) general permits for stormwater, fewer than 4,000 are covered under the new multi-sector general permit for industrial activities, according to a staffer at the EPA's NOI Processing Center.

As of Oct. 31, 62,494 facilities had sent in notices of intent (NOI) to be covered by one of the agency's three general permits. About a third of those were rejected; mostly because of missing information such as signatures or dates, said Jon Klaff, a research assistant at the center. At last count, 15,481 active permit holders were covered by the baseline industrial general permit, 19,758 by the construction general permit and 3,799 by the multi-sector general permit, he said.

NOI forms also were rejected because applicants failed to include standard industrial classification (SIC) codes, he said. Klaff recommended that applicants who do not know their SIC codes should call their regional stormwater contacts. Also, applicants can call the Region 6 stormwater hotline ((800) 245-6510) even if they are not in that region, Klaff said.

Another common problem is that applicants for the multi-sector permit fail to include zip codes, latitude-longitude quadrants, or quarter section township ranges. Two out of the three must be provided on the NOI, Klaff said. Applicants who don't know their latitude-longitude coordinates can obtain them if they have Internet access from the U.S. Census Bureau at <http://census.gov/cgi-bin/gazetteer>, he said. Multi-sector permit applicants also must answer questions regarding land disturbing activities, historic preservation and endangered species that may be affected by stormwater runoff. NOIs have been rejected because applicants fail to answer these questions, Klaff said. ■

Phase II

(Continued from page 1)

Under the new proposal, EPA and states authorized to run the NPDES program would have to issue new general permits for construction activities. To avoid duplication of requirements, compliance with a qualifying local sediment and erosion control program would be considered compliance with a general permit, according to the latest version of the phase II concept document.

The expanded provision would allow the permitting authority to approve programs not covered by a municipal stormwater NPDES permit. EPA proposed this provision in response to comments from the phase II advisory subcommittee requesting broad authority to allow equivalent municipal or state programs to be recognized under the general permit.

In a Nov. 15 memo to the members of the UWWF phase II subcommittee outlining revisions to EPA's

earlier proposal, phase II matrix manager George Utting said the agency has attempted to "synthesize and meld together salient features" of ideas generated by the subcommittee in recent meetings and conference calls. Provisions for industrial and commercial sources also have been revised, according to Utting's memo.

For example, the document states that certain industrial/commercial sources will be required to obtain a permit similar to a phase I permit because they have a high potential for exposure to stormwater. It appears that two broad categories of facilities have been identified thus far for inclusion under the phase I "look alike" provisions. The first includes facilities engaged in maintenance, fueling, cleaning and rehabilitation of heavy industrial vehicles such as bulldozers, concrete mixers, dredging machinery, cranes and pavers. The second category would include facilities engaged in maintenance, fueling, equipment cleaning and rehabilitation of school buses, according to the revised document.

EPA is continuing to look at other phase II industrial and commercial sources, to determine what sources should be included in the rule, according to Utting, who also noted that the phase II concept document is still far from final. Comments from the UWWF committee and the phase II subcommittee are due by mid-December. EPA expects to submit the rule for Office of Management and Budget review in May 1997 and to issue a proposed rule in September 1997. ■

Calendar of Events

State Stormwater Series. The National Stormwater Center will hold a workshop on stormwater permit compliance for dischargers in Kentucky. The workshop, which is scheduled for Dec. 18 in Frankfort, Ky., will include an overview of the National Pollutant Discharge Elimination System (NPDES) stormwater program; a review of the permitting process; discussions of stormwater pollution prevention plan development and maintenance; employee training; sample collection and other related topics. Cost: \$395, including course materials. Call: (407) 288-6852.

Clean Water Institute. Government Institutes will hold a course on Clean Water Act (CWA) requirements and compliance strategies, including compliance with NPDES stormwater permitting regulations, Jan. 28-31, 1997, in Orlando, Fla. Cost: \$1,599. Call: (301) 921-2345 or fax to (301) 921-0373.

Federal Facility Compliance Institute. This Government Institutes course slated for Feb. 3-7, 1997, in Orlando, Fla., will provide intensive training for federal facility employees and contractors on all aspects of environmental compliance, including CWA requirements under the NPDES permitting program. Cost: \$1,899. Call: (301) 921-2345 or fax to (301) 921-0373. ■

Stormwater Permit Manual

Bulletin

Volume 6, Number 3

September 1996

Point Source Trades Could Save Millions in Pollution Control Costs

Effluent trading among point source dischargers could result in pollution control cost savings of up to \$1.9 billion per year, according to an analysis of the economic benefits and costs of watershed-based effluent trading prepared for President Clinton's Clean Water Initiative.

Cost savings are a big draw for participation in any pollutant trading program, and effluent trading is no exception, according to the U.S. Environmental Protection Agency's (EPA's) draft framework for watershed-based trading (see *Bulletin*, July 1996, p. 2). Dischargers are more likely to be interested in buying or selling water quality improvements if the transaction will reduce the costs of meeting regulatory requirements. Trading also will be welcome if it allows a facility to expand, or to locate a new source when it would not otherwise have been possible.

In effluent trading, buyers benefit by purchasing pollutant reduction credits from other facilities that are less expensive than the cost of actually reducing their own pollutants. Sellers, on the other hand,

benefit from income received for reducing pollutant loads below what is required of their facilities. When considering a trading opportunity, each source must decide whether it is more cost-effective to reduce pollutants in their own discharges or to purchase reduction credits achieved by other sources. Cost-effectiveness of load reductions generally is described in terms of "cost per mass unit" of pollutants reduced, such as dollars per pound.

According to EPA, there are several methods for determining if a particular trading opportunity will be a financial boon to trading partners. For example, to determine if dischargers might be interested in trading, stakeholders in a given watershed should estimate the unit load reduction cost for each potential trader. The greater the range of unit costs among traders, the more likely the trade will be economically beneficial.

Another useful indicator is the magnitude of cost savings that trading partners can realize. The amount
(Continued on page 2)

Criminal Environmental Cases Up in 1995; Overall EPA Enforcement Efforts Falling Off

The U.S. Environmental Protection Agency (EPA) referred more criminal enforcement cases to the Department of Justice (DOJ) in fiscal 1995 than ever before, including 91 cases stemming from National Pollutant Discharge Elimination System (NPDES) violations, according to a report from the agency's Office of Enforcement and Compliance Assurance.

The report detailing EPA's enforcement accomplishments for the year shows that 256 criminal cases were referred to DOJ, 562 new criminal investigations were started and \$23 million in penalties for environmental crimes were assessed. EPA said these record numbers reflect efforts to target the worst polluters first, part of its "common-sense approach to increasing compliance ... by taking aggressive actions against flagrant polluters while providing assistance for those businesses that seek to comply."

The number of NPDES criminal cases referred in 1995 was second only to cases related to violations of the Resource Conservation and Recovery Act.

(Continued on page 3)

Inside This Issue ...

EPA Issues Final MS4 Policy	3
New Jersey Will Offer SWP3 Guidance	3
Polluted Stormwater Prompts Beach Closings	3
New Index to the Stormwater Permit Manual	Index Tab

Effluent Trading

(Continued from page 1)

of pollution reduction that can be traded among dischargers, along with information on unit costs, can be used to compute the total cost savings available from trading, according to the framework document.

If unit load reduction estimates are not easily determined, stakeholders should look for the following characteristics among potential traders that may indicate whether cost savings will be high. Potential traders should:

- be numerous;
- treat varying amounts of effluent;
- use different technologies to treat effluent (including older treatment equipment); and
- treat effluent to different degrees.

The more variation in these criteria among a particular group of traders, the greater the opportunity for mutual benefit, according to the EPA framework.

Cost savings are more likely to occur when the incremental costs of reducing pollution differ from source to source. Differences in incremental costs among point sources might arise for several reasons. For example, average pollution control costs tend to fall as volumes of effluent increase. Economies of scale exist where some point sources discharge larger amounts of effluent than others. This opportunity also is available to a single plant engaged in intra-plant trading where there are outfalls that discharge varying amounts of effluent.

In addition, cost-effectiveness of pollution control tends to diminish as the level of control becomes more stringent, or where more sophisticated—and thus more expensive—technologies are needed. In some cases, it might be more expensive to reduce effluent concentrations for a pollutant from 2 mg/l to

1 mg/l, than to reduce the concentration from 20 mg/l to 2 mg/l, according to the framework.

Point sources in any given watershed are likely to differ widely in the level of treatment they have achieved. Even though all point source dischargers operate under the same regulatory system, differences in technology-based requirements among different industries might result in different concentrations of various pollutants. In addition, the age of the various facilities engaged in trading will result in variation among their relative pollutant loadings.

Transaction costs also can affect the decision to trade. Transaction costs result from the process of identifying trading partners, negotiating a trade, and obtaining regulatory approval for a trade. To reduce transaction costs, companies can rely on a government entity or other third-party, such as a clearinghouse or facilitator. However, because point source dischargers already are regulated under the National Pollutant Discharge Elimination System (NPDES), industries may opt for a more market-like approach to trading that avoids additional exposure to government beyond the NPDES permitting process.

Because most point sources are for-profit ventures, a facility's interest in trading might depend not only on the net cost savings, but also on the relative importance of the savings compared to its overall operating costs. "If the benefits of trading outweigh associated costs, but returns on investment in trading have little overall impact on a discharger's total operating costs, the discharger might choose to devote its limited resources to endeavors that promise greater returns," EPA said in the framework document.

Further, trading programs are likely to be most successful when they include a range of industries or when neutral parties broker the trades, because companies involved in the same line of business may be hesitant to share information with their competitors. For more information on the framework document, call EPA's Deborah Nagle at (202) 260-2656. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Senior Editor, Licia Ponzani; Contributing Editor, Kimberly C. Cushner. Annual subscription rate is \$398. Periodicals Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen, Tricker and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longsworth, Esq., Collier, Shannon, Rill & Scott; Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Licia Ponzani at (202) 739-9559; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1996 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Issues Final MS4 Policy. The U.S. Environmental Protection Agency (EPA) officially announced its new policy regarding application requirements for renewal or reissuance of National Pollutant Discharge Elimination System permits for municipal separate storm sewer systems (MS4s). The interpretative policy memorandum, signed by Assistant Administrator for Water Robert Perciasepe May 17, was published in the *Federal Register* in the form of a federal policy statement on Aug. 9 (61 FR 41698) (For a detailed look at the new policy, see the *Bulletin*, July 1996, p. 1).

New Jersey Will Offer SWP3 Guidance. The New Jersey Department of Environmental Protection's (DEP's) Bureau of Stormwater Permitting is in the process of developing three guidance documents to help permittees create stormwater pollution prevention plans (SWP3s). The guidance documents will be geared toward individual permittees, and facilities that discharge under the state's scrap metal general permit and concrete general permit.

The documents will provide information on forming and training a pollution prevention team, conducting site assessments, developing best management practices (BMPs) and controls, and setting up and maintaining a schedule for implementing BMPs. According to DEP, permittees who complete the worksheets included with the guidance will be in compliance with the state's SWP3 requirements. DEP expects to issue the guidance documents by year end. For information, call DEP at (609) 633-7021.

Polluted Stormwater Prompts Beach Closings. Disease-carrying organisms, primarily from stormwater runoff and sewage overflows, prompted 3,522 beach closings and advisories across the nation last year, up 50 percent from 1994's figures, according to an annual survey by the Natural Resources De-

fense Council (NRDC) covering 32 coastal and Great Lakes states and U.S. territories.

For the first time, NRDC listed the names of popular tourist destinations that fail to regularly monitor beach water and notify the public regarding the presence of pathogens that can cause rashes, infections and other health effects. Among the top offenders were Santa Barbara, Calif.; Miami; Mississippi's Gulf Coast; North Carolina's Outer Banks; Puerto Rico's entire coast line; and Myrtle Beach, S.C.

The report found that the primary sources of pollution in 1995 were sewage overflows (842 closings); stormwater runoff (823); sewage treatment plant malfunctions (236); and polluted runoff (143). The increase in closings was due in part to heavy rains in Florida and California that flushed pollutants into coastal waters, NRDC said. The report is available via the Internet at <http://www.nrdc.org>.

Separately, a May 1996 epidemiological study by the Santa Monica Bay Restoration Project in California found that people who swam near stormwater drains in the bay were almost 50 percent more likely to experience illnesses than those who swam farther away from the outlets.

SOCMA Offers NPDES Compliance Tool. The Synthetic Organic Chemical Manufacturers Association (SOCMA) is offering a compliance tool designed to help the chemical industry develop effective stormwater pollution prevention plans. *SOCMA's Model Storm Water Pollution Prevention Plan* was created by the association's industry-staffed Water Committee. The document will help dischargers identify potential sources of pollution and identify appropriate practices and controls to reduce pollutants, SOCMA said. For more information, contact SOCMA's Ed Armstrong at (202) 414-4163. ■

Enforcement

(Continued from page 1)

EPA also referred 35 civil NPDES cases to DOJ and issued 17 administrative penalty orders under the program. Forty-nine criminal cases and 24 civil cases—all related to NPDES violations—were concluded in fiscal 1995, the report said. In addition, 191 administrative penalty orders and 825 compliance orders were concluded, it said.

Although enforcement figures for NPDES violations were higher in most cases than for other environmental programs, overall enforcement under the program was significantly lower than in fiscal 1994, according to an EPA press release. For example, EPA conducted 2,075 NPDES inspections in 1995 compared to 2,397 in 1994, a 13.4 percent decrease. Administrative

penalty order complaints for all CWA violations fell 25 percent from 284 in fiscal 1994 to 212 in fiscal 1995, and new civil referrals for CWA dropped 43 percent from 86 in 1994 to 49 in the last fiscal year. This trend appears to be continuing in fiscal 1996: only nine CWA civil referrals were initiated in the first half of the current fiscal year, EPA said.

Enforcement numbers for the first half of fiscal 1996 have been uniformly low, showing the effects of the federal government shutdown, EPA said. EPA lodged 28 administrative penalty orders under CWA, and concluded 28 final orders in the first half of the year. Only 217 CWA administrative compliance orders were issued during the period, EPA said. ■

Calendar of Events

State Stormwater Series. The National Stormwater Center (NSC) will hold a series of workshops on state-specific stormwater permit compliance with the aid of state regulators and stormwater program managers. The workshops will include an overview of the National Pollutant Discharge Elimination System (NPDES) stormwater program, a review of the permitting process, and discussions of stormwater pollution prevention plan (SWP3) development and other topics. Cost: \$395, including course materials. Call: (407) 288-6852. The workshops are slated for Sept. 11 in Madison, Wis.; Sept. 18 in Jackson, Miss.; Sept. 25 in Atlanta; Oct. 9 in Des Moines, Iowa; Oct. 16 in Carson City, Nev.; Oct. 28 and Nov. 25 in Stuart, Fla.; Nov. 12 in Sacramento, Calif.; Nov. 14 in San Diego; Dec. 4 in Montgomery, Ala.; and Dec. 18 in Frankfort, Ky.

Water Quality Standards Academy. EPA's Water Quality Standards Academy basic course, slated for Sept. 16-20 in Baltimore, will cover all aspects of the water quality standards and criteria programs, including designated uses; use attainability analyses; principles of toxicology; risk assessment; criteria development; ecological risk assessment; anti-degradation policy requirements; and more. The course is free of charge. Call: Kate Belmont, The Cadmus Group Inc. at (703) 931-8708.

WEFTEC '96. The Water Environment Federation (WEF) will hold its 69th annual conference and exposition in Dallas Oct. 5-9. Over 75 technical sessions will cover topics such as ecological risk assessment, facility privatization, remediation and environmental regulations. Over 650 exhibitors are

expected. Call: (800) 666-0206 or (703) 684-2452; or e-mail confinfo@wef.org.

Stormwater Discharge Regulations. This course scheduled for Oct. 15-16 in Alexandria, Va., will cover legal requirements and objectives of stormwater permits, requirements for SWP3s, a case study including options for materials handling, transfer and storage activities, and how to coordinate SWP3s with other facility compliance programs. Sponsored by Government Institutes. Cost: \$949. Call: (301) 921-2345 or fax to (301) 921-0373.

WEF Short Courses. WEF will hold five courses related to water quality on the following dates: Oct. 22-25 in Los Angeles; Nov. 11-14 in Salt Lake City; and Dec. 3-6 in Denver. Courses cover: flow measurement, chemical and biological nutrient removal, negotiating an NPDES permit, implementing the Part 503 biosolids regulation, pretreatment regulatory compliance, and optimizing clarifier performance. Call: (800) 666-0206 or (703) 684-2452 or e-mail confinfo@wef.org.

Clean Water Compliance Institute. This course, to be held Oct. 29-Nov. 1, in Breckenridge, Colo., will include an overview of the NPDES permit program, including technology- and water quality-based effluent limits; NPDES permit applications and procedures; how to develop, challenge and appeal permits; recordkeeping, monitoring and enforcement; nonpoint sources and stormwater controls; and current and future priorities for EPA's regulatory program. Sponsored by Government Institutes. Cost: \$1,599. Call: (301) 921-2345 or fax to (301) 921-0373. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

BJ86040

Stormwater Permit Manual

Bulletin

Volume 6, Number 2

August 1996

Dischargers Are Responsible for Airborne Pollutants in Runoff

General Motors Seeks Appeals Board Review of EPA Administrative Law Judge Ruling

General Motors Corp. (GM) July 11 filed a request for review of an administrative ruling on whether stormwater discharges from a closed GM plant in Pontiac, Mich., violated the Clean Water Act (CWA).

In a June 28 ruling, U.S. Environmental Protection Agency (EPA) Administrative Law Judge (ALJ) Thomas Hoya upheld an EPA complaint that claimed the automaker violated CWA 92 times between 1989 and 1993 (*In re General Motors Corp., CPC-Pontiac Fiero Plant*, Docket No. CWA-A-0-011-93).

The March 1, 1993, complaint and an amended complaint issued Nov. 10, 1993, by EPA Region 5 in Chicago, charged GM with discharging stormwater that contained excessive levels of lead, copper and zinc. The amount of these metals present in GM's stormwater discharges exceeded limits set under the company's National Pollutant Discharge Elimination System (NPDES) stormwater permit, the complaints

said. The permit was issued by the Michigan Department of Natural Resources in 1988.

GM in 1993 denied the charges and appealed the complaints, arguing that the lead, copper and zinc were caused by acid rain, and therefore should not be considered "pollutants" under CWA. According to GM, the metals did not occur at the plant as the result of an industrial process. Instead, the metallic content of local rainfall caused deposits of lead, copper and zinc on the Pontiac property. In addition, the acidic quality of the rain also caused metals to leach from building surfaces on its property, and thus into stormwater discharges leaving the property.

In documents submitted to the ALJ, GM stated that "EPA's actions and words over the past 20 years of regulatory history have indicated that it does not view either ambient contaminated rainfall or the

(Continued on page 4)

California Waives Sampling, Planning Requirements Until New Permit Is Issued

California's State Water Resources Control Board (SWRCB) said July 2 it would postpone the Aug. 1 deadline for submitting group monitoring plans for the 1996-1997 monitoring year while regulators continue to work on the state's new industrial general stormwater permit.

In addition, all dischargers subject to the industrial general permit are excused from conducting sampling and analysis until the new permit is adopted or SWRCB provides further guidance on future monitoring requirements. Dischargers will have to continue to comply with all other aspects of the current permit, SWRCB Executive Director Walt Pettit said in a letter to group monitoring participants.

California's current permit is set to expire Nov. 19. It was the first NPDES stormwater general permit issued by a state, and took effect 10 months earlier than EPA's general permits. The state expects to adopt a revised

(Continued on page 2)

Inside This Issue ...

Know Your Options: Use Caution When Faced with a CWA Citizen Suit	3
Supreme Court Lets Stand Ruling on Water Quality Standards	5
TRI Expansion Won't Affect Stormwater Permittees	5
New Index of Stormwater Permit Manual Newsletter Articles	Index Tab

California

(Continued from page 1)

general permit this fall. "If the SWRCB does not adopt a new general permit this year, I will provide a reasonable time period to submit [group monitoring plans] under the existing ... requirements," Pettit said.

California's stormwater program is somewhat unique in that industries with "sufficiently similar" facilities may request permission from the state to join monitoring groups. Approved monitoring groups generally are required to provide sampling data from only 20 percent of the facilities in the group. Monitoring groups also must submit group monitoring plans to SWRCB and the appropriate regional agency by Aug. 1 of each year.

At a February meeting between SWRCB staff and group monitoring participants, the board heard recommendations from permittees on how existing group monitoring requirements could be improved and modified.

A number of group members have questioned the utility of sampling and many favor increased reliance on best management practices and specific physical stormwater controls in lieu of sampling and monitoring requirements (see *Bulletin*, March 1996, page 1). The board said it is considering including suggested improvements in the upcoming permit.

According to Pettit, most permittees said they wanted a written SWRCB policy on 1996-1997 group monitoring requirements, particularly if the agency was contemplating modifying the requirements with the new five-year general permit. Group participants were concerned about having to expend the resources to develop and implement a 1996-1997 monitoring plan under the existing permit and then having to revise their plans to meet changed re-

quirements in the new general permit, Pettit said in the letter.

"Therefore, to avoid the confusion of complying with two different permits, we are postponing the deadline for submission of [plans] until after the new general permit is adopted," he said. In the letter, Pettit assured group members that dischargers also would have an "appropriate and reasonable" time period under a new permit to revise their stormwater pollution prevention plans.

For more information about California's upcoming general permit, call SWRCB's Leo Cosentini at (916) 657-1009 or Bruce Fujimoto at (916) 657-0908. ■

Documents, Data Available From SWRCB Internet Site

Information on the California State Water Resources Control Board (SWRCB), its members and its programs, can now be accessed via the Internet.

The SWRCB home page includes a mission statement, an introduction to board members, names and addresses of regional board offices, access to public information files, access to recent bulletins and announcements, and links to other related resources.

Examples of documents available at the site are the *California Stormwater Best Management Practice Handbook*; the board's watershed management initiative summary; various application forms and information on fees; board meeting minutes; information on nonpoint sources; proposed statewide water plans; and SWRCB policies, plans and standards.

The SWRCB home page can be accessed at <http://www.swrcb.ca.gov>. To send comments or suggestions, e-mail webmaster@swrcb.ca.gov. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Senior Editor, Licia Ponzani; Contributing Editor, Kimberly C. Cushner. Annual subscription rate is \$398. Periodicals Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen, Tricker and Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Licia Ponzani at (202) 739-9559; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1996 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Dischargers Facing Citizen Suits Should Know Their Options

Companies facing a potential citizen suit for alleged stormwater violations have several options available that could preclude the lawsuit from being filed, or minimize the costs of alleged violations if the lawsuit is filed, according to William Funderburk Jr., an attorney with Radcliff, Frandsen, Tricker and Dongell in Los Angeles.

To date, a number of third-party suits have been filed under Section 505 of the Clean Water Act (CWA) in an attempt by citizen groups to enforce federal and state water quality standards through civil litigation. According to Funderburk, the number of citizen suits filed against companies for stormwater violations is likely to increase as states adopt final stormwater permit programs and issue discharge permits.

Under CWA, citizen groups intending to file a civil action against a company must provide the company with notice of their intent to sue 60 days in advance of filing any actions in federal court. In the notice, the citizen group must provide the company with a list of alleged violations.

The notice must be sent to the U.S. Environmental Protection Agency (EPA) and the appropriate state agency. The notice affords EPA and the state agency time to investigate the alleged violations and an opportunity to file an administrative, civil or criminal complaint if warranted. If EPA or the state agency chooses to file charges against the company for a particular violation, the citizen group may be preempted under CWA from filing suit for the same offense.

In addition, the 60-day "grace period" affords the company an opportunity to evaluate its options before deciding how to respond. Companies faced with a citizen suit should proceed with caution and weigh all of their alternatives before deciding to counter sue the citizen group, according to Funderburk, who has defended a number of actions by environmental groups against California industrial dischargers.

Companies involved in negotiations with a citizen group over alleged violations should try to work with the group in a reasonable and cooperative manner, Funderburk said. The goal of early negotiations with the citizen group is to find out what the group expects to achieve by filing the lawsuit, he said. By knowing what the group is seeking, companies will be in a better position to approach the lawsuit and defend their companies' actions, he said.

By working with the citizen group, the company also may be able to determine ways to correct all alleged violations before the 60-day notice period ends, Funderburk said. In a 1987 precedent-setting case, the U.S. Supreme Court ruled that a citizen lawsuit could

not be filed against an industrial discharger that corrected all alleged violations before the citizen suit was filed (*Gwaltney v. Chesapeake Bay Foundation* (484 U.S. 49, 108 S. Ct. 376, 98 L. Ed. 2d 306 (1987))). In the ruling, the Supreme Court authorized the filing of citizen suits only in cases where the citizen group can allege "a state of either continuous or intermittent violation," and not in cases where the alleged violations occurred "wholly in the past." Violations that occurred "wholly in the past" can be enforced only by the government, the high court said.

In addition to obtaining legal advice, companies faced with a third-party lawsuit should consider retaining the services of a registered professional engineer, according to Timothy Simpson, vice president and principal engineer with Geomatrix Consultants Inc. in Newport Beach, Calif.

According to Simpson, an engineer can assist a company in establishing a defense against certain alleged violations. For example, in a case where it is alleged that a facility has failed to file a notice of intent or prepare other required documents, and the facility intends to use the *Gwaltney* defense, an engineer can suggest compliance strategies and prepare the necessary paperwork before the 60-day notice period ends, he said. In addition, the engineer can assist a facility to evaluate best management practices and to establish procedures for the installation of structural improvements, he said.

Once such steps are taken, the engineer can certify that the facility is in compliance with stormwater permit requirements, including the applicable provisions of Sections 301 and 302 of CWA, which require the control of discharges using best available technology and best conventional pollutant control technology, said Simpson, whose company has advised facilities in similar circumstances.

In addition to the *Gwaltney* defense, companies may use a little known CWA provision—the citizen suit bar—if the state or EPA has taken certain actions, said Funderburk. CWA Section 309 preempts citizen suits if: 1) a state is "diligently prosecuting" an action under a "comparable state law"; 2) EPA is "diligently prosecuting" an action under Section 309; or 3) either EPA or the state has "issued a final order" and the "violator has paid a penalty" assessed under Section 309 or a comparable state law.

In many cases, companies may prefer dealing with a government agency, as opposed to a citizen group, when attempting to negotiate fair and reasonable settlements, Funderburk said. Unfortunately, the citizen bar defense puts companies in the unusual position of pleading with EPA or the state to sue them during the 60-day notice period, he said. Funderburk

(Continued on page 6)

General Motors

(Continued from page 1)

effects of acid rain on ubiquitous building materials as CWA 'pollutants.' ... Previously, EPA explicitly has concluded that metals from these same sources are not pollutants discharged from a point source." In addition, GM argued that EPA said in crafting the stormwater application rule that NPDES permit requirements apply to stormwater discharges from plant areas that are no longer in use only if significant materials remain and are exposed to stormwater.

The company also challenged the validity of its own state stormwater permit. First, GM claimed that the company and state regulators "were mutually mistaken" about the appropriate levels for lead, copper and zinc. Second, GM said the permit was invalid due to the 1987 amendments to CWA: that is, after GM applied for the state permit in 1984 but before the permit was issued in 1988, Congress added Section 402(p) to CWA, which states that EPA "shall not require a permit ... for discharges composed entirely of stormwater."

Finally, the company argued that over half of the 92 violations listed in EPA's complaints occurred after the permit expired in 1990, and therefore should not be included in the complaints.

In his June 28 ruling, Judge Hoya found that EPA correctly interpreted the meaning of "pollutant" under CWA, and that GM was indeed responsible for the presence of excessive levels of the three metals in its stormwater runoff. Regardless of their origins, the pollutants were "added" to navigable waters by way of GM's discharges, Hoya said.

He also found that GM's challenges to the validity of its Michigan NPDES permit could not be reviewed as part of a federal enforcement action. Permit review falls under state authority, but GM never appealed the permit to a state tribunal, Hoya said.

In its motion for review before the EPA Environmental Appeals Board, GM seeks a ruling on two points: 1) whether copper, lead and zinc from rain falling onto its property or leaching as a result of acid rain interacting with buildings on the site are pollutants within the meaning of CWA; and 2) whether GM can challenge an NPDES permit in the context of a federally initiated enforcement action.

The ruling is important because atmospheric deposition—deposits of airborne pollutants on the ground or building surfaces—generally is considered to be beyond the control of the discharger on whose property the pollutants collect. Nevertheless, several courts have held that facilities are responsible for the quality of discharge leaving their properties, regardless of the source of the pollutants on the property (see *Bulletin*, June 1995, p. 3).

GM plans to raise the issue of airborne pollutants at future meetings of the Urban Wet Weather Flows federal advisory committee, according to GM Attorney James P. Walle. "We don't have to talk about the GM case, but we should address the issues raised by the case," he said.

A related issue that has received ample attention during advisory committee meetings is the controversial no-exposure exemption. The committee has considered proposals to allow phase I facilities to opt-out of getting permits if they can show that their industrial activities and materials are kept within a permanent enclosed structure with a roof, and thus have "no-exposure" to rainfall. But in the GM case, the exposed roof was actually a source of pollutants, Walle said. "What effect, if any, does this opinion have on a no-exposure provision?" he asked.

Walle also raised the question of how the GM ruling fits with the so-called "permit shield" defense. According to a 1994 EPA policy statement, a permit provides a shield against enforcement against pollutants "resulting from facility processes, waste streams and operations that have been clearly identified in the permit application process" including:

- 1) pollutants specifically limited in the permit;
- 2) pollutants for which the permit authority has not set limits, but which are identified as present in facility discharges; and
- 3) "pollutants not identified as present but which are constituents of wastestreams, operations or processes that were clearly identified during the permit application process."

In light of the GM case and with particular emphasis on the third category of pollutants protected by the permit shield, Walle posed these questions:

"If you don't identify a particular chemical or parameter that happens to dissolve off your building because of acid rain—and in fact the permit doesn't regulate you for that because you didn't identify it in your permit application—are you protected? I think not. But I'd like to see what EPA has to say about that," Walle said.

"Another question that comes up is what about the 'pollutants' that fall onto your property and are thereby discharged. The GM case held that you are responsible for whatever you discharged, regardless of what falls from the sky," he said.

In its original complaint, EPA proposed a civil penalty of \$125,000 for the permit violations. The judge ordered EPA and GM to negotiate an appropriate penalty amount by July 31. If the two are unable to reach an agreement, the decision rests with Hoya, although both sides will have the ability to appeal his ruling, Walle said. ■

Storm Warnings

Stormwater-Related News in Capsule Format

Supreme Court Lets Stand Ruling on Water Quality Standards. The U.S. Supreme Court June 24 refused to review a case regarding whether citizen suits can be used to enforce state water quality standards included in Clean Water Act (CWA) discharge permits (*Portland v. Northwest Environmental Advocates*, No. 95-1732).

The city of Portland, Ore., in April asked the high court to review a ruling by the U.S. Court of Appeals for the Ninth Circuit that found narrative water quality standards are permit conditions, and thus are enforceable through citizen suits filed under CWA.

The Ninth Circuit originally had found in favor of Portland, ruling that water quality standards in the city's stormwater discharge permit were not enforceable in the suit brought by a group of conservationists. In that ruling, the court said that only numeric limitations—and not narrative limits—were enforceable through citizen suits.

But the court reversed this decision following a U.S. Supreme Court opinion in *Public Utility District No. 1 of Jefferson County v. Washington DEC* (114 S. Ct. 1900, 38 ERC 1593 (1994)), which said the state Department of Ecology could use broad water quality standards such as minimum stream flow requirements in setting permit certification conditions for a hydroelectric facility.

EPA Proposes To Study Stormwater Discharges. The U.S. Environmental Protection Agency (EPA) July 3 announced a proposed plan for developing new and revised effluent guidelines used in regulating industrial discharges to surface waters and publicly owned treatment works. In the proposed rule, EPA said it will begin three preliminary studies this year and that one of the subjects under consideration for a preliminary study is stormwater discharges (61 FR 35041).

The agency uses preliminary studies to determine whether and to what extent particular industries or other categories of discharger are discharging toxic and nonconventional pollutants. Results of the studies are used by EPA to determine which industry categories are in need of new or revised effluent guidelines. The studies typically take two years to complete.

In the proposed rule, EPA said it is considering whether development of additional technical information and guidance on characterizing stormwater discharges is needed and whether an evaluation of the efficacy of existing methods of stormwater control would be helpful for facilities with stormwater discharge permits. EPA may conduct a study to explore what kinds of documentation would be most

helpful to facilities with stormwater discharges. For example, the agency could develop a compilation of municipal stormwater control techniques appropriate for specific situations, along with cost models and cost-effectiveness analyses.

Other industries under consideration for preliminary studies this year are: hospitals; ore mining and dressing; glass manufacturing; coal mines; feedlots; can making; organic chemicals, plastics and synthetic fibers; and pulp, paper and paperboard. Studies already are underway for photographic processing and chemical formulators and packagers. Studies have been completed for petroleum refining, metal finishing, textile mills, inorganic chemicals, steam electric power generating, and iron and steel manufacturing. For more information, contact EPA's Eric Strassler at (202) 260-7150. Comments on the proposed rule were due Aug. 2.

TRI Expansion Won't Affect Stormwater Permittees. Two recent actions resulting in expansions to the toxic release inventory (TRI) list under the Emergency Planning and Community Right-to-Know Act (EPCRA) will not affect requirements under National Pollutant Discharge Elimination System (NPDES) stormwater permits.

An April 30 federal court ruling added 286 chemicals to the TRI list of reportable substances (*Chemical Manufacturers Association v. Browner*, No. 95-1673, D.D.C.). The chemicals were to have been added under a 1994 final rule, but enforcement was blocked by industry lawsuits. Separately, EPA proposed June 27 to expand the annual TRI reporting requirements of EPCRA Section 313 to seven additional industry groups representing approximately 6,400 facilities (61 FR 33588).

EPA's baseline industrial general permit includes special requirements and controls for stormwater discharges associated with industrial activity from facilities subject to reporting requirements under Section 313 for chemicals classified as Section 313 water priority chemicals.

However, in its June 27 proposed rule, EPA said, "These NPDES stormwater permit requirements are based on the coverage of EPCRA Section 313 at the time the permits were issued. The NPDES requirements do not apply to industries or chemicals that are added to the EPCRA Section 313 list until the time of permit renewal ... and may not apply in subsequent permits, depending on the agency's decisions at the time those permits are issued." EPA's industrial general permit is set to expire Oct. 1, 1997. For more information on requirements for Section 313 facilities,

(Continued on page 6)

Calendar of Events

Water Quality Standards and Trace Metals Workshops. The U.S. Environmental Protection Agency (EPA) will present a multi-region meeting on water quality standards and criteria Aug. 26-28, and a trace metals workshop Aug. 29 in Burlington, Vt. The first part of the program will include information and technical assistance on the agency's water quality standards and criteria programs and provide a forum for views on policy and technical and scientific information. The trace metals workshop will address requirements and techniques for determining trace metals at EPA ambient water quality criteria levels. The workshop will focus on sampling and analysis techniques, data review and quality assurance measures. Both sessions are free of charge. Call: Liz Hiatt, Tetra Tech Inc. at (703) 385-6000.

State Stormwater Series. The National Stormwater Center (NSC) will hold a series of workshops on state-specific stormwater permit compliance. NSC Director John Whitescarver will conduct the workshops with the aid of state regulators and stormwater program managers. The workshops will include an overview of the National Pollutant Discharge Elimination System (NPDES) stormwater program, a review of the permitting process, and discussions of stormwater pollution prevention plan development and maintenance, employee training, sample collection and other related topics. Cost: \$395, including course materials. Call: (407) 288-6852. The workshops are slated for Sept. 11 in Madison, Wis.; Sept. 18 in Jackson, Miss.; Sept. 25 in Atlanta; Oct. 9 in Des Moines, Iowa; Oct. 16 in Carson City, Nev.; Oct. 28 and Nov. 25 in Stuart, Fla.; Nov. 12 in Sacramento, Calif.; Nov. 14 in San Diego; Dec. 4 in Montgomery, Ala.; and Dec. 18 in Frankfort, Ky.

Water Quality Standards Academy. EPA's Water Quality Standards Academy basic course, slated for Sept. 16-20 in Baltimore, will cover all aspects of the water quality standards and criteria programs, including designated uses; use attainability analyses; principles of toxicology; risk assessment; criteria development; human health, aquatic, sediment and biological criteria; ecological risk assessment; antidegradation policy requirements; variances; economic considerations; mixing zones; and more. The course is free of charge. Call: Kate Belmont, The Cadmus Group Inc. at (703) 931-8708.

WEFTEC '96. The Water Environment Federation (WEF) will hold its 69th annual conference and exposition in Dallas Oct. 5-9. Over 75 technical sessions will cover topics such as ecological risk assessment, facility privatization, remediation and environmental regulations. Over 650 exhibitors are expected. Call: (800) 666-0206 or (703) 684-2452; e-mail confinfo@wef.org; or visit WEF on the Internet at <http://www.wef.org>. ■

Citizen Suits

(Continued from page 3)

cautioned companies choosing this position, because case law varies in each state as to what is considered "diligent," a "comparable state law" and a penalty. Thus, companies electing to use this highly creative, but often effective, defense must thoroughly analyze the consequences before choosing it, he said.

Finally, Funderburk advised companies to "do their homework" by researching the group that is filing the lawsuit. It is important for companies to find out in the early stages of negotiation how the citizen group has settled similar suits in the past, Funderburk said. Finding out how the group has settled other cases may be the key to minimizing the costs of alleged violations or precluding the lawsuit from being filed in the first place, he said. ■

Stormwarnings

(Continued from page 5)

see ¶542 and ¶544 of the *Stormwater Permit Manual*. For a list of water priority chemicals, see Appendix 3C of the *Manual*. For more information on the proposed TRI rule, call EPA's Tim Crawford at (202) 260-1715 or Brian Symmes at (202) 260-9121.

Environmental Indicators Project Proposals Sought. The Water Environment Research Foundation (WERF) is seeking proposals for research demonstration projects to help assess aquatic health impacts of various stormwater management practices and programs. The research, funded in part by EPA, will address the ability of traditional stormwater monitoring programs to describe conditions in receiving waters, evaluate the integrity of aquatic communities, and assess improvement in stream systems as a result of stormwater management programs.

Over the last 20 years, many municipalities and industrial facilities have developed stormwater management programs and invested significant resources toward monitoring stormwater impacts and the effectiveness of management controls, WERF said in announcing the project. The research will focus on specific demonstration projects to test the application of environmental indicators in stormwater management programs. WERF is a not-for-profit affiliate of the Water Environment Federation. The deadline for proposals is Sept. 30. For more information, call WERF at (703) 684-2470.

Proceedings Available. Proceedings from the June interactive conference, Watershed '96: Moving Ahead Together, are available from the Water Environment Federation (WEF). The 1,165-page overview contains more than 440 papers. Cost: \$95 for WEF members; \$150 for nonmembers. Call: (800) 666-0206. ■

Stormwater Permit Manual

Bulletin

Volume 5, Number 12

June 1996

Draft Interim Policy Promotes Stormwater Controls, Monitoring

The U.S. Environmental Protection Agency (EPA) recommends using best management practices (BMPs) instead of numeric water-quality based effluent limits in stormwater permits, according to a May 3 draft of an interim permitting strategy for regulating industrial and municipal discharges.

The interim approach calls for BMPs in first-round stormwater permits, and expanded or better-tailored BMPs in subsequent permits, according to a draft policy document from EPA's Office of Water. In a draft question and answer document explaining the interim policy, EPA said if BMPs alone are demonstrated to provide adequate water quality protection, additional controls are not necessary. However, in cases where data exist to develop more specific requirements for meeting water quality standards, those requirements would be incorporated into permits, the policy states.

The policy would apply to stormwater discharges associated with industrial activity and discharges from municipal separate storm sewer systems (MS4s).

It would not apply to industrial stormwater discharges regulated under an effluent limitation guideline for which technology-based numeric effluent limits already have been derived. EPA in March circulated a draft policy document saying that numeric effluent limits are not appropriate for MS4 permits (see *Bulletin*, April 1996, p. 1).

The policy evolved in response to questions about whether effluent limits—numeric or otherwise—are suitable for National Pollutant Discharge Elimination System (NPDES) stormwater permits, and whether numeric limits can be enforced. "Due to the nature of stormwater discharges, and the typical lack of information necessary to develop numeric effluent limits, EPA recommends an interim permitting approach be used for NPDES stormwater permits," the policy states.

"There has been a lot of anxiety over this because EPA has not spoken about water-quality based effluent standards," said John Whitescarver, president

(Continued on page 4)

Pick Your Part Consent Decree May Set New Standard for Auto Dismantlers

A March 26 consent decree between an environmental group and an automotive dismantling firm sets higher standards for stormwater runoff mitigation and may be cause for alarm for other industrial stormwater dischargers in California, according to William Funderburk Jr., an attorney with Radcliff, Frandsen, Tricker and Dongell in San Francisco.

According to Funderburk, the consent decree between San Francisco BayKeeper and Pick Your Part Auto Wrecking Inc.'s Hayward, Calif., facility is the first federal court-approved agreement between an industrial discharger and an environmental organization. The agreement is troubling because it may become the new standard for all dischargers in the state, said Funderburk, who has defended a number of actions by environmental groups against California industrial dischargers.

The consent decree settles allegations by BayKeeper that Pick Your Part's stormwater discharges to nearby wetlands and the San Francisco Bay

(Continued on page 6)

Inside This Issue ...

New England Dewatering Permit Covers Stormwater Discharges	2
NPDES States Must Allow Citizen Suits Under §402 Final Rule	3
Reinventing EPA: Flexibility, Efficiency Are Agency's Main Goals	5
Portland Seeks Supreme Court Review of Stormwater Decision	7

New England Dewatering Permit Covers Stormwater Discharges

A new general permit covering discharges from construction dewatering activities in New England will also allow for the release of groundwater and stormwater, according to a U.S. Environmental Protection Agency (EPA) Region 1 official.

The permit was issued May 1 under the National Pollutant Discharge Elimination System (NPDES) permitting program as authorized by the Clean Water Act (CWA) (61 FR 19284).

The general permit is available to owners and operators of facilities discharging effluent from construction dewatering sites in Massachusetts, Maine and New Hampshire. The permit also allows for the discharge of groundwater and stormwater to waters of those states, according to Suproakash Sarker of the Office of Ecosystem Protection in EPA's Region 1 office in Boston.

Sarker said the permit was not intended specifically for stormwater discharges. Instead, it anticipates that rainwater runoff may occur during dewatering activities and mix with dewatering effluent, he said.

The new permit is not designed for stormwater discharges from construction sites that disturb more than five acres of land. Those sites are covered under EPA's baseline general permit for construction activities and are regulated under phase I of EPA's NPDES stormwater program. Dewatering associated with the construction of single family homes does not require a permit, Sarker said.

Dewatering is the process of removing and discharging excess water from a construction site, such as pumping water out of excavated areas, sediment basins or sediment traps. Dewatering also refers to methods used to lower the groundwater table to stabilize an area prior to construction. Dewatering discharges typically have a high sediment content.

EPA is authorized to issue general permits under 40 CFR §122.28 to categories of point source discharges located within the same geographic area whose permits warrant similar pollutant control measures. The agency may issue a general permit if there are a number of point sources that:

- involve the same or similar types of operations;
- discharge the same types of wastes;
- require the same effluent limitations or operating conditions;
- require similar monitoring requirements; and
- are more aptly controlled under a general permit than under individual permits.

EPA said the permit will enable facilities to maintain compliance with CWA and will extend environmental and regulatory controls to a large number of discharges while reducing some permit backlog.

Coverage under the new permit is limited to discharges to specific types of water bodies in the three states. In Maine, discharges are confined to Class B, C, SB and SC waters of the state, except lakes. In Massachusetts, discharges are limited to Class B and SB waters as designated in the state water quality standards. Discharges into Class A waters in Massachusetts must be reviewed and approved by the Massachusetts Department of Environmental Protection. In New Hampshire, all discharges are restricted based on the state water quality standards.

The permit sets effluent limits for flow, total suspended solids, oil and grease, and pH. Permittees are required to retain discharge monitoring reports and other monitoring records for three years after sampling, except for information concerning stormwater discharges, which must be retained for six years. For information, call Suproakash Sarker at (617) 565-4878. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Senior Editor, Licia Ponzani; Contributing Editor, Kimberly C. Cushner. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Frandsen, Tricker & Dongell; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longsworth, Esq., Collier, Shannon, Rill & Scott; Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Licia Ponzani at (202) 739-9559; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1996 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

NPDES States Must Allow Citizen Suits Under §402 Final Rule

States that administer the National Pollutant Discharge Elimination System (NPDES) program in lieu of the federal permit program must provide an opportunity for judicial review in state court of final NPDES permit decisions, under a May 8 final rule from the U.S. Environmental Protection Agency (EPA) (61 FR 20972).

The rule amends the minimum requirements for federally authorized state permitting programs under Section 402 of the Clean Water Act (CWA). The judicial review requirement applies to all permit decisions, including approvals and denials, EPA said. States must give citizens the same opportunity for judicial review as is available for federally-issued NPDES permits, EPA said. States that narrowly restrict the class of persons who may challenge state-issued permits will not meet the new standard and risk losing federal program authorization, according to the rule.

The final rule takes effect June 7. States will have one year from the effective date to revise their permit programs and, if necessary, up to two years to amend or enact statutes to meet the requirement, EPA said. Additional states seeking authorization to operate the NPDES program will have to show compliance with the requirement as part of their applications. The new rule does not apply to Indian tribes; EPA said it will decide at a later time whether the rule should be extended to tribes.

The purpose of the new rule is to ensure equity by establishing a minimum level of public participation among state water pollution control programs. "When citizens have the opportunity to challenge executive agency decisions in court, their ability to influence permitting decisions through other required elements of public participation, such as public comments and public hearings on proposed permits is enhanced," EPA said. "State officials will inevitably spend less time considering and responding to the comments of parties who have no standing to sue, but will be more attentive to the comments of parties who can challenge the administrative decision in court," EPA said.

The final rule differs slightly from the proposed rule in one respect. The proposed rule would have required states to provide "any interested person an opportunity for judicial review in state court" (60 FR 14588, March 17, 1995) (see *Bulletin*, April 1995, p. 4). That language was based on section 509(b)(1) of CWA, which gives "any interested person" the power to seek judicial review of an EPA NPDES permit.

Several states commenting on the proposed rule complained that the proposed language was too rigid because a state might provide for meaningful public participation in the administrative process even

though it does not precisely meet the "any interested person" test described in the proposed rule.

As a result, EPA adopted a more flexible test that is tied directly to the mandate of CWA section 101(e). Thus, the final rule requires that states provide "an opportunity for judicial review in state court of the final approval or denial of permits by the state that is sufficient to provide for, encourage and assist public participation in the permitting process."

The citizen suit rule was proposed after EPA learned of cases in which citizens were barred from challenging state-issued permits because of restrictive standing requirements in state law. The original regulations setting minimum requirements for state section 402 permit programs did not explicitly address this problem, EPA said.

In 1993, a coalition of environmental groups filed petitions asking that EPA withdraw approval of Virginia's section 402 permit program, citing a limitation on citizen standing among other alleged deficiencies. In particular, they alleged that recent changes to Virginia law had significantly narrowed the public's opportunity to challenge state-issued section 402 permits.

Virginia's Water Control Law authorizes only an "owner aggrieved" to challenge permits in court (VA Code 62.1-44.29). In April, Virginia lawmakers approved a bill that would amend judicial review options under the Water Control Law. EPA said it is assessing the impact of the new measure, which is not yet in effect.

Some commenters said the rule unfairly singles out Virginia, claiming that EPA wanted simply to avoid having to decide on a petition to withdraw Virginia's NPDES authorization. But in issuing the final rule, EPA said that it knows of several other states with restrictive standing laws for judicial review. Several states that commented on the proposal indicated they would have to revise their current program regulations in response to the rule, EPA said.

For more information, contact EPA's Robert Klepp at (202) 260-5805. ■

Product Information Sought

If you have a product or service announcement of potential interest to our readers, please send it to Licia Ponzani, *Stormwater Permit Manual*, Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006; e-mail STRM@thompson.com or fax to (202) 739-9578.

Effluent Limits

(Continued from page 1)

of the National Stormwater Center in Washington. "We all know what the rules say—that the standards apply to all NPDES permits. But with this policy, EPA has done a good job of explaining the fact that the standards cannot be derived properly to be put into stormwater permits," Whitescarver said.

The interim permitting approach would apply to EPA only, although the agency said it would encourage NPDES states to adopt similar policies for state stormwater permits. But Whitescarver said he believes the policy would prevent NPDES-delegated states from enforcing numeric effluent limits in their existing permits. "EPA has never really pushed it, and this removes the threat of enforcement by states," he said.

The policy clarifies that EPA is aware of the lack of information to justify numeric limits in stormwater permits, and calls for a monitoring program to be used to gather additional data, which could be used to establish non-numeric limits in the form of BMPs.

Monitoring Procedures

To aid in gathering more information about stormwater discharges, permits should include some combination of monitoring procedures, such as ambient monitoring, receiving water assessment or discharge monitoring, the draft policy notes. According to the draft, the frequency and types of monitoring needed will vary depending on individual circumstances.

Monitoring is typically performed for two reasons: to identify and characterize stormwater contaminants found in industrial runoff, and to assess whether stormwater controls implemented under a pollution prevention plan are reducing the contaminants. This often involves end-of-pipe chemical-specific monitoring, EPA said.

Physical v. Chemical

Although EPA has defined a methodology for deriving numeric water-quality based effluent limits, that policy is really designed for continuous wastewater discharges at low flow conditions, not for intermittent wet weather discharges during high flow conditions, EPA said. "Low flow and continuous flow are two things you don't have in storm events," Whitescarver said. "For those two reasons, numeric effluent limits don't belong in stormwater permits," he said.

In some cases, the water quality impacts of stormwater discharges may be more closely related to physical effects—like stream bank erosion, streambed scouring, extreme temperature variations or sedi-

ment—than to the chemical pollutants present in the discharge, EPA said. However, the agency admitted that it is difficult and expensive to accurately measure the effects of specific BMPs or the overall effect of a complex stormwater control plan on the achievement of specific water quality standards.

"This issue of high velocity flows that cause erosion is of great interest," Whitescarver said. "In the policy, EPA talks a lot about the physical problems that can occur with episodic storm events. How do you fix that? How do you prevent high velocity flows from causing sediment discharges? Normally you have to use structural controls." Whitescarver said he sees EPA's thinking on water quality standards moving away from chemical constituents and toward physical constituents, "and by that I mean erosion, layering of sediment, scouring and the like."

Research Programs

The agency said it is working now with the Water Environment Research Foundation and the American Society of Civil Engineers to determine which BMPs are most effective under different circumstances. "The results of this research will provide permitting authorities and permittees with information about how to evaluate the effectiveness of different kinds of BMPs in different circumstances, and to select the most appropriate controls to achieve water quality objectives," EPA said.

In addition, EPA is sponsoring research by the Watershed Management Institute and other organizations over the next two to four years that will examine how well different BMPs protect receiving water quality.

What Lies Ahead

As Whitescarver pointed out, EPA is calling its new policy an "interim approach" to permitting. "That means there's another one coming, a final policy, and that could be something very different," he said. A final policy would take years to develop, he said. "EPA would need to develop the methodology, collect the data, and do the engineering to figure out what it all means. Clearly this is four or five years down the road," he said.

The draft policy stressed that the Clean Water Act does not require EPA to subject industrial and municipal permittees to numeric water-quality based effluent limits to attain water quality standards. EPA said it has interpreted the statute to allow BMPs in lieu of numeric standards. *NRDC v. Costle* held that EPA did not have to establish numeric effluent limits if the limits were not feasible (568 F.2d 1369 (D.C. Cir. 1977)). Further, although there is no formal guidance on the subject, EPA has defended use of BMPs as a substitute for numeric limits in other litigation involving stormwater discharges. ■

Reinventing EPA: Flexibility, Efficiency Are Agency's Main Goals

The U.S. Environmental Protection Agency (EPA) hopes to issue by September a number of proposed rules related to the National Pollutant Discharge Elimination System (NPDES) permitting program, according to the agency's semiannual regulatory agenda issued May 13.

The latest agenda continues to focus on the agency's attempts to reduce, streamline and "reinvent" environmental regulations, and water quality programs are no exception. (See the newly-revised Tab 700 of the *Manual* for information on EPA's long-term regulatory strategy.)

According to the agenda, a proposed rule to streamline the NPDES program due out in July could cut the number of requirements now on the books that are related to stormwater discharges, but would not have a substantive affect on permittees. Slated for release in September are a proposal to modify regulations governing how EPA reviews state permits, a proposal to revise NPDES Form 2C, and a proposed rule to clarify the definition of "waters of the United States."

Streamlining NPDES

Taken together, these proposed actions are intended to promote flexibility and efficiency in the regulatory process by deleting redundant regulations, clarifying confusing requirements and streamlining complex procedures that do not contribute to environmental quality. For example, the proposed NPDES streamlining rule will include revisions that consolidate regulatory definitions, delete obsolete stormwater group application requirements, and streamline permit termination procedures.

The proposal to revise Form 2C—the form used to collect data on wastewater discharges from manufacturing, commercial, mining and forestry operations—will reflect statutory and regulatory changes since 1984, when the form was last revised.

This proposed rule also will take into account new scientific methods and the increased emphasis on toxic control, according to the agenda. The proposed revisions are part of an effort to consolidate application forms and information requirements for industry and to streamline the permit application process, the agenda states. Although the revisions will focus on minimizing the need for information from small businesses and lessening duplicative reporting for some permittees, it actually may increase the burden on other permittees not previously required to submit certain types of information, the agenda states.

EPA and the Department of the Army will jointly propose a rule in September to clarify two aspects of the regulatory definition of "waters of the United States" under the Clean Water Act (CWA). First, the

proposal would clarify CWA jurisdiction over isolated waters and wetlands. Second, the agencies are proposing to clarify that five specific categories of artificial waters created out of dry land are not considered to be waters of the United States and, therefore, are not subject to permit requirements.

A final rule establishing test procedures for the analysis of oil and grease for purposes of monitoring required by CWA is scheduled for October publication. The proposed rule was issued Jan. 23.

Long-term Actions

The agency expects to issue a proposal for comprehensive phase II stormwater regulations by September 1997. That action will expand on the agency's August 1995 phase II stormwater rule, which requires all stormwater dischargers not currently covered by the permitting program to apply for permits by 2001.

A proposed rule that would revise and streamline the water quality planning and management regulations may be published by February 1997, according to the agenda. That rule would require states to submit data on total maximum daily loads (TMDL) to EPA every five years instead of every two years, reflecting EPA's goal to provide a comprehensive accounting of state waters every five years. The TMDL process provides a framework for resolving point and nonpoint source pollution problems in an integrated fashion, EPA said.

Finally, a proposed rulemaking on revisions to water quality standards regulations is scheduled for March 1997 release. EPA plans to review all components of the current program with an eye to providing more flexibility for states and strengthening the standards program as a key element of its growing emphasis on a watershed-based management approach. Targeted for review and possible revisions are: use classifications; numeric and narrative criteria; the anti-degradation policy; and optional policies such as mixing zones and variances. An advance notice of proposed rulemaking on this issue is expected in September. ■

News on the Web

Thompson Publishing Group's new Internet Web site has sample news articles and other content from the *Stormwater Permit Manual* and 47 other publications. Visit the Web page and let us know what features you would like to see added. A form for sending the editor e-mail is posted on the Web page. You can also review other TPG business and regulatory publications, which you can receive at a discount if you reference the Web site when placing your order. The Web address for Thompson's home page is <http://www.thompson.com>.

California

(Continued from page 1)

contained pollutants in excess of effluent limits set by its National Pollutant Discharge Elimination System stormwater permit. The company also violated stormwater reporting and monitoring requirements and illegally performed dredge and fill activities without a permit, BayKeeper alleged.

Under terms of the settlement agreement, Pick Your Part agreed to provide BayKeeper with quarterly stormwater monitoring reports, including dry and wet weather observations, stormwater samples during rain events and summaries of progress made in performing other activities agreed to in the consent decree. It also agreed to pay \$1,000 per day to the San Francisco Bay Citizen Action Fund if it fails to meet the requirements set forth in the decree. These stipulations will remain in effect until Jan. 31, 1997, the agreement states.

The company also agreed to donate \$50,000 to BayKeeper's Rose Foundation, which creates programs to help others clean up around the San Francisco Bay, and to pay \$61,000 to the San Francisco BayKeeper Legal Fund, the consent agreement states.

The company further agreed to: eliminate all nonstormwater discharges from its facility; fulfill the long-term pollution control measures in its existing pollution prevention plan; and remove all autos, parts, debris, tires, contaminated soil, tanks, drums and other equipment from the areas bordering its facility.

Pick Your Part's settlement with BayKeeper may affect companies currently in compliance with the state's industrial general stormwater permit because regulators may measure all dischargers against the new standard set by Pick Your Part, Funderburk said.

The settlement also may create an impossible compliance burden for other dismantling firms by creating a "regulatory compliance barrier for competition," Funderburk said. The settlement is very "open-ended" because it requires stormwater sampling after every storm event, which could cost between \$20,000 and \$30,000 a year, he said. In the long run, the sampling costs alone could "dwarf the settlement fee Pick Your Part paid to BayKeeper," Funderburk said.

Pick Your Part's attorney Chuck Reed of Reed, Elliot, Creech and Roth in San Jose, Calif., said the company agreed to settle with BayKeeper because "they were already planning to do what BayKeeper wanted." The firm had submitted a conditional use permit to renovate the site before BayKeeper filed the suit, he said. Pick Your Part planned to pave the site, construct a 22,000 square foot building and install drainage and water treatment systems—at a cost of over \$100,000.

BayKeeper was unaware that Pick Your Part had submitted the conditional use permit, Reed said. The

complaint was filed more to "object the historical conditions of the site" rather than comment on the company's business practices, he said. Pick Your Part has owned the Hayward site for about 10 years. Previously, the site had been used for automotive dismantling and by the city as a landfill, he said. Pick Your Part was aware of the contamination at the site and was attempting to clean up the site to make it more attractive to customers, Reed said.

The sampling agreed to by Pick Your Part would occur only after rain events when "flow" was involved, which would at most cost \$10,000, Reed said. The extra sampling costs will be minimal when compared with the costs of structural improvements Pick Your Part was making at the facility, he said.

According to Reed, state regulators probably will look at the consent decree as the "new" measure for industrial dischargers because Pick Your Part "is proving that new methods can and should be used" to deal with stormwater discharges.

Other BayKeeper Suits

In other California news, BayKeeper and Arc Ecology March 5 expanded a suit against the U.S. Naval Station Treasure Island to include charges that the Navy discharged diesel fuel and other pollutants from 59 stormwater outfalls. The complaint alleges that the Navy contaminated stormwater through groundwater flows from leaking underground storage tank plumes, surface flows across the contaminated site and tidal flows into storm drains, according to Daniel Cooper, attorney for BayKeeper.

Public affairs officer Ken McNeill said the Navy is working with the U.S. Environmental Protection Agency to clean up the island. The Navy intends to shut down operations at the island in September 1997, but will remain as caretaker until all environmental cleanup is completed, which is estimated to be by 2001, McNeill said. Christine Shirley, an environmental analyst with Arc Ecology, said the group's biggest gripe is that the Navy has "not asked for enough money to clean up the site."

The Treasure Island lawsuit is the latest effort in the groups' Campaign Against Military Pollution. The groups also have sued the Navy for environmental problems at the former Hunters Point Naval Shipyard and are "active in the cleanup issues" at Alameda Naval Air Station, Point Molate Naval Fuel Depot and Mare Island Naval Station. In a separate action involving Hunters Point, BayKeeper and Arc Ecology recently sued Astoria Metal Corp. for allegedly violating the monitoring and reporting requirements of its stormwater permit, failing to monitor prescribed pollutants in the permit and failing to submit monitoring results to the regional water quality control board. A settlement currently is still under negotiation, Shirley said. ■

Storm Warnings

Stormwater-Related News in Capsule Format

Portland Seeks Supreme Court Review of Stormwater Decision. Portland, Ore., April 22 asked the U.S. Supreme Court to decide whether citizen suits can be used to enforce state water quality standards included in the city's stormwater permit (*Portland v. Northwest Environmental Advocates*, US SupCt, No. 95-1732).

The city asked the high court to review a federal appeals court ruling that narrative water quality standards are permit conditions, and thus are enforceable through citizen suits filed under the Clean Water Act (CWA) (*Northwest Environmental Advocates v. Portland*, 56 F.3d 979, U.S. App. LEXIS 13761 (June 7, 1995)) (see *Bulletin*, August 1995, p. 4).

Hidden Message? The 1996 omnibus budget bill signed by President Clinton April 26 included \$6.5 billion in funding for the U.S. Environmental Protection Agency (EPA), an increase over the \$5.7 billion funding level in the EPA appropriations bill vetoed by the president in December 1995. The budget bill also included a message to EPA about the stormwater permitting program. Buried in the middle of the bill, and squeezed in among funding provisions for the safe drinking water state revolving fund and grants for wastewater treatment facility improvements, is the following statement:

"The conferees understand the agency has convened a federal advisory committee to address water pollution issues related to wet weather. The conferees believe the EPA should take advantage of the many stakeholders concerned about stormwater at the table and use this opportunity to see if these participants can reach consensus on a simplified, environmentally protective, workable, cost-effective stormwater program for municipalities regardless of population and all entities whether or not they are already covered under the phase I NPDES program" (*Congressional Record* H4035, April 25, 1996).

Los Angeles County Settles Stormwater Suit. Los Angeles County agreed to settle a two-year-old lawsuit brought by the Natural Resources Defense Council (NRDC) that alleged violations of the county's stormwater permit. The county board of supervisors voted unanimously April 30 to develop a stormwater monitoring program that will identify the types and sources of pollutants flowing from county storm drains and flood control channels into Santa Monica Bay.

In addition, the county agreed to spend up to \$629,000 to study stormwater pollution impacts in the bay and to pay NRDC \$312,500 in legal fees and up to \$40,000 for technical oversight work to be provided by NRDC experts.

The settlement also stipulates that Los Angeles must: develop a stormwater implementation manual; implement stormwater best management practices; educate county staff and private contractors about stormwater requirements; adopt pollution prevention measures at specified private and county construction projects; inspect commercial and industrial facilities in unincorporated areas for required stormwater control measures; and prepare a database of industrial facilities that may be subject to federal and regional stormwater laws. The improvements may cost as much as \$1.2 million, the county said.

EPA Issues Penalty Policy for Small Businesses. EPA will reduce or waive penalties for small businesses that make good faith efforts to correct environmental violations, under the agency's May 23 final policy on compliance incentives for small businesses.

The policy applies to violations under most environmental statutes, including the Clean Water Act. It will not apply in cases when public health or the environment are seriously threatened, or when the violation involves criminal conduct, EPA said. The final policy applies to companies with 100 or fewer employees.

Facilities can demonstrate good faith in two ways: either by conducting a self- or third-party compliance audit and promptly disclosing and correcting the violations; or by getting onsite compliance assistance from a state, federal or other government-sponsored compliance assistance program. If the small business uses a confidential compliance assistance program, it may get penalty relief by promptly disclosing the violations to the appropriate agency, EPA said.

Under an interim compliance incentive policy issued last June, businesses were eligible for penalty relief only if they sought government-sponsored compliance assistance to help identify and correct environmental violations. EPA in the final policy extended the "good faith" demonstration to self-audits, after receiving public comments from trade associations, states and federal regulators.

"Now a small business can undertake a private compliance audit, disclose and correct violations, and avoid penalties entirely," said Steve Herman, EPA assistant administrator for enforcement and compliance assurance.

For the policy to apply, the violation must be a first time, non-criminal violation that does not pose a significant threat to public health, safety or the environment. If the violation is corrected within 180 days—or 360 days using pollution prevention—EPA

(Continued on page 8)

Calendar of Events

State Stormwater Series. The National Stormwater Center (NSC) will hold the first in a series of workshops on state-specific stormwater permit compliance in Columbus, Ohio, June 26. NSC Director John Whitescarver will conduct the workshop with the aid of Robert E. Phelps, P.E., stormwater manager for the Ohio Environmental Protection Agency Division of Surface Water. The workshop will include an overview of the National Pollutant Discharge Elimination System (NPDES) stormwater program; a review of the permitting process; and discussions of stormwater pollution prevention plan development and maintenance, employee training, sample collection and other related topics. Cost: \$395, including course materials. Call: (561) 288-6852.

Other workshops are slated for July 10 in Denver; July 24 in Raleigh, N.C.; Aug. 7 in Albany, N.Y.; Sept. 11 in Madison, Wis.; Sept. 18 in Jackson, Miss.; Sept. 25 in Atlanta; Oct. 9 in Des Moines, Iowa; Oct. 16 in Carson City, Nev.; Oct. 28 and Nov. 25 in Stuart, Fla.; Nov. 12 in Sacramento, Calif.; Nov. 14 in San Diego; Dec. 4 in Montgomery, Ala.; Dec. 18 in Frankfort, Ky.

Clean Water Compliance Institute. This course, to be held July 15-18 in Annapolis, Md., and Oct. 29-Nov. 1, in Breckenridge, Colo., will include an overview of the Clean Water Act and the NPDES permit program, including permit development. It also will cover technology-based effluent limitations; water-quality based limitations; NPDES permit applications and procedures; how to develop, challenge and appeal permits; recordkeeping, monitoring and enforcement; nonpoint sources and stormwater controls; removal, conversion and destruction technologies; and criminal, civil and administrative enforcement. Sponsored

by Government Institutes. Cost: \$1,599. Call: (301) 921-2345 or fax to (301) 921-0373.

Stormwater Discharge Regulations. This course scheduled for Oct. 15-16 in Alexandria, Va., will cover legal requirements and objectives of stormwater permits, requirements for stormwater pollution prevention plans, a case study including options for materials handling, transfer and storage activities, and how to coordinate pollution prevention plans with other facility compliance programs. Sponsored by Government Institutes. Cost: \$949. Call: (301) 921-2345 or fax to (301) 921-0373. ■

Stormwarnings

(Continued from page 7)

will eliminate the entire penalty. If a business meets all the criteria, but takes additional time to correct the violation or, in the rare event that a business obtains a significant economic benefit from the violation, EPA will waive up to 100 percent of the gravity or punitive portion of the penalty, but may seek the amount the company saved through its non-compliance.

This will eliminate any economic advantage that violators have over those companies that do comply with the law, Herman said. Herman also noted that EPA will defer to state enforcement actions that are consistent with the policy, and said the agency continues to encourage states to develop flexible enforcement policies that build on their existing compliance assistance programs.

The policy takes effect June 10 and applies to all pending cases where an agreement on the penalty amount has not been reached, EPA said. For more information, contact EPA's Karin Leff at (202) 564-7068 or David Hindin at (202) 564-6004. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Environmental Compliance Tool Kit\$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report\$349
- Risk Management Program Handbook\$349
- Aboveground Storage Tank Guide.....\$397
- Underground Storage Tank Guide\$279
- Community Right-To-Know Manual\$349
- Guide to Used Oil Regulations\$399
- Ozone Depleter Compliance Guide.....\$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

BJ86040

Stormwater Permit Manual

Bulletin

Volume 5, Number 11

May 1996

Citizen Groups Sue Exxon For Alleged CWA, RCRA Violations

Three citizen groups filed suit against Exxon Corp.'s Baytown, Texas, refinery over allegations that the oil company diverted two billion gallons of untreated process wastewater during the last five years to a discharge point designated strictly for stormwater.

The suit, filed March 14 in federal court in Houston under the Resource Conservation and Recovery Act (RCRA) and Section 505 of the Clean Water Act, seeks to force Exxon to comply with the provisions of its wastewater discharge permit. The action is being brought by Trial Lawyers for Public Justice, Texans United and the citizens of Baytown.

The three groups notified the U.S. Environmental Protection Agency (EPA) and the Texas Natural Resources Conservation Commission (TNRCC) of their intent to sue in December 1995, and filed suit after the agencies failed to address their concerns within 60 days. The groups also are contesting the renewal of Exxon's five-year wastewater discharge permit with TNRCC.

The allegations are "old, untrue and the suit has no merit," Exxon said in a written statement released March 27. The company's handling and treatment of wastewater and stormwater are governed by detailed permit requirements, the company said. "During the last two years, there have been three wastewater inspections by state and federal environmental agencies. There were no violations which resulted from these inspections," Exxon said.

The suit alleges that Exxon has an inadequate collection system that combines and diverts contaminated process wastewater and stormwater runoff to a discharge point authorized only for stormwater runoff. The groups claim that the discharged process wastewater contains pollutants such as benzene, total suspended solids and phenol. According to Texans United Executive Director Rick Abraham, "We hope this suit will force Exxon to take the necessary steps to correct its wastewater treatment system and prevent future illegal discharges to our public waters."

(Continued on page 4)

Appeals Court: Zero Discharge Not Applicable When Permit Is Unavailable

A federal appeals court on April 1 reversed a lower court order that permanently barred a Georgia real estate developer from discharging stormwater runoff from a 19-acre residential housing development.

The appeals court held that the zero discharge standard for stormwater runoff does not apply when "compliance with the standard is factually impossible" (*Hughey v. JMS Development Corp.*, 94-8402, 94-88655 (11th Cir.)).

The Clean Water Act (CWA) specifically prohibits the discharge of pollutants without a National Pollutant Discharge Elimination System (NPDES) permit. However, "this zero discharge standard presupposes the availability of an NPDES permit, allowing for the discharge of pollutants under the conditions set forth in the permit," the court said.

The court also found that the zero discharge standard does not apply when the discharger was in good-faith compliance with local pollution control

(Continued on page 2)

Inside This Issue ...

EPA Proposes Approval of Louisiana's Permit Program 3

GAO Issues Two Reports on Water Permitting Issues 3

Activity-specific Best Management Practices Detailed Tab 600

Maine, Massachusetts, New Hampshire and Tennessee Updated Tab 800

Zero Discharge

(Continued from page 1)

requirements that substantially mirrored the proposed NPDES discharge standards, and the discharges were minimal. "The law does not compel the doing of impossibilities," the court said.

In August 1992, homeowner Terence Hughey sued JMS Development Corp. under the citizen suit provision of CWA, alleging that JMS had violated the act by discharging stormwater from a point source without first obtaining a permit. Hughey alleged that JMS' activities caused two watercourses to become muddied during rainfall events: a small stream originating on JMS property, and the Yellow River into which the stream empties. Hughey owns land abutting the Yellow River.

Hughey alleged that JMS' discharges were made "in association with industrial activity," which includes construction, according to U.S. Environmental Protection Agency (EPA) regulations. Because the developer's clearing, grading and grubbing activities were considered "industrial," Hughey contended that JMS was required to have an NPDES permit. In the absence of a permit, Hughey argued, JMS was subject to the zero discharge standard.

The U.S. District Court for the Northern District of Georgia in August 1992 issued a temporary restraining order prohibiting JMS from discharging stormwater without a permit from its Gwinnett County, Ga., development property, and in November of that year the court found that JMS was potentially liable under CWA for its stormwater discharges.

JMS conceded that rain water had run off its property and that it did not possess an NPDES permit. However, the company was able to show that no such permit was available from either EPA or Georgia at the time the property was under development and that it had obtained every permit that was available prior to initiating construction. EPA finalized its

stormwater general permits in September 1992, but Georgia did not issue its industrial and construction general permits until June 1993 and July 1995, respectively.

In addition, JMS had spent over \$30,000 installing sedimentation control devices, including silt fences, check dams, vegetation, sloping and a sedimentation retention basin, at the request of Gwinnett County officials. The erosion and sedimentation control measures used by JMS met or exceeded the county's requirements.

Nevertheless, in December 1993, the court found that JMS had indeed discharged stormwater without a permit on 14 separate dates in 1992, and that the violations—although minimal—were ongoing. The court subsequently issued a permanent order prohibiting JMS from discharging stormwater without a permit and required JMS to pay \$8,500 in civil penalties and over \$115,000 in attorney fees to Hughey.

In appealing the ruling, JMS argued that the general ban on discharging stormwater, which in effect was an order to "obey the law," violated the standard of specificity required by rules of civil procedure. JMS also contended that it should not be punished for failing to secure a permit when no permit was available, and objected to the award of attorney fees and costs.

The appeals court found that once JMS began the development, compliance with the zero discharge standard became impossible. "This was not a case of a manufacturing facility that could abate the discharge of pollutants by ceasing operations," the appeals court said. "Nor did the discharger come to court with unclean hands: JMS made every good-faith effort to comply with CWA and all other relevant pollution control standards."

"Practically speaking, rain water will run downhill, and not even a law passed by the Congress of the United States can stop that," the court said. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Senior Editor, Licia Ponzani; Contributing Editor, Kimberly C. Cushner. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Licia Ponzani at (202) 739-9559; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1996 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Federal Advisory Committee Meetings Scheduled.

The urban wet weather flows (UWWF) federal advisory committee will meet May 31 to continue discussions on monitoring, watershed framework, stormwater effluent limitations, no exposure, physical impacts and water quality standards in a wet weather context, according to a U.S. Environmental Protection Agency (EPA) announcement. The UWWF phase II subcommittee will meet May 29 to talk about stormwater phase II implementation. A joint meeting of the two bodies will be held May 30 to address issues that affect both phase I and phase II, and the timing associated with the rulemaking for phase II.

The phase II subcommittee is also scheduled to meet June 13-14 in Alexandria, Va., and Aug. 5-6 in Washington, D.C. Contact EPA's Sharie Centilla at (202) 260-6052 or e-mail centilla.sharie@epamail.epa.gov. The UWWF sanitary sewer overflows subcommittee will meet July 8-9 in Arlington, Va. Contact Charles Vanderlyn at (202) 260-7277 or vanderlyn.charles@epamail.epa.gov. The UWWF committee will meet Aug. 1-2 in Washington, D.C., and Sept. 26-27 in Alexandria, Va. Contact William Hall at (202) 260-1458 or hall.william@epamail.epa.gov. All meetings are open to the public.

EPA Proposes Louisiana Delegation. EPA on April 5 proposed to approve Louisiana's request to operate the Louisiana Pollutant Discharge Elimination System (LPDES) program under Section 402 of the Clean Water Act, in lieu of the National Pollutant Discharge Elimination System (NPDES) program in its state (61 FR 15261). Currently, EPA administers the NPDES program, including stormwater permitting, in Louisiana.

Louisiana's LPDES program would cover all discharges of pollutants subject to the federal program—including stormwater—but would not regulate the disposal of sewage sludge. Currently, 41 states and U.S. territories are authorized to administer the NPDES program in their states, but only 39 states have general permitting authority for stormwater. A public meeting on the Louisiana proposal was slated for May 9 in Baton Rouge. Written comments may be submitted until May 20 to Ellen Caldwell (6WQ-O), Water Quality Protection Division, EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202.

GAO Report Compares State, Federal Permitting Criteria. The General Accounting Office (GAO) report, *Differences Among the States in Issuing Permits Limiting the Discharge of Pollutants* (GAO/RCED-96-42), compares water quality standards and permitting criteria in states where EPA is the permitting authority to states that administer their own permitting

programs. The report determines whether differences exist in how states and EPA control pollutants under the discharge permits they issue, according to a report summary from GAO. It also identifies the causes of any differences and provides information on EPA's oversight of state water quality standards and policies.

A second GAO report, released in March, includes an analysis of EPA compliance data for fiscal years 1992-1994 that shows how often major facilities violated their NPDES discharge permits. For fiscal year 1994, for example, about one in six of the nation's 7,053 major regulated facilities "significantly violated" permit discharge limits according to the report, *Many Violations Have Not Received Appropriate Enforcement Attention* (GAO/RCED-96-23). However, EPA believes that the actual number of major violations may be nearly twice as high as the compliance data suggest, the report states. To order a GAO report, call (202) 512-6000 or fax a request to (301) 258-4066.

WEF Launches World Wide Web Home Page. The Water Environment Federation (WEF) launched a home page on the world wide web at <http://www.wef.org>. The new site will provide water quality data and information on the federation's programs, activities and services. Users may search for technical resources, register for conferences, sign up for committees and locate other professionals, products and companies. The site also will allow users to join technical discussion groups on topics such as biosolids management, collection systems and plant operations. The site is best viewed using Netscape 2.0 or higher, WEF said.

Stormwater Control Measures Proposed for Superfund Site. EPA proposed a plan for dealing with contaminated groundwater at the McColl national priorities list site in Fullerton, Calif., that calls for redirecting stormwater to drainage ditches or cement-lined channels, and grading areas along the planned perimeter of future sump cap, according to a report in *Superfund Week*. EPA estimates cleanup costs at the site will exceed \$25 million, with \$2 million to \$3 million going to groundwater cleanup, the report states. Cleanup work is slated to start next year.

Product, Service Information Sought. If you have a product or service announcement of potential interest to our readers, please send it to Licia Ponzani, *Stormwater Permit Manual*, Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006; e-mail STRM@thompson.com; or fax to (202) 739-9578. The editor welcomes such announcements, but will publish them only as space permits. ■

Exxon

(Continued from page 1)

According to Abraham, when it rains and the wastewater treatment system fills up, Exxon allegedly bypasses the treatment plant and dumps the untreated wastewater into the Houston Ship Channel just above Galveston Bay, which is a vital ecological and economic resource for the state. The complaint also alleges that the oil company's untreated process wastewater sometimes contains enough benzene to qualify as a hazardous waste, which is being handled in violation of RCRA.

The groups claim that the discharges have occurred because Exxon has failed to take one or more of the following steps to prevent or minimize discharges: maintain water levels in its stormwater retention basin at the lowest possible levels; maximize or increase the capacity of the stormwater retention basin; minimize or prevent releases from the stormwater retention basin to the Houston Ship Channel; segregate flows of process water and stormwater; reduce its production and generation of process wastewater; and maximize or increase the capacity of the wastewater treatment plant to treat the maximum amount of combined process water and stormwater.

Exxon said that contrary to the allegations made, there have not been any unauthorized bypasses around its wastewater treatment facilities. "Exxon has had only one permit exceedance regarding stormwater in the last three years, an event associated with extensive regional flooding in southeast Texas during October 1994," the company said. Exxon is continuing to cooperate with state and federal agencies on wastewater requirements at the Baytown refinery, the company said.

According to Terry Hadley, a spokesperson for TNRCC, the commission has enforced Exxon's wastewater discharge permit and fined the company for past violations. In March 1995, TNRCC fined Exxon \$600,000 for the illegal discharge of hazardous waste into a nonpermitted wastewater pond from October 1992 to January 1993.

TNRCC's commissioner was scheduled to review Exxon's application for permit renewal May 2. The revised permit would include an additional internal outfall and additional biomonitoring requirements. Trial Lawyers attorney Jim Hecker said Exxon was to file an answer to the complaint by April 30. ■

Calendar of Events

Stormwater Permit Regulations. An Environmental Education Enterprises course, slated for May 22-24 in Charleston, S.C., will emphasize the practical side of industrial stormwater pollution and permitting. It will cover federal and state regulations, legal and enforcement issues, impacts on industry, permitting strategies, identifying stormwater pollution, sampling and monitoring techniques, laboratory testing issues, and pollution prevention plans. Participants may bring a facility site map to use in completing a model stormwater pollution prevention plan. Cost: \$900. Call: (800) 792-0005 or fax to (614) 792-0006.

Watershed '96. Watershed management is the focus of a June 8-12 Water Environment Federation exposition and conference to be held in Baltimore. The program will include 80 technical sessions, over 320 presentations, and technology demonstrations. Portions of the program will be broadcast via satellite to viewing sites around the country. Call: (703) 684-2452 or e-mail msc@wef.org. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

BJ86040

Stormwater Permit Manual

Bulletin

Volume 5, Number 10

April 1996

Numeric Effluent Limits Should Not Apply to MS4s, Says EPA *Draft Interim Policy Advocates Phased Permitting Approach for Municipalities*

The U.S. Environmental Protection Agency (EPA) will recommend a phased permit approach for large municipal stormwater dischargers, according to a March 12 draft of a policy document on numeric effluent limitations.

According to draft language for an interim policy on water-quality-based effluent limitations for municipal separate storm sewer systems (MS4s), EPA indicated that numeric effluent limits are not appropriate for MS4 permits. The draft was circulated last month to members of a federal advisory committee on the stormwater permitting program.

The policy would apply to municipalities serving 100,000 or more people, that is, those covered under phase I of the stormwater permitting program. Phase I permits for cities with populations over 250,000 were due in 1992, and permits for cities serving over 100,000 were due in 1993, but many large and medium-sized MS4s remain unpermitted.

"Due to the unique nature of stormwater discharges from MS4s, the lack of information necessary to develop numeric effluent limitations, and the as yet unquantified linkage between stormwater control techniques and water quality impacts, EPA recommends a phased approach be used for these permits," the policy states. Under a phased approach, the first round of permits for MS4 discharges would include requirements for best management practices (BMPs). A second round of permits would include expanded or more specifically tailored BMPs, EPA said.

The agency "will presume that these BMPs provide an adequate level of control to meet the water-quality-based requirements of the Clean Water Act," provided the permitting authority approves based on the data available for the discharge, the policy states. If necessary, later MS4 permits may contain more specific requirements to ensure that water quality standards are met, the agency said.

(Continued on page 4)

Wisconsin's Scrap Recycling Industry **Negotiates Sector-specific Permit**

Wisconsin's scrap recycling industry may be exempt from stormwater sampling under an industry-specific stormwater permit set to be proposed later this year by the Wisconsin Department of Natural Resources (DNR).

The proposed permit would exempt sampling in return for more onsite training, best management practices (BMPs) and self-policing by the industry, according to Julia Riley, DNR wastewater specialist.

Since June 1995, the Wisconsin Institute for Scrap Recycling Industries (WISRI) has been working with DNR to develop an industry-specific permit for scrap recycling facilities in standard industrial classification code 5093, Riley said. The proposed permit would be based on a vision for

(Continued on page 2)

Inside This Issue ...

Hyundai Offers 'Unprecedented Solution' to Runoff Problem	3
EPA Releases Draft ANPRM On Water Quality Standards	5
New Jersey Proposes Permit Fee Changes	6
Advisory Group Examines Phase I Permitting Issues	6
No-exposure May Be Part of Future Stormwater Rules	7

Wisconsin

(Continued from page 1)

environmental compliance in this industry sector for the next 10 years. The long-range program meets the needs of both WISRI and DNR, she said.

The proposed permit would essentially buy time for the scrap recycling industry to comply with stormwater requirements, according to WISRI President Joseph Kovacich, who also is vice president of Miller Compressing Co., a Milwaukee-based scrap metal recycling firm.

Significant capital expenses are incurred to control stormwater and pollution in the scrap recycling industry because of the nature of the work, which is mostly done outdoors, he said. An industry-specific permit would be advantageous because it would allow scrap recyclers to account for costly BMPs in their projected capital budget plans over a period of several years, he said.

The permit also allows the industry to find the most appropriate, cost-effective BMPs to control contamination of stormwater, Kovacich said. The scrap recycling industry is unique, and an industry-specific permit will afford recyclers the opportunity to be involved in decisions about practical solutions to the industry's particular stormwater problems, he said.

Instead of having to comply with the rigid standards of Wisconsin's Tier I industrial general permit, WISRI and DNR are developing standards that will provide appropriate solutions to the stormwater problems of the scrap recycling industry, he said.

According to Riley, WISRI would set up a separate corporation to monitor the facilities that choose to be covered by the permit. The corporation would retain a consultant to train personnel at each covered facility on how to institute appropriate stormwater controls.

The corporation also would be responsible for certifying each facility's stormwater pollution prevention plan and performing annual audits for each facility, she said.

The industry-specific permit also has advantages for DNR, Kovacich said. By retaining a consultant for the group, the industry would be able to police itself more cost-effectively than DNR would be able to do, he said. Because the consultant would become the expert on stormwater problems peculiar to the scrap recycling industry, he would be better attuned to noncompliance issues than a DNR official who looks at one or two scrap recycling facilities a year, he said.

The proposed industry-specific permit privatizes the costs of compliance and provides DNR with detailed, site-specific reports of noncompliance uncovered by the consultant, Kovacich said. Any facility that is not in compliance with the industry-specific permit after an appropriate time period would be terminated from the new permit and required to obtain a Tier I industrial general permit from DNR. Such facilities also could face enforcement action by DNR, he said.

Currently, WISRI and DNR are finalizing the details of the environmental compliance vision and setting up schedules and deadlines for compliance with stormwater controls, Riley said. WISRI and DNR are still trying to work out how far-reaching the industry-specific permit will be, Kovacich said.

Issues that are still being discussed include whether solid waste, hazardous waste and air pollution requirements should be included in the permit and whether remediation should be included as part of the compliance vision, he said.

WISRI and DNR have held several meetings to discuss the industry-specific permit, and Kovacich said industry has found DNR's approach to be refreshing. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Senior Editor, Licia Ponzani; Contributing Editor, Kimberly C. Cushner. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Licia Ponzani at (202) 739-9559; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1996 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Hyundai Offers 'Unprecedented Solution' to Runoff Problem Firm May Be Fined for Failure To Comply With Construction General Permit

The Oregon Department of Environmental Quality (DEQ) may fine Hyundai Electronics Corp. for allegedly failing to comply with the provisions of its construction site general stormwater permit after issuing the company two notices of noncompliance this winter, according to Jennifer Boudin, public affairs representative for DEQ.

DEQ issued the first notice of noncompliance against Hyundai Feb. 13 after a Jan. 30 inspection found that the company had allegedly failed to control sediment flowing from its Eugene, Ore., construction site, Boudin said.

Hyundai was cited for noncompliance because the company allegedly failed to cover "raw, exposed clay" with hydromulching or jute mats, allowing stormwater on the site to flow into a sedimentation pond clean and flow out dirty, according to DEQ Senior Environmental Engineer Tim McFetridge, who inspected the site.

'Hyundai has done everything that DEQ has wanted, and by offering to install a water filtration system, has gone beyond what DEQ is asking.'

—Liz Cawood, Hyundai

Prior to construction on the site, DEQ had conditionally approved Hyundai's erosion control plan last year because it met the minimum standards set by DEQ, McFetridge said. But, Hyundai was required to put more sediment controls in place if visible or measurable erosion occurred, he said.

"This is where Hyundai was in noncompliance" with the permit, he said. According to DEQ and Hyundai officials, Hyundai offered measures to correct the sediment problem after the first notice of noncompliance including the use of a coagulant to reduce turbidity in the sedimentation pond.

On March 6, DEQ issued a second notice of noncompliance against Hyundai after two inspections in early March allegedly found that the coagulant was not settling out the sediment from the stormwater and that the company had taken no additional steps to prevent sediment from leaving the site, Boudin said. After the second notice, DEQ officials referred the case to the agency's enforcement department, she said.

In an unprecedented agreement with DEQ after the second notice of noncompliance, Hyundai offered to

install a water filtration system to filter sediment out of the stormwater that leaves its construction site, according to Liz Cawood, a spokesperson for Hyundai. "Hyundai has done everything that DEQ has wanted and, by offering to install a water filtration system, has gone beyond what DEQ is asking," she added.

Hyundai offered to install the system as the "maximum solution to the erosion problem," she said. The erosion from Hyundai's construction site was further exacerbated by the extreme flooding in the Northwest this winter, Cawood said.

McFetridge agreed that the installation of a water filtration system was unprecedented in Oregon, but added that erosion control in the rainy, winter months in Oregon was expensive. According to McFetridge, DEQ did not inspect facilities during the floods and all inspections of Hyundai's construction site occurred during relatively dry periods.

According to McFetridge, DEQ approved Hyundai's proposal to use their sedimentation pond as a retention pond and install a water filtration system to filter the silt out of the stormwater before discharge. In the first inspection, DEQ deemed the sedimentation pond "useless" because it was not functioning properly, he said.

Currently, Hyundai is pumping the water in the sedimentation pond into the sanitary sewer and stabilizing the pond so that it will work correctly, he said.

'Hyundai has not dealt with the erosion control problems quickly enough and has created a worst-case scenario ... by deciding to construct on rigid timelines during the rainiest periods in Oregon.'

—Catherine Macdonald, Nature Conservancy

According to Catherine Macdonald of the Nature Conservancy, Hyundai has not dealt with the erosion control problems quickly enough and has created a worst-case scenario for erosion control problems by deciding to construct on rigid timelines during the rainiest periods in Oregon.

The Nature Conservancy owns neighboring property in Eugene, Ore., and has had some concerns with the construction site and stormwater problems, including the choice of coagulant to settle out sediment in the sedimentation pond. ■

Effluent Limits Policy

(Continued from page 1)

non-numeric
The first two rounds of MS4 permits would include monitoring requirements—such as discharge monitoring, ambient monitoring, receiving water assessment or a combination of requirements—that would help the agency collect information about the potential impact of MS4 discharges and the effectiveness of BMPs on achieving water quality standards, EPA said.

EPA indicated that numeric effluent limits are not appropriate for MS4 permits.

The interim policy would apply only in states in which EPA is the permitting authority, but the agency said it would encourage delegated states to adopt similar policies for MS4 permits. States also would be asked to revise their designated uses and water quality standards implementation procedures to reflect the “episodic nature of stormwater runoff, the varying loadings during stormwater events, and the potential resilience of natural ecosystems.”

In the draft document, EPA said that CWA does not require the agency to impose numeric effluent limits on industrial or municipal dischargers to attain water quality standards, although national pollutant discharge elimination system (NPDES) permits must ensure that water quality standards are met. Under CWA and NPDES regulations, permitting authorities may employ a variety of controls and limitations in stormwater permits—including BMPs—as necessary technology-based or water-quality-based controls.

Although CWA requires dischargers to comply with effluent limits to meet state water quality standards, the statute also defines “effluent limitation” to mean any restriction on quantities, rates and concentrations of constituents discharged from point sources, EPA said. “Nowhere does the CWA say that effluent limitations need be numeric,” the draft policy states.

In addition, EPA in its regulations has interpreted the statute to allow for non-numeric limits in the form of BMPs to supplement or replace numeric limits.

Although there is no formal guidance on the subject, EPA has defended the use of BMPs as a substitute for numeric limits in litigation involving stormwater discharges. EPA has found that numeric limits often are not feasible for stormwater permits because of the intermittent and variable nature of the discharge. Few existing MS4 permits contain numeric limits based on water quality standards, the draft policy states.

EPA said the consequences of incorporating numeric water-quality-based effluent limits rather than BMPs in MS4 permits could be significant. Deriving nu-

meric limitations without adequate effluent characterization or receiving water exposure assessment may result in an inappropriate numeric limit being imposed on a discharge, the agency said.

For example, this could occur if a numeric water quality criteria were imposed as a limit without properly accounting for the mixing zone or the receiving water assimilation of the pollutants. This could lead to overly stringent permit requirements and excessive and expensive controls on stormwater discharges, EPA said.

The draft interim policy does not apply to industrial stormwater discharges because the permitting context for NPDES industrial stormwater permits differs from that of MS4s, EPA said. In section 402(p)(3) of CWA, Congress specifically directed that MS4 permits would be dealt with differently. In particular, Congress specified a new technology-based level of control for MS4s called maximum extent practicable (MEP), rather than best available technology (BAT), which is the technology-based standard for NPDES industrial permits.

‘It is highly doubtful that Congress intended to apply numeric water-quality-based effluent limitations for all ... storm sewer outfalls.’

—Environmental Protection Agency

In addition, MS4 permits can be issued on a system-wide or jurisdiction-wide basis compared to industrial permits, which generally are permitted on an outfall-by-outfall basis. By allowing MS4 permits to be issued on a jurisdictional or system-wide basis, which may include thousands of storm sewer outfalls discharging into numerous receiving waters, Congress established a distinct and different standard for municipalities, EPA said.

“It is highly doubtful that Congress intended to apply numeric water-quality-based effluent limitations for all MS4 outfalls if an MS4 permit does not even need to specifically identify, nor be specifically applicable to, each and every outfall,” the draft interim policy states.

The system-wide permit approach is different from the normal procedure for deriving numeric water-quality-based effluent limitations, which requires that such limits be derived specifically for each outfall relative to the specific receiving water.

The interim policy would provide time to more fully assess the range of issues related to stormwater control, EPA said. The policy may be modified as a result of the ongoing Urban Wet Weather Flows Advisory Committee policy dialogue, it said. ■

EPA Releases Draft ANPRM on Water Quality Standards

The U.S. Environmental Protection Agency (EPA) last month released a draft proposed rulemaking for water quality standards that includes a request for comments on possible changes to the agency's independent application policy.

The draft, described as "preliminary," will be used to obtain feedback to aid in developing an advance notice of proposed rulemaking (ANPRM) that EPA intends to issue late this year, an EPA official told the *Bulletin*. The draft ANPRM was circulated to 450 known stakeholders and "anyone who has expressed interest in the standards," according to Robert Wood, manager of water quality standards regulation development for EPA.

Water quality standards are an important component in any examination of wet weather issues—including stormwater runoff—and will likely play a role in new regulations or programs that emerge as EPA moves toward a place-based approach to watershed management.

Wood said the agency is not asking affected parties to submit their final positions on the issues at this time. Instead, he said comments on the draft will be used to make sure EPA has "captured all the issues that should be covered" and that they are presented in a fair and balanced way. "We are asking for assistance in defining the scope and character of the document," Wood said. "There will be time for debate later," he said, noting that the process of issuing the proposed rule will last many months.

EPA has said it wants early involvement by stakeholders in the water quality standards dialogue to ensure that interested parties have an active role in shaping the future of the national water quality standards program.

EPA believes that changes in water quality standards may be necessary to advance the watershed protection approach and to incorporate newer science—such as biological assessment, environmental indicators and bioaccumulation—into water quality management programs. The agency also will attempt to clarify any areas of the program that stakeholders identify as unclear, according to EPA.

The interim draft includes sections on designated uses, water quality criteria, antidegradation, mixing zones, variances, compliance schedules and wetlands.

Independent Application Policy

An example of the kind of comments EPA is seeking can be found in the discussion of the agency's policy on independent application as it applies to NPDES permitting. Independent application is used to determine whether a permit must contain water-

quality-based chemical or toxicity limits, and what those numeric limits should be. EPA's current policy states that where different types of monitoring data are available, each type of assessment should be given equal weight. That means that any one assessment—whether it is based on biological, toxicity or chemical-specific data—is sufficient to identify an existing or potential effect on water quality.

Because each type of assessment focuses on a different aspect of aquatic health, it is possible that one type of assessment may fail to detect water quality problems, the draft states. For that reason, EPA's current policy is that all three types of data should be used when evaluating whether a discharge has the potential to cause a breach of water quality criteria. For example, if one approach indicates that water quality is affected, the results from the other methods would not refute that finding.

EPA plans to seek comment on a variety of questions related to the current policy on independent application:

- If there are circumstances where an approach other than independent application is acceptable, should any one type of water quality data receive greater weight and why?
- Should EPA develop a mechanism to waive independent application with respect to decisions about when chemical-specific water-quality-based effluent limits are required?
- How should states and tribes evaluate effluent data generated using chemical, toxicity and biological methods in determining reasonable potential to cause or contribute to an impairment?
- Are there any cases which indicate that either chemical-specific, whole effluent toxicity or biological approaches do not legitimately represent some aspect of use attainment?
- Should EPA explicitly incorporate the independent application policy into the water quality standards regulation?
- Should EPA separate the use of independent application in determining the use attainment status of a water body from the use of independent application when determining reasonable potential for an effluent? If so, then what approach— independent application, weight-of-evidence or hierarchical—should be used for use attainment decisions or for NPDES permitting?

EPA has asked that comments on the draft be submitted by May 15. The final ANPRM is expected to be published in the *Federal Register* in September. For more information on the draft ANPRM, contact EPA's Robert Wood at (202) 260-9536. ■

Storm Warnings

Stormwater-Related News in Capsule Format

New Jersey Proposes Changes to its Permit Fee Schedule. The New Jersey Department of Environmental Protection (DEP) recently proposed changes to the fee schedule for its stormwater permitting program to reflect more accurately the costs associated with permit issuance, annual inspections and data management, according to Janet Jessel of DEP. In the proposal, DEP increased the fees for 1996 for its industry-specific general permits—scrap metal and concrete products—and individual permits to \$1,050 and \$1,900, respectively. Permittees in these groups would be required to pay a \$500 application fee and assessed the difference between the permit and application fees at a later date, Jessel said.

Permit fees for the construction and industrial general stormwater permits are not affected by the proposal. DEP was scheduled to hold a hearing on the proposed increases on March 20; the comment period on the proposal was to end March 22. For more information on the proposal, contact the Bureau of Stormwater Permitting at (609) 633-7021.

New Video Examines Pollution From Runoff. A new half-hour educational video released by the Oregon State University Extension Service examines nonpoint source urban and rural runoff and the problems it creates for surface waters and groundwater. "We All Live Downstream" was taped primarily in Oregon's Tualatin River basin, but OSU Extension Water Quality Specialist Ron Miner says the program has implications for most watersheds in the country.

The video explores how Oregon residents and government officials are trying to reduce nonpoint source pollution, and offers a variety of tips that can help protect drinking water sources, Miner said. Cost: \$30. Write to: Publications Orders, OSU Agricultural Communications Office, A422 Administrative Services Building, Corvallis, Ore. 97331-2119.

State Officials Consider Draft CWA Provisions. The National Governors Association and several groups representing state governments have developed a list of proposed changes to the Clean Water Act, including changes to stormwater permitting program provisions. The package of proposed amendments also includes provisions on risk assessment and cost-benefit analysis, state revolving loan fund reauthorization, pollution prevention and wetlands management.

The draft package recommends revising certain "inappropriate" requirements under the stormwater permitting program and would establish a \$70 million annual fund for stormwater management. Another proposed amendment would require the U.S. Environmental Protection Agency (EPA) to conduct risk assessment and cost-benefit analyses for

all regulatory requirements that cost \$100 million or more a year. Other proposed amendments would allow states to develop watershed programs, preserve states' role in developing water quality standards, and reduce nonpoint source pollution by providing states with technical assistance and funding.

Federal Advisory Group Examines Phase I Permitting Issues. Members of a federal advisory committee on urban wet weather flows are examining the pros and cons of phase I of the stormwater permitting program, in order to make recommendations to EPA on how to implement phase II stormwater permitting.

At a recent meeting, committee members raised a number of questions and concerns about the current permitting program, including the following:

- How can municipalities be sure that the best management practices (BMPs) they invest in will work for their particular circumstances and how should performance be assessed? How can municipalities determine whether nonstructural BMPs—like education—are working?
- Is industry complying with stormwater general permits? If not, how can this be improved?
- Should a watershed approach be used and, if so, how should this be accomplished?
- What aspects of existing municipal or industrial permitting are burdensome or create barriers to effective stormwater management?
- Are water quality standards achievable for stormwater? Should performance standards be used as an alternative?
- How should "maximum extent practicable" be defined for stormwater permits?
- How can costs be controlled? What traps can be avoided? How do municipalities fund programs?
- What monitoring must be done to obtain representative results while keeping costs down? How can these be selected and implemented in permits?
- Is atmospheric deposition a significant source of pollution and do permits need to account for this?
- Do annual reports on program effectiveness provide useful information? Do they require too much or too little detail?
- Should municipalities be able to opt out of the program if industrial activities are not exposed to stormwater?

The next round of the federal Urban Wet Weather Flows Advisory Committee phase II subcommittee meetings will be held April 22-23 in Washington. ■

No-exposure Incentive May Be Part of Future Stormwater Rules

Members of the Urban Wet Weather Flows federal advisory committee last month reviewed a draft "no-exposure" incentive provision that will likely be part of future stormwater regulations.

The proposal reflects a consensus on the part of committee members to include a no-exposure provision as an alternative to obtaining an industrial stormwater permit. But it also indicates that committee members are not yet in agreement on how to handle the issue of impermeable surfaces exposed to stormwater.

The draft no-exposure provision was developed by Peter Lehner of the National Resources Defense Council, attorney Jeff Longworth of the Washington law firm of Collier, Shannon, Rill & Scott, Roger Platt, deputy counsel of the Realty Committee and Gary Stephany of the Department of Environmental Health in San Diego.

The provision would allow industrial facilities that are required to obtain permits under phase I of the existing stormwater program to opt out of the permitting requirement by meeting certain conditions. Under the draft proposal, an industrial facility could avoid obtaining a permit by certifying that all its industrial materials or activities are kept within a permanent enclosed structure so that they are not exposed to rain, snow, snowmelt or runoff. The provision would apply to material handling equipment, industrial machinery, pipes, raw materials, intermediate products, by-products and waste products.

"The intent of this provision is to provide a simplified method of complying with section 402(p) for facilities which are entirely indoors," such as those located within a larger office building, according to a memo submitted to the committee by the no-exposure workgroup. A facility at which the only items permanently exposed to precipitation are roofs, parking lots and vegetative areas also would be eligible for the provision, the memo explained.

The term "permanent enclosed" could include structures with a top cover but no side coverings, provided that the materials protected beneath the structure are also protected from stormwater run-on, the memo said.

As proposed, the no-exposure provision would allow mobile equipment to be exposed to precipitation or runoff while in use. "It is understood that certain machinery, such as trucks, may pass between buildings and during passage be exposed to rain. Such activities would not prevent a facility from taking advantage," of the provision, the proposal states. States would be in charge of determining the specific circumstances under which temporary structures meet the requirement. Unless a state determined

otherwise, temporary exposure to rainfall or runoff would be allowed while a facility is being renovated, as long as a temporary cover is provided, the proposal states.

Industrial facilities seeking no-exposure certification in lieu of permits would be required to submit to EPA or other permitting authority a sworn certification from the plant manager that the facility meets all of the no-exposure requirements. A facility certifying to no-exposure would have to:

- re-certify every three years that it continues to meet the requirements;
- seek a permit within 30 days after ceasing to be eligible for the certification alternative; and
- allow the permitting authority or municipality to inspect the facility and to make inspection reports available to the public.

The purpose of a certification alternative would be to reduce the regulatory burden on both industry and government agencies, the proposal notes. However, it would be necessary for permitting authorities to institute an inspection program of some sort to ensure that facilities that take advantage of the no-exposure provision meet all the requirements.

Finally, facilities that are contributing to a violation of water quality standards would be required to apply for an individual or general permit, the proposal said.

A March 8 memo from the no-exposure workgroup noted that the committee has not reached agreement on how to address impacts from impermeable surfaces, such as parking lots, roads and sidewalks, which are found at virtually all types of facilities. Impermeable surfaces are known to increase flow velocity, which can be a contributor to environmental degradation. Some committee members have stated that including a no-exposure alternative to permits could result in a failure to address runoff from impermeable surfaces.

"While [no-exposure] may provide efficiencies for EPA and an added incentive to act in a manner viewed as positive—i.e., covering industrial materials—it would implicitly deem acceptable certain impacts that could, in predictable circumstances, have adverse environmental consequences," the memo says in summarizing the views of some committee members.

Others say that if facilities that qualify for the no-exposure provision still must implement structural controls to control runoff from impermeable surfaces, they will "in practice be punished rather than rewarded for enclosing industrial activities," the memo states. "It was further argued that such added

(Continued on page 8)

Calendar of Events

Clean Water Compliance. This Government Institutes course to be held April 15-18, in Phoenix, will give an overview of the Clean Water Act (CWA) and EPA's regulatory program. The agenda includes discussion of nonpoint sources and stormwater controls. Cost: \$1,599. Call: (301) 921-2345; or fax to (301) 921-0373.

Defense Environmental Management. Designed for federal agencies and facilities, this course will be held April 15-19 in Alexandria, Va. In addition to covering the Federal Facilities Compliance Act and the National Environmental Protection Act, the course will cover specific environmental regulations including CWA and the stormwater permitting program. Cost: \$1,899. Call Government Institutes at (301) 921-2345; or fax to (301) 921-0373.

Stormwater Regulations. A training course on compliance strategies for stormwater discharge regulations sponsored by Government Institutes will be held May 15-16 in Washington. Cost: \$949. Call: (301) 921-2345; or fax to (301) 921-0373.

Clean Water Laws Course. This June 10-11 Government Institutes course will be held in San Francisco and will cover legislative and enforcement developments under CWA; the National Pollutant Discharge Elimination System permit program and construction; technology and water quality-based limitations; whole effluent toxicity control; stormwater and nonpoint source controls; the pretreatment program; and the wetland dredge and fill permit program. Cost: \$949. Call: (301) 921-2345; or fax to (301) 921-0373. ■

No-exposure

(Continued from page 7)

regulatory burdens would be particularly inequitable, if they were burdens that were not shared equally by the whole range of dischargers whose impermeable surface may increase flow velocity," the memo states.

It was agreed during the March committee meeting that a separate workgroup should be formed to address problems stemming from water flow and velocity. The no-exposure workgroup will present a revised no-exposure proposal to the committee in April. EPA has said it expects to include a no-exposure provision in regulatory amendments to phase I of the stormwater permitting program. ■

Visit the TPG Web Site

Thompson Publishing Group (TPG) has launched an Internet Web site with sample news articles and other content from the *Stormwater Permit Manual* and 47 other TPG publications. Please visit the *Stormwater Permit Manual*/Web page and let us know what features or links to other resources you would like to see added. A convenient form for sending the editor e-mail is posted on the Web page.

While at the site, you may also want to review other TPG business and regulatory publications, which you can receive at a discount if you reference the Web site when placing your order. The Web address for TPG's home page is <http://www.thompson.com>. From the home page, click on the environmental library button to access the page for the *Stormwater Permit Manual* and related publications. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

BJ86040

Stormwater Permit Manual

Bulletin

Volume 5, Number 9

March 1996

BMPs vs. Monitoring: California's Next Industrial Permit

Members of industrial monitoring groups say California's next general permit could include provisions that would allow facilities to use best management practices (BMPs) in lieu of sampling and monitoring, according to several sources close to the permit development process.

The State Water Resources Control Board (SWRCB) is in the process of reviewing the state's industrial general permit, which expires this November. Recently, water board staff have indicated they may be open to a "carrot and stick" type program in which BMPs are traded in exchange for sampling requirements.

California's revised permit may provide an indication of what lies ahead for stormwater permitting in other states. The California permit, which was issued before EPA's general permit became final, was hailed five years ago as a reasonable approach to urban runoff problems. The permit turned out to be more burdensome than expected, however, and now

industry is looking for eased paperwork and monitoring requirements.

California's permit is unique in that dischargers with similar facilities may become members of monitoring groups. Only 20 percent of the members of a group are required to submit sampling data. Presently there are around 40 groups in California, and group members account for less than a third of all permittees.

In preparation for renewing the permit, the state has established an ad-hoc stormwater quality task force to develop written recommendations to be used by SWRCB in developing permit language. Task force members include representatives from the state water board, an environmental group, industry members and staff from regional water quality boards.

Leo Cosentini, who manages stormwater issues for SWRCB, said regulators are trying to be open-minded about how the second generation general permit

(Continued on page 4)

N.J. Proposal Would Regulate Point And Nonpoint Sources of Stormwater

The New Jersey Department of Environmental Protection (NJDEP) is proposing to require discharge permits for all industrial sources of stormwater, including nonpoint sources. The proposal is part of a larger package by which the state would drastically overhaul its entire discharge and permitting program.

But according to state officials, the proposed revisions are not significant. They would simply codify provisions of the stormwater program that the agency is already enforcing, according to Janet Jessel of NJDEP. The stormwater provisions in the rule do not change the "fundamental approach" of the state's permitting program, which is to "emphasize pollution prevention through development and implementation of stormwater pollution prevention plans (SWP3s)," said state program manager Barry Chalofsky, in a Feb. 20 letter describing the proposed rule (28 New Jersey Register 380, Feb. 5., 1996).

(Continued on page 5)

Inside This Issue ...

Place-based Approach is Focus of EPA's New Water Agenda	2
ASIWPCA Members Discuss EPA Reforms	3
Numeric Effluent Limits Policy Due Soon	3
Stormwater Permitting Deadlines	3

**Thompson
Publishing
Group**

'Place-Based' Approach is Focus of EPA's New Water Agenda

Place-based programs will be the trademark of the national water program as it evolves over the next several years, according to the U.S. Environmental Protection Agency's (EPA) second National Water Program agenda, released Jan. 16.

The water program's "Agenda for the Future: 1996-1997," sets new priorities, but "does not set a completely new direction," said Assistant EPA Administrator Robert Perciasepe in a memo to federal water program employees that accompanied the agenda.

EPA plans to focus 20 percent of the resources for all media programs on promoting place-based environmental protection, according to the agenda. "EPA can be directly involved in only a fraction of all communities, so most of our resources must be used to promote and enable place-based environmental protection by others," the agenda states.

EPA said it will provide tools, assistance and information to states and communities to aid in community-based wet-weather and watershed initiatives. EPA will "reorient" its own approach and "redesign some regulatory and non-regulatory programs" to better complement local efforts, the agenda states.

To accomplish this, the Office of Water will work with states and local governments to determine what tools EPA should provide—such as criteria, standards, monitoring and measurement methods, risk assessment methods, watershed education, and fate and transport models. EPA also will examine how it can use its authorities to assist in implementing local initiatives through its existing surface water and groundwater programs.

According to the agenda, EPA will work with states to develop total maximum daily loads, wasteload allocations and load allocations for priority water-quality-limited watersheds and design new computer

models to facilitate effluent trading among point and nonpoint sources within watersheds. One of several priority areas outlined in the agenda is protecting the environment by improving controls for wet weather flow. Water quality inventories have identified wet weather flows—including urban stormwater, agricultural runoff, combined sewer overflows, and sanitary sewer overflows—as the largest remaining threat to water quality.

The administration's approach focuses on "reducing this threat to water quality, on reducing costs, and on providing states and local governments with greater flexibility to solve wet weather problems."

Consistent with these principles, the National Water Program will take these specific actions:

- work with the urban wet-weather advisory group to address policy and technical issues, including stormwater;
- streamline monitoring required in the existing stormwater program and consolidate existing state reporting requirements on a watershed basis;
- reduce the existing burden of the phase I stormwater program;
- reduce monitoring and recordkeeping requirements by 25 percent; and
- continue examining ways to streamline the phase II stormwater program.

The agenda also calls for EPA to issue new national guidance on the section 319 nonpoint source program and complete guidance on how to address runoff from confined animal feeding operations. Finally, use of pollution prevention, incentive-based volunteer efforts and outreach will be used to address unregulated nonpoint sources that traditionally contribute to water quality problems, the agenda states. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Senior Editor, Licia Ponzani; Contributing Editor, Kimberly C. Cushner. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Licia Ponzani at (202) 739-9559; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1996 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Storm Warnings

Stormwater-Related News in Capsule Format

Federal Stormwater Advisory Group To Meet. The stormwater subcommittee of a federal advisory committee on urban wet weather flows is scheduled to meet March 14 and 15 in Washington. Committee members are expected to discuss draft issue papers on how to address stormwater discharges from small municipalities and small construction sites.

The small municipalities workgroup already has said community-based stormwater plans are needed, according to Michael Cook, director of the Environmental Protection Agency's (EPA) Office of Wastewater Management.

Discussions during a January meeting of the stormwater subcommittee outlined possible approaches to managing small construction sites, including a proposal to encourage municipalities to develop their own stormwater management programs. Under this scenario, small construction sites located in municipalities that develop management plans would be covered by the city's plan. Sites in cities that don't develop plans might be required to obtain permits.

ASIWPCA Members Discuss EPA Reforms. Officials and members of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) discussed the progress of several reform initiatives that are part of EPA's water program during the group's Feb. 12 meeting in Washington.

Among the issues discussed were proposed revisions in the national pollutant discharge elimination system (NPDES) permitting program; a draft report on environmental indicators that demonstrate improvements in national water quality; progress made by federal advisory committees on urban wet weather issues and stormwater runoff; a soon-to-be-released draft of an advance notice of proposed rulemaking on water quality criteria and standards; and proposed modifications to the total maximum daily load program.

EPA's Michael Cook said at the meeting that the sum of the reforms now underway at EPA will eventually amount to "a radical change" in the NPDES permitting program. Cook discussed a variety of reforms, including efforts to streamline requirements for obtaining a permit; developing more efficient ways to gather data related to permitting; and a move toward reduced reporting and monitoring requirements.

EPA Information Locator Available. As part of the National Information Infrastructure and through the Paperwork Reduction Act of 1995, EPA has an-

nounced a new service designed to help the public access environmental information. The Government Information Locator Service (GILS) is an electronic service through the Internet that provides a decentralized location to anyone that needs to locate, access or acquire government information. GILS offers an extensive listing of the agency's information resources; describes the information in those resources; and provides assistance in obtaining the information. EPA's GILS is available on the World Wide Web at <http://www.epa.gov/gils>.

Numeric Effluent Limits Policy Due Soon. A draft interim policy statement on the applicability of numeric effluent limits to large stormwater discharges could be issued by EPA in March, an EPA official said last month. The policy statement is expected to say that numeric effluent limits are not appropriate for stormwater.

Under such a policy, a facility would be in compliance with water quality standards if it established certain best management practices. Additional limitations would be put in place only if monitoring results showed that the discharge was contributing to water quality problems.

The interim policy would affect sources covered under phase I of the stormwater program. A draft of the policy will be circulated to members of a federal advisory committee on urban wet weather issues and to other stakeholders. The EPA official said the policy could be issued in final form following a short comment period.

Stormwater Permitting Deadlines. The deadline for submitting a notice of intent (NOI) to be covered by EPA's multi-sector general permit for stormwater discharges from industrial activities is March 29. The original deadline was Dec. 30, 1995. EPA extended the deadline for 90 days to give dischargers more time to examine the new permit. NOIs should be submitted to the following address: Storm Water Notice of Intent (4203), 401 M St., S.W., Washington, D.C. 20460. Questions about the NOI can be directed to the NOI Processing Center at (703) 931-3230.

Separately, the deadline for submitting discharge monitoring reports (DMRs) for the sampling period March through August 1995 and the sampling period September 1995 through February 1996, is April 28. The deadline applies to primary metal industry facilities, facilities with coal pile runoff and battery reclaimers that are subject to the EPA baseline industrial general permit. DMRs should be sent to the appropriate regional permitting authority. ■

California

(Continued from page 1)

should look. "We are looking at improving the permit so it is more user-friendly and cost-effective," he said in a Feb. 22 interview. According to Cosentini, the water board does not have a "preconceived notion" about the new permit. "But we may have a preconceived notion that what we're doing now isn't working," he said.

The problem with the current program is that the cost and labor associated with performing sampling and analysis is not necessarily offset by positive results. "People don't understand why they are sampling, and if they find something, they don't know what it means," Cosentini said. Complying with permit requirements does not guarantee improvements to water quality, he said.

The message SWRCB is hearing from industry is they want more reliance on BMPs, Cosentini said. "They would prefer to spend the money on BMPs rather than on sampling and analysis," he said. This position is somewhat defensible because they can "demonstrate pretty well" that grab samples don't necessarily characterize stormwater. "It's hit or miss," he said. However, from a regulator's perspective, the problem with relying on BMPs alone is "how do you know when someone is following their BMP program? And if they are, how do you ... gauge performance," Cosentini said.

"Monitoring is the only way to determine if BMPs are effective," according to Libby Lucas, coordinator for watershed protection programs at the San Diego-based Environmental Health Coalition. Lucas said current state monitoring requirements are not stringent enough. They are "inadequate to provide the information they are meant to provide," she said. Monitoring should be used to assess the effectiveness of BMPs over time and should show a reduction in pollutant discharges over time, she said.

Lucas also believes the first focus of stormwater pollution prevention plans should be pollution prevention and not pollution control. She would like to see pollution prevention "defined in stormwater permits as it is defined in the Pollution Prevention Act of 1990," which, according to Lucas, is very narrow and requires facilities to reduce the generation of pollutants. She feels that the permits should be "used as a vehicle to institutionalize" pollution prevention by including the definition in the permits and requiring "permittees to address pollution prevention first and not pollution control."

Maureen Daggett, president of Environmental Compliance Management Services Inc. in Sacramento, Calif., said analytical monitoring is a good tool for checking the effectiveness of BMPs, but that it is not scientifically defensible. **Daggett favors a more**

flexible stormwater program that would allow dischargers to self-monitor using definable criteria to ensure compliance. According to Daggett, there are three basic options now open to dischargers: become a group member (e.g., auto dismantlers, motor carriers, equipment maintenance); hire third-party facility inspectors that meet the state water board's professional accreditations; or monitor as required under the current state permit.

Daggett, whose company is the administrator for one of the two auto dismantlers groups, said she would like to see a "privatization of the state stormwater program." To become a group member, a facility pays a membership fee and agrees to fulfill certain minimum requirements, such as constructing BMPs. Because group members elect to voluntarily comply with additional requirements they should be provided with regulatory relief by the state.

Daggett advocates the following changes to the permitting process as it relates to groups:

- reduce permit fees for members of groups;
- concentrate enforcement efforts on non-group members (i.e., allow groups to self-police);
- eliminate duplicative reporting by requiring administrators to file reports for group members;
- if needed, require more frequent (perhaps quarterly) reporting for groups;
- streamline reporting requirements; and
- allow groups to determine the best way to manage their unique stormwater discharges by, for example, allowing them to choose between monitoring, facility inspections or BMPs.

Like Lucas, Daggett thinks the program should focus on preventing, not controlling, pollution. She said the group approach would allow "limited state resources to be used to inspect facilities that were not doing anything." Daggett, who called the existing permitting program a "paper chase," claims the 10,000 facilities that have applied for coverage under the industrial general permit represent fewer than 40 percent of the facilities that are required to comply. Lucas said the water board should step up the number of inspections performed each year and use inspections as a vehicle for discussing the importance of BMPs.

In addition, Daggett said a revised program should offer incentives to facilities that do not have an impact on stormwater.

The ad hoc committee is expected to produce a consensus document for SWRCB by mid-April. SWRCB has asked stormwater permittees to submit ideas or comments on the permitting process by March. The board will try to have a draft permit available for the formal comment process by June, Cosentini said. ■

New Jersey

(Continued from page 1)

The agency wants to repeal and readopt with minor corrections the basic industrial general permit and the construction general permit that were issued in 1992. This would allow more facilities to be eligible for the industrial permit by changing the definition of point sources to be more inclusive, Jessel said.

Industrial stormwater should be regulated regardless of whether it is discharged from point or nonpoint sources, NJDEP said. The department notes that although this proposal differs from the federal stormwater program—which does not regulate nonpoint source stormwater discharges—contaminated stormwater pollutes the receiving water regardless of whether it originates from a point or nonpoint source.

The proposed definition of “stormwater discharge associated with industrial activity” would include certain stormwater discharges that fall outside the scope of U.S. Environmental Protection Agency (EPA) rules. Under EPA’s definition, the terms “discharge” and “facilities” are restricted to additions of pollutants from a “point source,” NJDEP said.

“The issue of what physical types of stormwater flow (for example, sheet flow) fall under the definition of ‘point source’ has been a source of controversy,” the proposed rule states. NJDEP has said that it agrees with EPA’s effort to embrace a broad interpretation of the term, “nevertheless, the term ‘point source’ has been one of the most difficult aspects of the stormwater permitting program for the department to explain to the public.” This ambiguity will cease by including nonpoint source discharges in the definition of stormwater associated with industrial activity.

“It makes sense to regulate point and nonpoint sources of industrial stormwater in a unified and consistent manner under the ... permit program, rather than to require ... permits for ‘point sources’ and establish some other, separate control program for ‘nonpoint sources,’” the proposed rule states.

The overall goal of the proposed program change is to implement a watershed-based approach to discharge regulation, NJDEP said. This approach will “allow cooperative partnerships to be formed among the department, the regulated community and other interested parties to determine and implement the best possible ways to achieve water quality goals,” the proposed rule states.

The proposal includes several other important changes that would affect stormwater dischargers including:

- eliminating the need for a person who owns but does not operate a facility to obtain a permit;

- allowing SWP3s prepared under the basic industrial general permit to assign responsibility for implementing specific parts of the SWP3s to specific permittees, so that one permittee at a facility is not liable for permit violations caused by other permittees at that facility;
- allowing NJDEP to request persons whom the department has reason to believe may own or operate a facility with a “stormwater discharge associated with industrial activity” to either declare their intent to obtain a permit, or to explain to the department why they believe they do not need to obtain a permit.

In addition, the proposal would incorporate the phase II stormwater requirements approved by EPA last August.

Rather than address individual dischargers as their permits come up for renewal, New Jersey’s proposed strategy would consider a variety of pollution sources affecting a river or river segment, including industrial, municipal, point and nonpoint sources, according to Susan Hoffman, a partner with the law firm of Drinker Biddle & Reath in Lawrenceville, N.J.

The river’s assimilative capacity would be compared with current and anticipated discharge levels to devise an allocation load, taking into account such factors as technical and economic feasibility, she explained. Stormwater discharges and nonpoint source runoff would be among the discharges considered in this process, she said.

The proposal also would make it possible for industrial facilities other than those regulated by EPA’s stormwater rules to qualify voluntarily for the state’s industrial general permit. At present under New Jersey rules, only the 11 categories of heavy industry regulated by EPA qualify for the general permit (see Tab 100, ¶131 of the *Manual*).

NJDEP believes that by making the general permit available to other categories of industry, more industries would be encouraged to implement best management practices and undertake pollution prevention, Hoffman said.

The proposal is one of four proposed rules that together are designed to reform the state’s water resources management program. Also proposed were amendments to the state’s surface water quality standards, the water quality management planning rules and the Water Pollution Control Act rules.

A public hearing on the stormwater provisions will be held in Trenton on April 4. Comments on the proposal are due May 6. For more information, contact William Minervini in NJDEP’s Bureau of Stormwater Permitting at (609) 633-7021. ■

Calendar of Events

Stormwater Training. The National Stormwater Center will hold a series of stormwater training workshops for compliance managers March 20 in Boston; March 25 in San Juan, Puerto Rico; and March 27 in Stuart, Fla. The workshops will cover stormwater pollution prevention plans, best management practices, preventive maintenance, inspections, non-stormwater certification, sampling and training. Cost: \$395. Call: (407) 288-6852.

Financing Stormwater Management. The University of Wisconsin-Madison will hold the course Planning, Financing and Implementing Comprehensive Stormwater Management Programs, March 27-29. Cost \$795. Call: (800) 462-0876 or (608) 262-2061; or e-mail custserv@epd.engr.wisc.edu. Visit the University's engineering professional development Web location at <http://epdwww.engr.wisc.edu>.

Construction Site Erosion. A course on controlling erosion from construction sites will be held April 10-12, at the University of Wisconsin-Madison. Cost: \$699. See above for contact information.

Clean Water Compliance. This Government Institutes course to be held April 15-18, in Phoenix, will give an overview of the Clean Water Act (CWA) and EPA's regulatory program. The agenda includes discussion of nonpoint sources and stormwater controls. Cost: \$1,599. Call: (301) 921-2345; or fax to (301) 921-0373.

Defense Environmental Management. Designed for federal agencies and facilities, this course will be held April 15-19 in Alexandria, Va. In addition to covering the Federal Facilities Compliance Act and the National Environmental Protection Act, the course will

cover specific environmental regulations including CWA and the stormwater permitting program. Cost: \$1,899. Call Government Institutes at (301) 921-2345; or fax to (301) 921-0373.

Stormwater Regulations. A training course on compliance strategies for stormwater discharge regulations sponsored by Government Institutes will be held May 15-16 in Washington. Cost: \$949. Call: (301) 921-2345; or fax to (301) 921-0373.

Clean Water Laws Course. This June 10-11 Government Institutes course will be held in San Francisco and will cover legislative and enforcement developments under CWA; National Pollutant Discharge Elimination System permit program and construction; technology and water quality-based limitations; whole effluent toxicity control; stormwater and nonpoint source controls; the pretreatment program; and the wetland dredge and fill permit program. Cost: \$949. Call: (301) 921-2345; or fax to (301) 921-0373. ■

Attention Subscribers

If you have questions or comments about the *Stormwater Permit Manual*, or would like to submit an article for possible publication in the *Bulletin*, please contact the editors at (202) 739-9559; fax (202) 739-9578; or e-mail STRM@thompson.com. We look forward to hearing from you.

For more information on Thompson Publishing Group's Environmental Library, visit our Internet Web Site at <http://www.thompson.com>.

—Licia Ponzani, Senior Editor

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

BJ86040

Stormwater Permit Manual

Bulletin

Volume 5, Number 8

February 1996

State Officials Seek Local Control Over Stormwater Permitting

States should decide when stormwater permits are needed, according to state water officials, but federal regulators say a national permitting program may still be the best option for managing stormwater.

"Permits are important, but we view them as a tool rather than as something that must be used," Bruce Baker said Jan. 18 during a Clean Water Act teleconference. Baker is director of water resources management at the Wisconsin Department of Natural Resources. He favors a site-specific, water-quality-driven approach to stormwater management that is based on a state's unique water resources.

States want state-specific strategies that allow for prioritization of environmental goals at the local level, Baker said. "But we also need consistent national goals," he said.

Denver Urban Drainage Executive Director L. Scott Tucker agreed, saying that local governments would like to see a more focused federal research program

to provide, for example, impact studies for stormwater best management practices (BMPs).

Stormwater is a federal program with no federal funding, noted Tucker, who chairs the stormwater management committee of the National Association of Flood and Stormwater Management Agencies. Because city and county services are funded through local taxes and fees, "local officials will argue that allocating local resources should be based on local priorities," he said. Stormwater may be a priority in some communities but other communities may have more pressing concerns, he said.

The current approach to stormwater management pits local government against state and federal regulators, Tucker said. A new approach is needed that emphasizes local, state and federal cooperation and focuses on local water quality problems, solutions and implementation, he said. "Local governments advocate stormwater reform with the technical support of state and federal regulators," he said.

(Continued on page 4)

Watershed Effluent Trading Policy Will Reduce Costs and Pollutants, Says EPA

As part of President Clinton's initiative to reinvent environmental regulation announced last year, the U.S. Environmental Protection Agency (EPA) on Jan. 26 released its first trading policy for water pollution sources in watersheds.

The policy reflects the agency's move toward a watershed approach to managing wastewater and stormwater runoff.

Effluent trading occurs when a source that is able to cost-effectively reduce pollutants to levels lower than required sells or barter "credits" for its excess reduction to another source that is unable to reduce its own pollutants as cheaply, EPA said. Sources such as industrial dischargers and sewage treatment plants are likely to take advantage of the effluent trading policy, EPA said.

(Continued on page 2)

Inside This Issue ...

Advisory Group Reviews Eight Options for Phase II Program 3

Airborne Mercury May Explain Runoff Concentrations 5

EPA Proposes New Oil and Grease Test Procedures 5

Comment Period for Analytical Test Procedures Reopened 5

EPA Issues Corrections to Multi-sector Permit 5

Trading Policy

(Continued from page 1)

The policy states that EPA "strongly supports and will actively promote" effluent trading within watersheds to achieve water quality. The agency said it will assure that effluent trades are implemented responsibly so that environmental progress is enhanced, not harmed.

Trading is an innovative approach that will give sources greater flexibility to reduce costs; achieve equal or greater pollution reductions; create economic incentives to go beyond minimum environmental requirements; encourage broader use of pollution prevention and innovative technologies; and address broader environmental goals within an ecosystem, EPA said in announcing the policy.

By supplementing the current regulatory approach, EPA will help interested parties find sensible, innovative ways to meet water quality standards more quickly and at less overall cost than with traditional approaches alone, the agency said.

To participate in a trade, a point source must be in compliance, and remain in compliance, with applicable technology-based limits, the policy states. Facilities will trade pollutant reductions or water quality improvements. To ensure that water quality standards are met throughout a watershed, an equivalent or better water pollutant reduction must result from a trade, EPA said. The agency has proposed definitions for several types of effluent trades:

- Intra-plant trading: a point source is allocated pollutant discharges among its outfalls in a cost-effective manner, provided that the combined permitted discharge with trading is no greater than the combined permitted discharge without trading in the watershed.
- Pretreatment trading: an indirect industrial point source that discharges to a publicly owned treat-

ment works arrangement, through the local control authority, for additional control by other indirect point sources beyond the minimum requirements in lieu of upgrading its own treatment for an equivalent level of reduction.

- Point/point source trading: a point source arranges for other point source(s) in a watershed to undertake greater than required control in lieu of upgrading its own treatment beyond the minimum technology-based treatment requirements to more cost-effectively achieve water quality standards.
- Point/nonpoint source trading: a point source arranges for control of nonpoint source discharge(s) in a watershed in lieu of upgrading its own treatment beyond the minimum technology-based treatment requirements to more cost-effectively achieve water quality standards.
- Nonpoint/nonpoint source trading: a nonpoint source arranges for more cost-effective control of other nonpoint sources in a watershed in lieu of installing or upgrading its own control.

EPA is developing a framework for watershed-based effluent trading, as well as information exchange workshops and limited technical assistance for trading projects in specific areas. Watershed-based trading will be done on a voluntary basis under existing Clean Water Act authorities, the agency said.

EPA said although it believes that the potential of trading is largely untapped, its usefulness will depend on the site-specific water quality conditions in any given situation. The framework will describe situations that EPA believes are most appropriate for watershed-based trading, and those that are generally inappropriate.

For copies of the trading policy, call EPA's Water Resource Center at (202) 260-7786. For more information call Mahesh Podar at (202) 260-7818; fax (202) 401-3372 or e-mail herzi.hawa@epamail.epa.gov or tuono.theresa@epamail.epa.gov. ■

STORMWATER PERMIT MANUAL is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006. For subscription questions, call (800) 677-3789 or fax to (800) 999-5661. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Senior Editor, Licia Ponzani; Contributing Editor, Kimberly C. Cushner. Annual subscription rate is \$398. Second Class Postage paid at Washington, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

EDITORIAL ADVISORY BOARD: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, National Stormwater Center.

For editorial questions, call Licia Ponzani at (202) 739-9559; e-mail STRM@thompson.com; or fax to (202) 739-9578.

© 1996 by Thompson Publishing Group. Reproduction or photocopying, even for personal use, is prohibited without prior written consent. Consent is granted to reproduce items for personal or internal use provided that the base fee of U.S. \$1 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

"This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought." —from a Declaration of Principles jointly adopted by a Committee of the American Bar Association and a Committee of Publishers and Associations.

Advisory Group Reviews Eight Options for Phase II Program

Members of a U.S. Environmental Protection Agency (EPA) advisory committee reviewed eight options for implementing phase II of the stormwater permitting program at a Jan. 29-30 meeting in Washington.

EPA officials presented a matrix of phase II options that included a strategy set out in President Clinton's March 1994 Clean Water Initiative; six strategies previously developed by EPA; and a legislative option described in HR 961, the Clean Water Act reauthorization bill approved last spring by the U.S. House of Representatives.

The matrix is intended to help committee members understand and analyze the varied strategies and proposals that are on the table, EPA's Carmelita White said in a memo to the options workgroup of the stormwater phase II subcommittee, which is part of a federal advisory committee looking into urban wet weather issues. The matrix is only a starting point for committee recommendations for phase II, White said. "These matrices should also help in identifying some of the strengths, weaknesses and options that should be considered in shaping an effective phase II stormwater program."

In recommending a method for approaching phase II, committee members must answer these four questions: who will be covered by the program, who will be responsible for administering the program, when will the program take effect and what are its overall goals, White said.

Committee members need not confine themselves to any one option, but may consider any combination of components in reaching conclusions about phase II, she said. "If EPA has any bias about the options presented here, it is that no one option fits all," she said.

White began the matrix discussion by examining option four, which she described as "fairly neutral" because it is neither legislative nor prescriptive (see box). Under this option, EPA would provide guidance for states to use in developing state-wide management plans and issue a phase II regulation that would require states to meet basic program elements.

The agency also would approve proposed state programs and provide advice on how to select and identify regulated sources. "Because it is a flexible approach, any source is open to regulation. But it is up to the state to identify the dischargers who will be regulated," she said.

Option four would allow, but not require, the use of permits in state management plans, she said. States that fail to develop management plans or whose plans do not meet with EPA approval would default to a federal permit program, based on an EPA rule.

The primary objective under option four is the attainment of water quality standards to be achieved at the municipal level through the adoption of stormwater management plans and at the industrial level through the use of stormwater pollution prevention plans. This goal is shared by options one through three and option five. Options one through five also would embrace a graduated approach for implementing a phase II program, based on a timeline to be set forth in a rule, she said.

Option three is a permit program under which facilities in all urbanized areas would be subject to

(Continued on page 4)

Phase II Stormwater Options

Option 1—Only address phase II sources designated on a case-by-case basis for control under an NPDES permit.

Option 2—Issue NPDES permits requiring the development and implementation of stormwater management programs for all MS4s associated with a census-designated urbanized area where a phase I municipality is located (138 urbanized areas).

Option 3—Issue NPDES permits requiring the development and implementation of stormwater management programs for all MS4s associated with census-designated urbanized areas (396 urbanized areas).

Option 4—Establish state-wide stormwater management programs that comply with key core elements to be identified by EPA.

Option 5—Establish state stormwater management programs that comply with key core elements defined by EPA and EPA guidance on management measures.

Option 6—Issue NPDES permits requiring the development and implementation of stormwater management programs for all MS4s associated with census-designated urbanized areas where a phase I municipality is located, coupled with state stormwater management programs that comply with key core elements defined by EPA for other areas of the state.

Clinton Initiative—Issue system-wide NPDES permits for MS4s in census-designated urban areas greater than 50,000. Require stormwater management plans for targeted MS4s in 138 phase II urbanized areas associated with phase I permitting. No permits for phase II light industrial, commercial, retail or institutional stormwater sources unless designated.

HR 961—EPA provides guidance on program development and state developed program. Could use any mechanism (i.e., permits, voluntary or mandatory requirements, or other authorities in existence). Sources are not defined in the bill. Phase I program would be remanded.

Matrix

(Continued from page 3)

phase II, White said. Like option three, option two also would require permits, but only in areas already associated with a phase I municipal separate storm sewer system (MS4). This option concentrates on large urban areas that already are subject to phase I, while option three is not constrained by the presence of phase I facilities, White explained. Options two and three both involve federal regulations applied and managed at the local level. States would oversee permitting operations based on guidance developed by EPA.

Option one would allow states to designate high-risk sources on a case-by-case basis, based on EPA guidelines. This option could involve a refined and expanded definition of "designated facility" as it is now understood under phase I of the permitting program, White said. An expanded definition could encompass whole classes of facilities or entire geographic areas.

Option five is similar to option four, but also would address management measures for a variety of

situations, such as urban runoff, construction activity, existing development, onsite disposal, pollution prevention, and roads, highways and bridges. Like option four, it includes a default mechanism for states without approved programs to be covered under the National Pollutant Discharge Elimination System (NPDES) program. Option six, which is a combination of options two and four, adds selected sources identified by the federal government to the class of covered dischargers.

The last two options are very different from the first six, White said. "HR 961 is a legislative option that would allow states to come in and tell EPA what sources need to be controlled and would not involve the use of permits," she said. States would develop plans for EPA approval and would be required to meet water quality standards within 15 years.

Under the Clinton initiative, CWA would be revised to take on a watershed approach to NPDES permitting. Permits would be issued at the federal level and implemented locally. EPA would issue phase II regulations by Oct. 1, 1997, and issue a permit by October 1999. This option would require states to meet water quality standards in 10 years. ■

State View

(Continued from page 1)

Tucker also said local policymakers are concerned about stormwater being part of the National Pollutant Discharge Elimination System (NPDES) program—which is a point source program—when stormwater is a wet weather issue. NPDES "water quality standards are 'dry weather' standards and stormwater is a wet weather issue," he added.

Michael B. Cook, director of EPA's Office of Wastewater Management, said a permit program is needed because of the large number of sources and the general pervasiveness of stormwater. Cook said the agency is looking at new strategies for managing the phase I permitting program, noting that results from a series of advisory committee meetings are expected to produce recommendations for EPA this year.

"We think that [using a system of] permits has the most potential, but there are lots of areas for flexibility. We are especially likely to end up with recommendations that tell permit writers how to modify their approach to wet weather issues," Cook said.

John L. Mancini, president of John Mancini Consultants, Fort Worth, Texas, believes some of the stormwater pollution prevention techniques now in use under the phase I program are significant and valuable. But there is room in the current program for improvement, he said. Mancini sees a need to develop interim water quality standards or criteria so the stormwater program can proceed without encumbering industry with expensive rules. But

EPA's Mike Cook said it will take several years to obtain the data needed to set standards, and it will take more time to translate those standards into permits or permit limits. Cook said wet weather has a tremendous impact on small streams and water bodies. "If you take a holistic approach to urban watersheds in wet weather there is the potential for vast improvement," he said.

Mancini agreed that the watershed approach will be valuable in urban areas. "The benefits will become evident and make a solution easier," he said.

There are three elements to consider in working out a wet weather approach, Mancini said: economic capability, attainability of water quality benefit, and the overall priorities of the region. The long-term success of the program will be jeopardized if you don't acknowledge the needs of member communities and industries in the watershed, Mancini said.

Mancini said public support for such projects varies because the environmental gains are not visible to the public. "The public has to see tangible benefits and conclude that the costs are consistent with those benefits. If not, public support will waiver," he said.

"Stormwater quality alone is an elusive goal. Is the water quality improved as a result of controlling stormwater? If you combine stormwater goals with other components of water quality it becomes a more tangible goal," Mancini explained. ■

Storm Warnings

Stormwater-Related News in Capsule Format

Airborne Mercury May Explain Runoff Concentrations. Researchers at the Department of Energy's Oak Ridge National Laboratory (ORNL) have measured in air a type of gaseous mercury that is highly soluble in water, according to a Jan. 26 report published by the Environmental News Network (ENN). The finding may help explain the concentration of mercury in precipitation, the report states.

ORNL geochemist Steve Lindberg and professor Wilmer J. Stratton of Earlham College in Richmond, Ind., developed a sampling technique using an air scrubber to identify and measure reactive gaseous mercury in air. Measurements reveal that between 1 to 5 percent of total gaseous mercury in air is the highly water-soluble type and the remainder is elemental mercury vapor.

"Because this small fraction is highly soluble in water, it is important to explaining the observed concentration of mercury in rain and snow, as well as the high rates of mercury dry deposition measured in some areas," Lindberg said. "During dry weather, this form of mercury would also be rapidly deposited to vegetation where it may be washed into soils and nearby streams," he said in the ENN report. The discovery was made in 1993, reported in 1994 at a scientific meeting and published last year.

EPA Proposes New Oil and Grease Test Procedures. The U.S. Environmental Protection Agency (EPA) proposed Jan. 23 to change test procedure guidelines for oil and grease and total petroleum hydrocarbons as required under the National Pollutant Discharge Elimination System program (61 FR 1730).

The proposed rule would allow the use of EPA Method 1664 for determining the presence in discharged water of oil and grease and total petroleum hydrocarbons, and would withdraw approval of EPA Method 413.1 and Standard Method 5520B. The proposed amendment to 40 CFR 401.16 would aid in the agency's effort to reduce dependency on the use of chlorofluorocarbons (CFCs) by eliminating the use of Freon-113 in oil and grease testing procedures, EPA said.

Comment Period for Analytical Test Procedures Reopened. EPA is reopening the comment period for the proposed guidelines establishing new analytical methods for use under the Clean Water Act (CWA), which were published Oct. 18, 1995 (60 FR 53988). The public comment period for the proposed rule was to end on Dec. 18, 1995. It has been extended to April 2. Proposed for addition were new methods for: preparation of samples for metals analysis; inductively coupled plasma/mass spectrometry; a stabilized temperature graphite furnace atomic absorption

method for metals; and ion chromatography methods for anions and hexavalent chromium. A revised EPA inductively coupled plasma atomic emission spectrometry method for metals to replace the currently approved method, and an extension of the approved method for the determination of low level total residual chlorine were also proposed. For information, contact EPA's James Longbottom at (513) 569-7308.

EPA Issues Corrections to MSGP. Technical corrections to EPA's multi-sector general permit for stormwater discharges associated with industrial activities were published in the Feb. 9 *Federal Register* (61 FR 5248). The notice also includes official confirmation of the deadline extension for filing notice of intent (NOI) to be covered by the new permit. The new NOI deadline is March 29, 1996. Also included are certification conditions for Massachusetts and Idaho, which were omitted from the permit. The Feb. 9 action also finalizes the multi-sector permit in the state of Alaska. For more information on the corrections, see the December 1995 *Bulletin*, p. 5.

WERF Seeks New Research Proposals. The Water Environment Research Foundation (WERF) issued requests for proposals for new water environment research projects worth more than \$845,000. Proposals in response to the following requests are due March 29: assessment of the uses of biosolids and their effects in watersheds; effects of multiple stressors on aquatic ecosystems; innovative biosolids management techniques assessment; investigation of a hybrid suspended growth/attached growth system for enhanced nutrient removal; and effect of upstream treatment processes and particle characteristics on UV disinfection performance. A request for assessment of innovative technologies for wastewater treatment, valued at \$175,000, is still in development and will be released later this year, WERF said. For more information, call WERF at (703) 684-2470.

EPA Budget Woes. A continuing resolution approved by Congress Jan. 26 reduces EPA funding by 22 percent compared to the 1995 level while providing full funding for other agencies. EPA funding under previous resolutions was reduced by 34 percent over 1995. According to the Water Environment Federation, budget cuts will delay "much needed" reforms to EPA programs.

At a Jan. 18 CWA teleconference sponsored by WEF and the American Bar Association, EPA Assistant Administrator for Water Robert Perciasepe called the budget impasse "debilitating" to the agency's ability to make progress on the numerous reform initiatives launched by the agency. "The reduced budget allocations has had a profound effect on our ability to move forward," he said. ■

Calendar of Events

Source Loading and Management Model. The course Using the Source Loading and Management Model for Stormwater Management will be held by the University of Wisconsin-Madison Feb. 29-March 1. Fee \$499. Call: (800) 462-0876 or (608) 262-2061; or e-mail custserv@epd.engr.wisc.edu. Visit the University of Wisconsin engineering professional development Web location at <http://epdwww.engr.wisc.edu>.

Clean Water Compliance. This Government Institutes course to be held March 5-8 in Orlando, Fla., and April 15-18, in Phoenix, will give an overview of the Clean Water Act (CWA) and EPA's regulatory program. The agenda includes discussion of non-point sources and stormwater controls. Cost: \$1,599. Call: (301) 921-2345.

Stormwater Training. The National Stormwater Center will hold a series of stormwater training workshops for compliance managers March 4 in New Orleans; March 6 in Atlanta; March 11 in Phoenix; March 13 in Austin, Texas; March 18 in Washington, D.C.; March 20 in Boston; March 25 in San Juan, Puerto Rico; and March 27 in Stuart, Fla. The workshops will cover stormwater pollution prevention plans, best management practices, preventive maintenance, inspections, non-stormwater certification, sampling and training. Cost: \$395. Call: (407) 288-6852.

Financing Stormwater Management. The University of Wisconsin-Madison will hold the course Planning, Financing, and Implementing Comprehensive Stormwater Management Programs, March 27-29. Cost \$795. See above for contact information.

Construction Site Erosion. A course on controlling erosion from construction sites will be held April 10-12, at the University of Wisconsin-Madison. Cost: \$699. See above for contact information.

Defense Environmental Management. Designed for federal agencies and facilities, this course will be held April 15-19 in Alexandria, Va. In addition to covering the Federal Facilities Compliance Act and the National Environmental Protection Act, the course will cover specific environmental regulations including CWA and the stormwater permitting program. Cost: \$1,899. Call Government Institutes at (301) 921-2345.

Stormwater Regulations. A training course on compliance strategies for stormwater discharge regulations sponsored by Government Institutes will be held May 15-16 in Washington. Cost: \$949. Call: (301) 921-2345; or fax to (301) 921-0373.

Clean Water Laws Course. This June 10-11 Government Institutes course will be held in San Francisco and will cover legislative and enforcement developments under CWA; the National Pollutant Discharge Elimination System permit program and construction; technology and water quality-based limitations; whole effluent toxicity control; stormwater and nonpoint source controls and workshop; the pretreatment program; and the wetlands dredge and fill permit program. Cost: \$949. Call: (301) 921-2345. ■

Attention Subscribers

If you have questions or comments about the *Stormwater Permit Manual*, or would like to submit an article for publication in the *Bulletin*, please contact the editors at (202) 739-9559; fax (202) 739-9578; or e-mail STRM@thompson.com. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act . \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

Stormwater Permit Manual

Bulletin

Volume 5, Number 7

January 1996

Enforcement

Metal Casting Firm Agrees to 'Innovative Project' in Lieu of Fine

The Washington State Department of Ecology (DEC) and Atlas Foundry and Machine Co. last month agreed to settle a \$53,000 penalty issued to Atlas for failure to comply with provisions of a stormwater discharge permit.

DEC fined the Tacoma, Wash.-based metal casting manufacturer in April 1995 for discharging excessive levels of copper, chromium, lead, zinc and other metals into the Thea Foss Waterway through the Tacoma storm sewer system.

Under the agreement, Atlas agreed to pay a portion of the penalty in the form of an "innovative settlement" designed to yield direct benefits to the environment, according to DEC.

"The settlement is called innovative in the sense that Atlas will pay \$25,000 toward an environmental project to benefit either the Puyallup/White River

Watershed or the Commencement Bay/Near Shore Tide Flats," said Mike Llewelyn, water quality program manager at DEC. "Both [DEC] and Atlas agreed on having the money go directly toward helping the environment. That way the environment truly benefits," he said. Atlas will pay \$22,000 of the remaining \$47,000 penalty to the state general fund, DEC said.

The fine was further reduced by applying as a credit \$7,968 in water permit fees already paid by the company, explained a DEC spokeswoman. Atlas had paid \$9,960 for a combined process wastewater/stormwater permit. But in 1993, the company changed the manufacturing process at its Tacoma facility to a closed loop system, which halted the discharge of process wastewater to the Tacoma storm sewer system. Atlas now has an individual stormwater permit, costing \$1,992.

(Continued on page 5)

API Lawsuit Challenges EPA Authority To Issue Phase II Stormwater Rule

The American Petroleum Institute (API) has filed suit against the U.S. Environmental Protection Agency (EPA) over EPA's final phase II stormwater rule, which affects smaller stormwater dischargers including retail gasoline stations.

The lawsuit filed Nov. 28, 1995, is "a protective measure" which will allow API to challenge future developments in phase II permitting, according to API attorney Alice Crowe (*API v. EPA*, D.C. Cir., No. 95-1589). API and EPA Dec. 21 filed a joint motion seeking an extension until Jan. 5—or ten days after the end of the federal government shutdown—for filing all procedural motions. The court earlier ordered API to file certain required materials by Dec. 28.

The Aug. 7, 1995, final phase II rule affects all point source discharges of stormwater not currently covered under phase I of the stormwater

(Continued on page 2)

Inside This Issue ...

Senate Holds First CWA Hearing	3
EPA Issues Final Environmental Audit Policy	3
EPA Plans Next Generation of Baseline Permits	3
Stormwater Permitting Deadlines for 1996	4
Will EPA Enforce SWP3 Deadlines for Baseline Permittees?	5

API

(Continued from page 1)

permitting program. Phase II sources include commercial, retail, light industrial and institutional facilities; construction activities under five acres; and municipal separate storm sewer systems serving fewer than 100,000 people (see *Bulletin*, September 1995, page 3).

The rule gives the majority of phase II dischargers six years to apply for permits. Only those facilities designated by EPA or another permitting authority as "significant polluters" must obtain permits right away. However, EPA has promised to issue a "supplemental" phase II rule to clarify details of the phase II permitting process.

EPA is attempting to craft the supplemental rule based on recommendations from a group of phase II stakeholders who are part of a larger federal advisory committee established by the agency under the Federal Advisory Committee Act (FACA).

It is not clear what sort of rule will emerge from the FACA stakeholder process, but EPA has indicated that a supplemental rule may not require permits at all. The rule "will determine the nature and extent of requirements, if any, that will apply to the various types of phase II facilities prior to the end of the six-year application period," EPA stated in issuing the final phase II rule.

API is suing now to protect its rights in the future, Crowe said. The statute of limitations for challenging regulations under the Clean Water Act is 120 days from the date a rule is issued. "There are some issues covered in the notice of final rulemaking that may change over the next six years. In order to protect our right to challenge those issues, we have to file now," she said.

Crowe said API is concerned with the breadth of the Aug. 7 rule, noting that EPA is required by statute to

identify the types of dischargers covered under the rule. "They haven't done that," she said. "Basically, all they have said is everyone who is not covered under phase I is covered under phase II."

The rule also gives local permitting authorities the right to identify significant contributors of pollutants, who will be required to obtain permits within 180 days of notification. "The problem is there is no definition of 'significant contributor,'" Crowe said. In addition, there is no process for EPA or the regulated community to abide by. "How does a designated facility challenge the definition if there is no definition or process for challenging it?"

EPA did not invite API to participate in the FACA stakeholder group, but the association has requested that it be given a seat on the phase II subcommittee of the Urban Wet Weather Flows Committee.

"We believe it is essential that we have a seat at the table. EPA has promoted this as a stakeholder process and we feel that we are an identified stakeholder ... particularly since EPA has targeted our industry—retail gas stations and convenience stores—for coverage under phase II," Crowe said.

EPA was in the process of considering API's nomination when federal workers were furloughed pending the resolution of budget talks in congress. "With the shutdown, obviously things have been delayed," Crowe said. "We can't rest until we know officially that we are a member."

Thus far, the API suit has not been joined by other industries, but the National Resources Defense Council on Dec. 22, 1995, filed a motion with the court to intervene in the lawsuit.

"We know that other industry representatives share our concerns but many already have official representation on the FACA committee. They may feel they have a channel through which to be heard," she said. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Executive Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot, Esq.; Senior Editor, Licia Ponzani; Contributing Editor, Kimberly Cushner; Production Manager, Connie Barclay. For subscription questions, call (800) 677-3789. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

For editorial questions, call Licia Ponzani at (202) 739-9559; e-mail STRM@thompson.com; or fax to (202) 739-9578.

POSTMASTER: Send address changes to Stormwater Permit Manual, Thompson Publishing Group, Subscription Service Center 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

Copyright ©1996 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, phone (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409, (800) 677-3789.

Storm Warnings

Stormwater-Related News in Capsule Format

Senate Holds First CWA Hearing. Senate Environment and Public Works Committee Chairman John Chafee, R-R.I., said Dec. 13, 1995, he hopes to complete work on a bill to reauthorize the Clean Water Act (CWA) sometime in 1996. At the hearing, Chafee again stressed that he will not attempt to overhaul the law, which he generally supports. Instead he plans to offer a more narrow reauthorization that will focus on refining provisions related to stormwater, wetlands and state revolving funds, he said.

The committee heard testimony from U.S. Environmental Protection Agency (EPA) Assistant Administrator Robert Perciasepe, as well as from water companies, environmentalists and agencies that provide financing for infrastructure projects.

Testimony on the stormwater program varied widely. Rutland, Vt., Mayor, Jeff Wennberg, who testified on behalf of the National League of Cities, said Congress should repeal the stormwater program and implement a new program that would apply stormwater management efforts in regions where benefits to the environment would be the greatest. Wennberg, who said the current program is too costly, supports the stormwater plan laid out by Rep. Bud Shuster, R-Pa., in HR 961, a CWA reform bill approved by the U.S. House of Representatives in May (see *Bulletin*, June 1995, p. 1).

Perciasepe said that EPA has involved stakeholders in a committee process to examine existing and future stormwater regulation. Although he is not opposed to considering legislative remedies, he is opposed to the stormwater provisions of HR 961.

The hearing also included testimony from Sen. Larry Pressler, R-S.D., on a bill he sponsored that would allow companies fined for clean water violations to use the penalties to fund community environmental projects (S 1390). Another Pressler-backed bill (S 1391) would prohibit EPA from imposing a civil or administrative fine against a community that has a compliance plan in effect.

Chafee spoke in favor of Pressler's bills, but Perciasepe said that S 1390 would not safeguard funds for environmental projects from being used improperly. He also said that S 1391 would prevent EPA from seeking penalties from local governments unless EPA could prove that the entity did not act in good faith. The legislation also might be interpreted to apply retroactively, he said. No further clean water hearings have been scheduled.

EPA Issues Final Environmental Audit Policy. EPA issued a final policy statement encouraging voluntary discovery, disclosure, correction and prevention of

environmental violations (60 FR 66706, Dec. 22, 1995). Under the policy, EPA will eliminate or substantially reduce the gravity component of penalties for violations found through voluntary environmental audits or efforts that reflect a company's due diligence, provided the violations are promptly disclosed and expeditiously corrected, the agency said. The policy is effective Jan. 22. For more information, call Robert Fentress or Brian Riedel at (202) 564-4187.

EPA Plans Next Generation of Baseline Permits. EPA officials say that if new approaches to monitoring that were introduced with the agency's new multi-sector stormwater general permit work well, they are likely to be used in future permits, including the next generation of the baseline general permit for industrial activities. The existing baseline permit is set to expire on Oct. 1, 1997.

EPA's Ephraim King of the Office of Water Permits Division said last month that he is not sure what future versions of baseline permits will look like but that probably some portions of the multi-sector permit will be used in designing the next baseline industrial permit.

Likely candidates for inclusion in a revised baseline industrial general permit are the low concentration monitoring waiver and the no-exposure waiver, two of the more flexible monitoring options available to multi-sector permittees. The low concentration waiver allows facilities to opt-out of monitoring for a specific pollutant in the fourth year of the permit if average quarterly grab samples collected in the second year of permit coverage are less than benchmark values. Each of the 29 industrial sectors covered by the multi-sector permit have unique monitoring requirements tailored to the sectors needs.

The no exposure waiver allows facilities to obtain exemptions from analytical monitoring for a particular pollutant if the operator can certify that there is no source of that pollutant exposed to stormwater at the facility. Both waivers are available on a pollutant-by-pollutant basis, rather than an "all-or-nothing" basis. Asked if more sectors would be added to the multi-sector permit in the future, King said the agency would have to gather more information on other sectors before developing additional sector-specific requirements.

According to Bill Swietlik of the water permits division, the agency has several options for handling future permits, including extending the current baseline permit beyond the deadline, modifying the baseline permit or broadening the multi-sector permit to encompass existing baseline permittees.

(Continued on page 4)

Storm Warnings

(Continued from page 3)

EPA Releases 18 "Sector Notebooks" to Aid Environmental Compliance. EPA has prepared comprehensive environmental and technical profiles (sector notebooks) of 18 industries. Each profile contains information on the industry's enforcement and compliance history, federal laws and regulations, industrial processes, amount and type of pollutants generated, pollution prevention approaches and cooperative programs designed to improve environmental performance.

The 18 industries are: dry cleaning; wood furniture and fixtures; iron and steel; fabricated metal products; motor vehicle assembly; non-fuel, non-metal mining; petroleum refining; pulp and paper; stone, clay, glass and concrete; lumber and wood products; metal mining; nonferrous metals; organic chemicals; printing; rubber and plastics; and the transportation equipment cleaning industry.

Electronic versions of the notebooks are on the Internet at <http://wastenot.intel.gov/envirosense/>. Hard copies are available by calling EPA at (202) 564-2395. ■

Stormwater Permitting Deadlines for 1996

Facilities Covered	Requirement	Deadline
Superfund Amendments and Reauthorization Act, Title III, Section 313 facilities (also known as Emergency Planning and Community Right-to-Know Act Section 313 facilities) covered under EPA's baseline industrial general permit	Must submit separate discharge monitoring report forms for the sampling periods January through June 1995, and July through December 1995	Jan. 28
Wood treatment facilities covered under EPA's baseline industrial general permit	Must submit separate discharge monitoring report forms for the sampling periods January through June 1995, and July through December 1995	Jan. 28
Facilities that wish to be covered by EPA's multi-sector general permit for industrial activities, including those previously covered by a baseline general permit	Must submit a notice of intent (NOI) form to EPA's NOI Processing Center	March 29
Primary metal industry facilities (SIC code 33) covered under EPA's baseline industrial general permit	Must submit separate discharge monitoring report forms for the sampling periods March through August 1995, and September 1995 through February 1996	April 28
Facilities covered under EPA's baseline industrial general permit and that have coal pile runoff	Must submit separate discharge monitoring report forms for the sampling periods March through August 1995, and September 1995 through February 1996	April 28
Battery reclaimers covered under EPA's baseline industrial general permit	Must submit separate discharge monitoring report forms for the sampling periods March through August 1995, and September 1995 through February 1996	April 28
Facilities covered under EPA's multi-sector general permit for industrial activities	Must develop and implement stormwater pollution prevention plans	Sept. 25
Land disposal facilities, incinerators, boilers and industrial furnaces covered by a baseline industrial general permit	Must submit separate discharge monitoring report forms for the sampling periods October 1995 through March 1996 and April through September 1996	Oct. 28
Airports; coal-fired steam electric facilities, animal handling/meat packing facilities; and facilities with industrial activities that are exposed to chemicals used as raw materials at facilities classified as SIC code 30 and 20, or are from one of the following: certain automobile junkyards, lime storage piles at lime manufacturing plants, oil handling sites at oil fired steam electric power generating facilities, cement manufacturing facilities and cement kilns, ready-mixed concrete facilities, or ship building and repairing facilities	Must conduct monitoring for oil and grease, chemical oxygen demand, total suspended solids, pH, and any pollutant limited in an effluent guideline to which the facility is subject	Annually

Will EPA Enforce SWP3 Deadlines for Baseline Permittees?

When EPA issued the final multi-sector permit for industrial activities, it said that dischargers with baseline general permits could switch to the multi-sector permit and that unpermitted group applicants could apply for coverage under the baseline general permit, even though the deadline for submitting a notice of intent (NOI) to be covered by a baseline permit expired in 1992.

However, EPA said it will not extend compliance deadlines under the baseline permit for group applicants. That means a previously unpermitted group applicant applying now for a baseline permit should have had a stormwater pollution prevention plan (SWP3) in place since April 1993, and, at the very least, must prepare an SWP3 prior to filing an NOI.

In its response to comments published with the multi-sector permit (60 FR 50804, Sept. 29, 1995, at p. 51069) EPA said group applicants "had the opportunity to apply for the baseline general permit in a timely manner. It would be inappropriate for EPA to favor group applicants over facilities that complied with the baseline general permit by allowing them more time to come into compliance." In addition, to

extend compliance deadlines EPA would have to modify the baseline permit, the agency said.

Clearly, EPA feels that group applicants who do not have SWP3s in place will be out of compliance with the baseline permit. "The question arises as to whether this type of violation would be considered significant noncompliance," said consultant John Whitescarver of the National Stormwater Center. "Right now, I just think EPA wants to get the job done," he said.

Whitescarver questions whether EPA has the resources or the interest to track compliance with the deadline. "If you are a large company—say a Fortune 500 company—and want to maintain a record of continuous compliance, you can't afford to be out of compliance over something like this," Whitescarver said.

"But, for small companies, I don't think EPA is going to be that interested." The agency has the ability to enforce the deadline "but it's not likely to stand up on an appeal," he said. "There is a lot of non-compliance out there, but it's like going through a red light: it's worse than speeding, but it's not murder," he said.

Atlas

(Continued from page 1)

Also under the settlement, Atlas has nine months to develop an environmental project to benefit local waterways. The proposed project must meet the approval of DEC. If the company fails to propose an acceptable project by September 1996, it must pay an additional \$25,000 to the state general fund, DEC said.

The agreement also amended an administrative order and penalty issued to Atlas last April. The order has been amended to require that Atlas hire a third-party auditor to perform an independent pollution prevention audit of the company's best management practices (BMP) plan and procedures. The auditor's report is due in March and must meet DEC approval, the agency said.

Under the agreement, the auditor is required to:

- conduct a review of all existing practices and procedures which may impact stormwater quality at the Tacoma facility;
- review the firm's existing BMP plan and procedures;
- review data depicting the chemical characteristics of stormwater at the facility and in the surrounding area;
- review applicable literature, manuals, guidance and other materials used in the field; and
- prepare a written report for DEC and Atlas.

The report is to include the auditor's findings on the firm's existing BMP plan and recommendations for improvements to reduce stormwater contamination. It also will include a proposed schedule for implementing the auditor's recommendations, DEC said.

Atlas has chosen the firm of Kennedy/Jenks Consultants to perform the pollution prevention audit.

Also under the agreement, Atlas is required to conduct one round of acute and chronic toxicity testing during the term of its permit. The company agreed not to appeal the order to the state Pollution Control Hearings Board. ■

New Feature for *Manual* Subscribers

As a new benefit to subscribers, the editorial staff of the *Stormwater Permit Manual* will periodically send information on significant developments affecting stormwater dischargers and permittees via Internet e-mail. If you are interested in being added to our Internet e-mail list, simply send a message to:

STRM@thompson.com

Subscribers also may use e-mail to contact the editors with questions or comments about the *Manual*, or to submit ideas for Insight articles. We look forward to hearing from you.

—Licia Ponzani, Senior Editor

Calendar of Events

ABA Clean Water Seminar. On Jan. 18 the American Bar Association Section of Natural Resources, Energy and Environmental Law and the Center for Continuing Legal Education, in cooperation with the Water Environment Federation and EPA, will broadcast a four-hour seminar on the Clean Water Act to over 73 locations nationwide. The presentation will include an interview with EPA assistant administrator for water, Robert Perciasepe, followed by panel discussions on watershed management and effluent trading, National Pollutant Discharge Elimination System permitting, wet weather issues and enforcement. Cost: \$160. For times and locations, call: (312) 988-5522. Video and audio tapes of the program will be available by March 1996.

Stormwater Training. The National Stormwater Center will hold a series of stormwater training workshops for compliance managers. The workshops will be held on the following dates: Feb. 5 in San Juan, Puerto Rico; and March 6 in Atlanta. Cost: \$395. Call: (407) 288-6852.

Multi-sector Workshops. The National Stormwater Center will hold a series of workshops on the U.S. Environmental Protection Agency's (EPA) final stormwater multi-sector general permit for industrial activities. Workshops are slated for Feb. 12 in Boston; and March 4 in Phoenix. Cost: \$395. Call: (407) 288-6852.

Urban Runoff. The University of Wisconsin-Madison will hold the course Restoring Urban Streams and

Stormwater Channels Feb. 12-14. Cost: \$699. Call: (800) 462-0876 or (608) 262-2061; or e-mail custserv@epd.engr.wisc.edu. Visit the University of Wisconsin engineering professional development Web location at <http://epdwww.engr.wisc.edu>.

Designing Stormwater BMPs. The University of Wisconsin-Madison will hold a course on designing stormwater best management practices Feb. 26-28. Cost: \$699. See above for contact information.

Source Loading and Management Model. The course Using the Source Loading and Management Model for Stormwater Management will be held by the University of Wisconsin-Madison Feb. 29-March 1. Fee \$499. See above for contact information.

Financing Stormwater Management. The University of Wisconsin-Madison will hold the course Planning, Financing, and Implementing Comprehensive Stormwater Management Programs, March 27-29. Cost \$795. See above for contact information.

Construction Site Erosion. A course on controlling erosion from construction sites will be held April 10-12, at the University of Wisconsin-Madison. Cost: \$699. See above for contact information.

Stormwater Regulations. A training course on compliance strategies for stormwater discharge regulations sponsored by Government Institutes will be held May 15-16 in Washington. Cost: \$949. Call: (301) 921-2345; or fax to (301) 921-0373. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$399
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$479

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

J61STRM

Stormwater Permit Manual

Bulletin

Volume 5, Number 6

December 1995

Multi-Sector vs. Baseline: Which Permit is Best for Your Facility New Permit Has ESA, Co-location Requirements; But Offers Monitoring Waivers

Industrial dischargers have until March 29, 1996, to decide whether to seek coverage under the new multi-sector stormwater general permit or stick with the old baseline general permit, and according to one U.S. Environmental Protection Agency (EPA) official, they will need the extra time.

It is not always clear which permit is more favorable for a given discharger, according to Bill Swietlik of EPA's Office of Water Permits Division. "There are shades of differences; it is not clear-cut," Swietlik told attendees at a Nov. 13 workshop at EPA headquarters in Washington. In most cases, differences in monitoring requirements will tip the scales one way or the other, he said.

The workshop was designed to help dischargers better understand the differences between the two industrial permits. The final multi-sector permit is available to dischargers in 29 industrial categories located in states and territories in which EPA is the

permitting authority (60 FR 50804, Sept. 29, 1995). The agency is encouraging other states to adopt a sector-specific permit based on the EPA model. At last count, about half the states said they planned to adopt some form of multi-sector permit, Swietlik said. Baseline industrial permits are available in all states.

Multi-sector permit applicants face several requirements that baseline permittees do not. For example, under the "co-located facilities" provision, if there are industrial activities within a single facility that fit the description of more than one sector in the multi-sector permit, the facility must comply with additional pollution prevention and monitoring requirements.

However, Swietlik noted that the co-located facility requirements are intended to be "additive" rather than "duplicative." That means, if a facility is required to monitor for the same pollutant for two different industrial activities found on the site, only

(Continued on page 4)

Stormwater Rules May Be Revised, Cut; EPA's Latest Agenda is 'Deregulatory'

The U.S. Environmental Protection Agency (EPA) is seeking to streamline or eliminate a number of regulations related to stormwater permitting, according to its latest semiannual regulatory agenda.

The agenda includes 19 proposed rules and 11 final rules that would revise requirements under the Clean Water Act (CWA).

A number of agenda items are described by EPA as being "deregulatory" in nature, and fall into the "reinventing government" category of rulemaking (60 FR 60604, Nov. 28, 1995). In announcing the agenda, EPA said it is "committed to reinventing environmental regulation to provide greater protection at less cost." The agency said it has identified "rules that are obsolete or no longer applicable or which could be modified to reduce compliance costs."

(Continued on page 3)

Inside This Issue ...

What Applicants Should Know About EPA's Notification Form	2
Recommended Reading and Resources for the Multi-Sector Permit	4
EPA Corrects Errors in the Multi-Sector Permit	5
Wet Weather and Stormwater Committees Convene	5

Notice of Intent

What Applicants Should Know About EPA's Notification Form

Facilities that submitted group applications will not automatically receive coverage under the U.S. Environmental Protection Agency's (EPA) new multi-sector stormwater general permit for industrial activities according to EPA program specialist Betty West. Group applicants must submit to EPA a notice of intent (NOI) form stating that they intend to be covered by the permit, she said.

"Submission of the group application itself is not enough. Under our requirements we must receive a certified, signed and dated application form—an NOI," West said at a Nov. 13, EPA workshop.

The NOI form (EPA Form 3510-6) was revised in August to accommodate special conditions related to the multi-sector permit. The new form allows applicants to check a box indicating which permit is being sought: the baseline industrial, baseline construction or multi-sector. Applicants can ascertain whether they are using the correct NOI form by checking the expiration date in the top right-hand corner. The new form expires as of Aug. 31, 1998.

Although the "Facility/Site Location" section of the form has not changed in appearance, applicants for the multi-sector permit *must* fill in the facility's latitude and longitude, as well as its address, West said. Applicants should note that instructions for the form do not specify that latitude and longitude are required for multi-sector applicants. Instructions on the back of the form appear to indicate that this information is optional for all permittees. In fact, it is optional only for baseline industrial and baseline construction permittees.

"This is one of the critical fields on the NOI," added Bill Swietlik of EPA's Office of Water Permits Division. Applicants that fail to complete the form will receive a letter from EPA requesting more informa-

tion. "Permit coverage will not be granted until all information has been sent to EPA," he said.

In addition, multi-sector applicants must certify by signing the form that they are in compliance with the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA), West said. Baseline general permit applicants do not face this requirement, although they must certify that all information submitted with the form is true and accurate.

Finally, multi-sector applicants must answer yes or no to the following questions: Are endangered species in proximity to storm water discharges or in proximity to construction of best management practices designed to control stormwater? Will construction be conducted for storm water controls? Is the applicant subject to a written historic preservation agreement?

West noted that there are many old NOI forms still in circulation and that the NOI Processing Center will continue to accept the old forms until the revised version becomes more generally available. In the interim, EPA will call all applicants who submit old NOI forms to clarify which permit the facility is seeking. This is necessary because the old form does not distinguish between the baseline industrial and the multi-sector industrial permits.

Applicants that use the wrong form will have to submit a new NOI in order to fulfill the ESA and NHPA certification requirements of the multi-sector permit, she said. "It is a bit of a redundant process, but the NOI Processing Center will help people deal with this," West said. EPA also issued a revised notice of termination form (EPA Form 3510-7). Both forms are available from the NOI Processing Center at (703) 931-3230. Copies of the forms are included at Appendix 2(f) and 2(g) of the *Manual*. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Executive Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot, Esq.; Senior Editor, Licia Ponzani; Contributing Editor, Kimberly Cushman; Production Manager, Connie Barclay. For subscription questions, call (800) 677-3789. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill & Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

For editorial questions, call Licia Ponzani at (202) 739-9559; e-mail STRM@thompson.com; or fax to (202) 739-9578.

POSTMASTER: Send address changes to Stormwater Permit Manual, Thompson Publishing Group, Subscription Service Center 5132 Tampa West Blvd., Tampa, Fla. 33624-2409. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, phone (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Tampa, Fla. 33624-2409, (800) 677-3789.

Agenda

(Continued from page 1)

EPA has set a target of reducing reporting and recordkeeping burdens on business by 25 percent and by as much as 50 percent where "legal and appropriate," the agency said.

Prerule. The agency will announce an advanced notice of proposed rulemaking or "prerule" to revise water quality standards regulations by April 1996. A proposed rule would be issued by March 1997 and a final rule a year later. (Contact Rob Wood at (202) 260-9536.)

Proposed Rules. A proposed rule due out next May would revise and modify the National Pollutant Discharge Elimination System (NPDES) permit application requirements for municipal separate storm sewer systems (MS4s) originally established under 40 CFR 122.26 in 1990. The revision would streamline stormwater sampling requirements and illicit connection screening requirements for all regulated MS4s in the NPDES stormwater permitting program. The regulation also would clarify permit application requirements during re-application for permits by previously permitted MS4s. Final action on the rule is slated for June 1997. (Contact Bill Swietlik at (202) 260-9529.)

Revised NPDES industrial permit application requirements and a new form 2C (wastewater discharge information) are slated for proposal in April 1996, with final action due January 1998. Existing manufacturing, commercial, mining and forestry-related operations would be required to submit revised applications to obtain NPDES permits. The application form has not been revised since 1984 and must be updated to reflect statutory and regulatory changes to the NPDES program, advances in scientific methods and an increased emphasis on toxic control, EPA said. The purpose of the action is to revise and consolidate existing application forms and requirements for industry and to streamline the permit application process for these facilities. The agency seeks to establish a unified process that minimizes the need for additional information from applicants while providing permit writers with information on toxic pollutants, EPA said. (Contact Brian Bell at (202) 260-6057.)

A proposed rule due September 1996 would clarify portions of the definition of "waters of the United States" that address isolated waters and wetlands and artificial waters. Final action is expected in January 1997. (Contact Hazel Groman at (202) 260-8798.)

EPA will propose a rule in February 1996 that would streamline NPDES general pretreatment requirements. The rule would become final August 1996. Among the possible revisions would be removal of stormwater group application requirements, streamlining permit termination procedures and consolidating regulatory

definitions. The agency also will propose two rules by September 1996 that would make minor adjustments to requirements concerning EPA's review of state NPDES permits. Final action on the proposals would occur in December 1997. (Contact Thomas Charlton at (202) 260-6960.)

Final action on a proposed rule on guidelines for oil and grease test procedures is due out in October 1996. The proposed rule was expected to be issued last month. Revised guidelines would replace existing gravimetric test procedures with EPA Method 1664 to assist in meeting chlorofluorocarbon phaseout requirements under the Clean Air Act. (Contact William A. Telliard at (202) 260-7134.)

Final Rule. Final action on a rule to provide standing to citizens to challenge final state-issued NPDES permits in state courts is expected in September 1996. The new provision would make it clear that a state must provide standing in state courts to the same extent that standing is granted to citizens in federal courts when EPA issues an NPDES permit. This approach is designed to let EPA move away from permit-by-permit oversight of state programs. The proposed rule was issued March 17, 1995 (60 FR 14588). (Contact Bob Klepp at (202) 260-5805.)

Long-term Actions. Comprehensive phase II stormwater regulations are expected to be proposed by September 1997 with a final rule to be issued in March 1999. An advisory committee composed of stormwater phase II stakeholders is assisting EPA in developing the rule. Currently all phase II dischargers are required to have stormwater permits by 2001. EPA will be considering limiting the universe of phase II sources and may recommend control options that are less burdensome than permits. (Contact Pamela Mazakas at (202) 260-1460.)

To be placed on the regulatory agenda mailing list, write to EPA at P.O. Box 42419, Cincinnati, Ohio 45242 or fax to (513) 489-8695. ■

New Feature for Manual Subscribers

As a new benefit to subscribers, the editorial staff of the *Stormwater Permit Manual* will periodically send news and information on significant developments affecting stormwater dischargers and permittees via Internet e-mail. If you are interested in being added to our Internet e-mail list, simply send a message to:

STRM@thompson.com

Subscribers also may use e-mail to contact the editors with questions or comments about the *Manual*, or to submit ideas for Insight articles. We look forward to hearing from you.

—Licia Ponzani, Senior Editor

MSGP

(Continued from page 1)

one sample and analytical measurement for that pollutant is necessary, as long as discharges from the industrial activities drain to the same outfall.

Although multi-sector permit applicants are the only stormwater permittees required to certify compliance with the Endangered Species Act (ESA), Swietlik noted that all three general permits require dischargers to comply with ESA. Even though the certification is new, and requires permittees to do extra paperwork in advance of applying, most facilities will not have a problem meeting the ESA requirements, he said.

Swietlik estimated that 90 percent of facilities applying for the multi-sector permit will not be located in a county that has a listed endangered species. Of those that do, he said, the majority will not have discharges in "proximity to" the endangered species' habitat, and thus will be able to certify that they are not harming endangered wildlife. "Proximity to" is intended to mean "in the immediate vicinity," Swietlik said. "It doesn't mean ten miles away," he said.

Further, if a facility is in proximity to a listed species, but does not have an "adverse affect" on the species, the facility can certify compliance with ESA. In response to industry requests to provide a more precise definition of "adverse affect," Swietlik said it should be an "obvious situation, such as stormwater flowing into a breeding area." Adverse affects will not be triggered by, for example, discharges that flow into a stream that empties into a river which, farther downstream, is a breeding area, he said.

"The Fish and Wildlife Service already determined that the permit would not have an adverse effect on endangered species," he said. The ESA certification is designed to ensure that it stays that way, he said.

Unlike baseline permittees, most multi-sector permittees must conduct quarterly visual monitoring. Swietlik noted that visual monitoring is not the same as an inspection, adding that many who commented on the proposed permit said visual monitoring is a good tool. Analytical monitoring, which is required only for industry sectors and subsectors that have a high potential to discharge pollutants at concentrations of concern, can be waived in the fourth year of the permit if average quarterly grab samples collected in the second year of permit coverage are less than benchmark values. The "low concentration opt-out," as it is called, is available on a pollutant-by-pollutant basis, Swietlik explained.

"The idea has a lot of merit. If it works, we will see more of it in the future," said Ephraim King of the permits division in an earlier interview. "If you ask people to monitor once a year, every year, you are not getting a representative sampling. If you ask them to

monitor four times a year, every year, it's burdensome," King said. "With this plan, facilities will have the opportunity, over time, to get a representative sampling. And if it is low, they can waive future monitoring. Also, it is an inducement for them to get the numbers down," he said.

The multi-sector permit also offers a "no-exposure waiver," that allows a facility to obtain an exemption from analytical monitoring for a particular pollutant if the operator certifies there is no source of that pollutant exposed to stormwater at the facility. The exemption can be obtained at any time in the life of the permit, even in year one. If the operator can base the certification on data from group applications or other historical information, it is possible to avoid analytical monitoring altogether because the exemption lasts for the full term of the permit, Swietlik said. ■

Recommended Reading

EPA officials recommended that potential multi-sector permittees read the following publications, all of which are available from the the agency's Office of Water Resource Center (see address below):

- EPA Summary Information Package (October 1995);
- EPA Pollution Prevention guidance document (EPA-832R-92-006, September 1992);
- Sampling guidance document (EPA-833/B-92-001, July 1992); and
- EPCRA 313 Sampling Methods (EPA-833-B-94-001, April 1994).

Additional Resources

Contact these resources for more information on the multi-sector permit and on stormwater permitting in general.

- Point Source Information and Provision Exchange System (PIPES) electronic bulletin board: via modem at (703) 749-9216; or via Internet at <http://www.ehsg.saic.com/pipes>.
- EPA Region 6 Hotline: (800) 245-6510.
- Office of Water Resource Center: call (202) 260-7786; fax (202) 260-4383; or e-mail waterpubs@epamail.epa.gov.
- EPA Notice of Intent Center: (703) 931-3230.

In the Manual, see ...

Your *Stormwater Permit Manual* includes several useful question and answer documents issued by EPA. Two of these are included with your December update. A Q&A on the multi-sector permit is added at ¶291, and a Q&A on monitoring under the baseline general permit is revised and added at ¶591. Also see ¶192 for answers to commonly asked questions about who is subject to permitting.

Storm Warnings

Stormwater-Related News in Capsule Format

EPA Corrects Errors in the Multi-Sector Permit. The U.S. Environmental Protection Agency (EPA) issued an "errata sheet" to correct errors found in the text of the multi-sector permit, published in the Sept. 29 *Federal Register* (60 FR 50804). The errata sheet was included as part of the information package distributed by the agency in October. EPA identified the following errors and corrections.

- The benchmark and monitoring cut-off values for zinc were incorrectly listed throughout the permit as 0.065 mg/l. The correct benchmark for zinc is 0.117 mg/l. This error occurred most frequently in tables used to describe monitoring requirements.
- The permit includes an incorrect address for the stormwater contact at EPA Region 6. The correct address is: EPA Region 6, Enforcement and Compliance Assurance Division (6EN-WC), EPA SW MSGP, First Interstate Bank Tower at Fountain Place, P.O. Box 50625, Dallas, Texas 75205.
- On pages 51261 and 51262 of the *Federal Register* notice, a section of text and a total metal table appear twice, where they should appear only once.
- Ammonia (NH₃) is missing from the list of chemicals that the Paper and Allied Product Manufacturing sector (p. 51257) and the Foods and Kindred Products Facilities sector (p. 51259) must monitor for in New Mexico.

Stormwater Permitting Deadlines. Jan. 28, 1996, is the deadline for Superfund Amendments and Reauthorization Act, Title III, Section 313 facilities (also known as Emergency Planning and Community Right-to-Know Act Section 313 facilities) covered under the baseline industrial stormwater general permit to submit discharge monitoring report (DMR) forms to EPA or other permitting authority. Jan. 28, 1996, also is the deadline for wood treatment facilities subject to the baseline industrial permit to submit reports. Both groups of dischargers must submit separate DMRs for the sampling periods January through June 1995 and July through December 1995 (see Appendix 1(c), p. 616 of the *Manual*).

The deadline for submitting a notice of intent (NOI) form to be covered under EPA's new multi-sector stormwater general permit is March 29, 1996. The deadline applies to group permittees seeking coverage under the permit for the first time and to dischargers previously covered under a baseline general permit and who wish to switch to coverage under the multi-sector permit. The original NOI deadline was Dec. 30, but EPA extended the deadline by 90 days (see Appendix 1(e), p. 808 of the *Manual*).

The deadline for developing and implementing a stormwater pollution prevention plan under the multi-sector permit also was moved forward 90 days to Sept. 25, 1996. The original pollution prevention plan deadline was June 27, 1996.

New Address for NOIs and NOTs. The address for submitting EPA stormwater NOI forms and notice of termination forms for stormwater discharges associated with industrial activity has changed. The new address is: EPA Stormwater Notice of Intent (4203), 401 M St., S.W., Washington, D.C. 20460. Questions about the new forms may be directed to the Notice of Intent Processing Center at (703) 931-3230.

Wet Weather and Stormwater Committees Convene. EPA's Office of Wastewater Management announced Nov. 17 it would convene the Urban Wet Weather Flows (UWWF) Advisory Committee Dec. 4-5 and the Stormwater Phase II Advisory Subcommittee Dec. 6-7. Both meetings, which are open to the public, will be held in Washington.

The UWWF meeting will focus on issue papers being developed on improving phase I of the stormwater program; water quality standards; and the watershed approach. The agenda also will include a status report on progress made by the sanitary sewer overflows subcommittee and the stormwater phase II subcommittee.

Phase II subcommittee members will discuss and adopt operating protocols and review in detail both EPA's report to Congress on phase II and the National Water Quality Inventory report. The subcommittee also will hear a number of case studies and will review the progress of work groups on the role of government; technical and programmatic options; and small construction sites and no-exposure industries. For information on the UWWF meeting contact EPA's William Hall at (202) 260-1458 or hall.william@epamail.epa.gov. For information on the phase II meeting, call EPA's Pamela Mazakas at (202) 260-6599.

EPA Budget Cut. A proposed EPA budget compromise bill (HR 2099) pending in Congress late last month would reduce funding for enforcing air, pesticide and water regulations by \$110 million (17 percent) compared to the fiscal year 1995 budget, according to EPA. The bill would reduce the agency's overall budget by \$1 billion, or 14 percent, EPA said in a Nov. 27 statement on the budget compromise process. Riders in the original funding bill that would have barred EPA from implementing several water programs did not survive the budget conference process. HR 2099 was approved by the U.S. House of Representatives July 31 and by the Senate Sept. 27.

(Continued on page 6)

Calendar of Events

Multi-Sector Workshops. The National Stormwater Center will hold a series of workshops on the U.S. Environmental Protection Agency's (EPA) final stormwater multi-sector general permit for industrial activities. Workshops are slated for Dec. 20 in Atlanta and Jan. 5 in Tampa, Fla. Cost: \$395. Call: (407) 288-6852.

Stormwater Training. The National Stormwater Center will hold a series of stormwater training workshops for compliance managers. The workshops will be held on the following dates: Jan. 8, 1996, in Stuart, Fla.; Feb. 5, 1996, in San Juan, Puerto Rico; and March 6, 1996, in Atlanta. Cost: \$395. Call: (407) 288-6852.

ABA Clean Water Seminar. On Jan. 18, 1996, the American Bar Association Section of Natural Resources, Energy and Environmental Law and the Center for Continuing Legal Education, in cooperation with the Water Environment Federation and EPA, will broadcast a four-hour seminar on the Clean Water Act to over 73 locations nationwide. The presentation will include an interview with EPA assistant administrator for water, Robert Perciasepe, followed by panel discussions on watershed management and effluent trading, National Pollutant Discharge Elimination System permitting, wet weather issues and enforcement. Cost: \$160. For times and locations, call: (312) 988-5522. Video and audio tapes of the program will be available by March 1996.

Urban Runoff. The University of Wisconsin-Madison will hold the course Restoring Urban Streams and Stormwater Channels Feb. 12-14, 1996. Cost: \$699.

Call: (800) 462-0876 or (608) 262-2061; or e-mail custserv@epd.engr.wisc.edu. Visit the University of Wisconsin engineering professional development Web location at <http://epdwww.engr.wisc.edu>.

Designing Stormwater BMPs. The University of Wisconsin-Madison will hold a course on designing stormwater best management practices Feb. 26-28, 1996. Cost: \$699. See above for contact information.

Source Loading and Management Model. The course Using the Source Loading and Management Model for Stormwater Management will be held by the University of Wisconsin-Madison Feb. 29-March 1, 1996. Fee \$499. See above for contact information.

Financing Stormwater Management. The University of Wisconsin-Madison will hold the course Planning, Financing, and Implementing Comprehensive Stormwater Management Programs, March 27-29, 1996. Cost \$795. See above for contact information. ■

Storm warnings

(Continued from page 5)

Senate Slated to Tackle CWA in December. Senate Environment and Public Works Committee Chairman John Chafee, R-R.I., is expected to hold hearings on Clean Water Act (CWA) reauthorization in December. Stormwater and wetlands provisions will be the primary targets for reform, according to a committee staffer. CWA hearings were delayed while the committee concentrated on a measure to reauthorize the Safe Drinking Water Act. A date for hearings had not been set as of late last month. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

J5DSTRM

Stormwater Permit Manual

Bulletin

Volume 5, Number 5

November 1995

EPA Extends Multi-sector Permit Deadlines by 90 Days

The U.S. Environmental Protection Agency (EPA) will extend the 90-day notification deadline for dischargers that wish to obtain coverage under the new multi-sector general permit, according to an EPA water office staff member.

Originally, potential permittees had until Dec. 30 to submit a notice of intent (NOI) to be covered by the permit, which was issued Sept. 29 and became effective Oct. 1. The extension gives dischargers until March 29, 1996, to submit NOIs. The agency also will allow dischargers that seek coverage under the multi-sector permit more time to develop and implement their stormwater pollution prevention plans (SWP3s). The SWP3 implementation deadline will be extended an additional 90 days, giving permittees until Sept. 25, 1996, to implement their plans.

The multi-sector permit is available to dischargers who fall under one of the 29 industrial sectors listed in the permit and are located in states and territories where EPA is the permitting authority.

EPA Issues Whole Effluent Toxicity Testing Final Rule

The U.S. Environmental Protection Agency (EPA) Oct. 16 issued a final rule adding three whole effluent toxicity (WET) testing methods to the list of agency-approved methods for conducting biological test procedures under the Clean Water Act (CWA) (60 FR 53529).

WET testing is required for some permittees under EPA's National Pollutant Discharge Elimination System (NPDES) stormwater permitting program. CWA requires EPA to set guidelines for test procedures for pollutant analysis when information on pollutants is required for permit applications, discharge monitoring reports, and determining compliance with pretreatment standards.

(Continued on page 2)

Industry officials and trade groups sought the extensions claiming that the 90-day deadline did not give facilities enough time to decide which permit was best suited to their particular needs—the multi-sector or the baseline general permit for industrial activities.

The 90-day window applied to previously unpermitted group applicants as well as to dischargers already covered by a baseline permit who want to switch to the more tailored multi-sector permit. The latter group had 90 days to submit a notice of termination (NOT) to discontinue coverage under the baseline permit and an NOI to be covered by the multi-sector permit. Facilities that want to make the switch also would benefit from an extension of the deadline, according to the EPA staffer.

Separately, the EPA staffer said the agency would not extend the April 1993 deadline for implementing SWP3s under the baseline general permit. That means group applicants that want coverage under the baseline permit must have their SWP3s in place prior to NOI submittal. This provision makes many group applicants ineligible for the baseline permit.

The agency was expected to announce a final decision on the extensions on Nov. 13. ■

Inside This Issue ...

Multi-sector Information Package Available	3
General Permit Compliance Deadlines Approach	3
EPA to Collect Water Quality Standards Data	3
EPA Proposed Rule Would Amend Approved Test Methods	4

WET Test

(Continued from page 1)

Approved test procedures apply to the analysis of bacteriological, inorganic (metal, non-metal, mineral, nutrient, demand, residue) and physical, non-pesticide organic, pesticide and radiological parameters. Test procedures for over 260 parameters previously have been approved, EPA said.

The final rule, which takes effect Nov. 15, amends tables IA and II of 40 CFR Part 136.3 by adding nationally approved methods for measuring the acute and short-term chronic toxicity of effluents and receiving waters. The rule incorporates by reference three technical documents describing the test methods. Each of the documents provides extensive guidance on quality assurance and routine quality control activities, EPA said.

According to EPA, many of the whole effluent toxicity testing methods incorporated into the rule have been included in previously issued NPDES permits. The final rule relieves NPDES permit writers of having to include these test methods on a case-by-cases basis. In addition, the test methods standardized in the rule will replace unapproved test methods for NPDES permits issued after the rule's Nov. 15 effective date.

Existing NPDES permits need not be re-opened to include test methods from the new rule, EPA said.

States Sought Rule

According to EPA, the rulemaking was initiated at the request of the states. The final rule will reduce costs and eliminate the confusion caused by the multiple versions of any one test method currently in use. At present, an industry with facilities in six different states may be required to conduct six different versions of the same test method, EPA said. The agency estimates that standardizing these approved methods could save the regulated community up to 20 percent of the

current test method costs, which can range from \$160 to \$2,240.

Methods for measuring mutagenicity (changes in genes or chromosomes) or for monitoring viruses in wastewaters and sludges that were included in the December 1989 proposed rule are not included in the final rule. Also, methods for testing for marine chronic toxicity in the rule do not apply to discharges into marine waters of the Pacific Ocean, EPA said. Methods addressing such discharges will be proposed at a later date, EPA said.

Information Resources

The three aquatic toxicity test manuals incorporated into the rule are:

- *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, Fourth Edition, EPA/600/4-90/027F;
- *Short-term Methods to Estimate the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Third Edition, July 1994, EPA/600/4-91/002; and
- *Short-term Methods to Estimate the Chronic Toxicity of Effluents and Receiving Waters to Estuarine and Marine Organisms*, Second Edition, July 1994, EPA/600/4-91/003.

The documents are available from the following sources:

- the National Center for Environmental Publications and Information; call (513) 489-8190 or fax (513) 489-8695 (paper copy or disk);
- EPA Office of Water Resource Center; call (202) 260-7786 (paper copy or disk); and
- EPA Internet homepage at [ftp.epa.gov](ftp://ftp.epa.gov) or gopher.epa.gov.

For more information on the final rule, contact Margarete A. Heber of EPA's Health and Ecological Criteria Division, Office of Science and Technology at (202) 260-0658. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Executive Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot, Esq.; Senior Editor, Licia Ponzani; Production Manager, Connie Barclay. For subscription questions, call (800) 677-3789. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Drinker Biddle & Reath; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

For editorial questions, call Licia Ponzani at (202) 739-9559; or e-mail STRM@thompson.com.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center 5132 Tampa West Blvd., Tampa, Fla. 33624-2409. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Dr., Danvers, Mass. 01923, phone (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Tampa, Fla. 33624-2409, (800) 677-3789.

Storm Warnings

Stormwater-Related News in Capsule Format

Multi-sector Information Package Available. The U.S. Environmental Protection Agency (EPA) is making available an information package designed to introduce potential permittees to the new multi-sector general permit for industrial activities. The information package provides a much-simplified overview of the lengthy permit.

The document includes a list of industry sectors that are eligible for coverage under the permit; a discussion of permit provisions that apply to all sectors; and a chart summarizing the permit's sector-specific monitoring and pollution prevention conditions. Copies of the agency's revised notice of intent (NOI) and notice of termination (NOT) forms also are included. Limited quantities of the information package are available from EPA's Office of Water Resources Center: call (202) 260-7786; fax (202) 260-0386; or e-mail waterpubs@epamail.epa.gov.

General Permit Compliance Deadlines

Approach. Emergency Planning and Community Right to Know Act (EPCRA) Section 313 facilities that discharge stormwater under EPA's baseline general permit for industrial activities and, separately, wood treatment facilities subject to the baseline general permit, are required to submit discharge monitoring report forms for the sampling periods January through June and July through December. Separate forms must be submitted for each sampling period (see Appendix 1(c), pp. 616-617 of the *Manual*).

Section 313 facilities are required to monitor for oil and grease, five-day biochemical oxygen demand, chemical oxygen demand (COD), total suspended solids (TSS), total Kjeldahl nitrogen, total phosphorus, pH, acute whole effluent toxicity (WET), and any Section 313 water priority chemical for which the facility is subject to reporting under EPCRA.

Wood treatment facilities are required to monitor stormwater for oil and grease, pH, COD, and TSS. In addition, facilities that use chlorophenolic formulations must measure pentachlorophenol and acute WET. Facilities that use creosote formulations must measure acute WET and facilities that use chromium-arsenic formulations must measure total recoverable arsenic, total recoverable chromium and total recoverable

copper. Permittees must submit forms by Jan. 28, 1996, to the appropriate EPA regional office.

EPA to Collect Water Quality Standards Data. EPA is seeking comments on specific aspects of its information collection procedures for water quality standards (60 FR 54682, Oct. 25, 1995).

Under the Clean Water Act, EPA is required to collect every three years information from states and some Indian Tribes on water quality standards and water quality criteria. Based on information submitted by states and tribes, the standards may be revised. The agency is soliciting comments on specific aspects of the information collection process, including the methods for, burden of, and value of collecting the data. For more information, contact EPA's Karen Gourdine at (202) 260-1328.

Whole Effluent Toxicity Forum Scheduled.

The Society of Environmental Toxicology and Chemistry (SETAC) will hold an open forum to report the results of a recent workshop on whole effluent toxicity (WET). The workshop was attended by 45 scientists from government, academia and business, and workshop results should give valuable insight into the strengths and weaknesses of technical aspects of WET testing, according to an EPA announcement.

Topics addressed during the workshop included laboratory test methods/appropriate endpoints; effluent toxicity testing variability; field assessments; and predicting receiving system impact from WET tests. The forum is intended to give attendees an overview of conclusions from the workshop and an opportunity to add their perspectives on the technical issues that were addressed there. The forum will be held Dec. 5 near Washington, D.C. For information, contact Greg Schiefer of SETAC at (904) 469-1500; fax (904) 469-9778; or e-mail schiefer@setac.org.

Multi-sector Workshops. The National Stormwater Center will hold workshops on the new multi-sector general permit on the following dates and locations: Dec. 6 in Boston; Dec. 12 in Washington; Dec. 14 in New Orleans; Dec. 20 in Atlanta; and Jan. 5, 1996, in Tampa, Fla. For information, call: (407) 288-6852. ■

EPA Proposed Rule Would Amend Approved Test Methods

The U.S. Environmental Protection Agency (EPA) Oct. 18 issued a proposed rule to amend its list of approved analytical techniques by adding new or revised test procedures for certain metal and inorganic chemical pollutants under Section 304(h) of the Clean Water Act (60 FR 53988).

The agency also is proposing to substitute reagents that are more "environmentally friendly" for certain hazardous and toxic chemical reagents currently used in some approved methods. In addition, EPA is proposing to withdraw approval of outdated or little-used analytical methods, as well as certain methods that require the use of hazardous or toxic reagents.

For each method that is proposed for withdrawal, one or more commonly used methods have been previously approved, EPA said.

Test procedures proposed for addition include new methods for: preparation of samples for metals analysis; inductively coupled plasma/mass spectrometry; a stabilized temperature graphite furnace atomic absorption method for metals; and ion chromatography methods for anions and for hexavalent chromium.

A revised EPA inductively coupled plasma atomic emission spectrometry method for metals to replace the currently approved method, and a low-level extension of the approved method for the determination of low level total residual chlorine also are being proposed.

In the interest of pollution prevention, EPA said it is proposing to replace mercuric sulfate with copper sulfate in the total Kjeldahl nitrogen methods and to permit the substitution of the AMCO-AEPA-1 Standard for the formazin standard in the turbidity method. Replacement of these two reagents would remove hazardous or potentially carcinogenic chemicals from use in EPA-approved methods, the agency said.

The use of approved test procedures is required whenever effluent data is required for a National Pollutant Discharge Elimination System permit application, discharge monitoring report or state

certification. Use of approved test procedures also is required for the expression of pollutant amounts, characteristics or properties in effluent limitations guidelines and standards of performance and pretreatment standards.

Comments on the proposed amendments are due Dec. 18. Send written comments to 304(h) Docket Clerk (Ben Honaker), Water Docket (MC-4101), U.S. EPA, 401 M St., S.W., Washington, D.C. 20460. For more information on the proposed rule contact James E. Longbottom of EPA's Office of Research and Development at (513) 569-7308. ■

Statement of Ownership, Management and Circulation

1. Title of Publication: Stormwater Permit Manual (008-384)
2. Date of Filing: October 17, 1995
3. Frequency of Issue: Monthly
 - (a) No. of Issues Printed Annually: 12
 - (b) Annual Subscription Price: \$398
4. Loc. of Known Office of Publication: 1725 K St. N.W., 7th Floor; Wash. D.C. 20006
5. Location of the Headquarters of General Business Offices of Publisher: 1725 K St. N.W., 7th Floor; Wash. D.C. 20006
6. Name and Address of Publisher, Editor, Managing Editor:
 - (a) Daphne Musselwhite, 1725 K St. N.W., 7th Floor; Wash. D.C. 20006
 - (b) Licia Ponzani, 1725 K St. N.W., 7th Floor; Wash. D.C. 20006
 - (c) None.
7. Owner: Thompson Publishing Group, Inc.: Richard E. Thompson, 1725 K St. N.W., 7th Floor; Wash. D.C. 20006
8. Known Bondholders, Mortgages and other Security Holders: None
10. Extent and Nature of Circulation:

	Avg. # Copies Each Issue During Preceding 12 Months	Act. # Copies of Single Issue Published Nearest to Filing Date
A. Total No. Copies (Net Press Run)	2038	1800
B. Paid and/or Requested Circulation		
1. Sales through dealers and carriers, street vendors and counter sales	0	0
2. Mail Subscription (Paid and/or requested)	1584	1371
C. Total Paid and/or Requested Circulation (Sum of 10B1 and 10B2)	1584	1371
D. Free Distribution by Mail, Carrier or Other Means. Samples, Complimentary and Other Free Copies	22	22
E. Total Distribution (Sum of C and D)	1606	1393
F. Copies Not Distributed		
1. Office use, left over, unaccounted, spoiled after printing	432	407
2. Return from News Agents	0	0
G. TOTAL (Sum of E, F1 & 2—should equal net press run shown in A)	2038	1800
11. I certify that the statements made by me above are correct and complete. Licia Ponzani, Editor

Attention Subscribers:

If you have Internet e-mail and would like to be on our Internet mailing list, please send your address to:

STRM@thompson.com.

We will use e-mail to periodically alert subscribers to important stormwater-related news.

Stormwater Permit Manual

Bulletin

Volume 5, Number 4

October 1995

DEC. 28 DEADLINE

EPA's Final Multi-Sector General Permit Issued Sept. 29

Facilities that wish to apply for the U.S. Environmental Protection Agency's (EPA) multi-sector general permit for industrial activities have until Dec. 28 to file a notice of intent (NOI) to be covered under the final permit, which was published in the *Federal Register* Sept. 29 (60 FR 50804).

The long-overdue permit is an outgrowth of the group application process that took place in the early 1990s. The permit, which covers 29 industrial sectors and numerous subsectors, gives applicants only 90 days to advise EPA that they want to obtain coverage. The permit is available to facilities located in states and territories where EPA is the permitting authority. Coverage is not limited to companies that participated in the group application process, EPA said in issuing the permit.

The permit includes general provisions that apply to all sectors (see *Bulletin*, Sept 1995, p. 1).

However, because the industries identified for coverage in the permit vary widely in terms of the types of pollutants present in their stormwater discharges, the permit contains industry-specific provisions that describe requirements for stormwater pollution prevention plans, numeric effluent limitations, and monitoring for each industry. The permit specifies that 32 industrial subsectors will be required to perform analytical monitoring (see table, p. 5).

According to EPA, most industry sectors will face fewer requirements under the multi-sector than they would under the baseline general permit. One exception is the rubber manufacturing sector, which will come under increased monitoring requirements, the agency said.

In many cases, facilities that choose the multi-sector permit will have to perform quantitative

(Continued on page 4)

Advisory Committee Urges Flexible Approach to Phase II

In the absence of congressional action on the Clean Water Act (CWA), it is up to the U.S. Environmental Protection Agency (EPA) to develop a program for regulating phase II stormwater dischargers, Michael Cook, director of EPA's Office of Wastewater Management, said at an agency advisory committee meeting Sept. 11.

Cook said he does not anticipate any "real changes or amendments to CWA" this year and chances that the federal water law will be reauthorized during the next two years are slim, he told attendees at the first meeting of the Stormwater Phase II Federal Advisory Subcommittee. The stormwater subcommittee is part of the Urban Wet Weather Flows Advisory Committee convened this

(Continued on page 7)

Inside This Issue ...

Benchmark Values Are Not Effluent Limitations, EPA Says	2
ESA Certification May Be a Hurdle for MSGP Applicants	3
MSGP Requires Analytical Monitoring for Some Sectors	5
State Survey	7
Multi-Sector Permit Information Resources	8
Calendar of Events	8

Benchmark Values Are Not Effluent Limitations, EPA Says

The U.S. Environmental Protection Agency (EPA) established in the multi-sector permit benchmark values for 41 separate parameters, including chemicals and water quality characteristics. Benchmarks are the pollutant concentrations that when exceeded could impair water quality or affect human health, EPA said.

EPA stressed that the benchmark concentrations are not intended to be interpreted as effluent limitations. "These values are merely levels which EPA has used to determine if a stormwater discharge from any given facility merits further monitoring," EPA said. The benchmark levels represent a "target concentration for a facility to achieve through implementation of pollution prevention measures," it said.

In the agency's view, if pollutants in a facility's discharges fall below the benchmark, the facility "represents little potential for water quality concern."

Parameter Benchmark Values

Biochemical oxygen demand ₅	30 mg/L
Chemical oxygen demand	120 mg/L
Total suspended solids	100 mg/L
Oil and grease	15 mg/L
Nitrate + nitrite nitrogen	0.68 mg/L
Total phosphorus	2.0 mg/L
pH	6.0-9.0
Acrylonitrile (c)	7.55 mg/L
Aluminum, total (pH 6.5-9)	0.75 mg/L
Ammonia	19 mg/L
Antimony, total	0.636 mg/L
Arsenic, total (c)	0.16854 mg/L
Benzene	0.01 mg/L
Beryllium, total (c)	0.13 mg/L

Butylbenzyl phthalate	3 mg/L
Cadmium, total (H)	0.0159 mg/L
Chloride	860 mg/L
Copper, total (H)	0.0636 mg/L
Dimethyl phthalate	1.0 mg/L
Ethylbenzene	3.1 mg/L
Fluoranthene	0.042 mg/L
Fluoride	1.8 mg/L
Iron, total	1.0 mg/L
Lead, total (H)	0.0816 mg/L
Manganese	1.0 mg/L
Mercury, total	0.0024 mg/L
Nickel, total (H)	1.417 mg/L
PCB-1016 (c)	0.000127 mg/L
PCB-1221 (c)	0.10 mg/L
PCB-1232 (c)	0.000318 mg/L
PCB-1242 (c)	0.00020 mg/L
PCB-1248 (c)	0.002544 mg/L
PCB-1254 (c)	0.10 mg/L
PCB-1260 (c)	0.000477 mg/L
Phenols, total	1.0 mg/L
Pyrene (PAH, c)	0.01 mg/L
Selenium, total (*)	0.2385 mg/L
Silver, total (H)	0.0318 mg/L
Toluene	10.0 mg/L
Trichloroethylene (c)	0.0027 mg/L
Zinc, total (H)	0.065 mg/L

Source: Multi-sector general permit (60 FR 50804, Sept. 29, 1995, at p. 50826). Notes: (*) Limit established for oil and gas exploration and production facilities only. (c) Carcinogen. (H) Hardness dependent. (PAH) Polynuclear Aromatic Hydrocarbon. Assumptions: Receiving water temperature—20°C; pH—7.8; hardness—CaCO₃ 100 mg/L; salinity—20 g/kg. Acute to Chronic Ratio (ACR)—10. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Executive Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot, Esq.; Senior Editor, Licia Ponzani; Contributing Editor, Kimberly Cushner; Production Manager, Connie Barclay. For subscription questions, call (800) 677-3789. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

For editorial questions, call Licia Ponzani at (202) 739-9559; or e-mail STRM@thompson.com

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center 5132 Tampa West Blvd., Tampa, Fla. 33624-2409. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Dr., Danvers, Mass. 01923, phone (508) 750-8400, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Tampa, Fla. 33624-2409, (800) 677-3789.

ESA Certification May Be a Hurdle for MSGP Applicants

Companies that apply for coverage under the U.S. Environmental Protection Agency's (EPA) new multi-sector general permit will have to jump through an extra hoop during the application process, compared to companies that already are covered under general permits.

Although stormwater permits issued under the National Pollutant Discharge Elimination System (NPDES) program have always required dischargers to comply with the Endangered Species Act (ESA), applicants for the multi-sector permit will be the first permittees to certify that their discharges, pollution prevention plans and best management practices (BMPs) do not adversely affect endangered species.

EPA published an endangered species guidance document along with its Sept. 29, final permit (60 FR 50804) designed to help companies comply with the new endangered species certification component of the multi-sector permit application process. The guidance includes a list of endangered species broken down by state and county and instructions on how to properly certify (Addendum H to the permit, p. 51278).

The multi-sector permit at present only applies in states in which EPA is the permitting authority. These include: Maine, Massachusetts, New Hampshire, Puerto Rico, the District of Columbia, Florida, Louisiana, New Mexico, Oklahoma, Texas, Arizona and Idaho. The permit also applies on federal Indian lands and at some federal facilities.

To be covered under the multi-sector permit, applicants must: indicate on the Notice of Intent (NOI) form whether any endangered species are located in the vicinity of the facility; and certify that their discharges and stormwater controls or BMPs will not harm endangered species. The EPA guidance document outlines a four-step process for fulfilling the certification requirement.

Step One: Check the List

First, facilities must review the county/species list in Addendum H to determine whether any endangered species are known to inhabit the county in which their facility is located.

If no species are listed in the county or the county does not appear on the list, applicants are automatically eligible for coverage under the multi-sector permit and may indicate on the NOI that there are no endangered species near the facility. If a facility is located in more than one county, the lists for all counties should be consulted.

Step Two: Determine "Proximity"

However, if a listed species does inhabit the county in question, the applicant must proceed to step two: determining whether the listed species may be found "in proximity" to the facility.

The area in proximity to be searched or surveyed for listed species will vary with the size of the facility, the nature and quantity of the stormwater discharges and the type of receiving waters, EPA said. Given the number of facilities potentially covered by the multi-sector permit, EPA has not established specific methods for determining whether species are nearby. Instead, applicants are advised to use the best method available based on the type facility, as long as it allows them to determine "to the best of their knowledge" whether an endangered or threatened species inhabits the region near the facility.

According to the EPA guidance, a species is in proximity to a facility's stormwater discharge if it is:

- located in the path or immediate area through which or over which contaminated point source stormwater flows from industrial activities to the point of discharge into the receiving water;
- located in the immediate vicinity of, or nearby, the point of discharge into receiving waters; or
- located in the area of a site where stormwater BMPs are planned or are to be constructed.

EPA offers four methods to determine species "proximity."

Visual inspections. This method is best suited for small facilities; facilities located in urban areas or industrial parks where there is little natural habitat; and facilities that discharge directly into municipal stormwater collection systems. For other facilities, a visual survey of the site and stormwater drainage areas may be insufficient.

State and federal agencies. In some cases, contacting the nearest state wildlife agency or the U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) is the easiest method. According to EPA, many endangered and threatened species are found in well-defined areas or habitats. State and federal wildlife agencies frequently have this information on hand. FWS has offices in every state and NMFS has regional offices in Gloucester, Mass.; St. Petersburg, Fla.; Long Beach, Calif.; Portland, Ore.; and Juneau, Alaska.

Conservation groups. Local and regional conservation groups often inventory species and their locations and maintain lists of sightings and habitats.

(Continued on page 4)

ESA Certification

(Continued from page 3)

Formal biological survey. Larger facilities with extensive stormwater discharges may choose to conduct biological surveys as the most effective way to assess whether species are located in proximity and whether there are likely to be adverse effects from discharges.

Step Three: Are Adverse effects Likely?

If no species are found to be in proximity to the facility, the applicant is eligible for permit coverage and may proceed with the certification. If listed species are found in proximity to a facility, applicants are advised to follow step three: determine if the species could be "adversely affected" by the facility's stormwater discharges or by BMPs.

EPA outlined three main adverse effects applicants should look for.

Hydrological effects. Stormwater may cause siltation or sedimentation or induce other changes in the receiving water such as the level of temperature, salinity or pH. These effects will vary with the amount of stormwater discharged and the volume and condition of the receiving water. Where a stormwater discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely, EPA said.

Effects to habitat. Stormwater may drain or inundate the habitat of a listed species.

Toxic effects. In some cases, pollutants in stormwater may have toxic effects on listed species.

The scope of the effects to consider will vary with each site, EPA said. Applicants also should consider the likelihood of adverse effects on species from any BMPs to control stormwater. Most adverse impacts from BMPs are likely to occur during the construction of the BMPs, EPA said.

In some cases a facility may be eligible for multi-sector coverage because actual or potential adverse effects were addressed or discounted through an earlier ESA authorization. Examples of this include:

- an earlier ESA section 7 consultation for the facility;
- an ESA section 10(a) permit issued for the facility;
- an area-wide Habitat Conservation Plan applicable to the facility; or
- a clearance letter from FWS, NMFS or a state wildlife service that discounts the possibility of an adverse impact from the facility.

Applicants must meet certain eligibility requirements to use an earlier ESA authorization, EPA said.

If adverse effects are found to be not likely, the applicant is eligible for coverage and may proceed with the NOI and certification.

Step Four: Remedies

If adverse effects are found to be likely, the final step in the process is to determine if measures can be implemented to avoid the adverse effects. Applicants are eligible for permit coverage if they take appropriate measures to avoid or eliminate actual or potential adverse effects prior to applying for coverage. Measures may involve relatively simple changes to facility operations such as rerouting a stormwater discharge to bypass an area where species are located, EPA said.

At this stage, applicants are advised to contact FWS or NMFS to see what appropriate measures might be applied to avoid or eliminate adverse impacts to species, the guidance said. If applicants adopt measures of this type, they must continue to abide by them during the course of permit coverage, EPA said.

In cases where measures to avoid an adverse impact are not available, the applicant is not eligible for coverage under the multi-sector permit. In such cases, applicants should contact their EPA regional office about obtaining an individual NPDES stormwater permit. ■

Multi-Sector Permit

(Continued from page 1)

monitoring less frequently than they would under the baseline permit. However, the new permit requires most sectors to conduct quarterly visual examinations of stormwater discharges, something they would not have to do under the baseline general permit.

In addition, all applicants are required to certify that their stormwater discharges and best management practices do not harm endangered species. Some facilities may have difficulty in providing this certification, and those that can't will likely be required to obtain individual permits (see related story, page 3).

EPA said it cannot require delegated states—those that are authorized to operate their own National Pollutant Discharge Elimination System (NPDES) programs—to adopt the multi-sector permit but that it continues to encourage those states to do so. EPA has said it plans to replace the existing baseline general permit with a more tailored measure modeled after the multi-sector permit when the general permit comes up for renewal.

See page 8 for information on how to obtain a copy of the permit. ■

MSGP Requires Analytical Monitoring for Some Sectors

Only eight of the 29 industrial sectors addressed by the U.S. Environmental Protection Agency's final multi-sector permit are not required to perform analytical monitoring. However, most of the 21 sectors that do require analytical monitoring are broken down into subsectors, and many of these do not have monitoring requirements (see table below).

According to EPA, only those sectors that "demonstrated a potential to discharge pollutants at concentrations of concern" are required to perform analytical monitoring. Sectors that were found to contain a wide range of industrial activities or that

were exposed to a variety of pollutant sources were further subdivided into the industry subsectors listed here.

Analytical monitoring is used to measure concentrations of pollutants in stormwater. Because analytical monitoring is a quantitative process, it can be used to measure improvements in stormwater quality by comparing results from one discharge to another, the agency said. This allows permittees to determine whether their stormwater pollution prevention plans are working, and to identify pollutants that are not being controlled by the plan. ■

Industrial Subsectors Subject to Analytical Testing

Sub-sector	SIC Code	Description
A. Timber Products Facilities		
1*	2421	general sawmills and planing mills
2	2491	wood preserving
3*	2411	log storage and handling
4*	2426	hardwood dimension and flooring mills
	2429	special product sawmills, not elsewhere classified
	243X	millwork, veneer, plywood and structural wood
	244X	wood containers
	245X	wood buildings and mobile homes
	2493	reconstituted wood products
	2499	wood products, not elsewhere classified
B. Paper and Allied Products Manufacturing		
1	261X	pulp mills
2	262X	paper mills
3*	263X	paperboard mills
4	265X	paperboard containers and boxes
5	267X	converted paper and paperboard products, except containers and boxes
C. Chemical and Allied Products Manufacturing		
1*	281X	industrial inorganic chemicals
2*	282X	plastics materials and synthetic resins, synthetic rubber, cellulosic and other manmade fibers except glass
3	283X	drugs
4*	284X	soaps, detergents and cleaning preparations; perfumes, cosmetics and other toilet preparations
5	285X	paints, varnishes, lacquers, enamels and allied products
6	286X	industrial organic chemicals
7*	287X	agricultural chemicals
8	289X	misc. chemical products
D. Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers		
1*	295X	asphalt paving and roofing materials
2	299X	misc. products of petroleum and coal
E. Glass, Clay, Cement, Concrete and Gypsum Product Manufacturing		
1	321X	flat glass
	322X	glass and glassware, pressed or blown
	323X	glass products made of purchased glass
2	324X	hydraulic cement
3*	325X	structural clay products
	326X	pottery and related products
	3297	non-clay refractories
4*	327X	concrete, gypsum and plaster products
	3295	minerals and earths, ground, or otherwise treated
F. Primary Metals		
1*	331X	steel works, blast furnaces and rolling and finishing mills
2*	332X	iron and steel foundries
3	333X	primary smelting and refining of nonferrous metals
4	334X	secondary smelting and refining of nonferrous metals
5*	335X	rolling, drawing and extruding of nonferrous metals
6*	336X	nonferrous foundries (castings)
7	339X	misc. primary metal products
G. Metal Mining (Ore Mining and Dressing)		
1	101X	iron ores
2*	102X	copper ores
3	103X	lead and zinc ores
4	104X	gold and silver ores
5	106X	ferroalloy ores, except vanadium
6	108X	metal mining services
7	109X	misc. metal ores
H. Coal Mines and Coal Mining-related Facilities		
NA*	12XX	coal mines and coal mining-related facilities
I. Oil and Gas Extraction		
1*	131X	crude petroleum and natural gas
2	132X	natural gas liquids
3*	138X	oil and gas field services

(Continued on page 6)

(Continued from page 5)

J. Mineral Mining and Dressing

1*	141X	dimension stone
	142X	crushed and broken stone, including rip rap
	148X	nonmetallic minerals, except fuels
2*	144X	sand and gravel
3	145X	clay, ceramic and refractory materials
4	147X	chemical and fertilizer mineral mining

K. Hazardous Waste Treatment Storage or Disposal Facilities

NA*	NA	hazardous waste treatment, storage or disposal
-----	----	--

L. Landfills and Land Application Sites

NA*	NA	landfills and land application sites
-----	----	--------------------------------------

M. Automobile Salvage Yards

NA*	5015	automobile salvage yards
-----	------	--------------------------

N. Scrap Recycling Facilities

NA*	5093	scrap recycling facilities
-----	------	----------------------------

O. Steam Electric Generating Facilities

NA*	NA	steam electric generating facilities
-----	----	--------------------------------------

P. Land Transportation

1	40XX	railroad transportation
2	41XX	local and highway passenger transportation
3	42XX	motor freight transportation and warehousing
4	43XX	United States Postal Service
5	5171	petroleum bulk stations and terminals

Q. Water Transportation

NA*	44XX	water transportation
-----	------	----------------------

R. Ship and Boat Building or Repairing Yards

NA	373X	ship and boat building or repairing yards
----	------	---

S. Air Transportation Facilities

NA*	45XX	air transportation facilities
-----	------	-------------------------------

T. Treatment Works

NA*	NA	treatment works
-----	----	-----------------

U. Food and Kindred Products

1	201X	meat products
2	202X	dairy products
3	203X	canned, frozen and preserved fruits, vegetables and food specialties
4*	204X	grain mill products
5	205X	bakery products
6	206X	sugar and confectionery products
7*	207X	fats and oils
8	208X	beverages
9	209X	miscellaneous food preparations and kindred products

V. Textile Mills, Apparel and Other Fabric Product Manufacturing

1	22XX	textile mill products
---	------	-----------------------

2	23XX	apparel and other finished products made from fabrics and similar materials
---	------	---

W. Furniture and Fixtures

NA	25XX	furniture and fixtures
	2434	wood kitchen cabinets

X. Printing and Publishing

NA	27XX	printing and publishing
----	------	-------------------------

Y. Rubber, Misc. Plastic Products and Misc. Manufacturing Industries

1*	301X	tires and inner tubes
	302X	rubber and plastics footwear
	305X	gaskets, packing and sealing devices, rubber and plastics hose and belting
	306X	fabricated rubber products, not elsewhere classified
2	308X	misc. plastics products
	393X	musical instruments
	394X	dolls, toys, games and sporting and athletic goods
	395X	pens, pencils and other artists' materials
	396X	costume jewelry, costume novelties, buttons and misc. notions, except precious metal
	399X	misc. manufacturing industries

Z. Leather Tanning and Finishing

NA	311X	leather tanning and finishing
----	------	-------------------------------

AA. Fabricated Metal Products

1*	342X	cutlery, handtools and general hardware
	344X	fabricated structural metal products
	345X	screw machine products, and bolts, nuts, screws, rivets and washers
	346X	metal forgings and stampings
	3471	electroplating, plating, polishing, anodizing and coloring
	349X	misc. fabricated metal products
	391X	jewelry, silverware and plated ware
2*	3479	coating, engraving and allied services

AB. Transportation Equipment, Industrial or Commercial Machinery

NA	35XX	industrial and commercial machinery
----	------	-------------------------------------

AC. Electronic, Electrical, Photographic and Optical Goods

NA	36XX	electronic, electrical
	38XX	measuring, analyzing and controlling instruments; photographic and optical goods

Source: Multi-sector general permit (60 FR 50804, Sept. 29, 1995, at p. 50821). Notes: "*" Denotes subsector with analytical (chemical) monitoring requirements. "NA" in the Subsector column indicates those industry sectors in which subdivision into subsectors was determined by EPA to be not applicable. "NA" in the SIC code column indicates that EPA did not define the category using Standard Industrial Classification codes. ■

States Will Use the Multi-Sector Permit in Different Ways

California Considers Permitting Options. California's State Water Resources Control Board (SWRCB) is currently considering a range of options for its industrial and construction general permits, including adopting EPA's multi-sector general permit, incorporating portions of the multi-sector permit into its permits, and retaining the current strategy for its general permits. The board will reissue the permits in 1996 and 1997, respectively, according to Leo Cosentini of SWRCB.

California also has made all published stormwater-related materials available through SWRCB's stormwater bulletin board, Cosentini said. Frequently requested materials available through the bulletin board include California's stormwater general permits and notices of intent, handbooks on best management practices, and notices of termination.

The modem telephone number is (916) 654-3692. Individuals without modems can request that the materials be sent to them by faxing a request to (916) 657-1011 or leaving a telephone request at (916) 657-1110. Stormwater-related questions also can be directed to Regional Water Quality Control Board contacts, he said (see ¶890.5 of the *Manual*).

Hawaii Incorporates Multi-Sector General Permit into State Program. Hawaii's Department of Health (DOH) has incorporated portions of EPA's multi-sector model general permit into its state stormwater program. Facilities that apply for coverage under Hawaii's baseline industrial permit may be required to comply with additional requirements from EPA's multi-sector model when permit coverage is extended to them by the state, according to Alec Wong of DOH.

Maryland to Issue Six Permits in 1996. Maryland intends to issue six stormwater permits in the next year. The permits will regulate discharges from: (1) swimming pools and spas (the permit is expected to grant coverage to all swimming pools and spas including residential, but is expected to require monitoring and reporting only by public facilities); (2) agricultural waste facilities (such as manure); (3) marinas; (4) facilities whose only discharge is cooling waters; (5) car washes; and (6) well development for activities involved in providing drinking water or performing groundwater monitoring, according to Patsy Allen of the Maryland Department of the Environment (MDE). MDE does not intend to adopt EPA's multi-sector model general permit. ■

Phase II

(Continued from page 1)

year to study a variety of watershed-related issues.

Because it is unlikely that Congress can reach a compromise this year or next, Cook said it is imperative that the agency act swiftly. "We have enough flexibility under existing law to come up with a good program for phase II, even without changing the law," he said.

The phase II group, whose 33 members include representatives from state, local, tribal and federal government, environmentalists and industry, is charged with developing recommendations for a comprehensive phase II stormwater program. The purpose of assembling a variety of stakeholders—many of whom have differing agendas—is to develop a consensus, said Chris Kirtz of EPA's Office of Policy, Planning and Evaluation. "You are asked to get as far as you can toward establishing a consensus. You may even develop regulatory language," Kirtz told subcommittee members.

Cook challenged the group to produce some solid options by next April and to deliver its final recommendations to EPA by December 1996. EPA is under a court order to issue a proposed supplemental phase II rule by September 1997, and a final rule by March 1999. Although that time frame might seem

"liberal" to some, Cook assured those present that getting a proposed rule out the door in just two years puts EPA on a "very tight schedule."

Most subcommittee members agreed that a flexible, cost-effective approach to controlling stormwater runoff is needed. Many urged EPA and their colleagues to consider lessons learned from the phase I program in developing options for regulating phase II discharges. Others called for a regional, or even local, approach to stormwater controls, noting that distinct geographic and population differences around the country make traditional across-the-board approaches impractical.

"I have a deep belief that we must educate before we regulate," said Jean Michaels of the National Association of Counties. Provisions should be developed to allow proactive communities to opt out of regulations and follow their own solutions, she said.

Predictable divisions between environmental groups, agricultural interests and industry representatives surfaced early in the meeting, with the environmentalists calling for stricter federal oversight and those in the regulated community citing a need for further study and more data on the subject. Industry sectors represented on the subcommittee include road and transportation construction, metal finishing, food processing, agriculture and cattle ranching, and automotive services. ■

Multi-Sector Permit Information Resources

The U.S. Environmental Protection Agency's (EPA) final multi-sector general permit for industrial activities was published in the *Federal Register* on Sept. 29 (60 FR 50804-51319). The 305-page preamble to the permit begins at page 50804. The permit itself, which is 154 pages long, begins at page 51109.

The notice includes copies of EPA forms and other guidance documents, including: a list of organic and toxic pollutants and hazardous substances (Addendum A, p. 51263); Notice of Intent form (Addendum B, p. 51265); Notice of Termination form (Addendum C, p. 51267); partial list of covered municipalities (Addendum D, p. 51269); environmental assessment guidance (Addendum E, p. 51273); section 313 water priority chemicals (Addendum F, p. 51274); endangered species guidance and list of endangered species by state and county (Addendum G, p. 51279). To order a copy of the *Federal Register* notice, call the U.S. Government Printing Office at (202) 512-1800 and ask for Vol. 60, No. 189.

For information on the permit, contact the EPA office in your region.

Submit NOIs to: NOI/NOT Processing Center (4203), 401 M St., S.W., Washington, D.C. 20460.

For copies of other stormwater documents, contact EPA's Office of Water Resource Center by phone (202) 260-7786; fax (202) 260-4383; or e-mail waterpubs@epamail.epa.gov. ■

Calendar of Events

Multi-Sector Workshops. The National Stormwater Center will hold a series of workshops on the U.S. Environmental Protection Agency's final stormwater multi-sector general permit for industrial activities. Workshops will be held on the following dates: Nov. 7 in New Orleans; Nov. 10 in West Palm Beach, Fla.; Nov. 29 in Houston; Nov. 30 in Dallas; Dec. 6 in Boston; Dec. 12 in Washington; Dec. 14 in Phoenix; and Dec. 20 in Atlanta. For information, call John Whitescarver at (407) 288-6852.

Industrial Permit Compliance. A stormwater compliance course, Practical Compliance With Industrial Stormwater Permit Regulations, will be held Nov. 8-10 in Charlotte, N.C. The course is sponsored by Environmental Education Enterprises, and will include an update of state and federal regulations; legal and enforcement issues; impacts on industry; permitting strategies, requirements and limitations; techniques for identifying stormwater pollution; sampling and monitoring techniques; laboratory testing issues; and pollution prevention plans. Attendees will prepare their own stormwater pollution prevention plans during the course. Cost \$900; second attendee from same company is half price. For information call Jay Lehr at (614) 792-0005, or send a fax to (614) 792-0006.

Clean Water Technologies. Topics to be covered in Government Institutes' Clean Water Technologies Course, Nov. 13-14, in Atlanta, include requirements for treatment technologies, emerging trends in wastewater treatment and control, pollutant removal technologies, and conversion and destruction technologies. Cost: \$949. Call: (301) 921-2345. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-677-3789

J5OSTRM

Stormwater Permit Manual

Bulletin

Volume 5, Number 3

September 1995

EPA Says Multi-Sector Permit Expected in September

The U.S. Environmental Protection Agency's (EPA) multi-sector model general permit for industrial stormwater discharges was scheduled to be made public in September. The long-awaited permit, which will cover discharges from 29 major industrial sectors and numerous subsectors, includes detailed monitoring and pollution prevention requirements for each of the covered industrial activities.

The multi-sector permit replaced the original group permit concept, which was abandoned by EPA after it received over 1,200 group applications from over 60,000 facilities in late 1992. The multi-sector permit, when final, will add a third permitting option for phase I stormwater dischargers in some states. Currently, industrial dischargers are covered under either a baseline industrial general permit or an individual permit.

The multi-sector permit will provide industry-specific coverage to applicants in areas not autho-

rized to administer EPA's National Pollutant Discharge Elimination System (NPDES): Alaska, Arizona, Florida, Idaho, Louisiana, Maine, Massachusetts, New Hampshire, New Mexico, Oklahoma, Texas, the District of Columbia, Puerto Rico and other U.S. territories. It also applies to facilities located on federal Indian lands and federal facilities in some states.

EPA said it will encourage NPDES delegated states to consider adopting the multi-sector permit. However, it is up to individual state permitting authorities to decide whether to offer the multi-sector permit.

To facilitate development of permit conditions for each of the 1,200 group applications it received under the group permitting process, EPA classified the groups into 29 industrial sectors based on the nature of industrial activity, type of materials handled and material management practices. Each

(Continued on page 4)

NRDC, Port of Long Beach, Settle Stormwater Lawsuit

The Port of Long Beach, Calif., in July agreed to develop a plan to control stormwater runoff into the San Pedro Bay in settlement of a legal challenge by three environmental groups.

Under a settlement agreement reached July 25 with the Natural Resources Defense Council (NRDC) and two local groups—Heal the Bay and the Santa Monica BayKeeper—the Port agreed to improve its comprehensive pollution monitoring program and to institute a consolidated stormwater runoff "master plan" for its more than 50 tenants.

The suit alleged that activities by the Port and its tenants—including the transfer, storage and export

(Continued on page 2)

Inside This Issue ...

Phase II Rule Gives Most Dischargers Six Years To Comply	3
Industrial Sectors Covered Under The Multi-Sector Permit	5
Senate Will Reauthorize, Not Rewrite, CWA	6
EPA Defends Authority, Provisions Of Final Phase II Rule	7
Calendar of Events	8

Long Beach

(Continued from page 1)

of petroleum; outdoor uncovered storage of treated lumber, scrap metal and coke; and outdoor vehicle maintenance—result in significant pollution flowing into the ocean.

The settlement requires the Port to retain a consultant to:

- train Port staff and tenants in stormwater pollution control issues;
- evaluate and improve on current management practices in use by the Port and its tenants to reduce any polluted runoff from their properties;
- improve stormwater pollution prevention plans (SWP3s) used by both the Port and the tenants; and
- evaluate and improve the Port's program for inspecting tenant's facilities to ensure that adequate stormwater controls are in place and that all are in compliance with the California industrial general stormwater permit.

According to NRDC, surface runoff at the Port is collected in more than 100 storm drains, and empties untreated directly into San Pedro Bay and then to the Pacific Ocean.

The Port's runoff sometimes contains petroleum hydrocarbons, such as oil and gasoline components, and heavy metals, such as zinc, which have been detected in harbor waters, the suit alleged. These pollutants can degrade aquatic life and the quality of the marine environment, NRDC said in announcing the settlement.

The suit was filed last year in the U.S. District Court for the Central District of California. The plaintiffs sought to require the Port and over 50 of its tenants to prevent potential pollution of the ocean from stormwater runoff flowing from their

properties into the storm drain system and to increase monitoring of pollutant levels in their runoff. The Clean Water Act allows citizens to sue for violations of the act.

Mark Gold, Heal the Bay executive director, said the settlement "has already resulted in improved stormwater management at the Port." Tenants of the Port involved in stormwater management activities include Metropolitan Stevedore, Aimcor, Domtar Gypsum, Hiuka America and Tidelands Oil Production.

The suit was brought in connection with an industrial permit issued by the California Water Resources Control Board in 1992. According to NRDC, the board estimates that 20,000 industries are subject to the state's industrial general permit but that there is "rampant noncompliance" with its terms.

"Working with representatives of the Port, we were able to fashion a plan to ensure better information and ultimately clean water in the harbor," said Andrew R. Henderson of Hall & Associates, co-counsel for the plaintiffs.

The settlement will become final once it is approved by the court.

The agreement with the Port of Long Beach follows another challenge by NRDC and the BayKeeper last December that ended when a federal court issued an injunction against the California Department of Transportation for violations of its municipal stormwater permit and a separate settlement last year of a lawsuit under the same municipal permit against the cities of Beverly Hills, El Segundo and Hermosa Beach.

NRDC and the BayKeeper are scheduled to go to trial against Los Angeles County for its alleged failure to adequately control runoff from streets and properties and to implement an adequate stormwater monitoring program. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Executive Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot, Esq.; Senior Editor, Licia Ponzani; Contributing Editor, Kim Cushman; Production Manager, Connie Barclay. For subscription questions, call (800) 677-3789. For editorial questions, call (202) 739-9559. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hofman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center 5132 Tampa West Blvd., Tampa, Fla. 33624-2409. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Dr., Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Tampa, Fla. 33624-2409. For information on multiple subscription discounts, call (800) 677-3789 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

Phase II Rule Gives Most Dischargers Six Years To Comply

Under the U.S. Environmental Protection Agency's (EPA) final rule for phase II stormwater discharges, most commercial and retail establishments and small municipal storm sewer systems will have six years to obtain stormwater permits, unless the agency decides to pursue a "non-permit" strategy for phase II sources.

The Aug. 7 final rule (60 FR 40230) includes the same requirements and regulatory amendments originally proposed by the agency in April. The rule, which amends the National Pollutant Discharge Elimination System (NPDES) stormwater permit application regulations under the Clean Water Act (CWA), is intended to take a "common sense approach" to phase II permitting, EPA said. (The full text of the final rule is included with this month's update to the *Manual*. See new Appendix 1(b)(3) in Volume II.)

Phase II covers all point source discharges of stormwater not currently covered under phase I of the stormwater permitting program. Phase II sources include commercial, retail, light industrial and institutional facilities; construction activities under five acres; and municipal separate storm sewer systems serving fewer than 100,000 people.

Agricultural runoff and runoff from mining operations and oil and gas exploration and production continue to be exempt from permitting requirements under phase II of the stormwater program.

The final rule, which already is in effect, establishes a sequential or "two-tiered" application process that targets the worst polluters first, according to EPA. Under the rule, EPA and state regulators will identify and notify dischargers who "are determined to be contributing to a water quality impairment or are a significant contributor of pollutants to waters of the United States." This group will have to obtain permits within 180 days of notification. EPA is allowed to extend this deadline, according to the rule.

EPA said it expects the tier one group to be small because most of these dischargers have already been included under phase I of the stormwater program. In fact, phase I encompasses discharges that contribute to violations of water quality standards and other "significant contributors of pollutants." The second tier, which includes all other phase II dischargers and is expected to be larger than tier one, will be required to apply for permits by the end of six years, but only if the regulatory program in place at that time requires permits, EPA said.

A number of commenters to the proposed rule asked EPA to clarify the requirements for designation under tier one. Commenters specifically asked the agency to better define the phrases "contribut-

ing to a water quality impairment" and "significant contributor of pollutants." In response, EPA said it deliberately avoided giving explicit definitions to give permitting authorities more flexibility. "Interpretive flexibility is warranted due to climatic and geographic differences across the United States," the agency said.

One commenter took issue with the 180-day deadline for permit applications, particularly for municipal separate storm sewer systems that are designated under tier one. In response, EPA noted that it can grant permission to submit applications late. Also, some municipalities may be able to use information already submitted for nearby medium or large municipalities under phase I and therefore may not need more time, the agency said.

EPA has established a committee of phase II stakeholders to aid in development of a supplemental phase II rule. This rule, which is to be finalized by March 1, 1999, "will determine the nature and extent of requirements, if any, that will apply to the various types of phase II facilities prior to the end of the six-year application period," EPA stated in the final rule. "EPA is open to, and committed to exploring a number of non-permit control strategies for the phase II program that will allow efficient and effective targeting of real environmental problems," EPA said.

The agency said the rulemaking promotes the public interest by "relieving most phase II dischargers of the immediate requirement to apply for permits. Consequently, this rule relieves most phase II dischargers from citizen suit liability for failure to have an NPDES permit over the next six years." (See related story, page 7).

Under section 402(p)(1) of CWA, phase II sources were exempt from permitting requirements until Oct. 1, 1992. Section 402(p)(6) required EPA to publish phase II regulations by that date. When the agency failed to issue regulations by the statutory deadline, Congress extended the permitting moratorium until Oct. 1, 1994, and the date for publication of phase II rules until Oct. 1, 1993.

When the moratorium expired last year before EPA could issue the required regulations, the agency admitted that it was unable to waive the prohibition against unpermitted discharges.

If phase II dischargers comply with the application deadlines in the final rule, the facility will not be subject to enforcement actions for discharge without a permit or failure to submit an application, the rule said. For now, the only permit deadlines phase II sources need to be concerned with are those associated with the tier one group of dischargers, and those dischargers will be notified by their permitting authority about application deadlines. ■

Multi-Sector Permit

(Continued from page 1)

of the industrial sectors defined by EPA were represented by one or more groups that participated in the group application process, the agency said.

EPA has further divided some of the 29 sectors into subsectors to establish more specific and appropriate permit conditions, including best management practices and monitoring requirements, according to a draft of the final permit obtained by the *Stormwater Permit Manual*.

Types of Discharges Covered

Coverage under the permit is not restricted to participants in the group application process, according to the draft final permit. "To limit coverage in that way would not be appropriate for administrative, environmental, and national consistency reasons," the permit states. Likewise, group members are not precluded from seeking coverage under the baseline general permit for industrial activity.

However, group members that choose to apply for a general permit should be aware that the deadlines for preparing and implementing stormwater pollution prevention plans (SWP3s) required under the baseline permit have already expired for existing facilities, meaning that group members seeking coverage under the baseline general permit must have an SWP3 in place prior to submitting a notice of intent (NOI) to apply for a permit.

Construction activities and industrial activities not addressed under the 29 sectors of the multi-sector permit are not eligible for multi-sector coverage, EPA said.

Unlike the baseline general permit, which excludes all stormwater discharges subject to effluent limitation guidelines, the multi-sector permit allows for coverage of four types of such discharges, provided that they are not already covered by an existing or expired NPDES permit.

These discharges include contaminated stormwater runoff from phosphate fertilizer manufacturing facilities, runoff associated with asphalt paving or roofing emulsion production, runoff from material storage piles at cement manufacturing facilities, and coal pile runoff at steam electric generating facilities.

However, the multi-sector permit does not authorize all stormwater discharges subject to effluent guidelines. Discharges subject to effluent guidelines under 40 CFR Part 436 or mine drainage under 40 CFR Part 440 are not covered under the permit. Discharges subject to effluent guidelines for

acid or alkaline mine drainage under 40 CFR Part 434 are not covered either.

Limitations on Coverage

Although most industrial activities currently regulated under the stormwater program could be covered by the permit, there are several types of discharges that are not. These include stormwater discharges subject to an existing NPDES permit, except for facilities that are currently subject to the baseline general permit. In most cases, these discharges are more appropriately covered under the terms and conditions of their existing permit, EPA said. They may be covered under the multi-sector permit only when 1) the existing permit has expired, and 2) the expired permit did not contain numeric effluent limitations more stringent than those in the multi-sector permit.

Discharges associated with industrial activity from inactive mines, inactive landfills, and inactive oil and gas operations that are located on federal lands, are not covered under the multi-sector permit, EPA said. In addition, stormwater discharges and best management practices or activities associated with SWP3s that are likely to adversely affect endangered species are not eligible for the multi-sector permit, the draft permit states.

Endangered Species Provisions

According to the draft permit, applicants will be required to review a list of endangered species and their locations (provided with the permit) to determine whether any endangered species are found in the county in which their facilities are located. If none are present, applicants will receive permit coverage.

If an endangered species is present, applicants must determine whether the species is in "proximity to" the stormwater discharge, and, if so, whether the species will be harmed by the discharge. A definition of "proximity to" and guidelines for determining whether a species will be affected by a discharge are included with the permit.

Common Provisions

Like the baseline general permit, the multi-sector permit requires facilities to file an NOI, develop an SWP3, and fulfill recordkeeping, monitoring and reporting requirements. All the industrial sectors covered under the multi-sector permit share some common permit conditions. Many of the basic conditions in the multi-sector permit reflect the baseline permit requirements established for most regulated industries in EPA's industrial general permit, according to the multi-sector permit. In addition, each of the 29 sectors has its own set of permit conditions, and in some cases may require additional types of pollution prevention and monitoring.

Industrial Sectors Covered by the Multi-Sector Permit

- Timber products facilities
- Paper and allied products manufacturing facilities
- Chemical and allied products manufacturing facilities
- Asphalt paving and roofing materials manufacturers and lubricant manufacturers
- Glass, clay, cement, concrete and gypsum product manufacturing facilities
- Primary metals facilities
- Metal mining (ore mining and dressing) facilities
- Coal mines and coal mining-related facilities
- Oil and gas extraction facilities
- Mineral mining and processing facilities
- Hazardous waste treatment, storage or disposal facilities
- Landfills and land application sites
- Automobile salvage yards
- Scrap and waste recycling facilities
- Steam electric power generating facilities, including coal handling areas
- Vehicle maintenance or equipment cleaning areas at motor freight transportation facilities, passenger transportation facilities, petroleum bulk oil stations and terminals, rail transportation facilities and the United States Postal Service
- Vehicle maintenance areas and/or equipment cleaning operations at water transportation facilities
- Ship and boat building or repairing yards
- Vehicle maintenance areas, equipment cleaning areas or deicing areas located at air transportation facilities
- Treatment works
- Food and kindred products facilities
- Textile mills, apparel and other fabric product manufacturing facilities
- Wood and metal furniture and fixture manufacturing facilities
- Printing and publishing facilities
- Rubber, miscellaneous plastic products and miscellaneous manufacturing industries
- Leather tanning and finishing facilities
- Fabricated metal products industry
- Facilities that manufacture transportation equipment, or industrial or commercial machinery
- Facilities that manufacture electronic and electrical equipment and components, photographic and optical goods

To be covered under the multi-sector permit, facilities, including members of an approved group, must submit an NOI within 90 days of the effective date of the permit. The NOI must be accompanied by signed certifications stating compliance with the National Historic Preservation Act, Endangered Species Act and the new source performance standard requirements. In addition, group members must submit group application numbers.

Although EPA will accept NOIs submitted after the 90-day deadline, the agency said it "may bring appropriate enforcement actions" in such cases.

EPA said it expects that most of the facilities that will seek coverage under the final permit are: members of groups with approved applications; facilities that submitted an NOI to be covered by the baseline general permit and now wish to switch to coverage under the multi-sector permit; or facilities that have submitted a complete individual application but have not yet received an individual permit.

Operators of stormwater discharges associated with industrial activity that discharge through a large or medium municipal separate storm sewer system or a municipal system designated by the

permitting authority, must notify and submit a copy of their NOI to the municipal operator of the system receiving the discharge.

All facilities intending to be covered under the permit must prepare and implement SWP3s. There are common pollution prevention requirements—similar to those under the baseline general permit—and special requirements for each of the industrial sectors.

In addition, there are special requirements for discharges through large and medium municipal separate storm sewer systems, for facilities subject to Section 313 of the Emergency Planning and Community Right-to-Know Act for water priority chemicals, and for facilities with outdoor salt storage piles.

Co-located Industrial Facilities

Facilities that include co-located activities may be covered under the multi-sector permit. Co-located industrial activities occur when activities being conducted onsite meet more than one of the descriptions of coverage in the permit. A landfill at a wood treatment facility, or a vehicle maintenance garage at

(Continued on page 8)

Storm Warnings

Stormwater-Related News in Capsule Format

Stormwater Reporting Deadlines. Facilities covered by an EPA stormwater permit that have salt storage piles or are subject to the Emergency Planning and Community Right-to-Know Act Section 313 for water priority chemicals, must comply with additional requirements for stormwater management and pollution prevention by Oct. 1. Facilities with coal pile runoff also must comply with numeric effluent limitations by Oct. 1 (57 FR 41252, Sept. 11, 1992; 57 FR 44450, Sept. 25, 1992). (See also Tab 500 of the *Manual*.)

Senate Will Reauthorize, Not Rewrite, CWA. The Senate Environment Committee will begin work on Clean Water Act (CWA) reauthorization "in the next few weeks" Committee Chairman John Chafee, R-R.I., said Sept. 7 at a luncheon sponsored by the Chemical Manufacturers Association. CWA reauthorization is a top priority in the Senate this year, but don't look for the Senate to produce a complete rewrite of the existing law, he warned.

"CWA is the most successful environmental law on the books now. It has worked well and it doesn't need a major overhaul," he said. Due to the achievements of the act over the past 25 years, "two-thirds of the rivers, streams and estuaries in this country now are fishable and swimmable," he said.

Last year, the Environment Committee reported a bill described by Chafee as a "massive and expensive" reauthorization. "It would have imposed a lot of new costs. It was a total rewrite." That bill eventually was shelved. "That was a lesson. We need a bill that addresses fewer issues and gives EPA a smaller, more focused agenda," he said.

Chafee said he will target provisions related to stormwater permitting, combined sewer overflows, and wetlands in revising the law. The Senator indicated he favors changes that encourage local decision-making and pollution prevention, and said the Senate should be more receptive to industry recommendations on approaches to pollution prevention.

The U.S. House of Representatives earlier approved a bill that would make "sweeping changes" in the clean water law, he said. "Technical standards would be dropped in favor of cost-benefit analyses and water quality standards would be removed," he said. In addition, efforts to bring nonpoint source pollution under control would be "slowed down and tied to federal appropriations," he said.

Flexible Aid, Local Control Are Keys to Managing Watershed Runoff. Flexibility in the type of aid provided by federal agencies and local control of watershed projects were the common elements in nine successful watershed-based projects designed to control polluted runoff, according to a recent report from the General Accounting Office (GAO).

The report was done at the request of Sen. Richard G. Lugar, R-Ind., chairman of the Senate Committee on Agriculture, Nutrition and Forestry, which has oversight of farm bill reauthorization this year.

GAO looked at only nine of the 618 watershed-based projects being planned or carried out nationwide as of early 1995. The projects, which ranged in size from five acres to over 150 million acres involved both surface and groundwater water resources and addressed a variety of agricultural pollutants, such as animal waste, pesticides and soil sediment. Through early 1995, these projects had received an estimated \$514 million in federal funds, the report said.

"While the lessons learned from the nine innovative or successful projects we reviewed cannot be projected to the entire inventory of ... projects, participants in all nine echoed two key lessons learned: the need for flexibility in the kinds of financial and technical assistance provided by federal agencies and local tailoring of approaches to watershed management," the report said.

Watershed projects differ widely with respect to the type and source of pollutants, local agricultural practices, and the community's attitudes, making a prescriptive, one-size-fits-all approach inappropriate, according to project participants. Because each watershed project has a unique local characteristic, federal agencies should adopt a flexible approach, providing funding and technical assistance without prescriptive solutions, the report found. In some cases, inflexible federal rules hampered the funding and execution of solutions to watershed problems.

Locally participants found that the keys to reducing agricultural pollution include: building citizens' cooperation through education; getting stakeholders to participate in developing the project's goals; and tailoring the project's strategies, water quality monitoring, and regulatory enforcement efforts to local conditions. To obtain a copy of *Agriculture and the Environment: Information on and Characteristics of Selected Watershed Projects* (GAO/RCED-95-218) call GAO at (202) 512-6000. ■

EPA Defends Authority, Provisions of Final Phase II Rule

The U.S. Environmental Protection Agency's (EPA) phase II rule does not attempt to extend the statutory deadline for regulating phase II stormwater dischargers, even though the rule postpones permitting requirements for most phase II sources for another six years, according to EPA.

In response to claims that the agency had overstepped its legal authority in pushing the phase II permit application deadline for most dischargers forward to Aug. 7, 2001, EPA noted that section 402(p)(6) of CWA directs the agency to issue rules that identify which stormwater discharges should be regulated and establish a program to regulate those sources—including establishing deadlines.

In its final rule, EPA relies on section 402(p)(6) to designate all phase II discharges for regulation under a program which, for most of those dischargers, does not require permits for six years, the agency said. EPA will use the six-year period to "investigate alternative control strategies for the phase II program," including possibly eliminating permits for most phase II sources.

EPA's Authority Questioned

The question of EPA's legal authority to issue the rule was raised in many of the comments submitted by individuals, trade groups, and state and local governments (see *Bulletin*, July 1995, p. 1). Other commenters expressed concern that the final rule does not relieve unpermitted dischargers from the threat of citizen suits, called the rule an unfunded mandate, and argued that small construction sites should be exempt from phase II rules. The preamble of the final rule (included in this update to the *Manual*) attempts to address these and other concerns aired by commenters.

The authority question hinges on EPA's interpretation of section 402(p) of the Clean Water Act. Many commenters disagreed with the agency's belief that section 402(p) requires permits for all dischargers of stormwater *after* Oct. 1, 1994. Rather, commenters claimed that section 402(p) prohibits such permits *before* that date, EPA said in issuing the rule.

In defending its interpretation, EPA noted that Congress in 1992 extended the permit application deadline for phase II sources until 1994 to give EPA more time to develop regulations. The reason for granting a statutory extension was to protect unpermitted dischargers from third party lawsuits, EPA said. "If Congress had not intended unregulated phase II sources to be liable for violations ... on Oct. 1, 1992, there would have been no need to amend section 402(p)(1) at all," the agency said.

In addition, EPA reiterated its belief that the final rule protects most phase II dischargers from citizen

suit liability for up to six years for failure to have an NPDES permit.

The Unfunded Mandate Issue

A number of commenters called the rule an unfunded mandate, claiming that its implementation will cost the public and private sectors more than \$100 million a year. EPA disagreed, stating that the rulemaking "actually reduces the immediate regulatory burden imposed on phase II facilities." The agency argued that the cost to phase II sources immediately designated under tier one of the two-tiered permitting scheme will be small because "extremely few designations ... are anticipated." The agency also said it has the authority to modify permit application requirements to require less information and lessen the burden on—and presumably the cost to—all phase II facilities.

"Because of these reasons, costs are expected to be well below \$100 million for each of the next six years," EPA said. In addition, EPA said it expects that after the sixth year costs will still be below \$100 million because of flexibility in the application process. "In any event, those costs will not exceed existing costs (multiplied by the rate of inflation) because of the current statutory requirement that phase II dischargers apply for permits immediately, absent promulgation of today's rule," EPA said in issuing the rule.

The full costs of the phase II program will not be known until after the agency issues a supplemental phase II rule to clarify the scope of coverage under the phase II program. Under a consent agreement reached in April with the Natural Resources Defense Council, EPA is required to propose a supplemental phase II rule by Sept. 1, 1997, and issue a final rule by March 1, 1999. "The cost to potential dischargers of this action will be identified in the subsequent rulemaking and cannot be accurately predicted in today's final rule," EPA said.

Many commenters argued that smaller sources—small construction sites in particular—should not be designated phase II sources because they do not present "significant water quality concerns." In response, EPA cited its Report to Congress which found that unregulated stormwater discharges are a "significant threat" to surface water quality.

"While EPA recognizes that individual facilities within the total phase II universe may not represent equal threats ... there is sufficient information concerning water quality problems to designate the entire class of phase II dischargers as an interim matter pending further study," the agency stated. EPA also noted in the rule that commenters failed to present data to support the claim that small construction sites present negligible water quality concerns. ■

Calendar of Events

Ground Water Cleanup. The course, Fundamentals of Ground Water Contamination and Cleanup, sponsored by Government Institutes will be held Oct. 17-18 in Alexandria, Va. The course will cover how to conduct a ground water investigation and develop a ground water monitoring plan. Cost: \$949. Call: (301) 921-2345.

Industrial Permit Compliance. A stormwater compliance course, Practical Compliance With Industrial Stormwater Permit Regulations, will be held Nov. 8-10 in Charlotte, N.C. The course is sponsored by Environmental Education Enterprises, and will include an update of state and federal regulations; legal and enforcement issues; impacts on industry; permitting strategies, requirements and limitations; identifying stormwater pollution; sampling and monitoring techniques; laboratory testing issues; and pollution prevention plans. Attendees will prepare their own stormwater pollution prevention plans during the course. Cost \$900. Call Jay Lehr at (614) 792-0005, or fax to (614) 792-0006.

Clean Water Technologies. Topics to be covered in Government Institutes' Clean Water Technologies Course, Nov. 13-14, in Atlanta, include requirements for treatment technologies, emerging trends in wastewater treatment and control, pollutant removal technologies, and conversion and destruction technologies. Cost: \$949. Call: (301) 921-2345. ■

Multi-Sector Permit

(Continued from page 5)

an asphalt batching plant are examples of co-located activities. Co-located industrial activities are authorized only when the facility complies with the pollution prevention plan and monitoring requirements for each co-located activity.

Authorizing co-located discharges in this manner allows industrial facilities to develop pollution prevention plans that fully address all industrial activities at the site, EPA said in the permit.

For example, if a wood treatment facility has a landfill, the pollution prevention plan requirements for the wood treatment facility will differ greatly from those needed for a landfill. Therefore, by authorizing co-located industrial activities, the wood treatment facility would develop a pollution prevention plan to meet the requirements for stormwater discharges from both the wood treatment facility and the landfill.

Such a facility is also subject to applicable monitoring requirements for each type of industrial activity. By monitoring the discharges from the different industrial activities, the facility can better determine the effectiveness of the pollution prevention plan requirements for controlling discharges from all activities, the draft permit states.

More information on requirements for specific industrial sectors will appear in your next newsletter. Details of the permit also will be added to the *Manual*. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depletor Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-879-3169

J59STRM

Stormwater Permit Manual

Bulletin

Volume 5, Number 2

August 1995

Conrail Agrees to \$2.5 Million Fine for CWA Violations

Consolidated Rail Corp. (Conrail) agreed to pay \$2.5 million in fines for criminal violations of the Clean Water Act and the Oil Pollution Act of 1990, including failing to maintain a system that separated oil from stormwater.

In a plea agreement filed July 24 in U.S. District Court in Boston, the company said it knowingly discharged oil and grease into the Charles River from its Beacon Park Rail Yard in Allston, Mass., over a period of several years.

The fine, if it is accepted by the court, is believed to be the largest criminal environmental fine ever to be paid in Massachusetts, and the largest fine in the nation in the last year, according to attorneys working on the case. In the plea agreement, Conrail agreed to recommend to the court that it be sentenced to a probation period of five years and that it will establish and maintain an effective environ-

mental compliance program at its Beacon Park facility. As part of that program, Conrail must submit plans to the U.S. Environmental Protection Agency (EPA) explaining how it will bring all discharges into compliance with applicable environmental laws.

The six-count criminal complaint filed with the court alleges that an April 7, 1994, discharge of oil and grease into the Charles caused a visible oil slick hundreds of yards long, according to a joint statement from the U.S. Attorney's office in Massachusetts, the Department of Justice's Environmental Crimes Division and EPA's Region 1.

The complaint also charges that Conrail knowingly discharged illegal and harmful quantities of oil and grease into the river on four other occasions in 1992 and 1993.

The complaint alleges that for many years leading up to the specified discharges, Conrail was aware that its system to limit the amount of oil discharged into the river was not functioning, causing untreated water containing high levels of oil to be discharged into the river. The company's knowing failure to fix

(Continued on page 2)

Final Multi-Sector Permit Postponed to September

The final multi-sector model general permit for stormwater discharges likely will be made public by the end of August, and should be printed in the *Federal Register* by late September, a U.S. Environmental Protection Agency (EPA) official said Aug. 2.

Four of the 11 states not delegated by EPA to run the National Pollutant Discharge Elimination System program were still working on their Section 401 certifications, which will be incorporated as conditions of the final permit, the official said. Once published, the final permit will be made available on EPA electronic bulletin boards and the Internet, the official said. The multi-sector permit originally was slated to be issued in late 1994. ■

Inside This Issue ...

EPA Cuts NPDES Rules, Plans Further Revisions	3
Stormwater Phase II Advisory Group Update	4
Citizen Suits Allowed Under Section 505 of CWA	4

Conrail

(Continued from page 1)

and maintain its system caused the illegal discharges, the complaint alleges.

U.S. Attorney Donald K. Stern said "Conrail knowingly allowed harmful quantities of oil to be discharged into the Charles River. The [complaint] charges that Conrail acted with total indifference to our environmental laws and to the consequences of its unlawful discharge of oil." Stern said his office will "vigorously prosecute" companies that knowingly violate U.S. environmental laws.

Steve Herman, U.S. EPA Assistant Administrator for Enforcement and Compliance Assurance, said "Deliberate threats to the environment will not be tolerated. This action makes sure that such disregard of the laws and abuse of the environment will not be a cost of doing business along the Charles River or elsewhere."

"Conrail is finding out the hard way what happens when you play fast and loose with New England's environment," said John DeVillars, regional administrator for EPA Region 1. "It's one thing for a company to file paperwork a few days late. It's quite another to know that you are polluting a national treasure like the Charles River on a regular basis—and still not mend your ways," he said.

"This case ought to send a clear message that we will not stand for anyone treating this river like an urban cesspool. Today's enforcement action is an important step toward meeting our goal of making the Charles River swimmable once again," DeVillars said.

In a written statement, Conrail officials apologized for the company's actions. "Simply put, we

apologize for what transpired at Beacon Park Yard," said President and Chief Executive Officer David LeVan. "We are proud to be a major contributor to the economic vitality of New England. But we also recognize and take very seriously our responsibility to be stewards of the resources of the greater Boston community," LeVan said. "Conrail is frankly embarrassed by the spill and the permitting violation that occurred at Beacon Park," he said.

According to the complaint, Conrail held a perpetual easement to use the Allston rail yard. Lubricating oils and fuels used to maintain and repair trains would mix with stormwater runoff from the site and empty into an underground storm drain system that discharged into the Charles.

To reduce the amount of oil in the discharges to levels allowed under a National Pollutant Discharge Elimination System (NPDES) permit, Conrail was required to use a device designed to separate the oil from the stormwater prior to its discharge.

The complaint charges that Conrail failed to maintain the separator and caused oil to be discharged into the river.

The complaint alleges that for over ten years Conrail failed to keep the separator functioning properly despite the fact that employees in Conrail's environmental department knew that it was not working, that its alarm system was inoperative, and that amounts of oil up to 40 times higher than permitted levels were being discharged into the river.

Under an NPDES wastewater permit that expired in 1992, Conrail was allowed to discharge oil and grease to the river provided that the discharges did not contain oil and grease in excess of 15 milligrams per liter. Because Conrail failed to keep the separa-



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St., N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Executive Vice President/Publisher, Daphne Musselwhite; Vice President of Editorial Operations, Kathy Dunten; Senior Publications Manager, Jill S. Talbot, Esq.; Senior Editor, Licia Ponzani; Production Manager, Connie Barclay. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 739-9559. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. For information on multiple subscription discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

tor functioning properly, it caused discharges to occur on several occasions that were far in excess of permitted levels. In addition, Conrail continued to allow discharges after the permit had expired, the complaint said.

In announcing the plea agreement, Conrail said it was cooperating fully in an ongoing investigation at

the facility. Upon learning of the 1994 release, the company took immediate action to clean up the spill, Conrail said.

The company said \$1.5 million of the total fine will go to the Oil Pollution Trust Fund and an additional \$250,000 will go to the Charles River Watershed Association. ■

EPA Cuts Obsolete NPDES Rules, Plans Further Revisions

Over 25 percent of federal water-related regulations are obsolete and will be removed from the Code of Federal Regulations (C.F.R.), including a number of provisions affecting the National Pollutant Discharge Elimination System (NPDES) permitting program, according to the U.S. Environmental Protection Agency (EPA). The NPDES program is one of four federal water programs that are being streamlined to reduce reporting burdens and add flexibility, EPA said.

In a June 1 report to President Bill Clinton, EPA Administrator Carol Browner said 70 percent, or 1,400 pages worth of EPA regulations eventually will be deleted or revised as a result of a line-by-line review of all environmental rules conducted by EPA since March. The review is intended to eliminate obsolete and unnecessary provisions and to aid in restructuring and simplifying rules over the next year, Browner said.

The review process also affects rules for air and radiation; solid waste and emergency response; administration and resources management; enforcement and compliance assurance; and prevention, pesticides and toxics.

Other federal water programs slated for "re-invention" include EPA's national primary drinking water regulations, the pretreatment program and water quality planning and management. Of the 93 parts of the C.F.R. administered by the Office of Water, 74 (80 percent) will be revised, EPA said.

Obsolete Rules Eliminated

EPA said it plans to remove outdated requirements, streamline permit application and modification procedures, and reduce monitoring and reporting requirements under Part 122, the NPDES permit program. For example, EPA said it will consolidate and revise industrial and municipal permit application requirements and forms and streamline the application process.

In fact, the process is already underway. A June 29 final rule published by the agency deleted or modified portions of the NPDES regulations that were either obsolete or redundant and made minor

changes to other water program rules (60 FR 33926). The action did not make any "legally substantive" changes to water program rules, EPA said. The agency said it plans to address more substantive regulatory provisions in future actions.

Other upcoming changes will include revising permit application requirements for municipal separate storm sewer systems to reduce the cost and burden of reapplication for succeeding permit terms, the agency said. EPA will not in future applications require information that already is available from earlier applications or which is not pertinent for the approval process.

In total, these changes will result in "shorter, easier to understand regulations and an estimated savings to the regulated community of \$23 million per year and 287,000 burden hours," Browner said in her report to the president.

Legislative Remedies

EPA also has identified a number of legislative changes which, if adopted by Congress, "could provide for significant burden relief for the regulated community and economic benefit to the nation," the report said.

The administration last year proposed an aggressive package of Clean Water Act reforms that it said were designed to accelerate clean water goals while saving businesses and taxpayers billions of dollars annually when compared to existing statutory mandates, the agency said.

For example, EPA recommended a more targeted approach to stormwater management and more flexibility to communities with combined sewer overflows. If those changes are implemented, savings to businesses alone could be more than \$15 billion, EPA claimed.

The agency also recommended other provisions designed to provide increased flexibility and efficiencies, including:

- continued funding for the State Revolving Loan Fund and expanded use of the funds for a

(Continued on page 4)

NPDES Rules

(Continued from page 3)

broader array of water protection activities;

- allowing states to establish new management frameworks that focus resources on the most critical problems in priority watersheds to achieve and maintain water quality standards;
- consolidating most multiple water grant authorities into a single multi-purpose water grant authority; and
- allowing pollutant trading within a watershed to achieve cost-effective attainment of water quality standards.

As part of the Clinton administration's broad reinvention initiative, Browner said she has committed EPA to several initiatives aimed at streamlining

reporting and recordkeeping requirements. First, the agency plans to reduce by 25 percent existing monitoring, recordkeeping and reporting requirements. "When completed in June 1996, this effort will save the regulated community 20 million reporting burden hours annually," the EPA report said.

Second, EPA said it plans to create a one-stop reporting system for the collection of routine emissions data to replace the multitude of reporting forms currently required to collect data from a single facility.

Third, the agency said it is moving forward aggressively to enable firms to report environmental data electronically rather than with hard copy. Finally, the agency said it is taking steps to cut in half the frequency of regularly scheduled reports, as requested by the president in April. ■

Storm Warnings

Stormwater-Related News in Capsule Format

Stormwater Phase II Subcommittee. A status report on the stormwater phase II subcommittee was presented during the U.S. Environmental Protection Agency's (EPA) Wet Weather Flows Advisory Committee meeting Aug. 2-3 in Washington. EPA attorney Pam Mazakas, who is spearheading the stormwater group, said membership on the subcommittee will be finalized by early September and that the first subcommittee meeting, which will be open to the public, is tentatively scheduled for Sept. 11 and 12 in Washington.

Mazakas said EPA's final phase II rule, which was due out in early August, provides a six-year timeframe for the stormwater subcommittee to rethink the permitting program. EPA is asking subcommittee members to consider these questions: What are the problems with the current program? What are the sources of those problems? And what are some possible solutions? Also important is the question of who is best suited to administer the phase II program: federal, state or municipal government, she said.

Citizen Suits Allowed Under CWA Section 505. Water quality standards included in discharge permits may be enforced through citizen suits, even if the standards are not in the form of effluent limitations, a federal appeals court ruled in June. In *Northwest Environmental Advocates v. Portland, Ore.*, (56 F.3d 979; 1995 U.S. App. LEXIS 13761 (June 7, 1995)), a citizen group alleged that Portland's discharge of raw sewage from 54 outfalls was not covered by a National Pollutant Discharge Elimina-

tion System (NPDES) permit and that the discharges were causing violations of state water quality standards. The city had argued that Section 505 of the Clean Water Act (CWA) allows citizens to enforce only standards that can be translated into numeric effluent limitations, rather than water quality standards that appear in narrative form, such as those in NPDES permits.

Under the 1972 CWA amendments, effluent limitations replaced water quality standards as the primary method of regulating pollutants, Portland argued. The city said water quality standards are intended to be the goal of pollution control, while end-of-pipe effluent limits are the means by which the goal is achieved. The Ninth Circuit vacated its earlier opinion that citizen groups lacked standing to sue under Section 505. While Northwest's petition for rehearing in the earlier case was pending, the U.S. Supreme Court issued a decision (*PUD No. 1 of Jefferson County v. Washington Department of Ecology*) that cast doubt on the circuit court's earlier ruling.

Multi-sector Permit Workshops. The National Stormwater Center will hold management workshops on EPA's multisector model general permit for industrial stormwater dischargers on the following dates: Aug. 21 in Denver; Aug. 23 in Phoenix; Aug. 25 in Washington, D.C.; Aug. 29 in St. Louis; Aug. 30 in Atlanta; Sept. 6 in Dallas; Sept. 7 in Houston; Sept. 12 in Boston; Sept. 15 in West Palm Beach, Fla.; and Sept. 18 in Tampa, Fla. Cost: \$395. Call: (407) 288-6852. ■

Stormwater Permit Manual

Bulletin

Volume 5, Number 1

July 1995

EPA Withdraws 'Direct Final' Phase II Rule Amid Protests

Agency to Address Legal and Procedural Issues in Upcoming Revised Final Rule

The U.S. Environmental Protection Agency (EPA) will use an expedited rulemaking process to finalize the phase II stormwater rule by Aug. 7. Bowing to concerns about its legal authority to postpone permitting of phase II discharges, the agency decided in late June to withdraw its April 7 "direct final" phase II rule to address issues raised during the public comment period, agency officials said.

According to attorneys specializing in stormwater issues and comments submitted by a variety of industry and trade groups, the phase II rule is not valid because it attempts to extend the moratorium on permitting for the majority of phase II sources. That is something that only Congress—not EPA—has the power to do, the comments said.

EPA on April 7 issued a direct final rule regulating all stormwater dischargers not currently covered under phase I of the National Pollutant Discharge Elimination System (NPDES) stormwater program (60 FR 17950 as corrected by 60 FR 19464, April 18, 1995). That rule was to take effect Aug. 7 unless EPA received "significant adverse and critical comment." In that case, EPA said it would abandon the direct final rule and fall back on a separate—but virtually identical—proposed rule for phase II sources, also published on April 7 (60 FR 17958).

The agency decided to go forward with the proposed rule, after a careful review of the comments received, according to Bill Tate of the Office of Wastewater Management, Permits Division. Tate

(Continued on page 4)

N.J. Issues Two Permits, Amends Stormwater Rules

The New Jersey Department of Environmental Protection (DEP) announced it will issue stormwater general permits for the concrete and scrap metal industries, and proposed several changes to its statewide stormwater permitting program, as part of an effort to streamline the New Jersey Pollutant Discharge Elimination System (NJPDDES) water permitting process.

General permits save money and time because they group together similar dischargers that can be regulated with a single set of permit conditions, DEP's Division of Water Quality said in making the announcement. Dischargers with similar operating

(Continued on page 2)

Inside This Issue ...

Phase II Rule is an Unfunded Mandate, Industry Claims	3
Multi-sector Permit Status	7
FACA Stormwater Group is Underway	7
Urban Runoff is Polluting California's Waters, Report Finds	7

New Jersey

(Continued from page 1)

conditions, effluent limitations and monitoring requirements are good candidates for general permits, DEP said.

The concrete industry general permit would authorize facilities that manufacture concrete products, concrete block and brick, and ready-mixed concrete to discharge stormwater to surface waters. It also would cover facilities classified as concrete manufacturers by DEP.

Facilities covered under the concrete industry permit would be required to monitor pH and total suspended solids, implement a stormwater pollution prevention plan (SWP3) and use best management practices designed to eliminate or minimize the impacts of concrete manufacturing on water quality, the agency said. The final permit was due out in June, DEP said.

A new general permit for the scrap metal reprocessing and automotive parts dismantling industries now is available. It authorizes the discharge of stormwater from facilities involved in recycling and equipment washing operations. Facilities authorized under this permit must develop SWP3s and monitor their stormwater discharges for two years after implementing a pollution prevention plan.

In May, DEP proposed amendments to several sections of its stormwater rules (27 NJR 1857, May 15, 1995). The proposed amendments would establish a Stormwater Specialist Program in which registered volunteers would assist permittees in preparing and implementing SWP3s. Experienced individuals who complete a DEP-approved stormwater permitting training course would be eligible to register as stormwater specialists at their facilities,

DEP said. Other proposed amendments would:

- allow group applicants to use sampling data that has been accepted by the U.S. Environmental Protection Agency (EPA) from another member of the same group, as sampling data for a different member's application for an individual stormwater discharge permit;
- exempt permittees from discharge limits for industrial discharges if they can prove that discharges in excess of permit limits did not result from conditions at their facility;
- exempt all stormwater discharges from effluent limitations and monitoring requirements for oil and grease;
- modify the basic industrial general permit to allow some of a facility's stormwater discharges to be authorized under the basic industrial permit while the rest would be authorized under an individual stormwater discharge permit or other permit;
- expand the definition of "stormwater discharge associated with industrial activity" to include stormwater discharges that fall outside the EPA definition of "industrial activity";
- amend the definition of "non-point source" to include any source that discharges pollutants;
- require NJPDES stormwater discharge permits for "stormwater discharges associated with industrial activity" from non-point sources into surface waters; and
- give DEP authority to request that persons who own or operate a facility and whose stormwater is associated with industrial activity either declare their intent to obtain a permit for the discharge or provide a written justification as to why they do not need one. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Executive Vice President/Publisher, Daphne Musselwhite; Vice President of Editorial Operations, Kathy Dunten; Senior Publications Manager, Jill S. Talbot, Esq.; Editor, Licia Ponzani; Production Manager, Connie Barclay. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 739-9559. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. For information on multiple subscription discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

Phase II Rule Is an Unfunded Mandate, Industry Claims

The U.S. Environmental Protection Agency's (EPA) phase II stormwater rule is an unfunded mandate, according to comments from petroleum industry officials and some local stormwater officials.

Comments from Chevron Corp., Ashland Petroleum Co., Pennzoil Co., Amoco Corp. and the American Petroleum Institute charge that EPA failed to prepare an unfunded mandate statement as required by the Unfunded Mandates Reform Act of 1995, which was signed into law March 22. The Act requires agencies to conduct cost-benefit analyses before issuing new regulations that will cost the private sector \$100 million or more in any one year.

In issuing the April 7 direct final rule for phase II discharges, EPA estimated the costs to state and local governments and the private sector to be less than \$100 million and said that the rulemaking "significantly reduces the immediate regulatory burden" on phase II facilities. "EPA has determined that an unfunded mandates statement therefore is unnecessary," the agency said (60 FR 17956, April 7, 1995).

Chevron supports EPA's effort to develop a stormwater management program to protect water quality, said Philip T. Cavanaugh, vice president and general manager of federal relations. However, the company believes that the cost to implement the phase II rule "may well be greatly in excess of \$100 million," he said, noting that EPA did not provide any basis or explanation for either the assumed cost per permit or the estimated number of facilities to be covered by the rule. For that reason, Chevron believes EPA should provide an unfunded mandates statement and reevaluate the phase II rule.

In its recent report to Congress on phase II sources, EPA identified two classes of discharges with the potential for discharging pollutants through stormwater point sources. The report estimates that one group includes 100,000 facilities and the second group includes over one million facilities, but "this does not exclude the possibility that the total number of such facilities could in fact be much greater, Cavanaugh said. Cavanaugh and other commentators claim that earlier estimates from EPA have described a potential phase II universe of 7.5 million.

"In order for the total cost to be less than \$100 million, the cost for each facility would therefore have to be less than \$100 for the over 1.1 million facilities indicated in EPA's report to Congress," he

said. That figure does not include the cost of preparing pollution prevention plans, monitoring plans, sample collection and analysis, or individual permits, he noted. "Our past costs associated with phase I permitting have been, for a single facility, approximately \$5,000 for preparation of permit applications and \$2,000 annually for compliance. In addition to this we paid a \$3,000 permitting fee in California for one facility alone," Cavanaugh said.

In addition, EPA's finding that small businesses would not be affected by this rule "is not supported since they represent a significant number of facilities in the automobile service sector alone," Cavanaugh said.

'In order for the total cost to be less than \$100 million, the cost for each facility would therefore have to be less than \$100 for the over 1.1 million facilities indicated in EPA's report to Congress'
—Philip T. Cavanaugh, Chevron

Ashland Petroleum, a division of Ashland Oil Inc., also disagreed with EPA's conclusion that the rule would have no significant economic impact on the regulated community. "In order for this regulation to have an impact of less than \$100 million, each of the estimated 7.5 million permits will have to cost, on average, less than \$14," wrote Deborah Gates, vice president of environment and health. "Even where general permits are available, application fees alone are typically on the order of \$100," she said.

Amoco estimates that phase II compliance costs for its 8,000-plus gasoline marketing stations, 60 terminals, hundreds of parking lots and thousands of sites with access roads, would be \$30 million, according to D.T. Vickers, deputy director of environmental health and safety. "At any one time we have hundreds of active construction projects under five acres in the areas of drilling, pipeline, seismic, maintenance, new construction and modifications to facilities," Vickers said.

Amoco recommends that EPA reevaluate its cost estimates and its prediction that the regulatory burden for phase II facilities will be reduced, Vickers said.

Comments from the Riverside County (Calif.) Flood Control and Water Conservation District and the Denver Urban Drainage and Flood Control District state that up to 19,000 municipalities

(Continued on page 6)

Phase II

(Continued from page 1)

said the preamble of the phase II rule will be "updated" to reflect some commentors' concerns. EPA expects to issue the revised version as a final rule by Aug. 7, following review by the Office of Management and Budget. The rule will take effect upon publication in the *Federal Register*, he said.

"We received some very good comments, very thoughtful comments, many of which were about administrative and procedural requirements," said Pam Mazakas of EPA's stormwater office. "We received some very good comments on the substance of the direct final rule," such as who will be covered under phase II, she said.

'We believe phase II dischargers will be protected by the final rule.'

—Pam Mazakas, EPA

Mazakas said EPA plans to address concerns by commentors that the rule does not adequately protect unpermitted phase II sources. "We will explain again our belief in our legal authority to proceed with the rule. We believe phase II dischargers will be protected by the final rule," she said. "This is truly an interim measure," she added, referring to EPA's plan to develop specific regulations over the next few years. "We are going to be very focused on the FACA [Federal Advisory Committee Act] process, and getting all of these folks who commented involved in that process." EPA is organizing a FACA stormwater group to examine ways to improve the stormwater permitting program (see related item, page 7).

Questions about procedural issues surrounding the direct final rule also will be addressed in the revised rule, she said.

EPA's decision to make changes to the rule "indicates that some of the arguments that were put forth on the phase II rule obviously have some merit," said Jeffrey Longworth, an attorney for the Washington law firm of Collier, Shannon, Rill & Scott. Longworth submitted comments on behalf of the American Car Rental Association (ACRA), the Society of Independent Gasoline Marketers of America (SIGMA) and the National Association of Convenience Stores (NACS). Hopefully what will emerge from this process is a final rule that protects phase II dischargers from citizen suit liabilities, as well as protecting the environment, Longworth said.

Industry supported EPA's efforts to provide protection to phase II dischargers, but felt that the

protection afforded under the rule was "illusory," Longworth said. "If it can be challenged and thrown out in court, then it's not much of a protection," he said. "I applaud the agency for trying to ensure that [the rule] will stand up to legal challenge and will be enforceable."

As written, the rule would establish a two-tiered program under which certain dischargers identified by EPA or a state permitting authority would be required to apply for stormwater permits within 180 days of receiving notice (see *Bulletin*, May 1995, p. 3). This group would include all dischargers that are "contributing to a water quality impairment" or are a "significant contributor of pollutants." All other phase II sources would have six years to obtain permits. During that time, EPA would develop comprehensive new rules for phase II sources, including a new definition of "phase II."

Industrial stormwater dischargers and large cities (phase I dischargers) have been covered under the Nov. 16, 1990, stormwater rules for over four years, and most phase I sources already have stormwater permits. Because EPA missed the Oct. 1, 1993, statutory deadline to issue phase II regulations, permit writers have not been able to issue phase II permits. Congress granted an extension to the phase II regulatory moratorium through Oct. 1, 1994. Since then, many in industry have claimed that EPA's failure to enact phase II rules has left phase II dischargers in violation of Section 301 of the Clean Water Act (CWA), and thus open to the threat of third-party lawsuits.

'If it can be challenged and thrown out in court, then it's not much of a protection.'

—Jeffrey Longworth

Several commentors noted that EPA officials acknowledged the problem of potential third-party lawsuits in an October 1994 memo to all EPA regions. The memo from EPA Wastewater Management Director Michael Cook and then Regulatory Enforcement Director Robert Van Heuvelen states that phase II dischargers are not an EPA enforcement priority, but that the agency recognized that "citizen suits can be brought against operators of phase II point source discharges ... that are not authorized by an NPDES permit."

"EPA did not issue regulations for implementing the requirements of Section 402(p)(6) of the CWA before Oct. 1, 1994," the memo stated. "However, the agency and approved NPDES states are unable to waive the statutory requirement that point source discharges of pollutants to waters of the United States need an NPDES permit," it stated.

According to comments on the direct final rule from General Motors Corp. (GM) in Detroit, however, "EPA's proposed rule is a six year permit waiver for 99 percent of stormwater dischargers."

"Directors Cook and Van Heuvelen are correct: neither EPA nor the states can extend the phase II moratorium. Congress has already spoken—twice—on the moratorium end date. Congress considered extending the moratorium last fall but failed to act," GM said.

***'EPA's proposed rule is a six year permit waiver for 99 percent of stormwater dischargers.'*—General Motors**

Written comments from Kenneth L. Edwards, General Manager and Chief Engineer of the Riverside County, Calif., Flood Control and Water Conservation District state that "as much as we may like [the] idea" of delaying permit requirements for six years "we question if EPA has the statutory authority to extend the time for phase II compliance." Congress did not provide any authority to EPA for extending permit deadlines, he said. "The only latitude given EPA was in designating which groups were to be in the phase II permitting process."

In the same vein, comments from ACRA, SIGMA and NACS note that their members' facilities became subject to liability under the stormwater permitting requirements of CWA on Oct. 1, 1994, and that EPA's phase II rule does not relieve them of this liability. "The agency's attempt to extend the phase II permitting deadline is *ultra vires*. In other words, EPA's action to extend a statutory deadline for phase II permitting is beyond the scope of the agency's authority," the comments said.

"If EPA believes that Phase II permits are needed to control certain stormwater discharges, then the agency should clearly indicate classes or categories of facilities that are regulated and regulate them as required by CWA," the comments said. "If the agency desired to extend the CWA phase II permitting deadline, then it should seek congressional approval," they said.

SIGMA, NACS and ACRA also said the direct final and proposed rules are "overly broad" because they do not "specifically state to whom they apply and do not establish affirmative notification requirements." The April 7 rules do not say whether the agency plans to regulate specific facilities or entire categories of stormwater dischargers, the groups said. In addition, the rules may be invalid because they are too vague, the groups said. "The rules ... lack certainty, do not identify regulated facilities,

and do not inform the regulated community how the regulations are to apply to them in the future. A rule which does not fairly inform a person of what is being commanded or prohibited is violative of that person's right to due process," they said.

Finally, the three associations state that the phase II rules are "arbitrary and capricious" because the agency lacks sufficient information to adequately regulate phase II facilities.

The American Petroleum Institute (API) in its comments states that the phase II rule appears to "imply" an extension of the statutory deadline. "EPA should make this extension explicit," API said. "The agency should reinterpret the relevant statutory provisions in a manner that makes it clear that there is no requirement to obtain a permit prior to completion of rulemaking and a reasonable implementation period thereafter," it said.

API, among other commentators, also disputes EPA's right to publish the action as a direct final rule. In publishing the direct final rule, EPA said it wanted to implement the rule quickly to provide certainty for phase II dischargers. Under the Administrative Procedure Act (5 U.S.C. Section 553) there must be "good cause" for not publishing a rule in proposed form. According to API, however, EPA has failed to provide "good cause" for the action, noting that a direct final rule does not protect potential phase II dischargers because "no permits are yet required, nor will any be required, until EPA promulgates the phase II 'guidance'."

***'[W]e question if EPA has the statutory authority to extend the time for phase II compliance.'*—Kenneth L. Edwards**

The direct final rule would require only "significant contributors" of pollutants to apply for permits within 180 days of receipt of notice from a permitting authority. The rule does not define "significant contributor" or explain how the permitting authority will determine who the significant contributors are, API said. "This failure to define either the term or the process constitutes a significant omission from the 'direct final' rule that must be resolved prior to the rule's becoming effective," API said.

As written, the direct final rule would require every point source discharger not currently covered by phase I of the stormwater program to obtain an NPDES permit by Aug. 6, 2001, API said. If that is the case, the rule is contrary to Congress' intent in CWA, which authorizes EPA to conduct studies to determine which stormwater dischargers should be

(Continued on page 6)

Phase II

(Continued from page 5)

regulated. API and numerous other commentors said that EPA failed to provide this information to Congress.

'The rules ... lack certainty, do not identify regulated facilities, and do not inform the regulated community how the regulations are to apply to them in the future.'
—ACRA, SIGMA and NACS

Comments from the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, and the National Association of Flood & Stormwater Management Agencies expressed "serious concern" with the direct final rule, stating that the rule is "simply process, a process which in our opinion ignores the strictures of the Clean Water Act requiring EPA to study and issue reports on a stormwater management program and to consult with state and local officials in developing regulations for an expanded stormwater management program."

As representatives of local officials, the four groups said they were dismayed at EPA's "summary dismissal of the Clean Water Act's specific requirement to develop regulations 'in consultation with state and local officials' (Section 402(p)(6)). We are unaware that any such consultation has occurred," they said.

The groups also questioned EPA's legal authority to continue to postpone regulation of smaller municipalities. "The agency may have reached agreement with NRDC [the National Resources Defense Council] about litigation on this matter, but there are myriad other environmental groups, national and local, that are not in any way constrained by the NRDC/EPA compact," they said, referring to NRDC's attempt to sue the agency for failing to issue phase II rules.

Under a settlement agreement reached between NRDC and EPA, the agency agreed to issue proposed rules for controlling phase II stormwater discharges by Sept. 1, 1997 (see *Bulletin*, May 1995, p. 6).

'The agency may have reached agreement with NRDC about litigation on this matter, but there are myriad other environmental groups ... that are not in any way constrained by the NRDC/EPA compact.'—NAFSMA and others

EPA received comments from 49 affected businesses, trade associations and local permitting authorities on its direct final and proposed phase II rules. Besides questioning the agency's legal authority to issue the phase II rule, many commentors called the measure an unfunded mandate and accused EPA of violating Section 202 of the Unfunded Mandate Reform Act of 1995, which became law March 22 (see related story, page 1). Still others said the rule is redundant, expensive and unnecessarily burdensome to industry. ■

Unfunded Mandate

(Continued from page 3)

serving populations of 100,000 or fewer people could be affected by the rule.

"Considering the considerable number of dischargers required to apply for permits, both municipal ... and private, this rule should be classified as an unfunded mandate," said Kenneth L. Edwards, general manager and chief engineer for the Riverside County district. Edwards concluded that compliance costs for phase II could amount to billions of dollars.

L. Scott Tucker, executive director of the drainage and flood control district that covers some 1,600 square miles surrounding Denver, said that a survey by the National Association of Flood and

Stormwater Management Agencies of 64 phase I municipalities found that the average cost for preparing a phase I permit application was \$624,214.

"Assuming the permit preparation costs are similar, the total cost for the 19,000 smaller communities would be in the range of \$12 billion," Tucker said. "Even if they are one-half the cost experienced by larger cities, it would still be a total cost of \$6 billion," he said. Tucker said his estimate did not include private or other potential phase II sources.

EPA said in late June it would withdraw its April 7 direct final phase II rule and revise the identical proposed rule published on the same date. Revisions, which will appear in the form of a final rule to be issued in August, will address a variety of complaints from commentors, both procedural and substantive, including the unfunded mandates issue, EPA said (see related story, page 1). ■

Storm Warnings

Stormwater-Related News in Capsule Format

Multi-Sector Permit Status. As of June 29, the U.S. Environmental Protection Agency (EPA) was still working with the 11 states and other territories, federal facilities and Indian lands in which EPA is the permitting authority on the Section 401 water quality certification for the multi-sector stormwater model general permit. EPA in May asked states to return the certifications by June 19, although legally they have 60 days to certify the final version of the permit. "We're pushing for a quick turnaround on this," EPA's Carmelita White told the *Bulletin*.

White said EPA can move forward with the final permit once it has received certification from a majority of states and other permitting authorities, although the formula for making this determination is not clear cut. Including Indian lands, U.S. territories, federal facilities and the 11 states not delegated to administer the National Pollutant Discharge Elimination System program, there are around 22 certifications to consider, she said. In some cases, EPA has the ability to certify the permit, she said.

Once enough certifications are in hand, and a decision has been made to go forward, EPA will include the permit conditions requested by the states, territories and Indian lands in the text of the final permit. White said EPA hopes to finish work on the permit by the end of July and submit it to the General Printing Office by Aug. 1. If that happens, the final permit could appear in the *Federal Register* by late August, she said.

Once the permit is issued, facilities in non-delegated states will have 90 days to decide whether to apply for the multi-sector permit or the baseline general permit.

FACA Stormwater Group to Meet in September. EPA hopes to hold the first Federal Advisory Committee Act (FACA) stormwater meeting to address phase II stormwater permitting issues in September, according to EPA attorney Pam Mazakas, who is in charge of organizing the stormwater subcommittee of the FACA wet weather advisory committee.

"We're in the process of interviewing candidates for the FACA process," she said. So far, no candidates have been officially selected. "It's a lengthy process. We have a contractor who does an hour-long phone interview with candidates

who have been nominated." Nominees often recommend others for inclusion on the committee, too, she said.

The agency is trying to involve stakeholders from all sides in the process. "We are including representatives from the interest groups impacted by the phase II permitting program—municipalities, states, environmentalists and industry," she said. FACA committee memberships are highly sought after because the committee apparently will have a hand in crafting upcoming phase II permitting regulations. The committee also will be called upon to recommend improvements and refinements to the phase I program, according to EPA.

Under a phase II rule, which EPA expects to finalize in August, only the worst polluters will be required to obtain permits immediately. All other discharges not currently covered under phase I of the stormwater program will have until 2001 to apply for permits. The new rule was deliberately designed as a stop gap or "interim" measure so that the agency would have a chance to develop more comprehensive phase II regulations, EPA has said. The new rule specifies that the agency must propose comprehensive phase II permitting rules, including a definition of phase II, by September 1997. Final phase II rules are to be issued by 1999, the agency has said.

Urban Runoff Is Polluting California's Waters. A report from the Lindsay Museum in Walnut Creek, Calif., warns that up to 70 percent of the chemicals found in the San Francisco Bay are the result of polluted urban runoff, rather than discharges from factories and other industrial facilities, the San Francisco *Chronicle* reported May 22. On the Alameda County shoreline, 75 percent of the chromium and 64 percent of zinc are washed off city street, the report concludes.

"Experts are coming to the view that the daily crud ordinary people spread around the landscape—chemicals put on backyard gardens, motor oil dripped on city streets and garage messes hosed into the gutter—is the number one source of water pollution in California and the nation," said *Chronicle* science writer, Charles Petit. The report was prepared with a grant from EPA, and appears to support findings of studies by other researchers, Petit said. ■

Calendar of Events

Multi-sector Permit Workshops.* The National Stormwater Center will hold a series of management workshops on the U.S. Environmental Protection Agency's (EPA) multisector model general permit for industrial stormwater dischargers on the the following dates and locations: Aug. 21 in Denver; Aug. 23 in Phoenix; Aug. 25 in Washington; Aug. 29 in St. Louis; Aug. 30 in Atlanta; Sept. 6 in Dallas; Sept. 7 in Houston; Sept. 12 in Boston; Sept. 15 in West Palm Beach, Fla., and Sept. 18 in Tampa, Fla. Cost: \$395. Call: (407) 288-6852.

Management and Treatment. The George Washington University Continuing Engineering Education Program will hold a stormwater course Sept. 12-14 in Washington. The course will cover theory, design, management, treatment and regulatory requirements. Technical topics will include hydrologic effects of land development; selecting rainfall parameters; computing peak-rate rainfall; developing hydrographs; designing detention and retention basins, storm sewers, road inlets, pipes, culverts, open channels, energy dissipators; and more. For information on the course, contact Pat Murphree, program director, at (202) 994-8521. For registration information, call (800) 424-9773 or (202) 994-6106 or 2337.

Stormwater Management. The Government Institutes course, Stormwater Management: How to Comply with General Permits, is slated for

Sept. 14, in Arlington, Va. The course will provide information on obtaining NPDES permits, developing and submitting management plans to reduce pollutants in runoff and identifying and halting illegal connections to storm drains. Cost \$499. Call: (301) 921-2345.

Industrial Permit Compliance.* A stormwater compliance course, Practical Compliance With Industrial Stormwater Permit Regulations, sponsored by Environmental Education Enterprises, will be held Nov. 8-10 in Charlotte, N.C. It will include an update of state and federal regulations; legal and enforcement issues; impacts on industry; permitting strategies, requirements and limitations; identifying stormwater pollution; sampling and monitoring techniques; laboratory testing issues; and pollution prevention plans. Cost \$900; second attendee from same company is half price; 20 percent discount for registrations received by Sept. 24. For information call Jay Lehr at (614) 792-0005, or fax to (614) 792-0006.

Clean Water Technologies.* The Government Institutes' Clean Water Technologies Course, Nov. 13-14, in Atlanta, will cover treatment technologies, emerging trends in wastewater treatment and control, pollutant removal technologies, and conversion and destruction technologies. Cost: \$949. Call: (301) 921-2345. ■

* New Listing.

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 4, Number 12

June 1995

House Approves Clean Water Act Reform Legislation

Measure Faces Tough Fight in Senate; 240-185 Vote Won't Forestall a Clinton Veto

The U.S. House of Representatives May 16 easily approved a sweeping overhaul of the 1972 Clean Water Act (CWA) by a vote of 240-185. However, CWA reauthorization still faces an uncertain reception from less-conservative Senate leaders, in addition to the threat of a presidential veto.

HR 961, the Clean Water Amendments of 1995, would relax a number of regulations under the National Pollutant Discharge Elimination System (NPDES) program. It also would limit federal land use restrictions in designated wetlands and require agencies to compensate landowners for property value losses resulting from wetlands regulations.

Stormwater Provisions

The bill, which generally defines stormwater as a nonpoint source, would repeal the existing stormwater permitting program under Section 402(p), and replace it with a flexible, "voluntary"

stormwater management program fashioned after the current nonpoint source management program in Section 319. The new stormwater program would be administered entirely at the state level.

Other stormwater-related provisions would:

- ensure that state management programs would include "realistic" implementation measures;
- require that management programs be revised every five years and be geared toward attainment of water quality standards within 15 years from the approval of a state management program;
- create a hierarchy of stormwater management approaches emphasizing voluntary measures first, pollution prevention second, and mandatory measures as they become necessary and only if other measures fail;

(Continued on page 5)

EPA Issues Timetable For CWA, NPDES Regulations

The U.S. Environmental Protection Agency (EPA) said it expects to issue proposed revisions to its National Pollutant Discharge Elimination System (NPDES) industrial permit application requirements by January 1996, one of several actions related to NPDES permitting that EPA will undertake in the next year.

A final rule on the NPDES industrial permit application requirements is expected in 1998 (regulation number 2040-AC26).

(Continued on page 2)

Inside This Issue ...

Opinion: Are Dischargers Responsible for Run-on Contaminants?	3
Multi-sector General Permit Sent to States	7
EPA Proposed Rule Would Approve New Test Methods for TKN	7
Multi-sector Workshops Scheduled	7

Rules Timetable

(Continued from page 1)

The announcement was included in the agency's regulatory agenda and timetable, which was published in the May 8 *Federal Register* (60 FR 23961-23970). The regulatory agenda includes information on a number of proposed and final rules related to the Clean Water Act (CWA) and the NPDES program.

EPA plans to issue by September a final rule on amendments to requirements for authorized state permit programs under section 402 of CWA. The rule would amend EPA's existing regulations at 40 CFR Part 123 governing the approval of state programs to issue NPDES permits (see April 1995 *Bulletin*, p. 4). The proposed rule was issued March 17 (60 FR 14588).

The agency plans to take final action on a rule that would establish new, consistent biological testing procedures for the measurement of toxicity of effluents discharged from pipes and toxicity in ambient surface waters under 40 CFR 136. That rule was proposed Dec. 4, 1989 (54 FR 50216).

The agency said it would issue by September a proposed rule amending 40 CFR Part 136, by adding new West Coast test procedures for the analysis of pollutants under section 304(h) of CWA (regulation number 2040-AC54). This list of approved biological test methods would be amended by adding methods for measuring chronic toxicity in estuarine and marine species exposed to pollutants in effluents and receiving waters.

State and local governments and small businesses on the West Coast already are using variations of these methods in NPDES permits, EPA said. The rule will modify existing test methods, EPA said.

Final guidelines are expected to be issued by February 1996.

A proposed rule that would revise and consolidate NPDES wastewater permit application forms and revise regulations for municipal discharges and sewage sludge use or disposal is due out this month, with final action due in June 1997, according to the *Federal Register* notice (regulation number 2040-AB39). The agency said it is seeking a unified process that minimizes the need for additional information from applicants while providing permit writers the necessary information, including toxics data, to ensure that permits adequately address concerns of permittees and environmental protection.

A proposed rule regarding streamlined procedures for developing and maintaining approved publicly-owned treatment works (POTWs) and pretreatment programs is due in September 1995, with final action on the measure coming a year later, EPA said (regulation number 2040-AC57). Under the current regulations, changes to pretreatment programs are not effective until formally approved by EPA or the state. Under the new regulations, the POTW's NPDES permit would include only certain significant elements of the pretreatment program and the permitting agency would need to approve only changes to the POTW pretreatment program that make the program less restrictive.

On April 7, the agency published a direct final rule and a proposed rule affecting phase II stormwater discharges (60 FR 17950 and 17958, respectively). If EPA does not receive "significant adverse or critical comment" by June 6, the direct final rule will take effect Aug. 7. If, however, the agency changes its position based on comments critical to the direct final rule, it will proceed with the proposed rule (see May 1995 *Bulletin*, p. 3). ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Executive Vice President/Publisher, Daphne Musselwhite; Vice President of Editorial Operations, Kathy Dunten; Senior Publications Manager, Jill S. Talbot, Esq.; Editor, Licia Ponzani; Production Manager, Connie Barclay. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 739-9559. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. For information on multiple subscription discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

OPINION

Are Dischargers Responsible for 'Run-On' Contaminants?

By James P. Walle

Precipitation and other deposits from the atmosphere that land on your property are not pristine.

For example, by far the largest source of polychlorinated biphenyls in the Great Lakes comes from atmospheric deposits. Although some airborne contaminants such as lead and DDT have decreased as U.S. regulations have banned or limited their use, the contaminants persist either because they do not readily break down or because other countries continue to use them. Also, some contaminants have natural sources such as forest fires and volcanoes. (See "Deposition of Air Pollution to the Great Waters," EPA-453/R-93-055 (May 1994).)

Because man-made contaminants have been found in uninhabited areas such as the South Pole and remote locations in the northern United States and Canada, it also is fair to assume they fall on your property. Although there may be some attenuation by soil or pavement, the laws of physics and chemistry dictate that at least some of the contaminants will leave the property in the form of stormwater runoff. If they do so through a point source such as a storm sewer, are you responsible?

If you (1) have a National Pollutant Discharge Elimination System (NPDES) permit covering all outfalls, (2) properly complete the permit application, and (3) comply with the notice and reporting requirements, then you can rely on the "permit shield" defense should the permitting agency or a citizen group sue for discharging chemical X or element Y. This is true whether or not there is a specific permit limit for contaminants. (See *ASLF v. Eastman Kodak Co.*, 12 F.3d 353 (2nd. Cir. 1993).)

But what if you have unpermitted stormwater-only discharges? Up until Oct. 1, 1994, phase II sources were protected by the Section 402(p)(1) stormwater permit moratorium. What happens now that the moratorium has lapsed? This article examines three recent instances in which "run-on" or naturally occurring contaminants complicated compliance with NPDES permit conditions, and indicate how stormwater discharges contaminated by atmospheric deposits may be treated in future cases.

Acid Rain in Ohio

In an example of circular reasoning, an opinion issued by the Ohio Environmental Board of Review

held that a company that trucks hazardous waste onto its property can be regulated for low pH stormwater runoff from its private, paved road (*Waste Technologies Industries (WTI) v. Schregardus*, Case No. EBR 152581 (March 1, 1994).)

WTI's East Liverpool, Ohio, incinerator was the subject of intense neighborhood opposition and came under scrutiny by the U.S. Environmental Protection Agency and the White House in the early 1990s. The Ohio Environmental Protection Agency (OEPA) issued WTI an NPDES stormwater permit for outfalls from active and inactive areas. One area included a private, concrete road traveled by hazardous waste trucks going to the incinerator. Since there was a "slight potential" that material could spill onto the road, OEPA wanted WTI to monitor for pH as a spill indicator.

WTI's stormwater discharge monitoring between December 1991 and February 1993 showed pH levels ranging from 6.5 to 9.5, with many results below 7.0. State water quality regulations allowed pH discharges from 6.5 to 9.0. WTI appealed the permit claiming that it should not be restricted to the permit's 6.5 pH limit. From 1989 through 1992, acid rain measured 20 miles away from the facility by the North Ohio Valley Air Authority had a pH ranging from 3.32 to 5.21. In challenging the permit, WTI relied on Ohio rule 3745-1-01(D): "Water quality criteria will not apply where such criteria are exceeded due to natural conditions alone."

However, the review board held that the pH of the rainwater falling in the East Liverpool area differed so dramatically from the pH of WTI's untreated stormwater (i.e., the stormwater was less acidic), that contact with the facility's non-active process areas, and collection of the runoff from these areas, "in and of itself," affected the pH of the stormwater discharged by WTI into the Ohio River.

Yet, the "nonactive process areas" were ordinary paved roads. There was no evidence cited by the review board of known spills; only the potential for spills. The review board also dismissed WTI's argument that the 6.5 pH limit violates Rule 3745-1-01(D) due to acid rain.

WTI did not appeal the decision, even though expert testimony had shown that the acid rain falling on the concrete road was buffered by the alkaline cement, and that over time the buffering capacity of the roadway would diminish. The irony

(Continued on page 4)

Run-On

(Continued from page 3)

is that the road actually is improving the effects of acid rain.

Concrete roads and sidewalks are hardly an industrial activity. (See 40 CFR §122.26(b)(14).) Their impact—especially a positive impact—should not subject a company to the time and expense of testing and the risk of noncompliance when, inevitably, the concrete road loses its buffering capacity. Sometimes challenging a permit does not bring a common sense result at the agency level.

Watch Out for Road Salt

Another company that appealed an Ohio NPDES permit with similar results was J&L Specialty Products Corp. J&L appealed a process water discharge permit with a cyanide limit, arguing that the sole source of cyanide was from snow melted with road salt, which it collected from a storm sewer for use in production.

J&L asked for an evidentiary hearing to establish "that the cyanide in its discharge comes from a non-point source beyond its control, i.e., the road salt that is washed into its stormwater sewers, and therefore it is not 'added to' [the creek] by J&L." (*In re J&L Specialty Products Corp.*, NPDES Appeal No. 92-22 (June 20, 1994).)

J&L claimed that it did not cause the addition of pollutants but merely allowed them to pass through. The U.S. Environmental Protection Agency's (EPA) Environmental Appeals Board assumed all the facts asserted by J&L to be true, but still found that J&L was responsible for the discharge of cyanide.

The Appeals Board found that as a matter of law, J&L discharged cyanide as the term "discharge of a pollutant" is defined in section 502(12) of the Clean Water Act. "J&L collected stormwater containing cyanide and diverted it for use in its industrial process thereby introducing the cyanide into the [creek] via J&L's process wastewater outfall. ... Because J&L introduces cyanide found in the stormwater it collects and channels into the [creek], it adds pollutants to a navigable water," the Appeals Board found.

The Appeals Board also rejected J&L's contention that the pollutant was an unregulated nonpoint source. "Whether a pollutant is discharged from a point source ... depends not upon where the pollutant was generated, but on whether the pollutant is added to navigable waters from a 'discernible, confined and discrete conveyance' constituting a

point source. Because the cyanide first entered the [creek] from outfall 003, it was added to a navigable water from a point source and is therefore subject to the NPDES requirements."

Neither J&L nor the appeals board focused on the Nov. 16, 1990, preamble to the stormwater final rule. In responding to comments seeking clarification that "discharge associated with industrial activity" does not include stormwater run-on from upstream adjacent facilities, the agency said that facility operators generally are responsible for a discharge in its entirety, regardless of its initial source. "However, where an upstream source can be identified and permitted, the liability of a downstream facility for other stormwater entering that facility may be minimized" (55 FR 47990 and 48010, Nov. 16, 1990).

With EPA placing new emphasis on pollution prevention rather than "end of pipe" treatment, it makes more sense to regulate road salt trucks rather than unsuspecting dischargers. If J&L needs a cyanide limit, then all dischargers that use salt need one too.

Apart from the trace amounts of cyanide and other impurities in road salt, what about the "toxic" chemical NaCl (sodium chloride) which makes up 99 percent of road salt? Common salt is lethal to fresh water aquatic organisms. Does NaCl fall within the definitions of "pollutant" and "toxic pollutant?" If so, that would mean that a lot of northerners are unpermitted dischargers.

Because EPA Region V prevailed on the other permit issues, J&L is appealing all issues to the Sixth Circuit Court of Appeals.

New Jersey's Approach to Acid Rain

As the ink in *WTI* and *J&L* was drying, New Jersey proposed to unilaterally modify 148 New Jersey Pollutant Discharge Elimination System (NJPDDES) stormwater permits with pH limits to provide an offset for acid rain. Consistent with EPA's Nov. 16, 1990, preamble to the final stormwater rules (55 FR at 48010), the modification was designed to enable permittees to avoid violations if the pH of the rainfall is less than or equal to the pH of the stormwater sampled.*

Unfortunately, there was a catch: even though the weighted average pH for rainfall in New Jersey is 4.4, the permittee would be required to test the pH of each rain event to qualify for the "acid rain offset."

* In responding to public comment about pH in rainfall, EPA noted: "If an applicant has reason to believe pollutants in its stormwater discharges are from such sources, then that needs to be addressed in the permit application and brought to the attention of the permitting authority, which can draft appropriate permit conditions and reflect these circumstances."

Since storms occur at all hours of the day and on weekends and holidays, the testing requirements presented a practical problem. Automatic collection devices could be erected, but pH testing still had to be done promptly. In addition, the collection, testing, and reporting requirements represented an added expense.

Although General Motors (GM), among others, submitted comments criticizing the permit modifications, New Jersey enacted the pH modifications without change on Oct. 11, 1994. GM amended its Hyatt-Clark, N.J., stormwater permit appeal to request relief from monitoring rainfall pH. The agency has tentatively agreed to allow GM to obtain a general permit.

Lessons Learned: Vigilance is Key

The regulated community must be vigilant in preparing permit applications. To obtain the benefit of the permit shield full disclosure of the discharge characteristics must be made. The permittee must scrutinize draft permits, keep detailed records, and, when necessary, appeal permit limits and conditions that it cannot meet. Industry must be prepared to protect the environment through cost-effective, innovative approaches, but draw the line where there is high cost but little, if any, benefit.

For example, GM's Bowling Green, Ky., facility was at the forefront in obtaining a stormwater-only permit in 1980 for discharges to sinkholes. However, GM successfully contested the 1991 re-issued permit when Kentucky insisted on parts per billion limits for copper, lead and zinc, and a 6.0-9.0 pH limit.

GM proved that ambient rainfall contaminants exceeded permit limits. Site rainfall data showed that had the permit not been revoked, GM would have had 85 exceedances in a two year period, 20 of which were for monthly averages.

Stormwater must not be taken for granted, but neither should it be blindly "over-regulated." Industry must work with federal, state, and local governments, with environmental groups, and with commercial and industrial associations to reach a common ground founded on common sense.

James P. Walle is a member of the legal staff at GM. This article is condensed from the paper, "Case Studies in Stormwater Enforcement and Permitting: Lessons Learned," presented to members of the Natural Resources, Energy, and Environmental Law Section of the American Bar Association (ABA) during the Clean Water Act Corporate Counsel Retreat and Information Exchange, May 11, 1995. The article does not necessarily represent the views of GM or the ABA. ■

HR 961

(Continued from page 1)

- fund research and demonstration projects at \$20 million annually, to test innovative approaches and search for cost-effective methods of improving water quality; and
- retain controls under existing permits until states establish stormwater management programs.

The proposed stormwater management program would require states to adopt stormwater management plans based on model management practices and measures. It also would require dischargers to adopt pollution prevention plans. Each state would be required to provide a definition of "stormwater discharger" in its management plan. (see *Bulletin*, April 1995, p. 1, for more details.)

"This extreme rewrite of the Clean Water Act systematically weakens each and every one of the tools we have used to clean up and protect our rivers, lakes and streams over the past two decades."

—EPA Administrator Carol Browner

The House considered 36 amendments to HR 961 during five days of debate. Many of the 17 amendments adopted were designed to further ease or streamline clean water regulations. Of the 19 amendments rejected by the House, most were sponsored by Democrats and were designed to preserve existing water pollution restrictions and protections.

An amendment by Rep. Spencer Bachus, R-Ala., to require EPA and the Small Business Administration to define "small businesses" under the stormwater regulations was adopted May 10 by a voice vote.

An amendment by Rep. Sherwood Boehlert, R-N.Y., to strike provisions that would have eliminated the Coastal Zone Management Program was adopted. The program—which requires states to develop enforceable plans for controlling runoff from non-point sources—would be folded into a general nonpoint source program that allows states to rely on voluntary plans. Boehlert's amendment, approved by a 224-199 margin, also would reauthorize the Coastal Zone Management Act through the year 2000.

Rep. Tom Petri's, R-Wis., proposal to give coastal states the choice of participating either in the federal Coastal Zone Management program or the general federal nonpoint source pollution program, also was adopted. Before voting on the Petri amendment, the House agreed by voice vote to require EPA approval

(Continued on page 6)

HR 961

(Continued from page 5)

of any state plan designed to control nonpoint source pollution in coastal areas.

The House adopted by voice vote an amendment by Rep. James A. Traficant Jr., D-Ohio, to require federal and state officials to encourage the use of U.S.-made technology when providing extensions of deadlines to reduce point source pollution.

'The fact is, this ... battle to put reason and common sense into an update of the Clean Water Act has all along been a battle between two camps: the professional environmentalists in Washington and the EPA on the one hand, and the rest of America on the other,' —Rep. Bud Shuster

An amendment was approved to strike from the bill a new \$500 million state revolving loan program on nonpoint source water pollution control. The amendment, proposed by Rep. Steve Largent, R-Okla., also would reduce the authorization for existing state water pollution control revolving funds from \$2.5 billion to \$2.25 billion in fiscal 1996 and \$2.3 billion annually in fiscal years 1997-2000. The measure was approved 209-192.

Three amendments sponsored by Rep. Norman Y. Mineta, D-Calif., were rejected. One would have stricken from the bill provisions designed to ease regulation of point-source polluters. Another amendment would have kept intact existing permit requirements for industrial stormwater dischargers but retained provisions of the bill to relax stormwater regulations for municipalities.

A third amendment would have postponed for one year the effective date for the risk assessment and cost-benefit analysis requirements on regulations expected to have an annual economic impact of \$100 million. As adopted, this provision would be effective as of Feb. 15, 1995.

An amendment that would have stricken from the bill a provision allowing any state to reduce water quality standards and obtain waivers from designated use requirements for a body of water if the state finds that meeting the designated uses would be too costly or technically unfeasible, also was rejected. That measure was sponsored by Rep. Jerrold Nadler, D-N.Y.

Also rejected by the House was a substitute bill described by chief sponsors Boehlert and Rep. H. James Saxton, R-N.J., as a "more centrist approach," to clean water reform. That bill, which was popular

among moderate Republicans and Democrats, was rejected by a 184-242 vote. The substitute bill would have deleted many provisions of HR 961 designed to ease regulation of industrial and municipal point sources and eliminate requirements that private and public sector facilities obtain federal permits to discharge stormwater into combined drainage systems. It also included wetlands and environmental takings provisions.

In a May 10 statement, the Clinton administration said it "strongly opposes" HR 961 because, "It threatens to undermine achievements in cleaning up the nation's waters." EPA, the Office of Management and Budget and the Interior Department all have recommended that President Clinton veto a CWA rewrite if it survives the Senate in its current form. The Senate is expected to tackle a CWA rewrite in June or July, when it finishes up with the Safe Drinking Water Act.

EPA Administrator Carol Browner said May 16, "This extreme rewrite of the Clean Water Act systematically weakens each and every one of the tools we have used to clean up and protect our rivers, lakes and streams over the past two decades." Browner accused the bill's sponsors of inviting lobbyists "into the back rooms of Congress to write exemptions for industry and others from the water quality standards that protect public health."

Transportation and Infrastructure Committee Chairman Bud Shuster, R-Pa., the bill's lead sponsor, invited work groups from industry, agriculture and state and local groups to help craft the bill. But the Clinton administration and environmental groups were excluded from this process, Browner said.

"These new House-approved amendments are a polluter's dream come true, a nightmare for the rest of us, and an embarrassment for the House of Representatives," Mineta said in a statement.

In a May 15 editorial in *USA Today*, Shuster wrote, "the bill is endorsed by national associations representing virtually every local elected official in America. The ethos of HR 961 is to give states and localities more flexibility in meeting Clean Water Act standards. We reform the unworkable stormwater program, which even the EPA admits is hopelessly broken, and we bring sanity to the nation's troubled wetlands program."

"The fact is, this ... battle to put reason and common sense into an update of the Clean Water Act has all along been a battle between two camps: the professional environmentalists in Washington and the EPA on the one hand, and the rest of America on the other," Shuster wrote. ■

Storm Warnings

Stormwater Related News in Capsule Format

Multi-sector General Permit Sent to States. The U.S. Environmental Protection Agency (EPA) said it expects to issue the multi-sector stormwater general permit by this summer, possibly as early as July, following certification by the states in which EPA is the permitting authority. The agency in May asked states to certify the final version of the permit by June 19, although legally they may take more time if needed, an EPA official said June 1.

Following publication of the final permit, facilities in EPA states will have 90 days to decide whether to apply for the multi-sector permit or the baseline general permit, according to John Whitescarver, director of the National Stormwater Center. Group applicants who postponed applying for permits will have to decide quickly which permitting option to choose, he said.

Whitescarver said some questions about the endangered species provisions of the permit appear to have been resolved (see May 1995 *Bulletin*, p. 1). Whitescarver said he had learned from a variety of state and regional sources that the final permit will include a listing of endangered species by county. "If your facility is not in one of those counties, you're okay. If you are in one of those counties, and you can certify that the listed species will not be harmed by your discharge, you can apply for the multi-sector permit," Whitescarver said. However, if a facility cannot certify that its discharges will not harm a listed species identified by EPA, it must apply for an individual permit, he said.

One provision of the final permit will affect the chemical industry, he said. As originally proposed, the permit required all SARA Title III Section 313 facilities to have a registered engineer review their stormwater pollution prevention plans—which have to be recertified every three years. "I'm told that provision is gone," Whitescarver said. "That's a big help because that is an expensive process to go through."

EPA Proposed Rule Would Approve New Test Methods for TKN. EPA May 17 issued a proposed rule and request for comment on the approval of three additional test procedures for the determination of total kjeldahl nitrogen (TKN) in wastewater. Approval of the alternate procedures was sought by Perstorp

Analytical Corp., Helena, Calif.

EPA chemists found Perstorp's proposed tritrimetric, colorimetric and gas diffusion methods to "exhibit sufficient precision and recovery to establish their acceptability." The proposed test methods are comparable to other approved procedures for analysis of TKN, EPA said in the proposed rule. If approved as alternate test procedures, these methods could be used by any person required to test for TKN (60 FR 26600).

Use of approved test procedures is required under 40 CFR Part 136 whenever the waste constituent specified is required to be measured for a National Pollutant Discharge Elimination System (NPDES) permit application, discharge monitoring report, or state certification, EPA said. Use of the approved test procedures also is required for the expression of pollutant amounts, characteristics, or properties in effluent limitations guidelines and performance and pretreatment standards, EPA said.

Test procedures have previously been approved for 262 different parameters. Comments on the proposed rule are due June 16. For more information, call James E. Longbottom, Environmental Monitoring Systems Laboratory, EPA Office of Research and Development, (513) 569-7308.

Multi-sector Permit Workshops Announced. The National Stormwater Center announced it will hold a series of management workshops on EPA's upcoming final multi-sector general permit for industrial stormwater dischargers.

The workshops will compare the merits of the multi-sector permit and the baseline general permit, and are designed to help facilities determine which permit best suits their needs. Workshop leader and National Stormwater Center Director John Whitescarver also will discuss possible Clean Water Act amendments and current stormwater regulation.

EPA and state regulators are invited to speak at the workshops, which are slated for Aug. 21 in Denver; Aug. 23 in Phoenix; Aug. 25 in Washington, D.C.; Aug. 29 in St. Louis; Aug. 30 in Atlanta; Sept. 6 in Dallas; Sept. 7 in Houston; Sept. 12 in Boston; Sept. 15 in West Palm Beach, Fla.; and Sept. 18 in Tampa, Fla. The fee is \$395. For more information, call (407) 288-6852. ■

Calendar of Events

Environmental Sampling. The Environmental Sampling and Data Analysis course to be held June 28-29 in Denver is sponsored by Government Institutes. The program will cover laws and regulations that mandate sampling, determining objectives, sampling strategies, field techniques, choosing the right analytical methods, choosing a laboratory, recordkeeping and project files, environmental chemistry, validation and interpretation, data management and application. Cost: \$949. Call: (301) 921-2345.

Clean Water Compliance. The Clean Water Compliance Institute will be held Aug. 1-4 in Hilton Head, S.C. The program will include an overview of clean water laws and regulations, enforcement, inspections, pretreatment requirements, issues for publicly owned treatment works, the Oil Pollution Act and spill prevention controls and countermeasures, the national pollutant discharge elimination system (NPDES) permitting program, technology-based effluent limitations, water quality-based limitations, developing and challenging permits, appealing final permits and more. For more information, contact Government Institutes at (301) 921-2345.

Clean Water Act. This Government Institutes' course to be held Sept. 12-13 in Arlington, Va., will cover compliance obligations, permitting requirements, release reporting regulations and EPA enforcement priorities and strategies. Cost \$949. Call: (301) 921-2345.

Management and Treatment. The George Washington University Continuing Engineering Education Program will hold a stormwater course Sept. 12-14 in Washington. The course will cover theory, design, management, treatment and regulatory requirements. Technical topics to be addressed include hydrologic effects of land development; selecting rain fall parameters; computing peak-rate rainfall; developing hydrographs; designing detention and retention basins, storm sewers; and more. For information on the course, contact Pat Murphree, program director, at (202) 994-8521. For registration information, call (800) 424-9773 or (202) 994-6106 or 2337.

Stormwater Management.* The Government Institutes course, Stormwater Management: How to Comply with General Permits, is slated for Sept. 14 in Arlington, Va. The course will provide information on obtaining NPDES permits, developing and submitting management plans to reduce pollutants in runoff and identifying and halting illegal connections to storm drains. Cost \$499. Call: (301) 921-2345.

Ground Water Cleanup.* A course on ground water contamination and cleanup to be held by Government Institutes Oct. 17-18 in Alexandria, Va., will cover how to conduct a ground water investigation and develop a ground water monitoring plan. Cost: \$949. Call: (301) 921-2345. ■

* New Listing

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 4, Number 11

May 1995

Multi-Sector Permit Will Not Harm Endangered Species

FWS Issues 'No Jeopardy' Biological Opinion; Recommends Changes to Permit

The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) last month approved the U.S. Environmental Protection Agency's (EPA) proposed multi-sector general stormwater permit, saying the permit does not threaten endangered species.

The joint FWS/NMFS biological opinion issued April 5 concluded that the multi-sector permit, as proposed, "is not likely to jeopardize the continued existence of listed or proposed species, and is not likely to result in the destruction or adverse modification of designated or proposed critical habitats."

However, stormwater dischargers under the permit could be subject to enforcement under the Clean Water Act (CWA) for failure to meet permit conditions specifically designed to protect endangered species or habitats, the report said. EPA now is in the process of integrating a variety of recom-

mended permit conditions intended to protect listed species, according to Carmelita White of EPA's Office of Water, permits section.

As part of the National Pollutant Discharge Elimination System (NPDES) program, the multi-sector permit will regulate discharges from some 11,000 industrial stormwater dischargers in the 11 states, U.S. territories, federal Indian reservations, and federal facilities where EPA is the permitting authority. States that operate their own stormwater programs also may use the multi-sector permit if desired.

The multi-sector permit represents a "new phase in industrial stormwater permitting," and will be the "preferred permitting approach for industry in the future," the report said.

(Continued on page 2)

EPA To Revise, Repeal Some Water Rules, Report Says

Regulations covering group applications for stormwater dischargers may be eliminated and reporting requirements and application forms under the National Pollutant Discharge Elimination System (NPDES) program are likely to be revised, according to a March 24 report from the U.S. Environmental Protection Agency's (EPA) Office of Water.

The report is the result of a review by all EPA departments in response to President Bill Clinton's recent regulatory reform initiative in which he

(Continued on page 4)

Inside This Issue ...

EPA Issues Direct Final Rule for Phase II Dischargers	3
N.Y. General Permit is Guideline, Not Mandate, Court Rules	5
Supreme Court Denies Appeal in Point Source Case ... Florida Wins NPDES Delegation ... NRDC, EPA Settle Phase II Lawsuit	6
EPA Issues Interim Settlement Penalty Policy ... House Committee Okays CWA Rewrite	7

Multi-Sector Permit

(Continued from page 1)

As proposed by EPA, the permit would not cover discharges of unpermitted process wastewater or stormwater that is combined with unpermitted process wastewater. Coverage under the permit would apply only to those sources where there is either a finding of "no significant impact" on listed endangered species or where an environmental impact statement has been performed under the National Environmental Policy Act (NEPA).

There are a number of permit conditions designed to protect endangered species that White said "could potentially" be included in the final permit. Following are some of the conditions that EPA is considering:

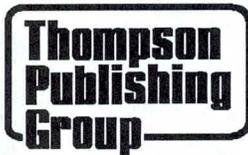
- Permits would not cover discharges that are likely to have an adverse impact on listed endangered species, and applicants would be prohibited from using stormwater controls that are likely to harm listed species.
- Facilities applying for coverage under the permit would have to include with their Notices of Intent (NOIs) an NMFS or FWS determination as to whether there are any listed species near their facility. If no listed species are known to be present, the discharge would be considered as having "no effect" on listed species. In that case, applicants would certify in their NOIs that their discharges are not likely to adversely affect listed species.
- If there are listed species near the discharging facility, applicants would have to work with FWS, NMFS or EPA to determine if their discharges or best management practices could adversely impact those species. In such cases, additional requirements may be included in the facility's stormwater pollution prevention plan

and as a condition of the permit. Failure to abide by permit conditions designed to protect endangered species could be subject to enforcement under CWA.

- Dischargers who cannot certify that their discharges won't harm listed species would have to apply to EPA for individual NPDES permits. In those cases, EPA would conduct an investigation under section 7 of the Endangered Species Act prior to issuing an individual permit.
- Regardless of a facility's ability to meet any of the conditions listed above, EPA still could require that a permittee apply for an individual NPDES permit. In addition, where there are concerns that the coverage for a particular discharger does not sufficiently protect a listed species, FWS, NMFS or a third party may petition EPA to require that the discharger obtain an individual NPDES permit.
- If new sources seek coverage under the permit, the review requirements under NEPA would apply. Coverage for new sources would only be extended where there is either a finding of "no significant impact" or where an environmental impact statement is issued.

In addition, the FWS/NMFS report recommends that EPA establish an automatic "may effect" category for all facilities that are near water-dependent listed species. The report recommends that EPA review stormwater pollution prevention plans for all "may effect" facilities and either approve them or modify the plans to impose additional requirements, or require the permittee to apply for an individual permit.

The multi-sector permit still awaits approval by the National Trust for Historic Preservation. EPA officials have said the permit will be issued by this summer. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Executive Vice President/Publisher, Daphne Musselwhite; Vice President of Editorial Operations, Kathy Duntzen; Senior Publications Manager, Jill S. Talbot, Esq.; Editor, Licia Ponzani; Production Manager, Connie Barclay. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 739-9559. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. For information on multiple subscription discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

EPA Issues Direct Final Rule For Phase II Dischargers

Most phase II stormwater dischargers have until 2001 to obtain stormwater permits, under a direct final rule issued April 7 by the U.S. Environmental Protection Agency (EPA) (60 FR 17950, as corrected by 60 FR 19464, April 18, 1995). The new two-tiered approach to regulating discharges will require only the worst polluters to seek permits soon after the rule takes effect.

The rule amends requirements under section 402 of the Clean Water Act (CWA) and affects all discharges composed entirely of stormwater and not previously covered under phase I of the National Pollutant Discharge Elimination System (NPDES) stormwater program.

Phase I covers discharges associated with industrial activity; discharges from municipal separate storm sewer systems serving 100,000 or more people; discharges for which permits were issued before Feb. 4, 1987; and discharges that violated water quality standards.

Two -Tiered Approach

Under the two-tiered approach, EPA and state regulators will identify those currently unregulated (phase II) stormwater dischargers that are "contributing to a water quality impairment or are a significant contributor of pollutants." These dischargers will be required to apply for a permit within 180 days of receiving notice. All other phase II facilities will have to apply for stormwater permits by Aug. 6, 2001 (see *Bulletin*, March 1995, p. 1 and p. 3).

The rulemaking promotes the public interest by "relieving dischargers of the requirements to apply for permits until (1) a phase II program is in place that can be defined by regulation or changes to the statute or (2) the permitting authority makes an affirmative finding of the need for a permit to protect water quality," EPA said.

A First Step for Phase II

Calling the action a first step in the development of a comprehensive phase II program, EPA said the new rule is consistent with President Bill Clinton's Feb. 21 environmental regulatory reform initiative and the Office of Water's National Program Agenda for the Future (see *Bulletin*, February 1995, p. 1).

"EPA cannot deal with all stormwater issues in today's action," the agency said in announcing the rule. "Some issues raised by stakeholders, such as funding for stormwater best management practices and certain issues with regard to compliance with water quality standards, can only be resolved by

legislative action," EPA said.

EPA said it supports certain statutory changes and clarifications to the stormwater program. However, some issues "like the nature and extent of requirements, if any, that will apply to the various types of phase II sources," can be resolved through the rulemaking process, EPA said.

Part of the phase II approach involves inviting stakeholders to participate in developing requirements for more comprehensive phase II rules, based on their experience with phase I of the program. Stakeholders also will be asked to contribute to discussions on how to improve the phase I program, including the application process and program requirements, EPA said. The agency said it plans to propose revised phase II rules by Sept. 1, 1997. The agency said it will issue final rules by March 1, 1999.

The Direct Final Rule

The agency said it chose to issue a "direct final rule" rather than a proposed or interim rule because it does not expect significant adverse reaction to the measure. The agency also said it wanted to avoid any further delay in providing guidance for the thousands of municipalities and other stormwater dischargers who are currently operating in violation of CWA, because EPA failed to issue rules as required by the law.

The rule takes effect Aug. 7, unless EPA receives critical comments that would cause it to withdraw the rule, according to the *Federal Register* notice. The phase II regulations were simultaneously published as a "proposed rule" in the event that critical comments are received (60 FR 17958, April 7, 1995). Should that occur, EPA could still proceed with the conventional rulemaking process.

To Submit Comments

Comments on the phase II rule must be post-marked by June 6 and should be submitted in duplicate to Comment Clerk, Water Docket (Storm Water Phase II Direct Final Rule), MC-4101, Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460. Comments also may be submitted electronically to the following Internet address: SWPH2-DRF@epamail.epa.gov. Submit electronic comments in ASCII, avoiding the use of special characters or any form of encryption.

For more information, contact Nancy Cunningham, Office of Wastewater Management, Permits Division, (202) 260-9535. ■

NPDES Permits

(Continued from page 1)

asked government officials to look for ways to streamline the regulatory process (see *Bulletin*, April 1995, p. 1). The report indicates that a number of NPDES program components are under consideration for elimination or revision.

The purpose of the reform effort is to identify and revise obsolete or unnecessary regulatory requirements such as those for which deadlines have passed or those that provide the agency with information that it already has, the report said. In some cases, redundant or similar requirements may be combined, the report said.

'The agency wants to establish a process that provides permit writers the information they need to protect the environment and minimizes the need for requests for additional information.'

— EPA Office of Water

EPA said it would revise and consolidate existing NPDES permit application forms and requirements for municipal and industrial facilities and streamline the application process. "The agency wants to establish a process that provides permit writers the information they need to protect the environment and minimizes the need for requests for additional information," the report said. The agency is looking for ways to avoid unnecessary reporting, and is considering how electronic data submission might be used.

The report states that EPA plans to delete "in its entirety" the section of 40 CFR Part 122 regarding group applications for stormwater discharges associated with industrial activity. The provisions originally were intended to simplify compliance with phase I regulations, the report said. They are no longer needed because industrial dischargers have either obtained permit coverage or plan to seek coverage under the multi-sector general permit, it said. New sources will be covered under existing general permits or individual permits, EPA said.

Application requirements for municipal separate storm sewer systems also will be revised to reduce the cost and burden of re-applying for succeeding permit terms, the report said. The agency is proposing to eliminate requirements for resubmitting information that previously was provided with the original application, it said.

Current NPDES requirements "have been interpreted to require some permittees to monitor for all

effluent guideline-listed pollutants," the report said. The agency said it would either revise the regulations or issue a clarification "to allow the removal of permit limits, on a case-by-case basis, if the pollutant is not present in treated effluent." It also plans to review other monitoring and reporting requirements for possible reduction.

The report said that EPA will consider revising NPDES requirements related to its "anti-backsliding" policy, which says that reissued permits cannot have less stringent conditions than previous permits.

The agency also will review National Historic Preservation Act (NHPA) and Endangered Species Act (ESA) consultation procedures, the report said, and will recommend statutory changes in the Clean Water Act "to modify applicability of NHPA and ESA consultation requirements to the NPDES program."

Also under review are state NPDES program requirements, the report said. Proposed revisions would eliminate a requirement that states submit copies of proposed general permits to EPA headquarters and regional offices and instead require them to be submitted to regional offices only.

The report said that EPA has proposed revisions to administrative procedures that states follow in getting EPA approval of water quality standards. EPA wants to "increase state flexibility and improve the Water Quality Standards Program's ability to support a watershed/place-based environmental management approach."

Other regulations that are up for reform are effluent guidelines regulations, leather tanning and finishing point source category effluent guidelines, state sludge management program regulations, pretreatment regulations for existing and new sources of pollution, ocean dumping provisions and drinking water regulations.

EPA plans to remove many 'outdated, obsolete or unnecessary requirements ... and, in a number of cases, to combine redundant or similar requirements.'

—EPA Office of Water

EPA said it would collect and review suggestions for other regulations not listed in the report, and that regional offices would be holding stakeholder meetings on the reform effort.

For additional information on the regulatory reform process, contact Mahesh Podar or Cynthia Puskar, EPA Office of Water, Mailcode 4102, 401 M St., S.W., Washington, D.C. 20460. ■

N.Y. General Permit is Guideline, Not Mandate, Court Rules

A federal court ruled April 14 that New York City cannot block construction of a golf course because the city failed to prove that stormwater runoff from the proposed construction project would damage the drinking water supply.

The U.S. District Court for the Southern District of New York found that the developers' stormwater pollution prevention plan (SWP3) included adequate environmental protections and did not violate effluent standards under Section 402(a) of the Clean Water Act (CWA). (*New York City v. Anglebrook Limited Partnership*; 94 Civ. 7215 (BDP); 1995 U.S. Dist. LEXIS 5213 (S.D.N.Y. April 14, 1995).) The city has appealed the decision and is again seeking an injunction to halt construction during the appeals process.

In deciding in favor of the developers, the court first had to determine whether standards for the development of SWP3s set out in New York's stormwater general permit are intended to be guidelines or mandatory requirements. Judge Barrington D. Parker Jr. concluded that the permit standards used in formulating SWP3s are guidelines.

According to the judge's opinion, the city's argument hinged on the fact that the concentration of phosphorus in two reservoirs near the construction site already exceeded the maximum concentration set forth in state standards. Phosphorus, which occurs naturally, promotes the growth of algae, which, in excessive amounts, degrades water quality over time, the city said.

The city made two claims: that the project's plans were "deficient"; and that "any additional stormwater runoff—no matter the amount—will, by exacerbating this problem, violate the Clean Water Act." As a result, the city claimed it was entitled to pre-construction injunctive relief under the act.

Developers Anglebrook Limited Partnership, Somers Golf Associates, Mitsui Fudosan Inc. and Kajima International (collectively, SGA) argued that their plan to build a private course in Somers, N.Y., incorporated effective and "imaginative" plans for controlling stormwater runoff. The site of the proposed course is far enough away from the reservoirs, and insulated by wetlands, forests, streams, ponds and other "protective features," to ensure that the city's water supply will be safe during construction and operation of the golf course, SGA said. The court agreed. (The opinion provides a detailed analysis of the specific controls included in

SGA's SWP3, and how their plan met the state's permit standards.)

Sign Post or Hitching Post

"An issue of immense importance to this litigation is just how the standards of the general permit should be interpreted," the judge wrote in his opinion. The Anglebrook case hinges on whether the permit guidelines governing SWP3s are understood to be "sign posts or hitching posts," he wrote.

The city contended that the guidelines are mandatory, and that SWP3s that "fall short of full compliance" are in violation of CWA, the opinion states. The defendants, however, viewed the guidelines as "aspirational," it states. "Unfortunately," the judge wrote, "the resolution of this critical issue is facilitated by neither rule nor precedent."

The city in its argument said there are numerous provisions in the guidelines that require permittees to address specific items in their SWP3s. It argued that the presence of the word "shall" in the guidelines is a "clear mandate in the language of command." However, the judge ruled that the regulations governing the contents of an SWP3 are "cast in considerably more open-textured terms than the city would concede."

Part III of the New York general permit says that plans should be prepared in accordance with "good engineering practices," the judge wrote. "In its description of various sediment and erosion control and stormwater management practices, the permit requires that permittees prepare plans that 'conform to' or are 'implemented in a manner consistent with' those measures," he wrote.

Further, the opinion states, appendices to the general permit, which detail various stormwater runoff prevention approaches, are called "guidelines," and are not called requirements. In fact, each appendix explains that its purpose is to "provide guidance" that is not intended to be "fixed and inflexible" but considers the "particular facts and circumstances of a particular project," the judge said.

Having found that the guidelines are intended to be flexible rules that require applicants to "exercise good engineering practices, informed by professional judgment and common sense," the judge determined that SGA's SWP3 fulfilled New York's permit requirements and protected nearby wetlands and reservoirs. ■

Storm Warnings

Stormwater Related News in Capsule Format

Supreme Court Denies Appeal in Point Source Case. The U.S. Supreme Court April 24 declined to review a federal appeals court ruling that discharges of liquid manure into a stream near Southview Farm in Wyoming County, N.Y., constituted unpermitted discharges from point sources under the Clean Water Act (CWA).

At issue in the case was whether the farm, owned by Richard H. Popp, was a concentrated animal feeding operation (CAFO) or whether it was eligible for an agricultural exemption under CWA.

The appeals court last year found that Southview Farm includes "an animal feeding lot operation with a tremendous number of cattle in a concentrated feeding facility in which no vegetation is grown." (*Southview Farm v. Concerned Area Residents for the Environment*, 34 F.3d 114; 1994 U.S. App. LEXIS 24248 (Sept. 2, 1994).)

CAFOs—facilities that include over 700 mature cattle where crops are not grown—are specifically listed as point sources under CWA. The court concluded that the Southview CAFO "in and of itself" is a point source as defined by CWA and therefore is not subject to the agricultural exemption. It also ruled that discharges from the field were not exempt from stormwater regulations just because the manure was applied during a rainfall.

The court concluded that farm equipment and a swale from which the manure was discharged were regulated point sources. Popp had claimed that the equipment and swale were too far away from the alleged discharges to be point sources. (see *Bulletin*, March 1995, p. 7).

Florida Wins NPDES Delegation Approval. The U.S. Environmental Protection Agency (EPA) April 30 approved Florida's application for National Pollutant Discharge Elimination System (NPDES) program delegation. The NPDES program will be administered by the Florida Department of Environmental Protection (FDEP).

The state's program will implement federal law and operate in lieu of the EPA administered program. However, EPA will retain the right to object to NPDES permits proposed to be issued by FDEP, EPA said. NPDES delegation will streamline the permitting process in the state because businesses no longer will have to apply

to both EPA and FDEP to obtain surface water discharge permits, FDEP officials said in a statement.

FDEP had requested a phased NPDES program that first will include permitting for domestic discharges; industrial discharges, including those that also have stormwater discharges; and pretreatment.

As of April 30, EPA stopped issuing NPDES permits in Florida, except for permits for federal facilities and municipal separate storm sewer systems, stormwater general permits and individual stormwater permits. FDEP permitting and enforcement for these categories will be phased in by the year 2000.

Florida's NPDES program approval originally was sought in Nov. 1994. A notice of application for program approval was published in the Jan. 27 *Federal Register* (60 FR 5390) and public hearings were held in March. Notice of program approval is expected to be published in the *Federal Register* in May.

NRDC Settles Phase II Lawsuit With EPA. The Natural Resources Defense Council (NRDC) and EPA reached an agreement that requires EPA to issue proposed and final rules for controlling phase II stormwater discharges by specific deadlines. Phase II discharges are those not currently regulated under CWA's stormwater program.

The agreement, filed as a consent decree in the U.S. District Court in Washington, settles NRDC's charges that EPA failed to meet the statutorily-mandated deadline for issuing a final rule for phase II stormwater discharges. Under CWA, the agency was supposed to have issued a final rule by Oct. 1, 1993. The final stormwater rule issued by EPA in November 1990 did not apply to smaller municipalities and certain industrial and commercial facilities, NRDC said (see *Bulletin*, December 1994, p. 7).

Under the consent agreement, EPA must issue a proposed stormwater rule within two and a half years and a final rule within four years. The decree allows currently unregulated sources six years to apply for their stormwater permits.

Separately, EPA April 7 published a direct final

rule covering phase II stormwater discharges that gives most dischargers six years to obtain permits (60 FR 17950). The measure requires EPA to propose comprehensive phase II regulations by Sept. 1, 1997. (See related story, p. 3.)

EPA Issues Interim Settlement Penalty Policy for CWA Violations. EPA issued a revised policy for calculating penalties as part of the settlement of judicial and administrative enforcement actions brought under section 309 of CWA.

The policy is designed to provide relief in cases against municipalities, and supersedes six interpretive guidance documents issued since the CWA penalty policy was created in 1986, EPA assistant administrator Steven A. Herman said in a letter to EPA regional administrators.

EPA issued the policy in an interim version because the agency expects to revise it based on its experience in applying the policy and on public comments.

Herman said the policy is designed to further the following important environmental goals. Penalties should: deter noncompliance and protect the public; create a level playing field by ensuring that violators do not gain an economic advantage over their competitors; be consistent across the country; and be based on a logical calculation methodology.

There are four key changes in the policy, Herman said. First, the revised policy establishes a new approach for determining penalties against municipalities, based on past settlements and on an evaluation of four factors: facility size; duration of violation; environmental impact; and economic benefit. Regional offices will have the discretion to select from a range of values for each factor and may then reduce the penalty further, if appropriate, by up to 40 percent, for supplemental environmental projects, Herman said.

Second, the methodology for evaluating the gravity of the violation has been revised to eliminate redundancy, improve national consistency and better cover non-effluent-limit violations. Third, EPA has established two new gravity adjustment factors to provide incentives for quick settlements and to mitigate penalty amounts for small facilities, Herman said. Fourth, EPA has consolidated the original policy and the six subsequent guidance documents into one document.

The revised interim policy took effect March 1. It applies to all CWA civil judicial and administra-

tive actions filed after that date, as well as to pending cases in which the government has not yet proposed a settlement penalty amount. It also may be applied in pending cases in which penalty negotiations have begun, Herman said.

House Committee OKs CWA Rewrite. The U.S. House of Representatives Transportation and Infrastructure Committee approved a CWA reauthorization bill that would increase flexibility in the NPDES stormwater runoff program.

The committee April 6 approved HR 961 by a vote of 42-16. The bill was introduced in February by Rep. Bud Shuster, R-Pa., chairman of the Subcommittee on Water Resources (see *Bulletin*, April 1995, p. 1). Thirteen Democrats supported the measure; three Republicans voted against. The bill is expected to pass with little opposition when it goes before the full House in late May or June.

The bill would make sweeping changes in the 23-year-old clean water statute, including eliminating the U.S. Environmental Protection Agency's stormwater permitting program and replacing it with a flexible, voluntary, state-administered stormwater management program. The bill has found support among some groups representing state and local governments and appears to have the approval of numerous industry segments.

Senate Environment and Public Works Committee Chairman John Chafee, R-R.I., has said he will offer a scaled down CWA reform bill, that could include changes in the stormwater program, reauthorization of the state revolving loan fund and improvements to the wetlands permitting program. Chafee, who has called CWA "our most successful environmental statute," does not support a complete rewrite of the act.

New Stormwater Publication. McGraw-Hill Inc. has published a new text on stormwater runoff and the NPDES program. *Storm Water Pollution Control: Industry and Construction NPDES Compliance*, is a 437-page hardbound book written by Roy D. Dodson, P.E., president of Dodson & Associates Inc., Houston, a supplier of engineering services and computer software for stormwater applications. The book describes which industrial facilities and construction sites are required to have permits and provides information on cost-effective permit compliance, McGraw Hill said. For information, contact Cynthia Borg or Charles Love at (212) 337-5947 or 5945. ■

Calendar of Events

Technologies. A course on New and Emerging Environmental Technologies and Products for Collection and Treatment of Waste Water will be held June 4-7 in Toronto, Ontario. The course is sponsored by the Water Environment Federation (WEF). For information call (703) 684-2464.

Nonpoint Sources. A national forum on non-point sources will be held by the National Nonpoint Source Federation (NNSF) in cooperation with the U.S. Department of Agriculture and the U.S. Environmental Protection Agency (EPA) June 7-9 in Arlington, Va. For more information contact NNSF at (202) 797-7720 or fax to (202) 234-1614.

Environmental Sampling.* The Environmental Sampling and Data Analysis course to be held June 28-29 in Denver is sponsored by Government Institutes. The program will cover laws and regulations that mandate sampling, determining objectives, sampling strategies, field techniques, choosing the right analytical methods, choosing a laboratory, documenting field activities and analytical results, recordkeeping and project files, environmental chemistry, validation and interpretation, data management and application. Cost: \$949. Call: (301) 921-2345.

Clean Water Compliance.* The Clean Water Compliance Institute will be held Aug. 1-4 in Hilton Head, S.C. The program will include an overview of clean water laws and regulations, enforcement, inspections, pretreatment require-

ments, issues for publicly-owned treatment works, Oil Pollution Act and spill prevention controls and countermeasures, national pollutant discharge elimination system (NPDES) permitting program, technology-based effluent limitations, water quality-based limitations, developing and challenging permits, and more. For more information, contact Government Institutes at (301) 921-2345.

Clean Water Act.* This Government Institutes' course to be held Sept. 12-13 in Arlington, Va., will cover compliance obligations, permitting requirements, release reporting regulations and EPA enforcement priorities and strategies. Cost: \$949. Call: (301) 921-2345.

Management and Treatment. The George Washington University Continuing Engineering Education Program will hold a stormwater course Sept. 12-14 in Washington. The course will cover design, management, treatment and regulatory requirements. Technical topics to be addressed include hydrologic effects of land development; selecting rainfall parameters; computing peak-rate rainfall; developing hydrographs; designing detention and retention basins, storm sewers, road inlets, pipes, culverts, open channels, energy dissipators; and more. For information on the course, contact Pat Murphree, program director, at (202) 994-8521. ■

* New Listing.

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 4, Number 10

April 1995

House Subcommittee Okays CWA Reauthorization Bill

Measure Would Replace Stormwater Permitting With Management Plans, SWP3s

A bill to reauthorize the Clean Water Act (CWA) could eliminate the U.S. Environmental Protection Agency's stormwater permitting program and replace it with an all new, state-administered stormwater management program.

A U.S. House of Representatives Transportation and Infrastructure subcommittee on March 29 amended and approved HR 961 by a vote of 19 to five. The bill is designed to increase flexibility in a number of CWA programs, including Section 402, the National Pollutant Discharge Elimination System (NPDES) permitting program, which covers stormwater discharges, according to its sponsors.

HR 961 was introduced in February by Bud Shuster, R-Pa., chairman of the Subcommittee on Water Resources and Environment. The bill, which was substantially revised prior to last month's one-

day markup session, has had a generally favorable reception among industry representatives and some state and local officials. However, environmental groups, EPA and top House democrats say they strongly oppose the measure.

Stormwater Highlights

The bill generally would define stormwater as a nonpoint source and would repeal Section 402(p), the stormwater permitting program. Instead, it would create a new Section 322 containing a stormwater management program modeled after the existing nonpoint source management program in Section 319.

Other provisions of the bill that apply to stormwater dischargers would:

- ensure that state management programs would

(Continued on page 2)

EPA's Phase II Rules Fit With Clinton Reform Plan

Forthcoming regulations on phase II stormwater dischargers "clearly fit in" with President Bill Clinton's newly released regulatory reform initiative, according to U.S. Environmental Protection Agency (EPA) official William Swietlik.

Swietlik said the long-awaited direct final rule for phase II stormwater dischargers is in line with the Clinton reforms because it is "deregulatory in nature." The rule was signed March 29 by EPA Administrator Carol M. Browner and was expected to appear in the *Federal Register* in early April, Swietlik said (see *Bulletin*, March 1995, p. 1).

(Continued on page 4)

Inside this issue ...

- | | |
|---|---|
| ❑ EPA Proposal Would Let Citizens Challenge State Permits | 4 |
| ❑ Multi-Sector General Permit Still on Hold | 5 |
| ❑ EPA Announces Great Lakes Restoration | 5 |
| ❑ Calendar of Events | 6 |

CWA Reform

(Continued from page 1)

be based on existing information and include "realistic" implementation measures;

- specify that management programs be revised every five years and be geared toward a goal of attaining water quality standards for designated uses of receiving waters within 15 years from the approval of a state management program;
- create a hierarchy of stormwater management approaches—based on the existing preamble to Section 319—emphasizing voluntary measures first, pollution prevention second, and mandatory measures as they become necessary and only if other measures fail;
- fund research and state and local demonstration projects, at \$20 million annually, to test innovative approaches and search for cost-effective, technologically feasible methods of improving water quality; and
- retain controls under existing permits until states establish stormwater management programs.

Stormwater Management Program

The proposed stormwater management program envisioned by the bill's bipartisan sponsors would require each state to adopt a stormwater management plan. The plans would include model management practices and measures, and would, in turn, require dischargers to adopt pollution prevention plans consistent with provisions described in HR 961. Each state would be required to provide a definition of "stormwater discharger" in its management plan.

The state plans would be drawn up with the aid of local governments and would be open to public

comment. According to the bill, model management practices and measures would be "economically achievable measures for the control of pollutants from stormwater discharges which reflect the most cost-effective degree of pollutant reduction achievable through the application of the best available practices, technologies, processes, siting criteria, operations methods or other alternatives."

As noted above, the program would employ a hierarchical approach stressing voluntary measures over mandatory requirements. "It is recognized that state stormwater management programs need to be built on a foundation that voluntary pollution prevention initiatives represent an approach most likely to succeed in achieving the objectives of this act," the bill said.

This system would apply to industrial, commercial, oil, gas and mining stormwater discharges and their subcategories, the bill said. Separate programs for municipal discharges and construction activities would also be developed.

Additionally, state programs would include "bad actor provisions" that would allow states to take action against facilities that have a "history of stormwater noncompliance," under CWA, state law or regulation, permit conditions or administrative actions. This provision also would apply to facilities "posing an imminent threat to human health and the environment," the bill said.

Pollution Prevention Plans

Once state management programs are in place, stormwater dischargers would be required to develop and implement stormwater pollution prevention plans (SWP3s). The plans, which would have to be updated annually, would include:

- appointment of a stormwater prevention team;



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Executive Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot, Esq.; Editor, Licia Ponzani; Production Manager, Connie Barclay. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 739-9559. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Dr., Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409. For information on multiple subscription discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

- description of potential pollutant sources;
- an annual site inspection evaluation;
- an annual visual discharge inspection;
- measures and controls for reducing stormwater, including preventive maintenance, good housekeeping, spill prevention and response, employee training and sediment and erosion control measures; and
- prevention of illegal discharges of non-stormwater through stormwater outfalls.

Facilities that certify to the state that they have implemented SWP3s that are designed to reduce possible pollutants in stormwater discharges would not be subject to permit or permit application requirements, mandatory model management practices and measures, analytical monitoring, effluent limitations or other numerical standards or guidelines, the bill said.

Besides stormwater, the bill also contains provisions relating to effluent limitations, water quality standards, cost-benefit analysis and wetlands. It also would extend NPDES permit deadlines for three years for facilities that use innovative pollution prevention technologies.

Support From the States

The Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) said of Shuster's bill that "many of the suggestions offered by the states have been taken to heart. Specifically the nonpoint source and watershed protection programs appear to closely track the positions of the association," according to a press release.

Shuster asked ASIWPCA, the National Governors Association, the National League of Cities and other organizations to help with CWA revisions, ASIWPCA said.

Leading Democrats Oppose the Bill

Rep. Norman Mineta, (D-Calif.) the ranking Democrat on the Transportation and Infrastructure Committee called the proposed legislation a "polluter's bill of rights." None of the five amendments offered by Mineta during markup were approved, including one that would have kept the stormwater permitting program intact.

Mineta has said administration officials, environmentalists and some House Democrats were barred from the process. He and Rep. Robert Borski, D-Pa., ranking minority member on the subcommittee, have been widely quoted as saying that Shuster allowed the industries that are subject to the law to

draft the proposed changes.

"The bill undermines 20 years of success in our clean water programs and weakens the commitment to achieve strong environmental and public health protection for the American people," EPA Administrator Carol Browner said in a March 22 letter to Shuster. Browner said that Shuster "excluded the administration and public interest groups ... and relied instead on closed-door discussions" in developing the bill.

In early March, Shuster called together a group of industry executives and lobbyists to participate in debate on the bill. Shuster has denied that he excluded Democrats and others, noting that the bill has eight Democratic co-sponsors. "All parties have had an opportunity to have their views fully considered," Shuster said in a letter to Mineta.

Environmental groups, including the Natural Resources Defense Council (NRDC) are strongly opposed to the bill.

"This bill is like a neutron bomb. If these amendments were adopted they would leave only the shell of the current Clean Water Act," NRDC said in a statement. The NRDC statement also noted that the bill does not address pesticides and other farm runoff, "leaving the biggest problem with the Clean Water Act unresolved."

Prospects for CWA Reform

HR 961 is generally expected to see swift passage in the House. On the Senate side, however, Senate Environment and Public Works Committee Chairman John Chafee, R-R.I., is planning a different approach to CWA reform.

Earlier in the year, Chafee aides said the senator was committed to producing a bill that would reform the stormwater permitting program. However, a member of the Environment and Public Works Committee staff said the committee now plans to offer a "scaled back" CWA reauthorization measure instead of a narrowly-focused stormwater bill.

Chafee's committee will not release a bill until the House Transportation and Infrastructure Committee has completed its markup of HR 961. If that is the case, a Senate bill is not likely to emerge until this summer.

In addition to stormwater issues, a Senate bill likely would include provisions for combined sewer overflows, wetlands, nonpoint sources, and reauthorization of state revolving loan funds, the committee staffer said. ■

EPA Proposal Would Let Citizens Challenge State Permits

The U.S. Environmental Protection Agency (EPA) in March issued a proposed rule that would require states to give citizens a chance to challenge the approval or denial of state-issued National Pollutant Discharge Elimination System (NPDES) permits.

The proposed rule would require that state laws provide "any interested person" with the opportunity to challenge in a state court the approval or denial of permits issued under Section 402 of the Clean Water Act (CWA) (60 FR 14588, March 17, 1995). The proposed rule is intended to ensure that citizens have the same opportunity to challenge judicially the final action on state-issued permits, as they do with permits issued by EPA.

In the notice of proposed rulemaking, EPA said it wants to define the term "any interested person" based on the U.S. Supreme Court's reading of the standing requirements of Article III of the U.S. Constitution in *Sierra Club v. Morton*, 405 U.S. 727 (1972). That interpretation found that "At an irreducible minimum, Art. III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,' ... and that the injury 'fairly can be

traced to the challenged action' and 'is likely to be redressed by a favorable decision.'"

EPA said there have been cases in which citizens have been barred from challenging state-issued NPDES permits because of restrictive standing requirements in state law.

"When citizens are denied the opportunity to challenge executive agency decision in court, their ability to influence permitting decisions through other required elements of public participation, such as through public comments and public hearings on proposed permits, may be seriously compromised," the notice said.

"If citizens perceive that a state is not addressing their concerns about 402 permits because the citizens have no recourse to an impartial judiciary, that perception also has a chilling effect on all the remaining forms of public participation in the permitting process," it said. Send comments in triplicate by June 15 to EPA Water Docket, MC-4101, 401 M St., S.W., Washington D.C. 20460. For more information contact Laura J. Phillips in EPA's Office of Wastewater Management, Permits Division, at (202) 260-9541. ■

Phase II

(Continued from page 1)

The administration's package of reforms, called "Reinventing Environmental Regulation," was released March 16. The reform strategy is based on the principle that environmental regulations should afford flexibility, but must require accountability as well. This combination provides greater environmental protection at a lower cost, according to the reform package.

Many of the environmental improvements seen in the United States in the last 25 years are the result of "end-of-the-pipe," "command-and-control" approaches to environmental regulation, the reform package said. "Prescriptive regulations can be inflexible, resulting in costly actions that defy common sense by requiring greater costs for smaller returns," it said. The reform strategy focuses on consensus-based rulemaking and "regulatory negotiation" and promises a 25 percent reduction in paperwork associated with environmental compliance.

The new phase II rule lifts the regulatory burden from literally millions of companies that previously were liable for stormwater permitting regulations,

he said. "The phase II rule we have just promulgated substantially reduces the permitting liability on stormwater dischargers. In essence, about 90 percent of them don't need permits right away," Swietlik said. Only those dischargers who are causing water problems will have to comply immediately, he said.

The phase II rule also speaks to the negotiated rulemaking component of the Clinton reform strategy, he said. Under the rule, EPA will work with phase II stormwater stakeholders to hammer out a comprehensive phase II program for the future. "We will be inviting stakeholders to sit down at the table to work through the best way to develop a phase II plan for the long term," Swietlik said.

EPA also plans to make improvements to its phase I stormwater program, he said. "We will be convening a Federal Advisory Committee Act (FACA) group to pull in stakeholders for the [phase I] program and examining with them ways to streamline, reduce costs and improve effectiveness of the stormwater program." The FACA group charter was approved by the Office of Management and Budget and EPA now is putting together the group from the pool of organizations and individuals who have volunteered to participate, he said. ■

Storm Warnings

Stormwater Related News in Capsule Format

- ❑ **Stormwater Center Picked for Airport Drainage Project.** The National Stormwater Center was selected to participate in a demonstration project to "rethink airport drainage," the Center announced. The objective of the project is to reduce or eliminate water management ponds at airports, the Center said. Ponds located near runways create problems because they may inhibit crash rescue and often attract birds that can disrupt aircraft flight patterns.

The Center will assist Mosby Engineering Associates to redesign the drainage master plan at the Charlotte County Airport in Punta Gorda, Fla. The new design will be compared to traditional designs and the results presented at the Florida Airport Managers Association conference in August.

Stormwater data from the U.S. Environmental Protection Agency (EPA) group applications will be used to estimate pollutant runoff from airside operations and compared to airport data and water quality criteria. The data were collected by the American Association of Airport Executives and the Florida Association of Counties for the EPA group application. For additional information, contact the Center's director, John Whitescarver, at (703) 777-9384.

- ❑ **Retail Gasoline Outlet Stormwater Study.** A new report published by the American Petroleum Institute (API) presents the findings of a study that characterizes stormwater runoff from retail gasoline outlets and compares the results with runoff from commercial parking lots and published urban "background" values. The results of the study, funded by the Western States Petroleum Association and API, indicate that fueling activities at normally operated and maintained retail gasoline outlets do not contribute additional significant concentrations of measured constituents in stormwater runoff. The 23-page report is available for \$20. Call API at (202) 682-8375 and use order no. 804-16691.
- ❑ **EPA Announces Great Lakes Restoration Plan.** EPA on March 13 unveiled what it called a "common-sense, comprehensive plan" to restore the health and economy of the Great Lakes. The plan is the result of a six-year

cooperative effort between state environmental agencies, industry, environmental and other public citizen groups, municipalities, academia and EPA.

The plan is in the form of a guidance document called "Water Quality Guidance for the Great Lakes System." The final guidance document was published in the *Federal Register* March 23 (60 FR 15366).

The guidance will provide Great Lakes states with community-based flexibility to tailor solutions to local conditions, EPA said. This will allow them to set sound health and environmental protection goals, while developing cost-effective solutions. For example, once states develop local plans, they may choose to improve water quality by reducing air emissions or by placing additional requirements on wastewater dischargers.

Within two years, the Great Lakes states and tribes will begin limiting many of the toxic pollutants entering the lakes through the development of water quality standards. The standards will be based on water quality criteria, specifically tailored to protect Great Lakes human, animal and aquatic life. Criteria are numerical limits expressing the amount of pollutants that can safely enter the waters.

To provide additional flexibility and to reduce implementation costs, the states and tribes will investigate pollution prevention opportunities to stop pollution before it enters the environment, EPA said. Examples of pollution prevention opportunities are substituting and using less toxic substances in manufacturing processes and recycling those toxic substances that are used. The guidance encourages states to develop pollution minimization plans, EPA said.

- ❑ **No Movement on Multi-Sector Permit.** As of March 30, EPA's multi-sector general stormwater permit still had not received approval from the U.S. Fish and Wildlife Service, according to an EPA official. "We're still working out whether there will be any impact on endangered species or on historic preservation," the official said. He said the agency still hopes to issue the permit "in the near future." ■

Calendar of Events

Management and Treatment.* The George Washington University Continuing Engineering Education Program will hold a stormwater course May 2-4 and Sept. 12-14 in Washington. The course will cover theory, design, management, treatment and regulatory requirements. Technical topics addressed include: hydrologic effects of land development; selecting rain fall parameters; computing peak-rate rainfall; developing hydrographs; designing detention and retention basins, storm sewers, road inlets, pipes, culverts, open channels and energy dissipators; and more. For information on the course, contact Pat Murphree, program director, at (202) 994-8521. For registration information, call (800) 424-9773 or (202) 994-6106 or 2337.

Water Pollutants. The 18th Annual Conference on Analysis of Pollutants in the Environment will be held May 3-4 in Norfolk, Va. The course is sponsored by the Water Environment Federation (WEF). For information, contact WEF at (703) 684-2400, or fax to (703) 684-2452.

Toxic Substances. The Water Environment Federation (WEF) will sponsor a course, Toxic Substances in Water Environments: Assessment and Control, May 14-17 in Cincinnati. For information contact Nancy Blatt, WEF (703) 684-2400, or fax to (703) 684-2452.

Permits and SWP3. A course on the U.S.

Environmental Protection Agency's stormwater permits and pollution prevention plans will be held May 16 in Cary, N.C. The course is sponsored by the Environmental Resource Center (ERC). For more information, contact ERC at (919) 469-1585.

Compliance. A stormwater compliance course, sponsored by Environmental Education Enterprises, will be held May 17-19 in St. Louis and Nov. 8-10 in Charlotte, N.C. For information call Jay Lehr at (800) 792-0005, or fax to (614) 792-0006.

Technologies. A course, New and Emerging Environmental Technologies and Products for Collection and Treatment of Waste Water, will be held June 4-7 in Toronto, Ontario. The course is sponsored by the Water Environment Federation (WEF). For information contact WEF at (703) 684-2464.

Nonpoint Sources. A national forum on non-point sources will be held by the National Nonpoint Source Federation (NNSF) in cooperation with the U.S. Department of Agriculture and the U.S. Environmental Protection Agency June 7-9 in Arlington, Va. For more information contact NNSF at (202) 797-7720, or fax to (202) 234-1614. ■

* New Listing.

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
5132 Tampa West Blvd., Suite B, Tampa, Fla. 33634-2409

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 4, Number 9

March 1995

EPA Floats Two-Tiered Approach to Phase II Permitting

The U.S. Environmental Protection Agency (EPA) will propose a two-tiered approach to regulating phase II stormwater dischargers, according to a draft final rule dated Feb. 3 that would revise the National Pollutant Discharge Elimination System (NPDES) permit requirements for stormwater.

Calling the rule "a common sense approach," EPA said its proposed requirements would "obtain real environmental results earlier," because it would apply to the worst polluters first. The rule, which EPA shared with city, state and local officials and environmental groups Feb. 10, could appear in the *Federal Register* soon, according to Michael Cook, director of EPA's Office of Wastewater Management.

Cook said EPA is in the process of making minor changes to the draft to respond to stakeholder comments. "I don't think the basic provisions would change, but we could change how they are presented," he told the *Bulletin* Feb. 22. One of the

issues EPA will respond to is a charge by municipalities and others that the rule does not address all of their concerns with the stormwater program. EPA wants to clarify that the rule does not preclude a legislative remedy, Cook said (see related story on reactions to phase II, page 3).

After these adjustments are made by EPA, the rule must be cleared by the Office of Management and Budget (OMB) before it can be published. OMB clearance "should be a matter of weeks," Cook said.

Two-Tiered Scheme

Under the two-tiered scheme, EPA, a state or an Indian tribe would identify those currently unregulated (phase II) stormwater dischargers that are "contributing to a water quality impairment or are a significant contributor of pollutants." These dischargers would be required to apply to the permitting authority within 180 days of receiving notice.

(Continued on page 2)

Clinton Budget Allows Modest Growth for EPA

U.S. Environmental Protection Agency (EPA) Administrator Carol M. Browner said President Clinton's proposed fiscal 1996 budget for the agency "shows modest growth" over the current year's numbers.

Under the administration's budget proposal, total fiscal 1996 outlays for natural resources and environment would be \$21.8 billion, down \$52 million from fiscal 1995. However, budget authority for these programs would increase by \$534 million over 1995 levels to \$22.6 billion. Budget authority can include money that was appropriated in earlier years, which is why EPA's budget authority (the

(Continued on page 6)

Inside this issue ...

- States, Industry Want Legislative Solution to Phase II 3
- CWA, Stormwater Reform Eyed in House 5
- Multi-Sector Permit Awaits USFWS Review 6
- Farm Owner Takes Point Source Discharge Appeal to Supreme Court 7
- Calendar of Events 8

Phase II Rule

(Continued from page 1)

Unless the appropriate permitting authority specifies otherwise, application requirements for phase II would be similar to the individual and municipal application requirements of phase I.

All other phase II facilities—those not notified by a permitting authority—would have to apply for permits within six years of the effective date of the regulation. EPA said it would establish application requirements for this second group of phase II dischargers, and make other “conforming” changes to its NPDES regulations.

EPA said it planned to propose comprehensive rules for the second tier of phase II dischargers by Sept. 1, 1997, with input from its “partners” or stakeholders in phase II matters. This process would relieve dischargers of the “requirements to apply for permits until application requirements are in place,” EPA said. The agency said final phase II rules would be ready by March 1, 1999.

EPA specifically said it would encourage the use of general permits for all phase II dischargers and would require submission of a notice of intent to be covered by the general permit. Group applications for phase II dischargers would not be provided for, EPA said, because the general permit process will be available to almost all phase II dischargers.

The initial portion of the phase II program does not contain a comprehensive set of performance standards, guidelines, management practices or treatment requirements, EPA said. Those conditions may be established on a case-by-case basis when permits are issued, or may be developed later.

Why a Direct Final Rule

The rule would amend Section 402(p)(6) of the Clean Water Act (CWA), EPA said. When published in the *Federal Register*, the amendments will

take the form of a “direct final rule”—rather than a proposed rule or interim rule—because the agency does not anticipate “significant adverse or critical comments” on its proposal. In addition, EPA said it would be “contrary to the public interest” to further delay the start of the permit application process for phase II dischargers. Therefore, if the rule gets a favorable reception, it would take effect 120 days from the time it appears in the *Federal Register*.

Under CWA amendments of 1987, phase II dischargers were exempt from regulation until Oct. 1, 1994. Many have argued that when that permitting moratorium expired, it left unregulated dischargers open to third-party lawsuits under CWA. To remedy that situation, the direct final rule would codify the existing statutory requirement that upon the Oct. 1, 1994, expiration of the phase II moratorium, all discharges composed entirely of stormwater and not already subject to phase I requirements would be brought into the program, the draft rule said.

Included among those that would be covered are light industries and construction sites of less than five acres: two categories that were exempt from EPA’s phase I rules. Also affected would be facilities owned by municipalities that were excluded from phase I by the Intermodal Surface Transportation Efficiency Act of 1991.

Second Tier

In devising rules for the second tier of phase II facilities, EPA said it would consider input from all interested stakeholders, as well as the information the agency collected from its September 1992 phase II notice and the results of other public meetings and expert studies conducted over the last several years. EPA also would consider the data used in the reports it assembled on municipal and individual sources, that will be submitted to Congress this year. It also would take into account the recommendations in President Clinton’s Clean Water Initiative, released last year.



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Executive Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot, Esq.; Editor, Licia Ponzani; Production Manager, Connie Barclay. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 739-9559. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Esq., Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Esq., Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center P.O. Box 26185, Tampa, Fla. 33623-6185. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher’s prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Dr., Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185. For information on multiple subscription discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

EPA said it is considering making changes to improve its operation of phase I of the stormwater program as part of the comprehensive phase II rulemaking action, including revising phase I municipal application requirements.

The as yet unpublished draft noted that reaction from the states to the rulemaking is "positive," but

that cities would "prefer a statutory change now to clarify the issue once and for all." The draft also indicated that EPA plans to state in its official *Federal Register* notice that the rulemaking's impact on small businesses would be positive: that small entities would benefit because EPA is "clarifying requirements," taking a "common sense approach," and "managing for results." ■

States, Industry Say Legislation Needed to Clarify Phase II

State water pollution control officials would prefer legislation to protect currently unregulated stormwater dischargers, but they don't object to the U.S. Environmental Protection Agency's (EPA) effort to provide an administrative solution.

EPA on Feb. 10 shared with representatives of cities, states and environmental interests a draft of a direct final rule designed to bring currently unregulated phase II stormwater dischargers into the National Pollutant Discharge Elimination System (NPDES) stormwater permitting program. The draft rule floated by EPA would require the worst polluters to obtain stormwater permits right away, and require all other dischargers to apply for permits within six years (see related story, page 1.)

'We didn't get the changes last year and there is a chance, but probably not a terribly good chance, that there will be changes this year.'
—Mike Cook, EPA

Under the Clean Water Act Amendments of 1987 (CWA), phase II dischargers—mostly smaller industrial facilities and municipalities serving fewer than 100,000 people, were exempt from regulation until Oct. 1, 1994. Since then, phase II facilities have been required by law to comply with stormwater permitting requirements, but have been unable to do so because EPA failed to issue application requirements.

Although EPA has said it does not intend to bring enforcement actions against unregulated phase II facilities, industry has argued that it is at risk from third-party lawsuits under CWA.

Attempts by Congress last year to reauthorize CWA failed, and many of the players in the water quality field feel the prognosis for reauthorization in the 104th Congress is uncertain. With that in mind, some supporters of stormwater reform legislation say EPA is right to issue a rule now, even if it is just a first step in clarifying the question of who is subject to phase II requirements.

Michael Cook, director of EPA's office of wastewater management said he believes all of the stakeholders—including EPA—would prefer to see legislative changes to the stormwater program. "But

the starting point for us is that we didn't get the changes last year and there is a chance, but probably not a terribly good chance, that there will be changes this year," he said Feb. 22. In the midst of this atmosphere of doubt, it is EPA's responsibility to proceed with the stormwater program under the existing regulatory framework, he said.

"We're receptive and fairly comfortable with the approach EPA is proposing to take," said Roberta Savage, executive director of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA). The draft direct final rule "responds to the concerns expressed by state and local governments," she said.

"It's a responsible move on EPA's part" to address the problem through the regulatory process, Savage told the *Bulletin*. "We need to get busy and get these programs moving," and then try a legislative approach, she said. "We've been in a 'wait and see' mode and now the states are desirous of getting back to work."

ASIWPCA members support the proposal's six-year moratorium on permitting for most dischargers, she said. The state group also likes the "inclusionary process" outlined by EPA in which stakeholders can will come together to fashion workable requirements for the second tier of phase II dischargers.

'We need to get busy and get these programs moving. ... We've been in a "wait and see" mode and now the states are desirous of getting back to work.'
—Roberta Savage, ASIWPCA

Diane Cameron, a senior researcher for the Natural Resources Defense Council (NRDC) said NRDC supports the draft and finds the time frame reasonable. "It's important to delay permit requirements for phase II sources because they are under a legal liability to have permits. Without proper EPA and state guidance and training these sources are not prepared to meet that requirement," Cameron said Feb. 17.

In a separate but related issue, NRDC is in the process of settling its own case with EPA concern-

(Continued on page 4)

Reform Needed

(Continued from page 3)

ing the agency's failure to implement stormwater provisions of CWA, including failure to issue phase II regulations on time and failure to issue two reports to Congress on phase II dischargers. NRDC, which filed a notice of intent to sue EPA on Oct. 21, 1994, wants the agency to agree to deadlines by which it must issue a proposed rule and a final rule, Cameron said (see *Bulletin*, December 1994, p. 7).

The reason for the lawsuit is that a "direct final rule is needed right now to ... clarify that the phase II sources do not have an immediate legal need to have permits," Cameron said. In the meantime, NRDC is committed to "an orderly inclusive process" for determining the exact scope and content of phase II, including who should be covered, she said. The roundtable approach to establishing the more specific phase II requirements promised in the draft direct final rule is necessary so that "EPA does not come up with those specifics in a vacuum," Cameron said.

It's a matter of timing, she said. "Both the direct final rule and the settlement that we are working on will buy us time to go through that process."

Attorney Jeff Longworth, of the Washington law firm of Collier, Shannon, Rill & Scott, and coordinator of the Coalition for Stormwater Reform said the businesses and industries he represents "would not be opposed to EPA trying to help out in any way with the liability it created by not drafting phase II regulations." However, Longworth said the coalition "reserved the right to object to anything in the rule that would affect other general industry interests."

'It's important to delay permit requirements for phase II sources because they are under a legal liability to have permits.'

—Diane Cameron, NRDC

In addition, Longworth said he believes that statutory corrections will be necessary in the long run regardless of what EPA does. "As I read the Clean Water Act, 'Thou shalt get a permit by Oct. 1, 1994.' I don't see how any action that EPA takes could eliminate the citizen suit liability for dischargers that don't have permits by that date. That date is in the law, not in the rule. Only Congress can change it," Longworth said Feb. 17.

According to ASIWPCA's Savage, a key issue that is likely to surface while stakeholders hammer out phase II requirements will be setting a deadline for the achievement of water quality standards. "The states feel that a program as important as stormwater needs to be linked to water quality

standards; they are the framework and focal point of the program. Whether that takes place in six, 10, 15 or 20 years ... we're open to negotiation," she said.

'Thou shalt get a permit by Oct. 1, 1994. ... That date is in the law, not in the rule. Only Congress can change it.'

—Jeff Longworth, Stormwater Reform Coalition

Another tough issue will be cost effectiveness, Savage said. Regulators will need "a little flexibility" in determining where stormwater requirements are necessary and where they are not. There are places "where potentially [stormwater requirements] won't have the kind of impact on water quality that we're looking for. We'll need flexibility to try some new things and to be open for some failures," she said.

The states don't want cities and municipalities to waste money on practices that don't work, "any more than they do," she said. But, ASIWPCA members also agree that where a demonstrated water quality problem exists, "we should be able to do something about it quickly." ■

Regulatory Moratorium May Delay Phase II Rule

A regulatory moratorium would "delay several important initiatives" including much-needed clarification of stormwater permitting rules, an EPA official told members at a U.S. House of Representatives subcommittee meeting on Clean Water Act reauthorization Feb. 21.

"I think a moratorium is a one size fits all solution to the problem," because a ban applies equally to all regulations, said Robert Perciasepe, assistant administrator in the Office of Water. "We would want to do a rulemaking soon to protect stormwater dischargers who are already required to have a permit," he said, referring to the agency's draft direct final rule for phase II stormwater dischargers (see related stories, pages 1 and 3).

The House Government Reform Committee on Feb. 8 approved HR 450, which would put a freeze on major new regulations until year-end or until they are reformed, whichever comes first. The full House was scheduled to consider the bill Feb. 23; it is expected to pass easily. The Senate version of the moratorium (S 219) will face greater opposition but is expected to pass in April. ■

Congress Debates CWA Rewrite, Stormwater Reform

The U.S. Environmental Protection Agency's (EPA) stormwater program "is fundamentally flawed," a spokesman for the Stormwater Reform Coalition told members of the U.S. House of Representatives subcommittee on Water Resources and the Environment Feb. 21.

Industry's partnership with EPA has failed, said Robert Stahl, risk manager for Chaney Enterprises, a Maryland-based construction material distributor. Stahl called on Congress to "provide EPA with the flexibility and the tools to correct the storm-water program." He asked subcommittee members to allow EPA to exempt a variety of stormwater discharges from the National Pollutant Discharge Elimination System program "either because they should not be regulated to begin with or as an incentive for pursuing pollution prevention activities."

The Stormwater Reform Coalition represents large and small manufacturers, the recycling industry, transportation industry, gasoline stations, convenience stores and the warehousing industry. Stahl was one of a dozen industry representatives who testified before the subcommittee during a series of hearings on Clean Water Act (CWA) reauthorization last month.

Bipartisan Stormwater Legislation

Rep. Bud Shuster, R-Pa., in February introduced reauthorization legislation that he characterized as a "starting point" from which to begin a CWA debate. Shuster, who is chairman of the House Committee on Transportation and Infrastructure, is joined by both Democratic and Republican co-sponsors in introducing HR 961, the Clean Water Act Amendments of 1995. Shuster said the bill is based on one of three draft bills that emerged from the 103rd Congress, none of which survived the last session.

Last year's "bipartisan alternative" bill upon which HR 961 is based, was developed by former members of the Public Works and Transportation Committee in response to other CWA proposals that, according to Shuster, were either "unnecessary or unnecessarily prescriptive."

Shuster said he anticipates "significant revisions" to the bill's provisions on unfunded mandates, risk assessment and cost-benefit analysis. "We developed these provisions before circulation of the Contract with America (HR 5) and other proposals pending in Congress," he said. Those issues will be revisited to reflect "more current thinking," he said. Shuster also said he expects major rewrites of provisions on stormwater and nonpoint source pollution, which now may be "viewed as unfunded or unfounded mandates."

Shuster said the bill's supporters want to "maximize flexibility for state and local governments,

minimize federal red tape and command-and-control regulations, and pursue market-based and risk-based approaches to ... water quality measures. Innovative technologies and pollution prevention efforts, as well as nonregulatory approaches to watershed planning and protection, also offer great promise."

Background on House Reform of Stormwater

Last year's bill would have exempted municipal separate storm sewers serving populations of under 100,000, non-industrial commercial activities, construction sites of five acres or less, and covered industrial facilities where stormwater does not come into contact with equipment, activities or materials. Exempt facilities would have been subject to nonpoint source controls. Permitted municipalities would not have been required to comply with numeric effluent limitations on water quality standards until Dec. 31, 2009.

Last year's measure also would have authorized a \$20 million set-aside from Section 319 funding (the nonpoint source program) for "cost-effective, innovative" municipal stormwater control measures.

EPA Testimony

In his comments to the subcommittee, Robert Perciasepe, EPA assistant administrator for the Office of Water, stressed the agency's desire to take a flexible, common sense approach to water quality issues, and said that EPA is "not out of sync" with the committee's bipartisan bill. Of the stormwater program, he said that EPA is working to "reduce inappropriate monitoring and permitting burdens" under phase I without compromising environmental protection. The agency believes that monitoring and reporting can be "streamlined and consolidated," he said.

In response to a subcommittee member's question about whether there is a pressing need for small municipalities to obtain stormwater permits, Perciasepe responded that the need would vary from one place to another. In some watersheds it may not be as important to water quality as in others, he said.

Rep. Robert Borski, D-Pa., asked Perciasepe to respond to allegations made during earlier CWA testimony that EPA had "thrown out" all the stormwater-related information and data gathered from industry. Perciasepe denied the charge saying that the data provided to EPA by industry has become the "central component" in EPA's work on the multi-sector general permit. Additional House subcommittee hearings were scheduled for late February and March. Senate stormwater reform legislation had not emerged from the Environment and Public Works Committee as of Feb. 23 (see *Bulletin*, February 1995, p. 5). ■

EPA Budget

(Continued from page 1)

amount the agency is permitted to spend) is higher than the actual outlays the president has requested.

In making the announcement Feb. 6, Browner said the budget redirects agency resources to target the highest risks; provide fast relief for communities near toxic dumpsites; strengthen partnerships with states, tribes and communities; strengthen science; and strengthen enforcement and ensure compliance with environmental laws."

The biggest ticket items in the agency's budget are the \$3.4 billion to address what Browner called the "highest environmental risks;" \$1.6 billion for the Superfund program; and \$2.4 billion for water infrastructure funding, including resources for state revolving funds. EPA's new STAR Program initiative (Science to Achieve Results) will provide a total of \$95.3 million for research grants.

The largest cut in the proposed budget for the agency is a \$404 million reduction in water infrastructure programs.

Browner said the fiscal 1996 budget devotes more money to directly support states' needs and less money on federal oversight. "For the first time, the vast majority of money allocated to support state, local and tribal environmental programs is eligible to be given in the form of consolidated grants, called Performance Partnership grants," Browner said. This is money states can spend "as they see fit," she said.

Water Office

The president's budget provides \$525.9 million for EPA's water quality program, under which the wastewater management and permitting programs fall. That amount is a net increase of \$3.5 million from 1995, EPA said.

The change includes an increase of \$32.3 million for high-priority programs, a decrease of \$24.3 million for lower priority areas and realignment of \$4.6 million to other areas to improve service, according to a summary of the agency's budget.

NPDES Program

According to Ephraim King of the Office of Water's permits division, there is a "slight disinvestment" in oversight of authorized National Pollutant Discharge Elimination System dates in the proposed 1996 budget.

"We will be streamlining the permitting process and looking into reduced support for permit issuance outside of priority watersheds," he said. "But, we will be continuing to emphasize wetweather controls, support the stormwater program and support the [cooperative state agreements] in as

cost-effective and targeted a way as we can."

The agency said it plans to invest in developing better scientific and technical tools and data to focus on specific pollutants and water quality parameters.

State Funds

EPA funding for water infrastructure is provided through the Clean Water State Revolving Fund program, the Drinking Water State Revolving Fund program, the U.S.-Mexico Integrated Border Environmental Plan and grants for needy communities. For 1996, the administration requested \$2.3 billion for these programs.

That includes a request of \$1.6 billion for the Clean Water State Revolving Fund, an increase of \$365 million over 1995. The fund provides financial and technical assistance for wastewater and other projects to the states, which have primary implementation and enforcement responsibility for Clean Water Act permit programs.

Projects that can be funded include nonpoint sources, estuaries, stormwater and combined sewer overflows. ■

Multi-Sector Permit Needs USFWS Okay

The U.S. Environmental Protection Agency (EPA) was due to receive comments from the U.S. Fish and Wildlife Service (USFWS) in late February on the impact of the multi-sector general stormwater permit on threatened and endangered species. Whether the agency will make adjustments based on USFWS' feedback is not known, according to Michael Cook, director of EPA's office of waste water management.

Cook said he doesn't anticipate any major problems with the review. "As I understand it from the preliminary feedback we've gotten there are no really serious issues," he said. Cook said Feb. 22 that he expects the agency to "move expeditiously" to issue the final permit once USFWS' comments are in hand.

Meanwhile, Robert Perciasepe, assistant administrator for EPA's Office of Water told members of the U.S. House of Representatives subcommittee on Water Resources Feb. 21 that he anticipated the permit would be published by summer. ■

Storm Warnings

Stormwater-Related News in Capsule Format

□ EPA Effluent Guidelines Task Force Meets.

The Effluent Guidelines Task Force will hold a meeting to discuss improvements to the agency's effluent guidelines program Feb. 28-March 1 in Washington. The task force is a subcommittee of the National Advisory Council for Environmental Policy and Technology, the external policy advisory board to the U.S. Environmental Protection Agency (EPA). The meeting will be open to the public.

The effluent guidelines program develops regulations for dischargers of industrial wastewater under Title III of the Clean Water Act (33 U.S.C. 1251). The task force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The meeting will include a discussion of life-cycle analysis and effluent guidelines regulations. Work groups on three topics—selecting industries for regulation, cross-media regulation, and pretreatment—also will meet.

The task force was created to advise EPA on a long-term strategy for the effluent guidelines program and to recommend ways to expedite the creation of the guidelines. For additional information, contact Shelia Frace, Acting Effluent Guidelines Task Force Staff Director, Office of Water, 401 M St., S.W., Washington, D.C. 20460; (202) 260-7120; fax (202) 260-7185.

□ Jacobs Wins Landfill Remediation Contract.

Jacobs Engineering Group Inc. announced it was awarded the South West Early Action Project (SWEAP) by New Cure Inc. at the Operating Industries Landfill in Monterey Park, Calif. As part of the first remedial design work to be conducted at the site, SWEAP will provide partial closure of one of the most sensitive areas of the landfill, Jacobs said. The landfill stopped receiving waste in 1984 and is on the Superfund National Priorities List. Under the terms of the agreement, Jacobs will provide the design for landfill cover, gas collection and control, and stormwater management and erosion protection for the affected portion of the site.

Jacobs provides single-source consulting, engineering, design, architectural, environmental and hazardous waste management, procurement, construction, construction management, contract maintenance and operations services to government and industry worldwide. For more information call Sherry Sweitzer of Jacobs at (818) 578-6902.

□ Farm Owner Takes Point Source Discharge Appeal to the Supreme Court.

Richard Popp, owner of Southview Farm in Wyoming County, N.Y. petitioned the U.S. Supreme Court to review a U.S. Court of Appeals finding that discharges of liquid manure into a nearby stream constituted unpermitted discharges from point sources under the Clean Water Act (CWA). The manure was being used as fertilizer. The court ruled Sept. 12, 1994, that because Popp's herd of dairy cows was separated from crops grown on nearby fields, the farm was a "concentrated animal feeding operation" (CAFO) and, therefore, regulated under CWA. It also ruled that discharges from the fields were not exempted from stormwater regulations just because the manure was applied during a rainfall.

Popp's petition filed Jan. 31, claims the circuit court's ruling defies Congress's decision not to regulate non-point agricultural discharges under CWA (*Southview Farm v. Concerned Area Residents for the Environment*, US SupCt, No. 94-1316 (Jan. 31, 1995)). CAFOs, which are specifically designated as point sources under CWA, are defined as operations that include over 700 mature cattle where crops are not grown "over any portion of the lot or facility." Popp is contesting the court's conclusion that Southview Farm is subject to regulation because crops are grown in neighboring fields, and not on the lot where his herd is kept.

The petition also notes that manure migrated from the fields on two occasions only after a rainfall. Reports from the New York Department of Environmental Conservation confirm that heavy rainfalls were the cause of the runoff, the petition said. In addition, the circuit court had ruled that the manure was discharged from farm equipment and a swale, which constitute regulated point sources. The petition claims that the swale and farm equipment were too far away from the alleged discharges to be point sources.

□ **Stormwater Research.** Golder Associates in Mississauga, Ontario received a \$32,100 contract from Natural Resources Canada for developing **wastewater management plan guidelines** and a water balance model. W.E. Watt, a civil engineer at Queen's University in Kingston, Ontario, received a \$51,930 Environment Canada contract to fund the final stages of his research on the removal of contaminants by **stormwater ponds**, according to the Jan. 6 edition of the publication *Eco-Log Week*. ■

Calendar of Events

Stormwater Management Model. A U.S. Environmental Protection Agency Stormwater Management Model Workshop will be held in Gainesville, Fla., March 6-8. The course is sponsored by the University of Florida. For more information, call the university at (904) 392-9570.

Compliance Strategies. A Government Institutes Inc. course, Stormwater Management: Compliance Strategies and Techniques, will be held March 13 in Washington, D.C. The course covers general permits, sampling requirements, analysis requirements, pollution prevention plans, treatment options and more. For more information, contact Government Institutes at (301) 921-2345.

NPDES Permits. A course on negotiating National Pollutant Discharge Elimination System permits sponsored by Government Institutes Inc. will be held March 16-17 in Washington, D.C. For information, call (301) 921-2345.

Water Pollutants. The 18th Annual Conference on Analysis of Pollutants in the Environment will be held May 3-4 in Norfolk, Va. The course is sponsored by the Water Environment Federation (WEF). For more information, contact WEF at (703) 684-2400, or fax to (703) 684-2452.

Toxic Substances. The Water Environment Federation (WEF) will sponsor a course, Toxic Substances in Water Environments: Assessment and Control, May 14-17 in Cincinnati. For information contact Nancy Blatt, (703) 684-2400 or fax to (703) 684-2452.

Permits and SWP3. A course on the U.S. Environmental Protection Agency's stormwater permits and pollution prevention plans will be held May 16 in Cary, N.C. The course is sponsored by the Environmental Resource Center (ERC). For more information, contact ERC at (919) 469-1585.

Compliance. A Stormwater Compliance course, sponsored by Environmental Education Enterprises, will be held May 17-19 in St. Louis. For information call Jay Lehr at (800) 792-0005, or fax (614) 792-0006.

Technologies. A course on New and Emerging Environmental Technologies and Products for Collection and Treatment of Waste Water will be held June 4-7 in Toronto, Ontario. The course is sponsored by the Water Environment Federation (WEF). For information call WEF at (703) 684-2464.

Nonpoint Sources. A national forum on non-point sources will be held by the National Nonpoint Source Federation (NNSF) in cooperation with the U.S. Department of Agriculture and the U.S. Environmental Protection Agency June 7-9 in Arlington, Va. For more information contact NNSF at (202) 797-7720 or fax to (202) 234-1614.

Compliance. A Stormwater Compliance course sponsored by Environmental Education Enterprises will be held Nov. 8-10 in Charlotte, N.C. For more information contact Jay Lehr at (800) 792-0005. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 4, Number 8

February 1995

Stormwater Program May Face Major Revisions Under EPA Water Office's New Reform Agenda

The Office of Water at the U.S. Environmental Protection Agency (EPA) has selected federal regulation of "wet weather flows" as one of two areas in need of "priority programmatic revisions" in 1995, according to a National Water Program Agenda for the Future drawn up by Robert Perciasepe, EPA assistant administrator for water. Consequently, the document indicates, EPA may soon be proposing some significant changes in existing stormwater permitting regulations, as well as in its approach to handling Phase II stormwater dischargers not yet addressed by federal regulations.

According to a Dec. 30, 1994, memo from Perciasepe to EPA staff in the national water program, "The national water program is at an historical crossroads. We need to refocus, and allow our partners to refocus, on shared priorities, and disengage in activities no longer needed due to the

evolution of our programs and our past successes. ... We owe it to the public to make sure that the approaches we use in the national water program evolve to fit the future."

Both Phase I, Phase II Programs May Be Affected

As part of the water program's Agenda for the Future, the Perciasepe memo indicates, the office of water will take the following specific actions to improve the government's control of wet weather flows including urban stormwater, combined sewer overflows, urban sanitary sewer overflows and agricultural runoff:

- "seek to target resources, levels of effort, and investment by all levels of government" to address wet weather issues;

(Continued on page 3)

STATE SURVEY:

Connecticut Proposes General Permit Changes

The Connecticut Department of Environmental Protection (DEP) has published a proposal to make a number of changes in the state's industrial stormwater general permit, DEP official Chris Stone said in January.

The proposed changes, published Dec. 19, 1994, primarily have aroused the concern of small municipalities operating "industrial" facilities that would be newly regulated under the altered permit. But according to Stone, the proposal also could change certain monitoring requirements for private industry.

(Continued on page 2)

Inside this issue. . .

- ❑ EPA May Promulgate 'Direct Final Regulation' for Phase II Facilities 4
- ❑ Senate Panel Eyes Stormwater Reform Legislation 5
- ❑ Engineering Conference Report Questions Utility of Stormwater Monitoring Requirements 6
- ❑ Will Multi-Sector Permit Run Afoul of GOP Regulatory Moratorium Bills? 7

**Thompson
Publishing
Group**

State Survey

(Continued from page 1)

The major proposed modification that would affect industry concerns aquatic toxicity or whole effluent toxicity (WET) testing, Stone said. At present, Connecticut requires all industrial permittees to sample for a number of conventional pollutants, including lead, copper and zinc, but only requires WET testing if a facility exceeds state water quality limits for one of the three metals. WET testing must involve two species, *Daphnia* and the fathead minnow.

Sampling data submitted to DEP suggest that WET tests using fathead minnows are redundant, Stone said, so the state now proposes to require WET tests for *Daphnia* only.

On the other hand, the widespread presence of galvanized fences and other zinc alloys at industrial sites means that approximately 90 percent of industrial permittees are exceeding heavy metals limits. Accordingly, DEP now proposes to require WET tests by all industrial permittees, regardless of their heavy metal discharges. In addition, DEP proposes to set less stringent "indicator levels" for heavy metals in stormwater discharges.

Under the proposed permit, a facility could be exempted from monitoring requirements if, for the previous two years in a row, its concentrations of copper, lead and zinc in runoff were below approximately the 80th percentile for discharges of these metals by all stormwater permittees, and if its WET mortality rate for those years was less than 50 percent.

Connecticut's industrial general permit is now two years old, so in effect this would mean no testing for certain facilities during the fifth year of the state's five-year permit.

'Loopholes' Closed For Certain Industries

The proposal would make trucks hauling waste and other "refuse systems" falling within Standard

Industrial Classification (SIC) code 4953, and not just landfills and transfer stations, subject to the general permit. Apparently at the request of the bulk oil storage industry, the new permit would cover all bulk oil storage facilities under SIC 5171, not just those with vehicle maintenance activities.

The permit also would cover all waste transfer stations, not just those sited near landfills, and all recycling centers, not only those located at transfer stations.

Although the existing permit covers only salt storage piles associated with other industrial activities, the modified permit would cover all salt storage facilities. However, they would not need to do stormwater monitoring.

Small Connecticut municipalities are uneasy with provisions that would require permits for their public works garages, recycling facilities, transfer stations and salt storage piles, Stone said. In response, DEP has taken several steps to reduce their permit compliance costs.

A hearing on the proposal was originally scheduled for March, but has been postponed to facilitate further consultation between DEP and affected parties.

Florida Public Hearings Set

An EPA proposal to extend National Pollutant Discharge Elimination System delegation to Florida was scheduled to be published in the Jan. 27 *Federal Register*. Public hearings on the proposal are scheduled for March 7 in Orlando and March 9 in Tallahassee.

New Jersey Permit Published

Publication of a new state final general permit for scrap recycling and auto dismantling facilities was expected on Feb. 1. Barring last-minute legal objections, the new permit should go into effect in early March. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Daphne Musselwhite; Executive Editorial Director, Kathy Dunten; Senior Publications Manager, Jill S. Talbot, Esq.; Editors, Andy Feeney and Licia Ponzani; Production Manager, Connie Barclay; Production Specialist, Laurie Clark. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk Jr., Attorney at Law, Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longsworth, Attorney at Law, Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Dr., Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185. For editorial questions, call (202) 739-9559. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

EPA Reform Agenda

(Continued from page 1)

- provide sufficient time and the "necessary legal framework" for a "common sense" approach to handling the development of a Phase II stormwater program, targeting "real targets to water quality" in the process;
- streamline monitoring requirements in the existing stormwater program, and consolidate existing state reporting requirements;
- "identify and take appropriate steps to reduce the existing burden of the Phase I stormwater program," possibly through changes to existing monitoring and permitting requirements;
- establish an "urban wet-weather advisory group" to address policy and technical issues concerning stormwater runoff and other urban wet-weather problems;
- resolve "questions regarding what cities must do" in the area of stormwater control, apparently by defining the stormwater program's current requirement for regulated municipal separate storm sewer systems (MS4s) to control polluted stormwater "to the maximum extent practicable";
- encourage states and localities to implement wet-weather programs to protect surface and groundwater "on a watershed basis"; and
- take a number of steps to strengthen state management of nonpoint-source pollution, in part by increasing the flexibility that state regulators have in designing nonpoint-source control programs under Section 319 of the Clean Water Act and in administering federal 319 program grants.

The memo also calls for water program staff to "continue to use pollution prevention, incentive-based volunteer efforts and outreach" to address "nonpoint sources that EPA has not traditionally regulated" and that are contributing to water-quality programs.

CZARA Program Change Eyed

In addition, the memo indicates, EPA should "consolidate gains" in state nonpoint-source control programs mandated by the Coastal Zone Amendments and Reauthorization Act (CZARA) of 1990. That law directs states receiving federal Coastal Zone Management Program grants to develop enforceable controls on coastal nonpoint-source pollution by 1995 or face possible cuts in federal funding.

According to the Perciasepe memo, the national water program should now make unspecified "common sense adjustments to current program requirements" under CZARA.

Such adjustments would be unlikely to affect industrial stormwater dischargers, large construction sites or MS4s regulated under EPA's Nov. 16, 1990, stormwater permitting rule. This is because point-source stormwater dischargers already subject to National Pollutant Discharge Elimination System (NPDES) permitting are specifically excluded by CZARA from coastal nonpoint-source programs.

However, changes in CZARA requirements could affect state environmental regulators now facing worrisome CZARA deadlines, as well as potential Phase II stormwater permittees likely to face regulation as the coastal states develop enforceable nonpoint-source pollution control rules.

Will Proposed Changes Head Off Congressional Attack?

Clearly, Perciasepe's "priority programmatic revisions" are being unveiled at a time when many state regulators and municipal officials are demanding a reduction in unfunded mandates imposed by Congress and the federal bureaucracy on other units of government.

Legislation offering stormwater regulatory relief to smaller cities, and significantly delaying Phase II regulatory burdens on state regulators and non-industrial stormwater dischargers as well, was introduced late last year in the Senate, but not enacted.

At press time, leading Republicans were revising last year's stormwater relief proposal for the cities and states, and a new Industry Stormwater Reform Coalition organized by Washington environmental attorneys is working on proposals to add amendments to the bill affecting some existing industrial stormwater dischargers (see related story, p. 6).

In addition, the Republican majority in Congress is proposing sweeping regulatory reform legislation, including a bill on unfunded mandates (S1), a Job Creation and Wage Enhancement Act (HR 9) containing ambitious restrictions on regulatory "takings," and bills (S 219 and HR 450) calling for a seven-month moratorium on new federal regulations that would apply retroactively to late November 1994 (see related story, page 7).

Given the context, it appears likely that Perciasepe's Agenda for the Future and "priority programmatic revisions" are intended to preserve the essence of EPA's existing national water program while offering critics of the federal stormwater program at least some of the concessions they have been demanding.

But whether Perciasepe's initiative will succeed in heading off more drastic changes in the water program, and just what form it will take over the next year, are questions that still remain to be answered. ■

EPA Considers 'Direct, Final Regulation' for Phase II

The U.S. Environmental Protection Agency (EPA) is considering the promulgation of a "direct, final regulation," to take effect this year, that would give currently unregulated Phase II stormwater dischargers several additional years before they need to apply for stormwater permits under the Clean Water Act.

Michael Cook, director of EPA's Office of Wastewater Management, said on Jan. 12 that such a regulation could be published in the *Federal Register* and take effect automatically 90 days after publication, but would give the public the opportunity to submit comments after its promulgation.

In the absence of major objections, EPA would issue the regulation without modifications, Cook said. The regulation would immediately apply to various non-industrial stormwater dischargers that the 1987 Water Quality Act specifically exempted from stormwater permitting during a regulatory moratorium that was originally scheduled through Oct. 1, 1992, but that Congress later extended through Oct. 1, 1994.

Background on Phase II

Under the 1987 law as amended, EPA and the states were authorized to issue stormwater permits to "large" and "medium" municipal separate storm sewer systems, construction activities, stormwater discharges "associated with industrial activity," and those industries already subject to the numeric stormwater effluent limits of 40 CFR Subchapter N.

Regulators also were allowed to issue permits to individual facilities causing significant water pollution problems. Other dischargers, including commercial and retail business and smaller urban storm sewer systems, were exempted from permitting until Oct. 1, 1994.

This permitting moratorium now has expired, leaving Phase II dischargers potentially liable to third-party lawsuits under the Clean Water Act. EPA has repeatedly said it has no eagerness to bring enforcement actions against unregulated Phase II facilities.

However, it can be argued that by discharging stormwater pollution without a permit, even if no permit is yet available, such facilities now are technically violating the Clean Water Act.

How Phase II Regs Might Work

By bringing Phase II dischargers under the new regulation, Cook said, EPA could limit their legal liabilities. The permit also would establish a general permitting deadline for Phase II facilities several years in the future.

TPG Announces Personnel Shift

Andy Feeney, who has edited the *Stormwater Permit Manual Bulletin* since its inception in 1991, is leaving Thompson Publishing Group. He will be working on a consulting basis with the National Stormwater Center, where he will be writing and editing a monthly environmental newsletter.

Succeeding Feeney is Licia Ponzani, a TPG editor who has worked on other environmental publications, including *Environmental Packaging: U.S. Guide to Green Labeling, Packaging and Recycling*; the *Environmental Compliance Tool Kit*; and the *Underground Storage Tank Guide*. Before joining TPG, she was a reporter for *Transport Topics*, a business newspaper for the heavy trucking industry. ■

Before the new permitting deadline is reached, Cook said, EPA would define the substance of Phase II regulations and identify which entities must comply with them through some sort of negotiated rulemaking. EPA has been proposing such a negotiated approach to Phase II since late 1993 (*Bulletin*, December 1993, p. 2). Cook said the new permit, like EPA's existing Phase I permitting regulations, would allow the permitting of individual facilities that cause significant water quality problems. Most potential Phase II permittees, however, would escape regulation for several additional years.

Advisory Panel May Be Named Soon

According to another EPA source who preferred not to be identified, EPA has drawn up a draft charter for a "wet weather" advisory commission to be named under the Federal Advisory Committee Act, to work on both Phase II and the problem of storm-driven overflows from sanitary sewers. According to this source, a charter for the new panel could be sent to the Office of Management and Budget for approval "sometime this spring."

However, some skeptics claim it is not in EPA's self-interest to proceed much further with Phase II at a time when states, cities and congressional Republicans all are raising loud objections to unfunded mandates.

National Stormwater Center Director John Whitescarver, who worked on EPA's first stormwater regulations, notes that EPA in recent years has been notably slow in its efforts to publish Phase II regulations. Perhaps this is because officials felt they would only provoke criticism from unfunded mandate foes, he suggests. Whether the new regulatory initiative outlined by Cook now offers EPA a safe way to handle the Phase II issue remains to be seen. ■

STORMWATER LEGISLATION:

Senate Committee Again Eyes Stormwater Reform

The Senate Environment and Public Works Committee is preparing to tackle stormwater reform legislation again this year, according to an aide to the committee.

Committee staff are working from a bill that was introduced last October by then committee Chairman Max Baucus, D-Mont., that would reform the U.S. Environmental Protection Agency's (EPA's) stormwater permitting program.

"We've been working off of Baucus's bill S 2507 from the last Congress," said Jimmie Powell, an aide to the committee. "We've had input from those who have an interest in the bill and we're going to get more opinions," he said.

Among those who contributed to writing the original bill were the National Resources Defense Council, the National Conference of Mayors, the National League of Cities, and the National Association of Flood and Stormwater Management Agencies.

Powell could not say precisely when a reform measure would be introduced nor what provisions it might include. He did say Jan. 19 that staff were still in the process of crafting the bill for approval by the committee's new chairman, Sen. John Chafee, R-R.I.

Chafee and other republicans in both the House and Senate have said they plan to act quickly on a number of environmental bills, including Clean Water Act reauthorization and Superfund reform. Last year's efforts by Congress to reform the stormwater program as part of Clean Water Act reauthorization failed.

1994 Bill Served As Template For Reform

Under the 1994 reform bill (S 2507), discharges from a municipal storm sewer (MS4) system serving fewer than 100,000 people would be included in permitting requirements, only if the MS4 is located in an "urbanized area" in which there is also a permitted municipal storm sewer system serving a population of over 100,000. The 1994 bill would have extended through October 2001 a permitting moratorium for all other small municipal systems—those serving fewer than 100,000 people.

Additionally, the bill would have made "commercial and light industrial sources" subject to stormwater permitting for the first time.

In comments submitted in response to last year's bill, the National League of Cities (NLC) said it recommends eliminating existing water quality standards until the completion of research to determine whether attaining the standards is a feasible

goal and whether the cost of meeting the standards is justified.

Congress should authorize funding for demonstration projects to study the issue, NLC said, and reform legislation should not apply to smaller cities until such research is complete.

The Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) said in a Jan. 13 letter to Chafee that a reform bill should "establish a process for reasonable and cost-effective progress toward water quality standards" but include a 15-year moratorium on mandatory compliance with such standards.

ASIWPCA also supports "an inclusionary process" that would allow EPA, states, cities and other affected parties to develop wet weather standards and assess the most cost-effective technologies and procedures for meeting them.

The group likewise supports the use of both point and non-point funding sources for stormwater projects.

Moratorium on Smaller Dischargers

A moratorium on regulating smaller stormwater dischargers, including small cities, retail and commercial businesses, construction projects of less than five acres and other potential Phase II sources was enacted by Congress in 1987. This moratorium now has expired (see related story, p. 4).

NLC has said it supports an extension of the moratorium that would be valid until the Clean Water Act is reauthorized. ASIWPCA wants a six-year moratorium on requiring permits for Phase II dischargers.

Reform Coalition Formed

In a related development, attorney Jeff Longworth, who handles stormwater issues for Collier, Shannon, Rill & Scott in Washington, has brought together a new stakeholders group called the Stormwater Reform Coalition, in anticipation of a new reform bill. The coalition includes a dozen members, including both Phase I and Phase II interests, Longworth said.

Longworth said Jan. 23 that the coalition was in the process of drafting a stormwater reform position paper and was working closely with Senate committee staff on a draft bill. Although he could not release details of the coalition's agenda at press time, he was hopeful that the group's official policy position would be in place by the end of January. ■

Engineering Panel Report Questions Monitoring Data

Much of the monitoring data collected pursuant to the U.S. Environmental Protection Agency's (EPA) national stormwater program "appears to be inappropriate and of little value," according to an overview summary of proceedings at an Engineering Foundation conference held last August in Crested Butte, Colo.

The conference, sponsored by the Urban Water Resources Research Council of the American Society of Civil Engineers (ASCE), was especially concerned with stormwater monitoring issues facing municipal separate storm sewer systems (MS4s) regulated under EPA's Nov. 16, 1990, stormwater permitting rule.

According to the overview summary of the proceedings, which is to be published soon by ASCE, the Aug. 7-12, 1994, gathering "was prompted by concerns that, while we as a nation are spending millions of dollars on stormwater monitoring, we still are not able to predict the effects of stormwater discharges on the environment, particularly in the long term. Moreover, we are faced with even larger expenditures in the future."

The two co-authors of the summary add that "Very little meaningful monitoring is being directed toward measuring the actual effect of stormwater discharges on the short- or long-term health of the environment. Furthermore, there is no consensus on how this monitoring should be done."

Given the technical backgrounds of most conference participants, who included regulators and representatives of the regulated community as well as independent researchers, the summary draws a fairly unsurprising conclusion as to what is needed to address perceived deficiencies in stormwater monitoring.

"There is a clear need for large, nationally funded investigations that can direct sufficient resources, provide sound experimental design, and provide adequate quality control to, over time, permit environmental scientists and engineers to draw conclusions concerning environmental health [and stormwater runoff]," the summary concludes.

The co-authors of the summary were Harry Torno, a veteran stormwater consultant now based in Victoria, British Columbia, and Ben Urbonas, chief of master planning for the Urban Drainage and Flood Control District for metropolitan Denver. In addition to raising questions about the utility of current stormwater monitoring requirements, the co-authors assert the following major points in the summary:

- There is "general agreement" that current water quality standards, which say little about the environmental health of receiving waters, "may

be a significant detriment to the improvement of environmental quality." Such standards cause a huge drain on regulatory resources, "impair effective communication between regulators and the regulated community" and offer a confusing guide to further research.

- Individual stormwater regulators often "do not have enough training and experience," given the technical complexities involved. Consequently, there is "considerable concern on the part of regulated communities ... that permit writers will continue to use the results of current monitoring, whether meaningful or not, to justify additional monitoring and ... control requirements," at great cost.
- There are unresolved questions about the degree of environmental stress caused by certain toxic stormwater pollutants. This is partly because the duration of exposure of aquatic biota to such pollutants is unknown, partly because toxic pollutants often are measured in "total recoverable" rather than "total dissolved" concentrations.
- Research aimed at identifying reliable environmental indicators for stormwater, as a substitute for monitoring, (see *Bulletin*, January 1995, p. 6) still has "a long way to go ... if indeed it can be done at all."

For a copy of the proceedings of "Stormwater NPDES-Related Monitoring Needs," ISBN number O-7844-0065-2, send a check for \$53 to ASCE, 345 East 47th St., New York, N.Y. 10017. ■

Resources: International Research On Stormwater Available

Most stormwater research today is occurring not in North America, but in Japan, Europe and Australia, says Harry Torno, the consultant who co-authored the overview summary of last year's Crested Butte conference (see above) with flood management official Ben Urbonas. Torno also compiled the Proceedings of the Sixth International Conference on Urban Stormwater Drainage held in 1993 in Niagara Falls, Ont.

He reports that the 333 papers presented there, many of which were translated from other languages into English, include important findings on best management practices, monitoring and "real time" control of urban runoff that are otherwise unavailable in the United States. For these proceedings, which run to more than 2,000 pages, send \$60 (U.S.) to Seapoint Publishing, 2880 Seapoint Dr., Victoria, British Columbia V8N 1S8, Canada; (604) 472-1057 (fax). ■

Storm Warnings

Stormwater-Related News in Capsule Format

- **Will Multi-Sector Permit Run Afoul of GOP's Regulatory Moratorium?** The U.S. Environmental Protection Agency's (EPA) plans to issue a final multi-sector model general permit for industrial stormwater dischargers could be affected by the efforts of the new Republican congressional leadership to enact a seven-month moratorium on new federal regulations. Michael Cook, director of EPA's Office of Wastewater Management, suggested in mid-January. Cook said that if a regulatory moratorium is not enacted, EPA hopes to issue a final multi-sector permit soon after receiving word from other federal agencies that the permit complies with the Endangered Species Act and the National Historic Preservation Act. One agency reviewing the permit's likely effects on federally listed species, the U.S. Fish and Wildlife Service, is scheduled to report to EPA by mid-February.

Another EPA source who preferred not to be identified predicted that if a congressionally ordered moratorium does not intervene, EPA will "try hard to have the final multi-sector permit out this spring. At this point, that's the best I can say." Some stormwater observers outside the agency, however, suspect that the final permit will not appear until March at the very earliest. Even in the absence of a regulatory moratorium, they predict its publication could easily be delayed until May.

At press time, Congress was considering two regulatory moratorium bills, HR 450, introduced Jan. 9 by Rep. Tom DeLay, R-Texas; and S 219, introduced Jan. 12 by Sen. Don Nickles, R-Okla. According to a press aide to Sen. Nickles, S 219 had 33 cosponsors as of mid-January and was awaiting hearings before the Senate Committee on Governmental Affairs chaired by Sen. William Roth, R-Dela. According to an aide to Rep. David McIntosh, R-Ind., a cosponsor of HR 450, the House bill was the subject of a Jan. 19 hearing before the Subcommittee on National Economic Growth, Natural Resources and Regulatory Affairs within the House Government Reform and Oversight Committee. HR 450 also has been referred to the House Judiciary Committee, which has yet to schedule hearings. At press time, a legislative markup of the House bill had not yet occurred.

- **EPA Reissues Florida General Permit for Stormwater, Groundwater Discharges Associated With Dewatering and Petroleum Fuels.** EPA Region IV has reissued a final National

Pollutant Discharge Elimination System (NPDES) general permit for Florida facilities releasing certain groundwater and stormwater discharges associated with the cleanup of groundwater that has been contaminated by automotive gasoline, diesel fuel or aviation fuel. The permit also covers certain discharges associated with dewatering activities. Notice of the reissued permit was published in the Dec. 16, 1994, *Federal Register* (59 FR 65041).

- **Concurrent Technologies Corp. Prepares SWP3 Manual for Smaller Factories, Other Facilities.** Concurrent Technologies Corp. (CTC) of Johnstown, Pa., has prepared a guidance manual on stormwater pollution prevention plan (SWP3) development for industrial dischargers, according to CTC staffer John Rugg. Rugg, formerly active on stormwater issues for the National Asphalt Pavement Association, says that the manual is tailored for use by factories and is focused on stormwater requirements facing metal finishing facilities, the prefabricated metal industry, wood furniture manufacturers, electroplating facilities and machine shops. However, he says, it could be modified to serve other kinds of manufacturing facilities as well.

According to Rugg and to CTC official Jim Bearden, CTC's manual is designed for use by trade associations and smaller manufacturing operations, and is written to help nontechnical people avoid being "swamped" by environmental regulations. Through the use of the manual and with some auxiliary advice from CTC, Rugg says, "Anyone with a high school education and an elementary knowledge of factory operations can sit down and produce an SWP3." CTC is a not-for-profit organization dedicated to strengthening U.S. industrial competitiveness. Through its Information Services Program and its Environment and Energy Division, CTC offers a variety of products and services to help industry adopt new technologies and comply with environmental regulations. For more information, contact John Rugg, CTC, 1450 Scalp Ave., Johnstown, Pa. 19504; (814) 269-6837.

- **North Carolina SWP3 Workshops Slated for Late Spring, Early Summer.** Upcoming workshops for six industrial sectors in North Carolina on the development of stormwater pollution prevention plans (SWP3s) have been announced by Pete Yakimowich, vice president of the Piedmont Olsen Hensley consulting firm,

(Continued on page 8)

Storm Warnings

(Continued from page 7)

and John Whitescarver, director of the National Stormwater Center. There is no definite schedule for the workshops as yet; however, Yakimowich said they probably will begin in March and last through early summer. Industrial sectors likely to be covered include textiles, municipally owned industrial facilities, metal fabricators, auto recycling facilities, transportation facilities and landfills. For more information contact Pete Yakimowich, Piedmont Olsen Hensley, at (615) 756-7193, or John Whitescarver, National Stormwater Center, at (703) 777-9384.

- Compost Filter System Said to Reduce Costs, Area Needed for Stormwater Treatment.** An innovative Compost Storm Water Filter (CSF™) offered for sale by CSF Treatment Systems Inc. provides a "simple, low cost and effective" alternative to treating stormwater runoff with conventional detention ponds or grassy swales, according to a product announcement. By percolating stormwater runoff through "certified compost," the system traps particulates, adsorbs nutrients and heavy metals and removes oil, grease and floating surface scums. The technique uses less than 10 percent of the land area required by comparable treatment ponds or grassy swales; removes more than 90 percent of all solids, 85 percent of oil and grease and 82-98 percent of heavy metals; and saves "up to 10 times the cost" of using conventional methods, CSF said. The company offers the system in two forms: a Drop-In Unit CSF™ in precast concrete that is sized for annual maintenance, and larger

Open Unit CSF™ systems to treat high-volume runoff from large impervious areas. For more information, contact CSF Treatment Systems Inc., P.O. Box 19390, Portland, Ore. 97280; (503) 644-8220.

- Parson Engineering-Science Offers Stormwater Consulting Services.** Parsons Engineering-Science (Parsons ES), an international environmental consulting firm associated with the Parsons Corp., a global architectural and engineering company, is offering a number of stormwater-related services, according to a company announcement. Parsons ES has been involved with stormwater permitting since the start of the federal stormwater program and has developed more than 50 industrial stormwater pollution prevention plans (SWP3s) at prices ranging from \$4,000 to \$20,000 per SWP3, the company said. The firm also claims to have experience with interstate transportation companies and "Category 11" industries. For more information, contact Dr. John Goeddertz, 290 Elmwood Davis Road, Suite 312, Liverpool, N.Y. 13088; (315) 451-9560.
- Product, Service Information Sought.** If you have a stormwater-related product or service of interest to our readers, please send an announcement to Licia Ponzani, Thompson Publishing Group, 1725 K St. N.W., Washington, D.C. 20006; or fax to (202) 739-9578. We welcome such announcements but will publish them only as time and space permit. TPG does not vouch for the accuracy of non-TPG product claims reprinted in the *Bulletin*. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depletor Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-879-3169

J52STRM

Stormwater Permit Manual

Bulletin

Volume 4, Number 7

January 1995

MULTI-SECTOR GENERAL PERMIT:

A 'Different' Multi-Sector Permit Expected by Spring

The U.S. Environmental Protection Agency (EPA) does not expect to issue a final "multi-sector" model general permit for industrial dischargers before mid-February, EPA official William Swietlik indicated in a Dec. 2 interview.

Swietlik did not reply to questions about how soon EPA can be expected to issue a final multi-sector permit after that. However, he did say that the regulated community should expect a final multi-sector permit that is "significantly different" from the proposed permit published in November 1993.

Swietlik indicated that, as previously noted, much of the expected delay will occur because of EPA's need to consult with the U.S. Fish and Wildlife Service (USFWS) over the potential impacts of the permit on endangered species, and to engage

in similar consultations with the National Trust for Historic Preservation concerning the impacts on designated historic sites (see *Bulletin*, December 1994, p. 1).

According to Dan Olson, a biologist who is coordinating the USFWS consultation process, EPA initiated a formal consultation with the wildlife agency on Oct. 5. Under the Endangered Species Act, USFWS must conclude this consultation within 90 days and take no more than 45 additional days to write up its decision.

There is no requirement that USFWS take the full 135 days, Olson noted. However, Olson added, both the comprehensiveness of the draft permit and the fact that seven USFWS regional offices as well as selected field offices must look at it may mean that the review takes all the time that is legally allowed. ■

STATE SURVEY:

California Launches Search for Non-Filers

California stormwater regulators are about to launch a statewide effort to identify industrial facilities that have improperly failed to file for coverage under the state industrial general permit, according to Bruce Fujimoto, of the State Water Resources Control Board (SWRCB).

According to Fujimoto and stormwater officials with various regional water quality control boards (RWQCBs), the non-filer identification effort will be partly financed through a \$200,000 grant that California recently received from the U.S. Environmental Protection Agency (EPA) under Section 104(b)(3) of the Clean Water Act.

(Continued on page 2)

Inside this issue. . .

- ❑ EPA Approach to Stormwater Monitoring May Change As Result of New 'Environmental Indicators' Project 4
- ❑ Litigation: Injunctive Relief Granted in NRDC Case Against CalTrans 6
- ❑ Storm Warnings: New Coalition Forms Against Multi-Sector 'Benchmarks'; Judge Remands Georgia Construction General Permit 7

State Survey

(Continued from page 1)

The initiative reflects what is believed to be massive non-compliance by industry with California's stormwater notice of intent (NOI) requirements. According to Tom Mumley of the San Francisco RWQCB, "The biggest issue in the state right now is getting to non-filers. We're now in the process of developing enforcement tools that could result in fines for people who need stormwater permits and don't have them."

The enforcement effort against non-filers, Mumley predicted, "should kick in around the beginning of the new year."

As part of the effort, California regulators are preparing a "boilerplate" administrative civil liability (ACL) complaint form for use in handling non-filers, according to Adam White, stormwater coordinator for the Central Coast RWQCB.

Presently, assessing penalties on non-filers is difficult because each case requires a separate ACL form, White said. Once the new form is developed, though, regulators will be able to go after particular categories of non-filers "en masse" and impose civil penalties on them.

According to White, the Central Coast RWQCB is putting a special priority on addressing auto dismantling facilities, marinas and boat yards that have failed to seek coverage under the state general permit. Regional officials believe this focus is justified by water quality concerns, White said. However, he said, other RWQCBs may choose different industries for priority enforcement efforts.

Certain other RWQCB stormwater officials emphasized in December that their regional boards are eager to work with the regulated community to get everyone covered by the stormwater program. But those facility operators who do not make a good-faith effort to comply with the program, they agreed, will face possible fines.

Other California Programs Funded

In addition to underwriting the non-filer identification effort, Fujimoto said, the Section 104(b)(3) grant has provided funds for several other projects, including:

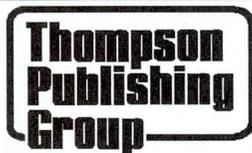
- a statewide study of non-stormwater discharges and their impacts on water quality, to be funded at \$85,000;
- continued efforts to develop a *Handbook of Procedures for Implementation of an Industrial Stormwater Program by a Permitted Municipality*, a state project already underway, which will be funded at \$60,000;
- an \$85,000 grant for the study of the pesticide diazinon in urban runoff, primarily in the San Francisco Bay region and the Central Valley region; and
- a \$200,000 grant for the implementation of a watershed projection strategy to be undertaken by the Los Angeles RWQCB.

'Early' MS4 Permits Up for Reissuance

Meanwhile, SWRCB and several RWQCBs are beginning the process of reissuing municipal separate storm sewer system (MS4) permits to "early" municipal permit holders in California. "Early" MS4 permittees are those California municipalities that received their MS4 permits in the summer of 1990, before publication of a final national stormwater permitting rule on Nov. 16, 1990.

According to Mumley of the San Francisco RWQCB, "early" MS4 permittees whose five-year permits expire next summer include Sacramento, Los Angeles, Orange, Riverside, San Bernardino, San Diego and Santa Clara counties.

Most of these MS4s are under deadline to submit their applications for reissued permits by late December 1994 or early January 1995, according to



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Senior Publications Director, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, P.E., Environmental Science and Engineering Inc.; Administrative Services Manager, Ted P. Metzler; Production Coordinator, Laurie Clark. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk, Jr., Attorney at Law, Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Attorney at Law, Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185. Please allow four weeks for change of address.

Copyright ©1995 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Dr., Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

RWQCB officials contacted by the *Bulletin*. However, San Bernardino County's application must be submitted by July, according to Pavlova Vitale of the Santa Ana RWQCB.

Regional officials have said they hope to reissue final MS4 permits for Santa Clara County, Los Angeles County and Sacramento County at the appropriate RWQCB board meetings in June. Permits for Orange County, Riverside County and San Diego County are expected to be reissued in July, at the earliest.

Generally speaking, RWQCB stormwater coordinators have said that interested private parties can expect to receive draft copies of the proposed permits for public comment approximately 30 to 60 days before the dates of the board meetings at which the final permits are scheduled to be adopted.

The board meetings also will serve as public meetings on the permits, the RWQCB officials indicated. However, in many regions representatives of business and industry affected by the permits probably will be consulted well before this.

Individuals interested in following the process may attend meetings of the California Stormwater Quality Task Force, which will meet in the odd-numbered months of 1995 to discuss this and other issues, according to Fujimoto.

In January and March, the Stormwater Quality Task Force will meet on the first Friday of the month at the Sacramento Host Hotel at the Sacramento Airport, Fujimoto said. Later meetings of the task force probably will be held alternately in Northern California and Southern California, at locations still to be selected.

The following are some other highlights from this month's survey of state stormwater programs:

Maine

The Maine Department of Environmental Protection currently is preparing a best management practices (BMP) manual on stormwater quality and stormwater quantity management, according to Norm Marcotte, state nonpoint-source water pollution control coordinator. The manual will be designed for use by state and local government agencies in making decisions on stormwater, Marcotte said in December. He predicted that the manual will be available by mid-June.

New Jersey

New Jersey anticipates issuing a final industry-specific "alternative" general permit for scrap metal recyclers by early this month, state stormwater official Ed Frankl said on Nov. 21. Frankl added that the Department of Environmental Protection also was conducting an internal review of an alternative general permit for ready-mix concrete

facilities and expected to publish a draft permit for public comment by Jan. 1.

According to Frankl, the draft alternative permit for scrap metal recyclers would allow the formation of sampling groups, such as those used in California, to cut sampling costs for individual dischargers.

The draft permit also would require sampling only after permittees implemented specified BMPs at their facilities, which would be in the third year of the five-year permit. In essence, then, scrap metal recyclers would only need to sample three times per year during the fourth and fifth years of their permit coverage.

The draft sampling requirements, Frankl said, represent a compromise reached through consultations with the Institute of Scrap Recycling Industries and certain members of the Automotive Recycling Association.

"If the industry is willing to meet us halfway by accepting the BMPs specified by the general permit, we're willing to allow them to do less sampling," Frankl said. The draft permit's BMPs, he added, are focused on reducing oil and grease discharges by scrap recycling facilities. For various reasons, they do not specifically focus on the control of heavy metals.

South Dakota

South Dakota is in the process of writing a sector-specific general permit for concrete batch plants, both stationary and portable, according to state stormwater official Norma Job. Job said the new permit will have a multi-media focus, with requirements both for stormwater discharges and for air pollution emissions. For wastewater discharges, however, concrete batch plant operators will still need separate National Pollutant Discharge Elimination System (NPDES) permits.

Wisconsin

On Nov. 1, the Department of Natural Resources (DNR) promulgated final regulations establishing three stormwater general permits: a "tier 1" general permit for heavy manufacturing facilities, a "tier 2" permit for light manufacturing facilities, and a third stormwater general permit for construction sites. In addition, DNR hopes by early this year to issue a "tier 3" general permit for dischargers that do have significant materials exposed to stormwater.

The existing general permits follow EPA's baseline requirements "very closely," according to state stormwater official Jack Saltes, and there are significant monitoring requirements for "tier 1" permittees. Wisconsin also has established a fee structure for stormwater dischargers. Fees will be \$100 annually for "tier 2" facilities in light industry, \$200 for heavy industry "tier 1" facilities and construction sites, and zero for the "tier 3" facilities yet to be permitted. ■

EPA Approach to Stormwater Monitoring May Change As A Result of New 'Environmental Indicators' Project

The U.S. Environmental Protection Agency (EPA) is engaged in a number of initiatives to improve its pollutant monitoring and data collection efforts, according to a report prepared last summer by three EPA staffers. In the future, the report indicates, these initiatives "will result in a number of changes to monitoring approaches under the National Pollutant Discharge Elimination System (NPDES) stormwater program."

However, agency staffers interviewed about the implications of the report say that it is still too early to tell whether the new data collection initiatives will be used as substitutes for the quantitative stormwater monitoring now required of certain industries under EPA's "baseline" industrial stormwater general permit and under its Nov. 29, 1993, proposed "multi-sector" general permit for industrial dischargers.

Background: Monitoring For BMP Evaluation

EPA's "baseline" industrial general permit, published Sept. 9, 1992, and Sept. 25, 1992, in the *Federal Register*, is available to industrial dischargers in 11 states not delegated for the NPDES program. In these states, EPA directly operates the stormwater program. The "baseline" industrial general permit also has been adopted in more or less complete form by a number of NPDES-delegated states, which operate their own federal stormwater permitting programs.

EPA's "multi-sector" model general permit, when published in final form, will be available to 31 categories of industrial dischargers in the 11 non-NPDES states. A few NPDES-delegated states also have said they will adopt it and offer it as a permitting option to industrial stormwater dischargers. So far, however, NPDES-delegated states are not required to adopt the multi-sector permit, which is largely based on the results of EPA's innovative and sometimes controversial group application process for industrial dischargers.

In part because of EPA's repeated delays in making a final multi-sector permit available, in part because of the extreme length of the Nov. 29, 1993, proposed permit, many NPDES-delegated states have expressed their intentions not to use the new permit. Instead, they will require industrial dischargers to apply for coverage under existing state general permits (*Bulletin*, April 1994, p. 1).

Under the "baseline" permit, several categories of industrial dischargers are required to conduct stormwater sampling and perform laboratory analyses of the samples for a number of pollutant parameters, on a semiannual basis. Several

additional categories of industrial dischargers must sample for various parameters on an annual basis (see *Stormwater Permit Manual*, Tab 500, ¶544).

Under the proposed multi-sector permit, facilities in some 17 different industrial categories would be required to sample for selected stormwater parameters during the second year of the five-year permit term, and those whose discharges failed to meet specified "benchmark" concentration levels would have to sample again in the fourth year of the permit term. For some industries, sampling in these years would be on a quarterly basis.

Although EPA's existing and proposed sampling requirements and its proposed "benchmark" pollutant concentrations are unpopular with many regulated industries (see *Bulletin*, July 1994, p. 6), EPA stormwater officials generally have defended quantitative monitoring requirements on the grounds that they are necessary to help regulated industries determine the effectiveness of the best management practices (BMPs) included in required stormwater pollution prevention plans.

Some stormwater observers, however, suspect that EPA's new initiatives to improve its pollutant monitoring and data collection efforts may give the agency and its permittees an alternative way to determine BMP effectiveness. Potentially, these sources suggest, this might make quantitative stormwater monitoring unnecessary.

New Initiatives Outlined In 'Monitoring Needs' Report

A report with the title "Monitoring Needs in the NPDES Stormwater Program—EPA's Point of View" was prepared last year by Michael Cook, director of EPA's Office of Wastewater Management; Kevin Weiss, a chemical engineer with EPA's Stormwater Program; and William Swietlik, chief of the NPDES Stormwater Section. All three officials have been closely involved with the development of EPA's stormwater permit program.

Presented to a 1994 national conference on stormwater monitoring held in Crested Butte, Colo., the "Monitoring Needs" paper mentions five new EPA initiatives that should "directly impact monitoring in the NPDES stormwater program." They include:

- an Intergovernmental Task Force on Monitoring Water Quality, established in 1992, which is supposed to help EPA develop monitoring approaches more suited to "holistic" risk reduction and pollution prevention efforts, as opposed to the agency's traditional technology-based, single-media permitting requirements;

- an EPA National Goals Project, which is supposed to produce a set of "ambitious, realistic and measurable environmental goals to be achieved in the next century," and which EPA reportedly hopes to complete by Earth Day, April 22, 1995;
- an EPA Watershed Strategy published by the Office of Water last March under the guidance of Ephraim King, former NPDES branch chief, who has since returned to the NPDES program;
- an Office of Water "environmental indicators" project; and
- an Office of Wastewater Management "stormwater environmental indicators project," which the report describes as seeking to develop "a set of environmental indicators that can be used specifically by stormwater dischargers to evaluate progress towards meeting the goals of the NPDES stormwater program and, more broadly, the strategic goals of the Office of Water."

"Programmatic Progress" Indicators Sought

According to EPA staffer Jim Horne, who is a member of a group of Office of Water officials working on the development of national environmental indicators, the initiatives described in the paper by Cook, Weiss and Swietlik will hardly affect the stormwater program alone.

National environmental indicators have been under development by EPA since 1991, Horne said. The agency is working to develop them for several purposes, including:

- to find better ways of measuring changes in water quality at the national level;
- to find ways of measuring changes in water quality and aquatic ecosystem conditions in individual watersheds, as a component of EPA's overall watershed strategy; and
- to develop ways of measuring the effectiveness of individual EPA programs.

"This is the beginning of a major, long-term, multi-year effort to determine if the water is getting cleaner, and if so, how it is getting cleaner," Horne said in a recent interview. "We're looking for a way to measure programmatic progress—a way to measure the effectiveness of our efforts and those of the states."

NPDES Section Chief William Swietlik, in an interview back in October, said EPA is attempting to develop environmental indicators for use "throughout the agency, to better assess the results of our programs." In addition to developing indicators for the stormwater program, Swietlik added, EPA hopes to use such indicators to measure program success in the industrial pretreatment program, the watershed strategy and the effort to regulate waterborne toxics, among other areas.

Will MS4 Permittees Be Chief Beneficiaries?

Within the stormwater program, both Horne and Swietlik indicated, EPA primarily may focus on using environmental indicators to determine the effectiveness of stormwater management plans developed for municipal separate storm sewer systems (MS4s).

The municipal uses of stormwater environmental indicators may well take precedence over potential uses by regulated industrial dischargers, Horne said.

But according to Swietlik, "On the industrial side of the stormwater program, we would hope to use the same types of environmental indicators to better assess the effectiveness of BMPs and stormwater pollution prevention plans."

Both Horne and Swietlik have indicated that it is too soon to say whether EPA's development of environmental indicators for stormwater dischargers might be used to relieve regulated industrial facilities of quantitative sampling requirements.

However, Swietlik added that there are some circumstances under which traditional chemical analyses of stormwater discharges from municipal areas may indicate that the water being discharged is of good quality, and yet a biological inventory of the receiving stream will find the condition of the stream to be quite poor, in part because of the temperature of the runoff being discharged.

"This casts a certain amount of question on what we're measuring in terms of biological health in the receiving stream when we rely on some of the traditional water chemistry measures, especially when we're monitoring urban runoff," Swietlik said.

Eight States to Test Water "Indicators"

According to Horne, EPA has reached agreement with eight states to conduct pilot programs to develop and test a list of 21 different environmental indicators proposed by the Office of Water. The 21 indicators are designed to gauge the effectiveness of efforts to:

- protect and enhance public health;
- conserve and enhance ecosystems;
- improve ambient water conditions; and
- reduce pollutant loadings.

The indicators as released by EPA are broadly defined, and range from measurements of "source water protection" and "drinking water standards violations," to indications of "species at risk" and "loadings of toxic pollutants from point and nonpoint sources to surface and ground water."

According to EPA, the states agreeing to test the indicators over the next 18 to 24 months are Arizona, Delaware, Georgia, Maine, Maryland, Ohio, South Carolina and Wisconsin. ■

Injunctive Relief, But No Punitive Damages, Granted In NRDC Case Against California Highway Agency

In the first legal decision ever concerning the non-compliance of an individual permittee with stormwater provisions of the 1987 Water Quality Act, a federal district court judge in California has ruled that the California Department of Transportation (CalTrans) has violated the terms of Los Angeles County's municipal separate storm sewer system (MS4) permit.

Ruling Nov. 18 in a case brought by the Natural Resources Defense Council (NRDC) and Santa Monica BayKeeper Inc. (*Natural Resources Defense Council, et al. v James W. Van Loben Sels et al.*, CV93-6073-ER(JRx) (C.D. Calif. Nov. 18, 1994)), Judge Edward Rafeedie of the U.S. District Court for the Central District of California declared that CalTrans had been only "half-hearted" in its attempts to comply with the MS4 permit conditions.

Several Permit Violations Cited

Specifically, the judge found that CalTrans

- failed to adopt an overall stormwater management plan, as required by the Los Angeles County MS4 permit, of which it is a co-permittee;
- failed to train and supervise its employees adequately in connection with its permit responsibilities to identify, and implement techniques to reduce, stormwater contamination;
- failed to ensure that stormwater responsibilities were given "appropriate priority" relative to the agency's other responsibilities, including operation of the state highway system and the repair of damage done to Los Angeles-area freeways by the Jan. 17, 1994, earthquake;
- failed to supervise maintenance yards adequately and ensure that contaminated water from such yards would not enter the Los Angeles County storm drain system;
- did not adequately clear its stormwater catch basins of hazardous materials; and
- has failed to ensure that its construction contractors will develop and implement precautions related to the prevention of stormwater contamination.

The judge also ruled that some of the reports CalTrans submitted to regulatory agencies contained "borrowed materials, ideas and best management practices" that the highway agency apparently took from reports submitted by other permittees.

"Had these borrowed proposals been, in fact, implemented, that would be a perfectly appropriate strategy," Rafeedie ruled. "However, it appears that CalTrans presented these stormwater control practices without any immediate intention of carrying them out."

The judge declared himself "astounded by the fact that many of the people in upper management had no knowledge of this permit or what was required of it." He rejected the highway agency's suggestions that vagueness and ambiguity in the permit, or lack of financial resources, excused CalTrans from making a greater effort to comply.

"It is simply insufficient for CalTrans to claim poverty as an excuse two years after the permit became effective," Rafeedie ruled. He added that if CalTrans found the permit vague or ambiguous, it should have contacted state regulators upon first receiving the permit, so that it could be clarified.

"Citizen Suit" Precedent Noted

In the Dec. 13, 1993, decision *Northwest Environmental Advocates v. Portland*, 11 F.3d 900 (9th Cir. 1993), the U.S. Court of Appeals for the Ninth District ruled that private citizen suits may not be used to enforce compliance with state water quality standards, unless such standards have been translated into "end-of-the-pipe effluent limitations" (see *Bulletin*, February 1994, p. 1).

Although noting this precedent in his ruling, Judge Rafeedie declared that 33 U.S.C. Section 1365(A) and Section 1365(F) allow citizen suits to enforce "a permit or condition thereof." The reporting, planning and pollution reduction requirements of the Los Angeles County MS4 permit are "permit conditions" that may be addressed by such suits, the judge ruled.

Injunction Issued Dec. 14

Judge Rafeedie's Nov. 18 ruling expressed a preference for "effective, but not draconian" injunctive relief to meet the goals of the Clean Water Act while respecting the "particular circumstances," including financial constraints, facing CalTrans. The judge also called on CalTrans and NRDC to cooperate in jointly writing a draft injunction by early December that would meet these criteria.

On Dec. 14, the judge issued a 11-page injunction ordering CalTrans to develop a stormwater management plan for its District 7 highway system around Los Angeles over the next four months, and to take a number of other steps to reform specific stormwater practices under the supervision of an individual to be selected by NRDC and the Santa Monica BayKeeper.

"This victory will resound across the country," NRDC attorney Mitchell Bernard claimed in a Dec. 14 press release briefly summarizing the injunction. At press time, the *Bulletin* was unable to obtain a statement on the injunction from CalTrans. ■

Storm Warnings

Stormwater-Related News in Capsule Form

- ❑ **California Based "Coalition for Regulatory Flexibility" Forms to Fight Against Benchmarks in Multi-Sector Permit.** Several California trade associations have formed a new Coalition for Regulatory Flexibility and are opposing the use of stormwater benchmarks by the U.S. Environmental Protection Agency (EPA) in EPA's proposed multi-sector model general permit for industrial stormwater dischargers, according to an attorney close to the coalition. William Funderburk Jr. of the Los Angeles law firm of Radcliff, Brestoff and Frandsen says that members of the new coalition are concerned that California regulators, although they have not said that they will adopt EPA's final multi-sector permit, nevertheless will look at benchmark values EPA has set for stormwater discharges by various industries when drawing up future state stormwater requirements. The coalition is investigating a number of options for opposing EPA's benchmarks, Funderburk indicated.
- ❑ **Georgia Construction Permit Remanded.** On Dec. 13, administrative law judge Mark Dickerson remanded to the Department of Natural Resources (DNR) the state's new stormwater general permit for construction activities (see *Bulletin*, November 1994, p. 2). DNR failed to respond to certain public comments on the permit, the judge ruled, thereby violating the requirements of 40 CFR §124.17 and Rule 391-3-6-.15(7)(b)l.(iv) of the Georgia Code.
- ❑ **Criminal Stormwater Prosecution in Los Angeles County Set for Continuance in March.** A preliminary hearing occurred Dec. 6-7, 1994, in a criminal case brought by the Los Angeles County District Attorney's Office against Liquid Air Corp. for allegedly violating California environmental laws during a January 1993 stormwater discharge in Santa Fe Springs, Calif., according to Deputy District Attorney Anthony Patchett (see *Bulletin*, November 1994, p. 1). Judge Glenette Blackwell of Los Angeles Municipal Court continued the preliminary hearing until March 21, 1995, when more testimony is scheduled to be heard, Patchett added. Patchett said that if the prosecution is successful at the preliminary hearing, the case could go to a state superior court two to three weeks later.
- ❑ **Los Angeles Prosecutors Eyeing Additional Criminal Stormwater Cases, Official Says.** So far, the Environmental Crimes Division of the Los Angeles County District Attorney's Office has prosecuted only two cases of alleged criminal violations associated with industrial stormwater discharges, Robert Heflin, head deputy district attorney for the Environmental Crimes Division, said Dec. 14. However, Heflin added, "We have several other allegations of similar violations, involving hazardous materials or pollutants getting into stormwater, under investigation. Some could eventually lead to criminal prosecutions." Some California stormwater observers have claimed that Heflin's office is thinking about bringing to trial as many as eight to 10 criminal stormwater prosecutions. Heflin said that he could not respond to these claims and could not say anything about any potential criminal cases until his office brings formal charges against the alleged violators.
- ❑ **NRDC Asks EPA for Altered Approach to Stormwater Permitting by Airports.** The Natural Resources Defense Council (NRDC) has requested the U.S. Environmental Protection Agency (EPA) to simplify its approach to airport stormwater runoff permitting so that airports in the future will only be required to obtain one National Pollutant Discharge Elimination System (NPDES) permit for stormwater, rather than two, according to Diane Cameron, an environmental engineer and Clean Water Act lobbyist with NRDC's Washington office. According to Cameron, EPA currently plans on requiring airports to obtain a "wet weather" permit, which already has been developed under the stormwater program, as well as a second "dry weather" NPDES permit that apparently would be required for airport deicing facilities, as well as other transportation facilities, under a proposed EPA effluent guideline for transportation equipment cleaning facilities. "This would just increase the permitting burden on airports, to no practical purpose," Cameron said in a Dec. 8 interview.
- ❑ **Truckers' Conference on Vehicle Washing Set for April 6-7.** The American Trucking Associations (ATA) is holding a national conference on vehicle washing activities on April 6-7 in Florida, according to Lisa Beal, water management specialist with ATA's Department of Environmental Affairs. The conference will bring together motor vehicle fleet maintenance managers and directors to examine the legal and regulatory aspects of motor vehicle fleet washing options, as well as current washing trends and technologies. For more information, contact Lisa Beal at (703) 838-7937.

(Continued on page 8)

Storm Warnings

(Continued from page 7)

Motor Vehicle Maintenance, Environmental Compliance Conference Set for July. The Environmental Resource Institute (ERI) of Findlay, Ohio, will hold its sixth annual national management conference from July 17 through July 20 in Chicago, according to a recent ERI press release. The focus of the conference, according to ERI, will be "environmental, health and safety issues in motor vehicle maintenance and refueling operations," and there will be separate workshops for new environmental managers and experienced environmental managers on a number of topics relating to this theme. The conference also should include presentations by the U.S. Environmental Protection Agency, the National Automobile Dealers Association, the Fiberglass Petroleum Tank & Pipe Institute and several other organizations, as well as a two-day exhibition of environmental products and services for vehicle maintenance and refueling facilities. To receive a conference agenda, contact the Conference Group at (800) 783-6338 or (614) 488-2403. Technical questions on the content of the program may be directed to ERI at (419) 422-6063.

"National Stormwater Center" Launched by Private Consultant. On Dec. 15, private stormwater consultant John Whitescarver announced the formation of a private, nonprofit "National Stormwater Center" to assist industry and local governments in their efforts to comply with the EPA stormwater permitting program. According

to Whitescarver, the National Stormwater Center will promote the "fundamental concepts" of EPA's stormwater program while seeking "program equity and fairness in permitting and compliance," and will operate a telephone and facsimile "Help Line" and a speakers bureau on stormwater issues. The center also will conduct workshops and produce issue papers and will recruit engineering consultants to serve on best management practices (BMP) teams to assist permittees in adopting low-cost compliance techniques, Whitescarver said.

According to Whitescarver, the BMP teams will perform inspections, sampling, training and annual compliance evaluations and will issue "compliance certificates" to participating permittees upon successful completion of their compliance evaluations. The Center is now inviting "engineers and interested persons" to assist with the BMP teams, Whitescarver added. For more information, contact National Stormwater Center, John Whitescarver, Director, P.O. Box 16525, Washington Dulles International Airport, Washington, D.C. 20041; (703) 777-9384.

Product, Service Information Sought. If you have a product or service announcement of potential interest to our readers, please send it to Andy Feeney, Thompson Publishing Group (TPG), 1725 K St. N.W., Washington, D.C. 20006. TPG welcomes such announcements but will publish them only as time and space permit. We do not vouch for the accuracy of non-TPG product claims reprinted in the *Bulletin*. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398
- Commercial User's Guide to the Internet \$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center, P.O. Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-879-3169

J51STRM

Stormwater Permit Manual

Bulletin

Volume 4, Number 6

December 1994

Will Multi Sector Permit Be Delayed Until Next Year?

The U.S. Environmental Protection Agency (EPA) may not be able to meet its own deadline for issuing a final "multi-sector" model general permit this year, judging from recent statements by EPA officials and others close to the agency.

EPA sent a formal notice to the U.S. Fish and Wildlife Service (FWS) on Oct. 1, indicating that issuance of the final permit would have no effect on species listed under the Endangered Species Act, according to sources close to the agency who would prefer not to be named.

By law, FWS has up to 135 days to respond to the notice, according to Michael Cook, director of EPA's Office of Wastewater Management.

This means that in theory, FWS might not respond until mid-February, Cook said in early November. Cook added, however, that EPA still is hoping to receive "informal" approval from FWS before then so that it can proceed to issue the final permit.

Even if FWS does not take the full 135 days, said John Whitescarver, a private consultant who formerly worked on stormwater at EPA, "It doesn't look as if we will get a final permit in December."

Certification of the permit by non-delegated states, to ensure it meets state water-quality objectives, may take "two to three months," one EPA source has told the *Bulletin* privately. In mid-November, this source added, EPA still was polishing a final version of the permit for review by the states. The source therefore predicted issuance of a final permit "maybe in February, maybe in January."

Along with Whitescarver, Thompson Publishing Group has scheduled workshops in January on the multi-sector permit's provisions. Interested subscribers should sign up before Dec. 14, but should be aware that the dates will be rescheduled or the fees refunded if the final permit is not available on time. ■

STATE SURVEY:

Missouri Starts Local Enforcement Initiative

The Branson, Mo., area, over the past decade, has emerged as a national country and western music center rivalling Nashville, Tenn. But along with the twang of guitars and the clink of money in cash registers, state regulators contend, Branson has been visited by serious stormwater runoff pollution. A particularly severe problem in the three-county resort area is the contamination of local lakes by sedimentation and soil erosion, which regulators believe are coming from the rapid construction of theaters and associated facilities around Branson.

According to Richard Laux of the Missouri Department of Natural Resources (DNR), the state is

(Continued on page 2)

Inside this issue. . .

- ❑ California Judge Dismisses Charges in Stormwater Criminal Case 3
- ❑ Stormwater Interview: Discussion of Black and Veatch's Computerized System for SWP3 Compliance 4
- ❑ Storm Warnings: Ephraim King Returns as NPDES Chief; NRDC Threatens Suit Over Phase II Delays 7

**Thompson
Publishing
Group**

State Survey

(Continued from page 1)

launching a "Branson Initiative" to focus on water quality problems in region, both from construction site runoff and from inadequately treated wastewater discharges. DNR was scheduled to open a Branson field office in Table Rock State Park in November to focus on water quality enforcement. The U.S. Army Corps of Engineers also is opening a local field office to process wetlands dredge-and-fill permits under Section 404 of the Clean Water Act, Laux said.

Other highlights of this month's state survey are as follows:

Florida

As of mid-November, the Department of Environmental Protection (DEP) had not sent the U.S. Environmental Protection Agency (EPA) a formal application to assume delegation for most non-stormwater National Pollutant Discharge Elimination System (NPDES) functions, according to DEP official Darryl Joiner (*Bulletin*, November 1994, p. 2). However, DEP hoped to submit the application by Nov. 18, Joiner said.

After receiving the application, EPA has 90 days to decide on its merits, Joiner said. He added that public hearings probably will occur in January or February on the proposal, and that DEP will hold a final hearing on adopting a proposed NPDES fee schedule "sometime in January."

Georgia

Implementation of the state's new general stormwater permit is stayed pending an administrative ruling on a recent appeal against the permit by Terence Hughey and the Conservation Society, state stormwater official Will Salter said (*Bulletin*, November 1994, p. 3). A ruling is not expected before January at the earliest.

Michigan

By next year, the Department of Natural Resources (DNR) will start providing training courses for permittees who must have certified stormwater operators on staff within a year of being covered by the state industrial general permit, DNR official Dave Drullinger said. Drullinger also noted that DNR district offices now have videotapes on loan to help train certified stormwater operators for construction sites.

Montana

Montana reissued its industrial stormwater general permit on Oct. 26. The new permit drops a previous general permit provision that required whole effluent toxicity testing of stormwater by dischargers of "water priority" chemicals subject to reporting under Section 313 of Title III of the Superfund Amendments and Reauthorization Act.

New Mexico

In mid-October, the Water Quality Commission adopted several new standards that impose new monitoring requirements for tritium and gross alpha radiation on stormwater permittees that discharge into state waters designated for use as domestic water supplies. The standards must be reformatted to meet New Mexico's latest style for the state archives, however. They probably will not take effect until January at the earliest.

Ohio

In August, Ohio reissued its industrial stormwater general permit for 18 months. Existing permittees must file notices of intent and \$100 application fees to obtain coverage under the new permit.

Pennsylvania

A proposed revision of the state industrial general permit was published Nov. 12 in the *Pennsylvania Bulletin*. Public comments on the proposal are due within 30 days. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Senior Publications Director, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, P.E., Environmental Science and Engineering Inc.; Administrative Services Manager, Ted P. Metzler; Production Coordinator, Laurie Clark. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk, Jr., Attorney at Law, Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Attorney at Law, Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, PO Box 26185, Tampa, Fla. 33623-6185. Please allow four weeks for change of address.

Copyright ©1994 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Dr., Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, PO Box 26185, Tampa, Fla. 33623-6185. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

Charges Dismissed in Signal Hill, Calif., Criminal Case

On Nov. 8, Judge Richard Romero of Long Beach, Calif., Superior Court dismissed all charges in a criminal stormwater case brought by the Los Angeles County District Attorney's Office against the former Petroleum Recycling Corp. (PRC).

The company, which underwent bankruptcy proceedings in 1993, is now a subsidiary of Enviropur Waste Refining and Technology Inc. of Chicago and is known as Enviropur West Corp.

The District Attorney's Environmental Crimes Unit last January charged PRC/Enviropur West with allegedly discharging pollutants into the waters of California without properly reporting the discharge to local water quality authorities—a felony under Section 13260 of the California Water Code.

The firm also was charged with numerous misdemeanor offenses for allegedly discharging hydrocarbons, acetone and other specified pollutants into a Signal Hill, Calif., storm drain between Jan. 14, 1993 and Jan. 20, 1993, in violation of state and city regulations.

Attorneys for Enviropur denied any wrongdoing, however. In recent interviews with the press, Enviropur West Vice President Gary Leger contended that the discharges occurred after PRC already had obtained permit coverage for stormwater runoff from California regulators (*Bulletin*, November 1994, p. 1).

A jury trial in the case began Oct. 17 before Judge Romero. According to Fred Macksoud, the deputy district attorney who tried the case, the prosecution alleged that PRC in January 1993 had pumped stormwater from its property into a secondary containment area containing contaminated wastewater from the Signal Hill petroleum recycling facility.

The prosecution further contended that PRC subsequently pumped water from this containment area into a Baker tank, a particular brand of containment vessel, from which contaminated water was subsequently released into the street and into a local storm drain. In the prosecution's view, this constituted a violation of PRC's stormwater permit.

The defense contended that the stormwater had been pumped directly from a parking lot into the Baker tank—an action that was permissible under the stormwater permit, Macksoud said. However, the case turned not so much on the origins of the water in the tank as on whether there was sufficient evidence that the water released into the storm drain was contaminated.

According to Macksoud, the prosecution presented evidence that three samples taken from the valve at the bottom of the tank, shortly after local authorities had ordered the releases into the storm drains halted, contained the alleged contaminants.

A chemist presented as an expert witness by the defense, however, argued that turbulence in the tank caused by the valve's being shut and then reopened had caused hydrocarbons floating on the surface of the water to become mixed with water from the bottom of the tank, casting doubt on the validity of the samples. The defense also alleged that the proper place to sample runoff from the tank was not at the valve, but at a point 300 feet distant where the runoff entered the storm sewer, Macksoud said.

Despite countervailing testimony by a chemist called as expert witness by the prosecution, Macksoud said, Judge Romero ruled that the chemist for the defense had undermined the admissibility of the prosecution's sampling evidence. Consequently, the judge dismissed the case for lack of evidence.

According to a news release from Enviropur West, the judge has dismissed all charges against PRC, its former president Richard McAuley, its former compliance manager Ronald Daerr and its former plant manager Mark Vigeant.

"PRC has consistently maintained that it had the proper permits for this form of rain water discharge and that the water discharged was clean," and PRC has now been "exonerated" by the ruling, the news release stated.

Leger added, however, that "While we are pleased that the case has been dismissed, it is very hard to see that 'justice' has been achieved at this point." Because of allegations made in the case, Leger said, PRC lost several contracts worth \$8 million to \$10 million. Moreover, Leger said, because the original investigation of the stormwater discharges in January 1993 was "widely publicized in local papers," PRC lost the confidence of its bankers, who decided to discontinue loan agreements with the firm in February 1993.

According to Leger, "That forced the company to file for bankruptcy in March of that same year." At press time, Enviropur West was unavailable for further statements about the case.

Macksoud denied that the charges brought against PRC in 1994 had anything to do with the company's bankruptcy in 1993. He also defended the prosecution's presentation of the case, saying of the decision, "I don't know why the court ruled as it did." ■

STORMWATER INTERVIEW:

Computerizing Stormwater Pollution Control Plans: Black & Veatch's New System for SWP3 Compliance

Matthew Koch is a water resources project engineer at Black & Veatch in Kansas City, Mo., and a member of a team of approximately 80 professionals in the company's Advanced Environmental Technologies Division. For the past five years, he has largely focused on stormwater regulation and permit requirements as they apply to Black and Veatch's environmental consulting business. Koch graduated from Pennsylvania State University in 1983 with a B.S. in civil engineering and worked for Dewberry and Davis in Fairfax, Va., for approximately a year and half before leaving for Black and Veatch. He has worked for a few smaller engineering firms as well. Koch is currently studying to obtain a master's degree in environmental health and science from the University of Kansas. The following is excerpted from a longer interview with Koch by Thompson Publishing Group (TPG) on Nov. 3, 1994.

TPG: You've said that Black & Veatch has a computerized system for writing and maintaining stormwater pollution prevention plans. How does this computerized approach work?

Koch: We actually have two levels of our computerized stormwater pollution prevention plan (SWP3) development. One is a very simplistic approach that does not take an advanced degree to implement or to understand. It's simply using spread sheets and standardized text to accompany the spread sheets to explain the whole program. We have set up our SWP3 program so that it resembles EPA's baseline general permit, which is primarily also how most of the state industrial general permits have been written as well.

We have the chapters in the SWP3 program set up just the way the permit reads. We have sections identifying pollutant sources, sections identifying specific best management practices, and certain sections talking about the maintenance of the SWP3.

The generalized, simplistic approach we employ here is just to use a good standard format that explains just how the regulations are met by the SWP3, section by section, and what has been done to implement the SWP3 at the facility. The program includes a set of about 12 to 15 simple spread sheets that anyone, really, can implement. They're in Lotus format, but can be translated to just about any spread sheet format.

TPG: What's the price tag for using this simple SWP3 system?

Koch: If you were to take just a simple food processing system in Hometown, USA, and if you wanted to go with the simplistic approach, using a word processor to write clear and simple text and explaining how your SWP3 meets the regulatory requirements, and if you also followed that up with a set of spread sheets that can be updated on a daily basis if need be, so that the plan is a living and growing document—the price of developing that kind of a plan for a small facility will run somewhere between \$2,500 and \$10,000.

Something in that ball park can be done by Black and Veatch or any other professional engineering firm. You can do a good professional job with this and stake your engineering reputation on the fact that you haven't cut corners. That's the typical range that we're talking about.

TPG: What's your more advanced computerized planning system look like?

Koch: Our more advanced approach to SWP3 development is to organize the data we collect for a large facility and put it into a geographic information system (GIS) format where we track stormwater runoff, pollutant sources, and significant materials digitally, and where we have that information stored in the data base.

At a very large facility—say, an airport, or, in one of the best uses we can envision for the GIS system, at a government facility such as a military base—the facility may have five to 10 different industrial

"You can do a good professional job with this system and stake your engineering reputation on the fact that you haven't cut corners."

activities going on, each one of which merits its own SWP3 or its own chapter in the overall plan. And each one of those five or 10 industrial activities that are occurring—say, vehicle maintenance is one industrial activity, fueling is another one, and let's say that the facility also has an asphalt generating plant, a wastewater treatment plant, and a food processing operation at other parts of the site, so that you have quite varied industrial uses going on—each one of those five to 10 types of industrial uses may have 10 to 100 significant materials that need to be identified and put into some kind of data tracking system, especially if the quantities used vary across the site.

In this kind of complex situation, the GIS-based approach really enhances someone's capability to meet requirements of the permit and keep up with the regulations. The GIS approach, by the way, is a

glorified way of taking everything that's on a hard map and putting it into a living data base and a mapping system all in one, where you can click on a manhole in a storm sewer system map, for example, and the GIS will tell you everything you ever wanted to know about it: what kind of manhole it is, what kinds of pipes are coming into and going out of it, how old it is, what the analytical results of stormwater sampling at the manhole are, and any other information you need to know about it.

This is information that has to be generated by the user, but you can have stormwater flows, sanitary sewer flows, infiltration, inflow rates, whatever the application happens to be, you can have that information associated with that little dot on the map.

But so far, we just have not found a large enough market for that approach among industrial dischargers across the country. They just can't see spending money on a GIS-based approach.

TPG: What kind of price would you charge for the GIS approach, assuming that you ever do find a stormwater market for it?

Koch: That's kind of hard to put a price tag on. We use those kinds of systems extensively in other markets, such as the municipal stormwater market, especially where we're doing groundwater monitoring. If you're tracking pollutants that travel through subsurface media, and if you're modeling that with a complex groundwater model, those model results can be hooked into the GIS data base. You can click on an aquifer or a set of aquifers, for example, and actually see the results of the models. That's kind of the whole point of GIS technology: it's not only for real data, but also for model data, where you can see how model results can affect the real world.

TPG: Can't you even give us a ball-park price figure?

Koch: In the past, where we've developed GIS systems for large clients, I think I've seen numbers where they were talking in the \$50,000 to \$100,000 range, for a very complex facility where they needed a SWP3 done and where they had 15 to 30 different tenants out there, each one of which was involved in different activities, and each one of which had varied materials on site.

Where you have different significant users and different materials that you have to track independently, that's what drives the price up. That's where we thought a large airport or a large government facility could really get a lot of use out of the GIS approach to SWP3s. And there may be some of our competitors that have done this for larger industrial facilities.

But to be honest with you, I've seen a trend where many big industries are showing themselves pretty

reluctant to shell out this kind of money for any environmental work, and so they tend to go with the lower-cost approach. They also tend to do SWP3s in-house if they can, if their environmental compliance directors can do the work and certify that they've done it correctly. I've seen it go that way with a number of our clients, who just really can't afford our help. We advise them, and they do the whole SWP3 themselves.

TPG: When they do this, what do you charge for advising them?

Koch: We have standard contracts—ongoing retainer contracts for the companies. You take, instance, an hourly rate of \$80 or \$100 for a mid-level engineer who knows the regulations. You've got \$100 an hour; if you give someone a day's worth of advice you're talking \$800. Generally, we have so many ongoing contracts with many industry clients that the cost of SWP3 consulting just gets covered under parts of other contracts.

TPG: You mentioned your competitors. Who are your main competitors, both in developing complex SWP3s for larger facilities and in developing simpler, cookie-cutter plans?

Koch: You're talking about two markets, the local arena and the national arena, although some players transcend that dichotomy and fit in both, as I feel Black and Veatch does.

In the local arena, you really can't pinpoint one particular firm, but there are very many smaller local firms that can do this work—generally more cost-effectively, because they've known the facilities for so long. Generally speaking, they're prevalent across the country. Their expertise may not be that high, which is the only drawback to going with a firm that lacks national experience. But if they're up to speed on the regulations, they shouldn't have any problem in developing an effective and legally acceptable SWP3 for your facility.

On a larger scale, in the national arena, there are many players besides ourselves. I think Camp Dresser & McKee is probably one in the forefront in developing cost-effective SWP3s. There are a few others, also. Woodward-Clyde, I think, also does a

"You don't have need a big nationwide firm to do your SWP3—but a nationwide firm may bring greater breadth of experience to the table."

very good job nationally. Ogden Environmental, based primarily in the southeast part of the country, is not what you'd think of as a big national company, but they've done work nationwide on SWP3s.

Woolpert is another one that comes to mind that I think does a pretty good job. CH2M Hill is another

(Continued on page 6)

Stormwater Interview

(Continued from page 5)

one that I think is pretty capable of doing nationwide SWP3s, as well as working at the local level. Those are typically the competitors that we run into in the stormwater market.

There are probably hundreds more that I don't even know about. But again, if you're familiar with the regulations, just about anybody can do a SWP3. You don't have to go to a big nationwide firm, in my opinion, although the nationwide firm may bring a wider breadth of experience to the table.

TPG: Now that most people have had to develop their SWP3s, what should companies be doing to implement them?

Koch: After you've written a SWP3 and you have it in place, that's just really one small tip of the iceberg.

The implementation of that plan is critical, and the upkeep or update of the plan also is very critical. Those are the two larger pieces of the puzzle. It's one thing to say that we're going to do this, this and this, and have a laundry list of maybe 10 major things that you're planning to implement. It's another thing actually to implement those practices.

Implementation can include doing structural and nonstructural improvements at your facility, implementing best management practices, educating your employees, keeping them educated, potentially doing quarterly or semiannual monitoring to see what contaminants you still may be contributing to the environment—these are ongoing activities. When we finish with the SWP3, it may be written more from the consultant's standpoint, but it's really up to the client to implement the plan as you're supposed to do.

TPG: As a consultant, you probably charge for most advice you give—but do you have any free advice for compliance managers on the best way to go about updating a SWP3?

Koch: I think the most important thing is to have an individual or a group of individuals, depending on the size of the facility, focused on stormwater compliance. Generally you've got an individual who's responsible corporate-wide for environmental compliance, and generally he or she would be the point person for stormwater implementation and upkeep of the SWP3.

But that person needs to stay focused; you can't just sit down and forget about the SWP3. And so that's really the first thing that I would do, is make sure that you have a focused individual or a focused organizational SWP3 team, to make sure that everything that's been recommended is implemented and evaluated.

The second thing I would recommend after that is, ideally, to have proposed to do things that are

capable of being implemented. You don't want to say that you're going to construct a 100,000 gallon, underground stormwater detention facility made out of reinforced concrete only to find out that it's going to cost \$1 million to install the thing, so that you don't want to do it. Easily implemented controls are what you want to go with, if you haven't already.

TPG: What if the SWP3 already is written, and the practices it outlines aren't easy to implement?

Koch: Well, you can revise your SWP3. If a facility gets into stormwater management and finds out that it just can't afford that million-dollar underground detention structure, there's nothing in the regulations that says that management is stuck with it.

If you can come up with a more easily implemented, more cost-effective, practical, nonstructural approach, that's fine—so long as you've got something of equal environmental impact and effectiveness to replace what you first recommended in your SWP3.

"You can revise your SWP3. If your facility begins to implement the plan and you find out that you just can't afford to build that \$1-million underground detention structure, there's nothing in the regulations that says you're stuck with it ... But you can't just say, 'Oh, I don't want to do what I proposed.'"

But you can't just say, "Oh, I don't want to do what I proposed." You have to make sure that you have an alternative to that particular remedy you had proposed initially." It's a learning experience. There are some are very simple, common-sense types of things that you can do to minimize pollution at your facility at a minimal cost.

TPG: What else is important in implementing a SWP3?

Koch: The third priority is to continue to educate your employees through that pollution prevention team, and evaluate the performance of the controls you proposed after a certain time—generally it's once every year.

How are the controls that you proposed acting on the environment? Are they controlling stormwater pollution in the way that you had hoped? Do you see an improvement, either visually or through testing, to indicate that the controls are working? Someone has to be ready to follow up and check on the performance of the implementation.

TPG: This is your comprehensive annual inspection, right?

Koch: Comprehensive annual evaluation, to use a better word. "Evaluation" is more overly encompassing of the whole facility's activities. ■

Storm Warnings

Stormwater-Related News in Capsule Form

□ **Ephraim King Returns as NPDES Branch Chief.** Ephraim King, head of the National Pollutant Discharge Elimination System (NPDES) branch of the U.S. Environmental Protection Agency (EPA) from late 1990 until October 1993, when he left to work on EPA's watershed permitting initiative, has returned to his former position as NPDES branch chief. King will take over from acting NPDES branch chief Gary Hudiburgh. According to EPA, Hudiburgh will soon assume an environmental post with the Navajo Nation under an intergovernmental personnel exchange between EPA and the Navajos.

□ **NRDC Warns of Intent to Sue Over "Phase II" Delays; Also Predicts Court Action Soon on "Light" Industry, Small Construction Site Issues.** The Natural Resources Defense Council (NRDC) on Oct. 24 sent a 60-day notice to EPA administrator Carol Browner, stating that it intends to sue EPA for failure to issue a report identifying pollutants associated with stormwater dischargers not yet regulated under the stormwater permitting program and for failing to issue regulations governing such dischargers, as required by the Clean Water Act. Under the act, NRDC claims, action on both items was supposed to have been completed by Oct. 1, 1989. But in an interview with the *Bulletin*, NRDC attorney Peter Lehner said that the purpose of the letter is to force action, and that if EPA issues a "Phase II" report before the 60 days expire, the missed report deadline will not be an issue in any lawsuit.

NRDC also notified EPA in the letter that it intends to file a mandamus action soon before the U.S. Court of Appeals for the Ninth Circuit, seeking a court order requiring EPA to revisit the question of whether "light" industrial facilities without stormwater exposure of significant materials and construction sites disturbing less than five acres of land should be exempt from permitting under the current phase of the stormwater program. NRDC is not legally obligated to notify EPA of the proposed mandamus action, Lehner said, "but we want to deal straightforwardly with the agency." He declined to say when a mandamus filing might occur.

□ **EPA to Form Phase II "Reg Neg" Panel.** EPA's Office of Wastewater Management (OWM) is planning to convene a "wet weather" advisory task force under the Federal Advisory Committee Act and to convene a subcommittee of the

panel to involve different stakeholders in negotiations over "Phase II" stormwater regulations, OWM director Michael Cook said on Nov. 14. Cook said the concept of a "wet weather" task force, which also would look at overflows from publicly owned sewage treatment plants, was cleared at a recent meeting before Robert Perciasepe, EPA assistant administrator for water. Additional details about the advisory panel were not available at press time.

□ **Stormwater Management Courses Scheduled for Jan. 30, March 13.** Government Institutes Inc. (GI) has scheduled a one-day course on "Stormwater Management: Compliance Strategies and Techniques" for Jan. 30 in Phoenix (GI course no. 2256) and again for March 13 in Washington (GI course no. 2252). Topics covered will include sampling and analysis, preparation of stormwater pollution prevention plans (SWP3s) and stormwater treatment options. Attendance fee is \$499. For more information, contact Government Institutes Inc., Suite 200, 4 Research Place, Rockville, Md. 20850; (301) 921-2345; fax (301) 921-0373.

□ **New Stormwater Compliance Software for Transportation Industry Available.** A new environmental compliance data base designed to help the transportation industry maintain compliance with state and federal stormwater regulations is now available from Blymyer Engineers Inc., according to a recent announcement by the company. According to Blymyer, the *StormTrack*TM data base combines key regulations for up to 50 states and includes information on sampling requirements and deadlines, annual report deadlines and permit renewal dates. *StormTrack*TM also has fields for facility-specific information and can be used for "instant keyboard tracking of multiple state regulations and multiple facility conditions." The product reportedly can be integrated into an existing stormwater compliance program or used in conjunction with *Clean RunOff*TM, Blymyer's standardized SWP3 program for transportation facilities. For more information, contact Blymyer Engineers at (800) 753-3773.

□ **EDC Offers New Regulatory Audit System for Vehicle Maintenance and Refueling Operations.** Environmental Development Corp. (EDC) of Findlay, Ohio, has announced the availability of a new 46-page audit system for evaluating compliance by vehicle maintenance and refueling facilities with stormwater permit requirements and with other EPA and

(Continued on page 8)

Storm Warnings

(Continued from page 7)

Occupational Safety and Health Administration (OSHA) regulations. The new audit system, *Compliance Audit System for Motor Vehicle Maintenance & Refueling—Facilities and Operations (CAS)*, contains a check list of more than 500 key questions on various regulatory requirements and is available from EDC for \$79 per copy, \$179 for a set of five copies, or \$239 for a set of 10. For more information call EDC at (419) 422-1200.

North Carolina Consultants Offer Help With SWP3 Development. AWARE Environmental Inc. (AEI), a "multi-disciplined environmental consulting organization" in North Carolina, has established a stormwater compliance group, according to an AEI press release. AEI offers to provide assistance with SWP3 development, site compliance assessments, identification of best management practices, spill prevention and response procedures, development of inspection and housekeeping check lists, stormwater sample kits, sample analysis, engineering design, annual site compliance inspections and SWP3 revisions. For more information contact Carol Hambridge, 9305 Monroe Rd., Charlotte, N.C. 28270; (704) 845-1697.

Texas Study Explores Best Techniques for Highway Runoff Control. An ongoing study of highway runoff in Austin, Texas, and its effects on the threatened Edwards Aquifer may offer clues on the effectiveness of various techniques for controlling highway stormwater pollution, according to an article by Federal Highway

Administration official Ginny Finch in the Summer 1994 issue of *Watershed Events*, an EPA publication. According to Finch, the Texas Department of Transportation (TxDOT) and the University of Texas at Austin are jointly studying what construction of the Loop 1 expressway in Austin will mean for the Edwards Aquifer in terms of polluted runoff. As part of the research they have published a 160-page technical report summarizing the available literature. By using a rainfall simulation device to study the expressway during a period of drought, researchers also have found that "sand-only" filters do not work well in controlling nutrients, heavy metals and suspended solids in runoff from the expressway, Finch indicates. Better results were obtained from placing an alternative medium such as "coal, fibric peat, humic peat or zeolites" below the sand in the filter. The report, *A Review and Evaluation of Literature Pertaining to the Quantity and Control of Pollution from Highway Runoff and Construction*, is available for \$23.42 per copy from the University of Texas, Center for Research in Water Resources, J.J. Pickle Research Center, Bldg. 119, Austin, Texas 78712; (512) 471-3131.

Product, Service Information Sought. If you have a product or service announcement of potential interest to our readers, please send it to Andy Feeney, Thompson Publishing Group (TPG), 1725 K St. N.W., Washington, D.C. 20006. TPG welcomes such announcements but will publish them only as time and space permit. We do not vouch for the accuracy of non-TPG product claims reprinted in the *Bulletin*. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
PO Box 26185, Tampa, Fla. 33623-6185

Call Us Toll-Free At 1-800-879-3169

J4DSTRM

Stormwater Permit Manual

Bulletin

Volume 4, Number 5

November 1994

Two Criminal Prosecutions for Stormwater Violations Brought By Los Angeles District Attorney's Office

Criminal penalties for alleged stormwater-related violations are being sought in two cases now being prosecuted by the Los Angeles District Attorney's Office. According to deputy district attorneys involved with the cases, conviction could potentially result in jail terms for the defendants.

Representatives of the defendants, however, are contending in part that the provisions of California's industrial stormwater general permit covered the discharges in dispute, and that the crimes alleged by the prosecutors therefore never occurred.

Signal Hill Case Involves Alleged Discharge of Hydrocarbons

Charged under Section 13387 of the California Code in one case is Enviropur West Corp., formerly known as Petroleum Recycling Corp. The Environmental Crimes/Occupational Safety and Health

Administration (OSHA) division of the District Attorney's office has accused the firm of illegally discharging stormwater mixed with hydrocarbons into the storm drains of Signal Hill, Calif., between Jan. 14, 1993, and Jan. 20, 1993. According to Deputy District Attorney Fred Macksoud, a trial of the charges against Enviropur West was scheduled to begin before Judge Richard Romero in Long Beach Superior Court on Oct. 11.

In an Oct. 11 interview, however, Enviropur West Vice President Gary Leger said that the alleged violation occurred after the company, which operates an oil recycling facility in Signal Hill, already had obtained coverage under the California industrial general permit for stormwater.

"Once we had the permit, we called the regional Water Quality Control Board and said we were going to start discharging rainwater. Then local city

(Continued on page 4)

STATE SURVEY:

Draft 'Phase II' Permit Delayed in Connecticut

The Connecticut Department of Environmental Protection (DEP) will not publish a proposed general permit for currently unregulated, "Phase II" stormwater dischargers (such as commercial and retail businesses) as soon as previously anticipated, DEP stormwater staffer Chris Stone said in mid-October. However, Stone said that he still hopes to publish a proposed permit by early next year.

"This whole effort could go down the tubes if the commercial and retail facilities rise up in rebellion against it," Stone acknowledged. He added, however, that Connecticut businesses may derive real advantages from having their stormwater regulated by the state before the U.S. Environmental Protection

(Continued on page 2)

Inside this issue. . .

- NRDC, Three California Cities Settle Municipal Permit Case 5
- Formal Consultations Begin on 'Multi-Sector' Permit and Endangered Species 6
- Congress Fails to Extend 'Phase II' Permit Moratorium 7
- Storm Warnings: EPA, New York, Connecticut Sign Long Island Sound Pact 8

State Survey

(Continued from page 1)

Agency (EPA) issues its own "Phase II" regulations (see related story, p. 7).

"The name of the game is heading off EPA," Stone said. "What we're proposing right now is that nobody in the commercial sector in Connecticut will monitor: period. Most will not have to develop stormwater pollution prevention plans (SWP3s). The whole idea is to hand them everything on a silver platter. EPA, when it gets around to regulating Phase II, might not be so gentle."

DEP now has a draft Phase II regulation "almost ready to go," Stone said. A proposed revision of the state's industrial general permit, the framework of which was worked out in consultation with the Connecticut Business and Industry Association, also has been essentially ready for publication for six months, Stone added. But "state bureaucracy and politics" have held up publication, he said, and state budget problems have contributed to the delay.

"Frankly, we're trying to figure out how to cover the phone calls once the public notice of the proposed changes in the industrial general permit goes out," Stone said. "We're probably going to get swamped. Lord knows what will happen when the proposal for commercial and retail permitting is released."

Florida to Seek NPDES Delegation

The Florida Department of Environmental Protection (DEP) is seeking delegation from EPA to administer the National Pollutant Discharge Elimination System (NPDES) permit program, according to numerous sources. However, the state does not plan to assume responsibility for the NPDES stormwater program, except for the permitting of facilities with both wastewater and stormwater discharges, until 1999 or later.

Florida also reportedly intends to delay accepting regulatory responsibility over water pollution

permits for federal facilities. The state would become responsible for most other NPDES programs immediately upon receiving delegation.

Informal discussions about the delegation issue have been occurring between Florida and EPA Region IV for some time, Region IV stormwater coordinator Roosevelt Childress said Sept. 17.

In developing state 'Phase II' regulations for commercial business, a Connecticut stormwater official says, 'the name of the game is heading off EPA.'

Florida had planned to submit a formal delegation proposal to Region IV in mid-October, Childress added, but the state did not meet this schedule. The submission of the delegation proposal now is expected to occur no sooner than Nov. 1, Childress said.

Public hearings on the delegation question had been tentatively scheduled for December, but now have been canceled, Childress said. At press time, no new public hearings had been scheduled. Childress indicated that the final transfer of delegation now is expected to occur in "late winter or early spring" of 1995.

Childress said that he and DEP official Darryl Joiner, in workshops and seminars, already have begun to spread the word about the delegation application to Florida businesses.

Georgia Conservationist Appeals New Construction General Permit

On Sept. 15, the Georgia Department of Natural Resources (DNR) issued a new stormwater general permit for regulated construction sites disturbing five or more acres of land. The new permit is scheduled to become effective Nov. 1.

As anticipated, however, Atlanta-area conservationist Terence Hughey and the Conservation Society Inc. have made use of a last-minute appeal



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 700, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Senior Publications Director, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, P.E., Environmental Science and Engineering Inc.; Administrative Services Manager, Ted P. Metzler; Production Coordinator, Laurie Clark. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk, Jr., Attorney at Law, Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Attorney at Law, Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering Inc.; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 7711 Anderson Road, Tampa, Fla. 33634-3039. Please allow four weeks for change of address.

Copyright ©1994 by Thompson Publishing Group; 1725 K St., N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Dr., Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 7711 Anderson Road, Tampa, Fla. 33634-3039. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

process provided under state law to challenge the new permit (see *Bulletin*, October 1994, p. 1).

Last year, a DNR administrative law judge ruled for Hughey and the Conservation Society on an earlier appeal they had filed against a construction site general permit that DNR issued in 1992. State stormwater officials, responding to that judgment, rewrote the construction site general permit to include effluent limitations on the turbidity of construction site stormwater runoff.

Under the permit issued Sept. 15, turbidity in runoff must not be more than 100 nephelometric turbidity units (NTUs) above the turbidity of the receiving stream immediately upstream from a discharge, in the case of ordinary waterways, or more than 50 NTUs above the turbidity of a trout stream receiving a discharge. The limits reflect those already mandated by the Georgia Erosion and Sedimentation Control Act, as amended.

Dischargers must sample for turbidity once each calendar quarter, although various sampling waivers are available. DNR on written notice also may require construction site operators to sample for additional parameters, if they are suspected to be present.

Appeal Calls for Extensive Monitoring, Limits on Mass Loadings to Streams

In an Oct. 14 appeal, Hughey and the Conservation Society contend that quarterly monitoring will not ensure that state effluent limits for turbidity are met.

Instead, the appeal calls for monitoring, testing and reporting of stormwater discharges by "professional engineers and qualified laboratories" for every rainfall of .01 inch or greater at regulated construction sites.

The appeal also argues that the general permit must impose specific limits on the mass of sediment discharged at an outfall, with this not to exceed 25 mg/l, and that the permit must impose effluent limits on construction site discharges into "all waters of the state, including perennial streams ... annual streams, lakes and ponds."

The general permit also must be amended to ensure consistency with Georgia antidegradation rules, Hughey and the Conservation Society argue. And the appeal contends that the state has unlawfully delegated its regulatory responsibilities to local governments administering the Georgia Erosion and Sedimentation Control Act.

To comply with state law, the appeal argues, DNR's Environmental Protection Division "must retain jurisdiction of the entire National Pollutant Discharge Elimination System program and not allow delegation of implementation to local jurisdictions."

New Jersey DEP Issues First Facility-Wide, Multi-Media Permit

The state of New Jersey's first facility-wide environmental permit for an industrial facility, covering all of the facility's regulatory requirements, was issued early in September to the Schering-Plough Corp., according to the state Department of Environmental Protection (DEP).

The draft permit issued to the company includes stormwater best management practices for Schering-Plough's manufacturing facility, research and development activities and pilot plant activities at 2000 Galloping Hill Rd. in Kenilworth, N.J., according to a DEP press release.

In addition, the permit proposes to replace a New Jersey Pollutant Discharge Elimination System (NJDPES) wastewater discharge permit and approximately 100 DEP air pollution control certificates for the Kenilworth plant.

Still other provisions of the permit, according to DEP, will cover hazardous waste recycling by the facility, air pollution emission reporting and tracking, the submission of New Jersey pollution prevention reports and toxic release reports, and provisions giving Schering-Plough regulatory approval to accumulate hazardous wastes in a storage tank for less than 90 days.

Georgia's construction general permit needs mass loading limits, says an Atlanta conservationist. And the state can't delegate the program to localities.

The stormwater provisions of the new permit essentially repeal a previous DEP wastewater permit for combined discharges of cooling water and stormwater at the plant, according to DEP press officer Steve Anderson. The cooling water discharge, which is contaminated, will be segregated and treated separately. In effect, the stormwater will be controlled under SWP3 provisions and best management practices required by the state's industrial stormwater general permit, Anderson said.

DEP Commissioner Robert Shinn Jr. has hailed the permit as the first issued under a new multi-media permitting program that is "one of the most innovative environmental efforts nationally." The program, designed as a "research" program, requires DEP to analyze the successes and failures of facility-wide permitting and report its conclusions to the state legislature by March 1996.

DEP reports that it also is preparing draft facility-wide permits for two other "prepilot" facilities, the Fischer Scientific facility in Bridgewater, N.J., and the Sybron Chemical facility in Pemberton. ■

Criminal Prosecutions

(continued from page 1)

officials came to us and said to stop doing this, so we stopped immediately," Leger said. "We don't admit to doing anything wrong, but if we did do anything wrong, we think it's just a failure to understand what the permit allowed."

According to Leger, the prosecution for an alleged environmental felony under the state code appears to represent an overreaction by the prosecutor's office, which, he said, has been under pressure from local authorities seeking to close down Enviropur's oil-recycling operation in Signal Hill in order to redevelop the site as an auto dealership.

Leger said that the prosecutors have charged Enviropur, the Signal Hill plant manager, the company's president and the compliance director with violations under Section 13387. Felony convictions under this section of the code could lead to maximum penalties of three-year jail terms for the defendants, according to prosecutor Macksoud.

Santa Fe Springs Prosecution Brought Over Alleged pH Violations

In the second felony case, the Environmental Crimes/OSHA Division accused Liquid Air Corp., a multinational corporation that manufactures acetylene in Santa Fe Springs, Calif., with a felony violation under Section 25189.5 subparagraph B of the California Health and Safety Code, a felony water pollution violation under Section 13387 of the California Water Code, and conspiracy charges under Section 182 of the state's penal code for alleged stormwater-related crimes also stemming from January 1993.

"I'm seeking fines in the hundreds of thousands of dollars, and I'm seeking jail time for the defendants. This is a very serious offense."—L.A. Prosecutor

Liquid Air Corp. produces lime as a byproduct of its acetylene manufacturing operations, according to Deputy District Attorney Anthony Patchett of the Environmental Crimes/OSHA Division. In Santa Fe Springs, it allegedly collected this lime in two 25-foot-deep pits for drying, recycling and eventual sale. But according to Patchett, the company decided before 1993 to close the two lime pits and convert them into parking lots.

Heavy Rainfall Triggered Alleged Violations

According to Patchett's allegations, Liquid Air Corp. hired a contractor to carry out the conversions. During late December of 1992 and early January of 1993, however, a significant rainfall caused the pits to fill with stormwater.

According to the prosecutor's allegations, Liquid Air then ordered the pits pumped out, and the contractor discharged a highly corrosive mix of lime and water into public storm drains, without testing the discharge, between Jan. 20, 1993, and Jan. 22, 1993.

After investigators from the Los Angeles County Fire Department responded to complaints on Jan. 23, Patchett alleged, Liquid Air and its contractor again released a corrosive lime mixture into the storm drains, causing a second complaint to local authorities on Jan. 27.

"The minimum estimate of the total corrosive lime discharged is 212,000 gallons," Patchett told the *Bulletin*. Patchett also alleged that testing of the discharges showed alkalinity levels exceeding pH 12. According to Patchett, "Our expert witnesses will testify to the damages caused, in terms of wildlife killed and other environmental damages."

Jail Time, Huge Fines Sought by Prosecutor

The Environmental Crimes/OSHA Division is bringing criminal charges against Liquid Air Corp., a Delaware corporation, and against the company's plant manager Brian Leger Jr. for the alleged violations, Patchett said.

Patchett added, "I'm seeking fines in the hundreds of thousands of dollars, and I'm seeking jail time for the defendants. This is a very serious offense. Any time this stuff is discharged, any responsible corporation would sample it before discharging it into the local storm drains. That's what I would expect a sophisticated corporation such as Liquid Air to have done."

Release Did Not Exceed Stormwater Effluent Limit, Attorney Contends

Bob Wyatt, a partner with Beveridge and Diamond, the law firm representing Liquid Air Corp. in the case, said on Oct. 17 that he would not discuss the details of the case. Nevertheless, Wyatt contended that the Los Angeles District Attorney's office and its Environmental Crimes/OSHA Division do not understand the regulatory scheme used by the state of California to regulate stormwater, and that "they have both their legal theories and their facts wrong."

One of the significant issues in the case, Wyatt said, concerns the applicability of the state industrial stormwater general permit to stormwater discharges resembling those that Liquid Air and its contractor released in January 1993.

Liquid Air and the contractor did pump a certain amount of water from the Santa Fe Springs facility at that time, Wyatt said. However, he added, "The company was going through the closure of its ponds at this time, and it was doing so with complete environmental due diligence. That's what makes this case so absurd."

The only unusual thing about the pit-closure operation, Wyatt continued, was that a once-in-a-century storm event occurred between the end of December 1992 and mid-January 1993. Consequently, 19 inches of rainfall fell on Santa Fe Springs in a short period of time.

State's General Permit Allowed Discharges, Attorney Avows

"In order to complete the pond closure, they had to dewater those ponds," Wyatt contended. "Under the California stormwater general permit, there is no treatment requirement for this. There are narrative limits under the state industrial general permit; there are no numeric limits."

According to Wyatt, then, "This discharge of rainwater was consistent with the stormwater permit which Liquid Air had in place. They had filed their notice of intent with the state and had received confirmation that they were covered under the stormwater permit program."

In part for this reason, Wyatt said, Liquid Air and its attorneys intend to argue before the trial begins

*"They have both their legal theories and their facts wrong."
—Defense Attorney Bob Wyatt*

that there is no cause for a suspicion that any crime has been committed.

Wyatt also contends, "The District Attorney's own case report concedes that there was no environmental harm." Patchett does not have valid test results to back up his allegations about the alleged pH levels of the discharge, Wyatt argues, because the pH figures obtained by the prosecutor's office were not from the stormwater actually pumped from the Liquid Air Corp. pits, but instead from residual lime in the receiving canal that may not have come from the company's pumping operation.

According to Wyatt, Liquid Air's attorneys hope to prevail in a pre-trial hearing in December by convincing the judge that there is no reason to go forward with the case. Failing that, Wyatt said, the trial might occur in late spring or early summer of 1995; however, such predictions at this point are speculative. ■

NRDC, Three Cities Settle Stormwater Case

The Natural Resources Defense Council (NRDC) and three small California cities it had sued for allegedly violating the Los Angeles County municipal stormwater permit have recently settled the case.

Last November, NRDC sued Beverly Hills, Hermosa Beach and El Segundo for allegedly discharging contaminated stormwater from roads, parking lots and other areas into Los Angeles area storm drains, in violation of the county municipal permit's terms.

Joining NRDC in the suit were Santa Monica Baykeeper Inc. and Terry Tamminen, also known as the "Baykeeper," who alleged that they had sustained injuries as a result of stormwater pollutants entering Santa Monica Bay (see *Bulletin*, February 1994, p. 1).

The case, *Natural Resources Defense Council Inc.; Santa Monica Baykeeper Inc.; Terry Tamminen v. City of Beverly Hills; City of El Segundo; City of Hermosa Beach*, was scheduled for trial on Nov. 1, 1994, before U.S. District Judge Manuel Real of the U.S. District Court for the Central District of California.

In September, however, NRDC and Beverly Hills agreed to a settlement, and Judge Real dismissed the charges against Beverly Hills. In news releases issued Oct. 6, the plaintiffs and the cities of El Segundo and Hermosa Beach then announced the settlement of the rest of the case.

The press releases indicate that the cities have agreed collectively to spend an added \$1.3 million on stormwater control programs, including "programs which go beyond the [county municipal] permit's requirements."

Specifically, El Segundo reportedly agrees to rebuild two stormwater pumping stations using state-of-the-art technology and to implement pollution prevention plans that include "construction site, industrial and commercial stormwater runoff controls," residential water conservation, hazardous waste collection and "education about pesticides and illegal dumping."

Hermosa Beach reportedly will implement a \$50,000 stormwater management program and donate \$7,500 to the Santa Monica Bay Restoration Project educational fund.

Beverly Hills, under Judge Real's order, will adopt a comprehensive stormwater control ordinance; purchase some \$65,000 in video equipment to inspect all city storm drains and sanitary sewers for illicit connections; hire an added city inspector to check for stormwater pollution at auto-related small business, construction sites and property adjoining restaurants; and take some 30 other actions to fix stormwater problems.

According to David Barrett, a pro bono attorney for NRDC, the agreement should serve as a model for other cities discharging stormwater into the Bay. ■

Issuance of Final 'Multi-Sector' Permit Still Pending As Consultation Starts on Endangered Species Impacts

U.S. Environmental Protection Agency (EPA) headquarters still hopes to issue a final "multi-sector" model general permit for industrial dischargers in cooperating states by the end of December, according to an Oct. 17 interview with Gary Hudiburgh, chief of the National Pollutant Discharge Elimination System (NPDES) branch.

Meanwhile, however, EPA staff have cited consultations with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) over the permit's potential effects on endangered species as a "wild card" that could postpone the final permit nearly indefinitely.

Formal Endangered Species Act consultations between the agencies began Oct. 5 and were still underway at press time.

On Oct. 17, stormwater program chief William Swietlik said that although the final permit obviously will be "delayed" past the previously anticipated issuance date, NPDES staff were nearly finished with redrafting the fact sheet and selected points in the permit itself in response to public comments.

"We have gone through all the major issues and the minor issues raised in the comments, and we know pretty much what we want to do," Swietlik

said. However, he added, consultation over the Endangered Species Act was the "wild card" that might delay the final permit even more.

A source close to EPA, who declined to be named, said in October that the two wildlife agencies primarily are worried that federally listed endangered and threatened species or their critical habitats could be adversely affected by structural controls, such as wet detention ponds, that the permit may require for some facilities.

According to this source, wildlife officials are concerned that stormwater detention ponds could attract birds to toxic pollutants, for example, or deprive downstream wetlands of needed stream flow.

The source added, however, that FWS is not particularly concerned about source controls of stormwater pollution, which EPA generally favors over structural controls.

EPA and the wildlife agencies, the source said, therefore might eventually agree on promoting stormwater source controls where possible and requiring only those dischargers that use structural controls to certify whether they affect listed species. At press time, it was unclear whether this proposal is under formal discussion. ■

TPG Offers Multi-Sector Workshops

Thompson Publishing Group, in conjunction with John Whitescarver of JPW Group, has scheduled three workshops in January covering EPA's final "multi-sector" permit rule.

The workshops will be held in the Washington, D.C. area, and will offer in-depth discussion and analysis of sector-specific permit requirements and comparisons to EPA's general permit. The workshop dates are:

- Jan. 11, 1995 — Industry Sectors 1-8
- Jan. 12, 1995 — Industry Sectors 9-20
- Jan. 13, 1995 — Industry Sectors 21-31

Fees for each workshop are \$295 for *Stormwater Permit Manual* subscribers; \$395 for nonsubscribers. Workshop fees include workshop materials, lunch and refreshments.

Registration and payment must be received by Nov. 30, 1994. For more information, call (202) 872-4000.

To register, complete form and mail to:

Thompson Publishing Group
Attn: Stormwater Workshops
1725 K Street N.W., Suite 700
Washington, DC 20006

or call
(202) 872-4000

Yes, please sign me up for the following workshop(s):

Jan. 11, 1995; Sector _____

Jan. 12, 1995; Sector _____

Jan. 13, 1995; Sector _____

- \$295 Subscriber \$395 Nonsubscriber
 \$195 Add'l subscriber \$295 Add'l Nonsubscriber

Check enclosed (payable to Thompson Publishing Group)

Charge my: Mastercard/VISA American Express

Account # _____ Exp. _____

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (_____) _____

Fax (_____) _____

Signature _____

'Phase II' Permitting Moratorium Expires—For Now

At *Bulletin* press time, environmentalists and representatives of the nation's smaller cities apparently have reached agreement on legislation extending Congress's moratorium on the stormwater permitting of currently unregulated, "Phase II" dischargers. Congress, however, has adjourned without enacting the extension bill into law.

Technically speaking, Congress's failure to extend the moratorium could expose potential Phase II dischargers to legal liability, according to former U.S. Environmental Protection Agency (EPA) stormwater official John Whitescarver, who now heads his own consulting firm.

Under the Clean Water Act, Whitescarver said, point-source dischargers of stormwater who do not now have National Pollutant Discharge Elimination System (NPDES) permits are discharging pollutants without a permit. In theory, this is a violation of the law and punishable by large fines. But in fact, Whitescarver said, this does not necessarily mean that potential Phase II dischargers are in real danger.

"No judge in this country is likely to convict you of discharging without a permit when, through no fault of your own, EPA has failed to issue a permit and therefore no permit is available to you," Whitescarver noted.

EPA Reassures Potential Permittees

Michael Cook, director of EPA's Office of Wastewater Enforcement and Compliance, has been quoted in the trade press as reassuring potential Phase II permittees that EPA has no intention of taking enforcement actions against them for now. This policy also has been formally outlined in an Oct. 18 memo from Cook and Robert Van Heuvelen, director of EPA's Office of Regulatory Enforcement, to EPA regional offices and NPDES-delegated states.

Under the Clean Water Act, the memo notes, EPA and the NPDES states are "unable to waive the statutory requirement that point source discharges of pollutants to waters of the United State need an NPDES permit." Moreover, citizen suits can be brought against Phase II point sources that discharge stormwater without permit coverage after Oct. 1, 1994.

Nevertheless, the memo points out, EPA's current stormwater enforcement policy emphasizes actions against Phase I dischargers that have failed to apply for permits—not against any Phase II facilities.

In Connecticut, where Phase II permitting could soon become a reality, stormwater official Chris Stone said a few months ago that a draft state general stormwater permit for retail and commercial sites could be published by the end of 1994.

More recently, however, Stone said this proposed general stormwater permit for commercial businesses has been delayed, and that it is unlikely to be available until next January (see related story, p. 1).

OMB to Receive Formal Phase II Report Soon

On Oct. 17, Gary Hudiburgh, NPDES branch chief at EPA, said that EPA's report to Congress on Phase II permitting, which has been under preparation for some time, probably would be officially submitted to the Office of Management and Budget (OMB) for review "within one or two weeks"—that is, by early November.

Legally, EPA can't waive statutory deadlines; but the risk to dischargers probably is slight.

Cook said in September that a "draft" Phase II report had already been sent to OMB (see *Bulletin*, October 1994, p. 7). However, Hudiburgh said, OMB in mid-October had only seen this draft document, and the report itself still had not been submitted.

Background on the Phase II Issue

A moratorium on stormwater permitting of small cities, retail and commercial business and other potential Phase II sources was enacted by Congress in 1987. Under the 1987 Water Quality Act, the moratorium was originally scheduled to end Oct. 1, 1992. However, thanks in large part to lobbying by small cities that could face regulation under Phase II, Congress subsequently extended this to Oct. 1, 1994.

When Oct. 1 came and went without the date being moved again, Sen. Max Baucus, D-Mont., chair of the Senate Environment Committee, and Sen. John Chafee, R-R.I., the committee's ranking minority member, joined in introducing S 2507, a bill to extend the moratorium.

According to Diane Cameron of the Natural Resources Defense Council (NRDC), who reportedly contributed to the writing of S 2507, Senate staff members invited not only NRDC, but also representatives of the National League of Cities, the National Conference of Mayors and the National Association of Flood and Stormwater Management Agencies to discuss what the bill should contain.

After the interest groups reached tentative agreement on the legislation, Sen. Chafee and Sen. Baucus introduced S 2507 on Oct. 5. However, Congress adjourned on Oct. 8 for the fall elections without enacting the bill. It was unclear at press time whether Congress will revisit S 2507 when it reconvenes after the elections. ■

Storm Warnings

Stormwater-Related News in Capsule Form

EPA, New York, Connecticut Sign Cleanup Pact for Long Island Sound. On Sept. 26, the U.S. Environmental Protection Agency (EPA) and the states of New York and Connecticut signed a comprehensive conservation and management plan (CCMP) for the cleanup of Long Island Sound, according to an EPA news release. One of the main short-term objectives of the plan is reducing nitrogen levels in sewage treatment plant discharges into the Sound. Low levels of dissolved oxygen caused by excessive nitrogen inputs are one of the Sound's most urgent problems, according to EPA. The CCMP also lists five other "priority" problems: toxic contamination, pathogens, floatable debris, the impact of water quality problems and habitat degradation on living resources, and land use and development patterns leading to habitat loss and water quality degradation.

Pollution Prevention Plan Classes for Marinas Set. The International Marina Institute (IMI) has scheduled several workshops for marina operators on how to write stormwater pollution prevention plans (SWP3s). The instructor will be environmental consultant John Whitescarver, who has written extensively about stormwater and marinas. Workshops are scheduled for **Dec. 1**, Tampa, Fla.; **Dec. 6**, Daytona Beach, Fla.; **Dec. 10**, Dallas; **Jan. 4**, St. Louis; **Jan. 5**, Cleveland; **Jan. 6**, Detroit; **Jan. 19**, Newark, N.J.; **Jan. 20**, Boston; **Jan. 26**, Las Vegas and **Feb. 13**, Ft. Lauderdale, Fla. IMI also will consider scheduling special SWP3 workshops on request. Fees are \$250 for IMI members, plus \$195 for each added person from a given marina; and \$295 for non-members, plus \$250 for each added

person. For more information, contact the Marina Institute at (401) 294-9558.

New Screening Product for Construction Site Inlets, Catch Basins Announced. Foss Environmental Services Co. of Seattle has developed a cheap, innovative product for reducing the flow of materials into stormwater inlets at construction sites, according to a company press release. The product, whose trademark is StreamGuard™, is essentially a filter bag made of nonwoven polypropylene geotextile fabric, Foss indicates. Unlike flat geotextile screens that many regulators advise against using for inlet protection, StreamGuard™ is equipped with overflow holes near the top of the bag, which the company claims help to prevent ponding during high-inflow conditions. The reusable filter bag also can be removed easily when filled, Foss implies, thereby reducing the risk of spilled sediment falling down the inlet. One version of StreamGuard™ is for catching sediment; another is especially designed for oil and grease. For more information, contact Foss Environmental Services Co., 7440 West Marginal Way South, Seattle, Wash. 98108-4141; (206) 767-0441.

Product Information Sought. If you have a product or service announcement of potential interest to our readers, please send it to Andy Feeney, Thompson Publishing Group (TPG), 1725 K St. N.W., Washington, D.C. 20006. We welcome such announcements but will publish them only as time and space permit. TPG does not vouch for the accuracy of non-TPG product claims reprinted in the *Bulletin*. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$349
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$349
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
7711 Anderson Rd., Tampa, Fla. 33634-3039

Call Us Toll-Free At 1-800-879-3169

J4NSTRM

Stormwater Permit Manual

Bulletin

Volume 4, Number 4

October 1994

STATE SURVEY:

North Carolina Issues 5 New General Permits

Five new industry-specific general stormwater permits have been issued by the North Carolina's Department of Environmental, Health and Natural Resources (DEHNR), according to a written communication from DEHNR official Colleen Sullins. The five new general permits became effective Sept. 1. They cover stormwater point-source discharges associated with the following sources:

- ready-mixed concrete facilities;
- asphalt paving mixture and block facilities;
- textile mill products;
- furniture and fixtures facilities and wood kitchen cabinet facilities; and
- ship and boat building and repairing facilities and marinas, including marina areas where vehicle

maintenance and boat building and equipment cleaning operations occur.

According to Sullins, each of the five permits covers not only the activities specific to the regulated industry, but also stormwater discharges from vehicle maintenance activities at regulated sites. In addition, the state general permit for ready-mixed concrete facilities covers rinse waters associated with such facilities.

A new draft general permit also has been prepared for stormwater and wash water point-source discharges associated with general aviation facilities in North Carolina, but had not been issued by press time. The draft permit would cover vehicle maintenance, equipment cleaning and de-icing operations at general aviation facilities, but specifically would not cover hub airports.

(Continued on page 2)

LITIGATION:

NRDC Sues LA County; Pontiac Case Continues

In major stormwater litigation news, the Natural Resources Defense Council (NRDC) sued the County of Los Angeles Sept. 1 for alleged noncompliance with the county's municipal separate storm sewer system (MS4) permit.

Meanwhile, litigation continues before a U.S. Environmental Protection Agency (EPA) administrative law judge over a closed General Motors plant in Pontiac, Mich. EPA alleges that the company has violated its effluent limits for lead, zinc and copper in an old individual water pollution permit for the shuttered factory, but General Motors contends that

(Continued on page 8)

Inside this issue. . .

- Guest Editorial: New Jersey Regulators Court Business 4
- EPA Issues Draft Policy on MS4 Permits, 1990 Census Gains 5
- Tulsa Gets Final MS4 Permit 6
- Phase II Report Goes to OMB 7
- Workshops on Final 'Multi-Sector' Permit Scheduled for January 8

State Survey

(Continued from page 1)

Group, Individual Applicants Also Receive State's Attention

North Carolina is using several methods to process members of group applications, DEHNR indicates. Rather than waiting to issue a "multi-sector" general permit based on the U.S. Environmental Protection Agency's (EPA) proposed "multi-sector" permit, DEHNR moved last spring to cover approximately 1,200 group members under 13 industry-specific state general permits issued in 1992.

"At least" 1,100 other group applicants probably can be permitted under the state's six new industry-specific permits, according to DEHNR. State regulators plan to send letters to such group applicants this fall requesting them to file properly prepared notice of intent forms accompanied by application fees.

Some 259 industrial facilities have filed individual applications for stormwater permits in North Carolina. All but 164 have been folded into previously existing state general permits, DEHNR indicates. Some of the remainder will be covered under the six new general permits, but others should receive individual permits this fall.

Other highlights of this month's state survey are as follows:

Georgia Eyes Effluent Limits In Construction General Permit

The Georgia Department of Natural Resources (DNR) expects to issue a new construction site stormwater general permit this fall with quarterly monitoring requirements and numeric effluent limits for turbidity, DNR stormwater official Will Salter said.

The anticipated final permit should have an effective date of Nov. 1, 1994, and will limit turbid-

ity from sedimentation at affected construction sites to no more than 100 nephelometric turbidity units (NTUs) for nontrout streams and no more than 50 NTUs for trout streams, Salter predicted.

The limits reflect the provisions of Georgia's revised Erosion and Sedimentation Law of 1975, Salter said. As amended, the law limits sedimentation by regulated land-disturbing activities to the turbidity levels just mentioned, or to whatever limits the state Board of Natural Resources adopts in response to a scientific study of the subject to be conducted by the state Board of Regents.

The final Board of Regents study is not yet published, and the Board of Natural Resources may or may not abide by its recommendations, Salter said. But if and when state sedimentation limits are changed, DNR will change its construction site permit accordingly.

Comments on DNR's proposed permit, however, indicate that the final permit may be challenged legally by Georgia conservationist Terence Hughey. Hughey successfully overturned DNR's previous construction site general permit in a lawsuit decided last year.

Kentucky Rejects 'Multi-Sector' Permit

Kentucky will not use the federal "multi-sector" model general permit at this time, state stormwater official Jeff Hippe said. The state wrote group organizers on Aug. 26 stating that their members must apply for coverage under one of seven state general permits within 90 days.

Michigan Hires New Stormwater Coordinator

The Michigan Department of Natural Resources (DNR) has hired Susan Benzie, an aquatic biologist who formerly coordinated the Detroit River remedial action plan for cleanup activities along the river, as coordinator for the state stormwater program.

In a recent interview, Benzie said her primary function will be to facilitate and implement "team



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Senior Publications Director, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Administrative Services Manager, Ted P. Metzler; Laurie Clark, Production Coordinator. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk, Jr., Attorney at Law, Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Attorney at Law, Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 7711 Anderson Rd., Tampa, Fla. 33634-3039. Please allow four weeks for change of address.

Copyright ©1994 by Thompson Publishing Group; 1725 K Street, N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 7711 Anderson Rd., Tampa, Fla. 33634-3039. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

decision-making," not serve as czar over the program.

With perhaps eight to 10 DNR staffers regularly attending meetings of the state stormwater implementation team, Benzie said, "Management wanted someone at the end of the table facilitating the meetings and making sure all the loose ends are tied up. We make the decisions as a team; then I follow up to make sure the decisions are implemented."

Under the new structure, DNR stormwater officials David Drullinger and Gary Boersen will continue to play "very significant roles" in interpreting the regulations at the state level, Benzie said. DNR district offices will issue certificates of coverage to permittees, conduct inspections of industrial facilities and construction sites, and undertake initial enforcement actions.

In other Michigan news, DNR has produced a training videotape for use by construction sites seeking to get their stormwater operators certified under state law. It should be available this fall from DNR district offices.

New Jersey Checking Errors in 'Nasty Grams'

The New Jersey Department of Environmental Protection (NJDEP) mistakenly sent a few "nasty grams" this summer to industrial facilities that shouldn't have received them, state stormwater official Ed Frankl said. The "nasty grams" warned recipients to file for stormwater general permit coverage or file notices of nonapplicability, or face possible fines (see *Bulletin*, June 1994, p. 1).

"More than 10 but less than 100" facilities received the notices inappropriately, Frankl indicated. NJDEP does not want to antagonize cooperating facilities and now is carefully rechecking its database before proceeding further with the penalty warnings, he said.

In other state news, Frankl said NJDEP planned to publish a draft industry-specific general permit for scrap metal recycling and automobile dismantling facilities by early October. A second draft permit for ready-mix concrete facilities should be available a month or two later. (For a related guest editorial on New Jersey's program, see page 4.)

Pennsylvania Eyes Revision Of Industrial General Permit

State stormwater staffer Cuong Vu said in mid-September that he had completed a draft revision of the state's industrial stormwater general permit, but that Department of Environmental Regulation attorneys had not yet cleared it for publication. The proposed revision probably will be published in the Oct. 22 *Pennsylvania Bulletin*, Vu said.

Vu said the proposal is likely to include an option giving airports and their tenants the ability

to become "co-permittees" with joint responsibilities for implementing stormwater controls. Vu predicted that it also will recommend that stormwater samplers be required to take grab samples only, rather than composite samples, and he said it will explain clearly that toxics release inventory reporters under the federal Superfund law are subject to certain state stormwater provisions only if they also discharge "water priority" chemicals. ■

Statement of Ownership, Management and Circulation

1. Title of Publication: Stormwater Permit Manual (0008-384)
 2. Date of Filing: October 1, 1994
 3. Frequency of Issue: Monthly
 - (a) No. of Issues Printed Annually: 12
 - (b) Annual Subscription Price: \$398
 4. Loc. of Known Office of Publication: 1725 K St. N.W., 7th Floor Wash., D.C. 20006
 5. Location of the Headquarters of General Business Offices of Publisher: 1725 K St. N.W., 7th Floor; Wash., D.C. 20006
 6. Name and Address of Publisher, Editor, Managing Editor:
 - (a) Lucy Caldwell-Stair, 1725 K St. N.W., 7th Floor; Wash., D.C. 20006
 - (b) Andy Feeney, 1725 K St. N.W., 7th Floor; Wash., D.C., 20006
 - (c) Jill Talbot, 1725 K St. N.W., 7th Floor; Wash., D.C. 20006
 7. Owner: Thompson Publishing Group, Inc.: Richard E. Thompson, 1725 K St. N.W., 7th Floor; Wash., D.C. 20006
 8. Known Bondholders, Mortgages and other Security Holders: None
- | 10. Extent and Nature of Circulation: | Avg. # Copies Each Issue During Preceding 12 Months | Act. # Copies of Single Issue Published Nearest to Filing Date |
|--|---|--|
| A. Total No. Copies (Net Press Run) | 3025 | 2300 |
| B. Paid and/or Requested Circulation | | |
| 1. Sales through dealers and carriers, street vendors and counter sales | 0 | 0 |
| 2. Mail Subscription (Paid and/or requested) | 2355 | 1815 |
| C. Total Paid and/or Requested Circulation (Sum of 10B1 and 10B2) | 2355 | 1815 |
| D. Free Distribution by Mail, Carrier or Other Means. Samples, Complimentary and Other Free Copies | 22 | 22 |
| E. Total Distribution (Sum of C and D) | 2377 | 1837 |
| F. Copies Not Distributed | | |
| 1. Office use, left over, unaccounted, spoiled after printing | 648 | 463 |
| 2. Return from News Agents | 0 | 0 |
| G. TOTAL (Sum of E, F1 & 2—should equal net press run shown in A) | 3025 | 2300 |
11. I certify that the statements made by me above are correct and complete. Lucy Caldwell-Stair, Publisher

New Jersey Alters Runoff Rules to Lure Business

By Susan Hoffman

Long saddled with the reputation of having some of the toughest environmental laws in the country, the Garden State of New Jersey now is actively trying to lure business with a more reasonable approach to environmental regulation. Without sacrificing environmental quality, New Jersey, in a number of areas, is significantly reducing the regulatory burdens which it places on the private sector and is being more responsive to business needs. Nowhere is this more apparent than in the area of stormwater regulation.

"The Garden State is now actively trying to lure business with a more reasonable approach to environmental regulation."

Long before the Clean Water Act required it, New Jersey led most states in putting an active industrial stormwater permitting program into place. Often draconian in scope, the New Jersey program issued permits for combined cooling water and stormwater discharges and included in these permits effluent limitations based on a 1978 U.S. Environmental Protection Agency memorandum that provided no consideration for site-specific conditions or realistic expectations.

In practice, although the effluent limitations in those first-generation permits were achievable by combined discharges of cooling water and stormwater, many companies found that removing the cooling water meant that the stormwater could no longer meet the permit limits.

Many stormwater dischargers violating the limits were assessed large penalties—some of them totalling six figures. Facility operators who thought that they were employing environmentally correct technologies (such as total recycling of cooling water) found instead that they faced large fines every time it rained.

Recognizing the inequity involved in levying large penalties on stormwater dischargers, the New Jersey Department of Environmental Protection (NJDEP) has begun to adopt a new philosophy that recognizes real-world expectations in stormwater control.

Chief among the changes implemented in New Jersey has been NJDEP's recent move to convert many of its old individual stormwater permits into permits without specific numeric effluent limitations, and to focus the new permits on the implementation of best management practices.

NJDEP also has been developing industry-specific general permits that recognize the discharge characteristics unique to various manufacturing categories and that include stormwater pollution prevention plan (SWP3) requirements addressing specific conditions and practices within each industry. Moreover, NJDEP now is trying to eliminate much of the meaningless "boilerplate" language prevalent in many of its earlier permits.

In addition, because New Jersey is plagued with the effects of acid rain, NJDEP has begun incorporating provisions into its stormwater permits allowing the pH of a facility's stormwater discharge to be as low as that of rainwater falling on the site.

In fact, NJDEP issued a proposal in August to modify almost 150 individual stormwater permits *en masse* to state that pH values below the allowable range will not be considered violations, if a discharger can show that the pH of the rainfall was as low as, or lower than, that of the discharge.

Under a proposed change to 150 individual permits, stormwater discharges can be as acidic as rainwater—even if the pH is below previous state limits.

Rainwater pH can be as low as 3.8 or 4.0 standard units in New Jersey. End-of-pipe discharges that have pH values no lower than the pH of the rain—even if this is lower than the pH 6.0 limit typically found in NJDEP permits—will not be considered permit violations.

Of course, it is the discharger's responsibility to collect and analyze a rainwater sample during the same storm event that causes a discharge with such a low pH value, preferably within the same time frame in which the discharge sample is collected.

Overall, NJDEP's new stormwater regulations promise to streamline administrative practices, reduce reliance on unrealistic, end-of-pipe numeric standards, and focus on preventing stormwater contamination through the creative and vigorous use of SWP3s. ■

Susan Hoffman, a member of the Stormwater Permit Manual's Editorial Board of Advisors, is a partner with the law firm of Cohen, Shapiro, Polisher, Shiekman and Cohen in Lawrenceville, N.J.

MUNICIPAL STORMWATER PERMITTING:

EPA Drafts Policy on MS4s, 1990 Census Gains

Municipalities whose populations grew to more than 100,000 between 1980 and 1990 would face new stormwater permit application and compliance deadlines under a draft policy memo that has been issued by the U.S. Environmental Protection Agency (EPA).

According to the draft memo, some 30 cities around the nation saw their populations grow from less than 100,000 to more than 100,000 between the 1980 and the 1990 Decennial Census. The unincorporated populations of 12 counties also exceeded the 100,000 level, the threshold for eligibility under the 1990 stormwater regulations, during the decade. However, the 1990 Census recorded the populations of seven municipalities declining to below the 100,000 level.

The Water Quality Act of 1987 requires stormwater permitting for municipal separate storm sewer systems (MS4s) only if they serve populations of 100,000 or more. To comply with the 1987 law, the draft memo indicates, cities and counties that grew to more than that size in the 1990 Census should be required to submit "part 1" stormwater permit applications within 18 months of being notified of their eligibility by regulatory authorities.

MS4 operators in such cities and counties should submit "part 2" stormwater applications within 30 months of being notified of their eligibility, the draft memo adds. EPA regions and states delegated to administer the National Pollutant Discharge Elimination System (NPDES) permitting program should issue permits to these new "medium" MS4s within one year of receiving applications, and the MS4s should comply with their permit conditions within three years of being permitted.

"EPA recognizes that in many cases, new medium MS4s have already been notified by their permitting authorit(ies) to submit stormwater permit applications with specific deadlines," the draft memo notes. It suggests that such newly eligible MS4s "continue to meet the deadlines established by their respective permitting authorit(ies)."

A few MS4s whose populations grew to more than 100,000 during the 1980s are expected to resist stormwater regulation, the draft memo adds. It recommends that state and federal regulators address such recalcitrant municipalities under Section 402 (p)(2)(E) of the Clean Water Act, which allows the permitting of any discharge "for which the [EPA administrator] or the State, as the case may be, determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States."

The seven MS4s whose service areas dropped to less than 100,000 population in the last census are not expected to seek NPDES stormwater permits "at this time," the memo notes. However, "states and regions may elect to use their designation authority under Section 402 (p)(2)(E) ... to require these municipalities to seek coverage."

EPA's draft memo was circulated by Michael Cook, director of the Office of Wastewater Enforcement and Compliance, in May. It had not yet been adopted in final form by late August, according to sources in the the EPA stormwater program. For a list of the 30 cities and 12 counties that may be affected by the memo, see the chart on this page. ■

MUNICIPALITIES WHOSE 1990 CENSUS GAINS MAY SUBJECT THEM TO STORMWATER PERMITS

Cities With Populations That Grew To More Than 100,000 in the Census

STATE	CITY	STATE	CITY
Arizona	Glendale		Santa Rosa
	Scottsdale		Santa Clarita
California	Chula Vista		Simi Valley
	El Monte		Thousand Acres
	Escondido		Vallejo
	Hayward	Florida	Tallahassee
	Inglewood	Illinois	Springfield
	Irvine	Kansas	Overland Park
	Moreno Valley	Massachusetts	Lowell
	Oceanside	Oregon	Salem
	Ontario	South Dakota	Sioux Falls
	Orange	Texas	Abilene
	Pomona		Laredo
	Rancho Cucamonga		Mesquite
	Salinas		Plano

Counties With Unincorporated Urbanized Populations That Grew To More Than 100,000 in the Census

STATE	COUNTY
Colorado	Arapaho
Florida	Lee
	Manatee
	Pasco
	Seminole
Georgia	Fulton
	Gwinnett
Louisiana	East Baton Rouge
Maryland	Howard
Virginia	Prince William
Washington	Spokane
	Clark

MUNICIPAL PERMITTING:

Tulsa, Region VI Agree on Final MS4 Permit Terms

After months of wrangling, Tulsa, Okla., officials and Region VI of the U.S. Environmental Protection Agency (EPA) at last have reached agreement on a final municipal separate storm sewer system (MS4) permit for the city.

Region VI issued a final MS4 permit to Tulsa on August 26, hailing it as "the first federal permit of its kind in the country" and stating that the permit's terms are "based, in large part, on the city's existing stormwater program and a civic commitment to improving stormwater quality."

City officials earlier objected to a Region VI requirement that Tulsa must provide "readily available" household hazardous waste (HHW) disposal services to residents. At one time, the city suggested that Region VI was trying to force it to provide curbside HHW pickups on request—a very costly proposition.

Recently, officials with Camp Dresser McKee, engineering consultants for the city, also suggested that the regional authorities had not taken the specific applications of individual MS4s into account in proposing permits for Tulsa and other Region VI cities (see *Bulletin*, September 1994, p. 5).

According to Tulsa Public Works Department official Bob Poole, however, "We feel that we can definitely live with this [final] permit. We feel there's flexibility in it, and we feel that its provisions reflect conditions in Tulsa, and not those of some other city."

According to Monica Burrell, a permit writer for Region IV, the final permit requires Tulsa to provide semiannual HHW collection events for residents for three years, as an interim measure, "until they develop some kind of permanent collection program."

In another requirement that could be unique to Region VI, Burrell added, the region will require Tulsa and other MS4s to conduct annual sampling for a variety of stormwater parameters. However, the MS4s may choose to conduct "rapid bio-assessments" of stream flora and fauna in years two, three and five of their five-year permits, and only do chemical-specific monitoring in years one and four, as a less costly monitoring option.

Tulsa is the first of 27 MS4s for which Region VI must issue final permits, Burrell noted. She said the regional office hopes to have draft permits available for about a dozen "large" MS4s during this fiscal year. ■

New Manual Section Lists Impacts of MS4 Permits On Local Business, Industrial Sites, Developers

The stormwater permits that state and federal regulatory authorities are writing for "large" and "medium" municipal separate storm sewer systems (MS4s) may have significant implications for industrial facilities, large and small construction sites and commercial businesses, according to a new addition to Tab 400 of *The Stormwater Permit Manual*.

The new section is co-authored by Steven Veal, Associate Principal and Division Manager for Environmental Services for Carter & Burgess Inc., and technical writer Daniel De Wilde. The section includes a checklist of possible regulatory requirements that industrial dischargers, construction site operators and commercial businesses could face as MS4 stormwater permits go into effect.

Based on a review of federal regulations, as well as a detailed examination of five final MS4 permits and 10 MS4 permit applications, the Veal and De Wilde article predicts that "at a minimum, municipalities will monitor compliance with the federal stormwater permit program."

In some cases, the authors state, MS4s can be expected to seek out and possibly impose penalties on stormwater dischargers who have not filed notices of intent to seek general permit coverage. In other cases, MS4s may review monitoring data and stormwater pollution prevention plans (SWPs) submitted by industrial dischargers.

The permits about to be issued to eligible MS4s around the nation also have considerable potential to impose new burdens on small construction site operators, the new *Manual* section suggests. It explores what those permitting burdens are likely to be, in addition to outlining probable MS4 regulatory requirements for larger construction sites and commercial businesses.

The new section concludes with a discussion of how regulated facilities may seek to minimize MS4 stormwater permitting costs, and what Congress and the U.S. Environmental Protection Agency (EPA) may do in addressing smaller MS4s under "Phase II" of the stormwater program. The new section is included in this month's update, as an addition to the existing material in Tab 400. ■

Storm Warnings

Stormwater-Related News in Capsule Form

- **Report on "Phase II" Permitting Goes to OMB.** By mid-September, a draft of EPA's final report to Congress on the regulation of "Phase II" (currently exempted) stormwater dischargers had been sent to the Office of Management and Budget (OMB) for review, according to EPA official Michael Cook. Although details will not be released until OMB approves the report, Cook said the recommendations essentially echo those of the Clinton administration's Clean Water Initiative or "Green Book," which calls for stormwater permitting to be extended in some 396 "urbanized areas" identified by the Census Bureau. Outside these areas, EPA hopes to address Phase II sources primarily through an enhanced nonpoint source program, as the Green Book suggests. However, Cook said, EPA hopes to bring "all the stakeholders together" in an "inclusionary process" to hammer out the details of Phase II regulation, so ultimately it may differ slightly from the Green Book recommendations.
- **Work Continues on EPA "Multi-Sector" Permit.** Stormwater staffers at the U.S. Environmental Protection Agency (EPA) still were working on preparing a final "multi-sector" model general permit in mid-September, according to Michael Cook, director of EPA's Office of Wastewater Enforcement and Compliance. According to other sources, National Pollutant Discharge Elimination System (NPDES) staff concerned with stormwater have largely finished work on the draft permit, but questions remain to be settled over its compatibility with the Endangered Species Act and the National Historic Preservation Act. To address such concerns, Cook said in an interview, EPA has written a report on all endangered and threatened species likely to be affected by stormwater runoff and has sent copies to the U.S. Fish and Wildlife Service and National Marine Fisheries Service, which oversee federal actions that could adversely affect listed species.
- **72 MS4 Permits Issued by Mid-September, EPA Reports.** By mid-September, state and regional authorities had issued 72 final stormwater permits to municipal separate storm sewer systems (MS4s), according to EPA official Michael Cook. Under its current stormwater program, EPA must issue a total of some 275 municipal permits covering approximately 800 communities.
- **Region IV Proposes to Reissue Florida General Permit for Stormwater, Groundwater Contaminated by Petroleum Fuels.** In a Sept. 19, 1994, notice (59 FR 47862), EPA Region IV has proposed to reissue an NPDES general permit for Florida facilities discharging groundwater and stormwater that are incidental to cleanup operations involving groundwater that has been contaminated by gasoline, diesel fuel and/or aviation fuel. For more information, contact Region IV environmental engineer Larry Cole at (404) 347-3012, ext. 2948. Comments should be sent by Oct. 19 to Office of Public Affairs, EPA Region IV, 345 Courtland St. N.W., Atlanta, Ga. 30365, Attention: Lena Scott, Public Notice Coordinator.
- **Louisiana Firm Announces \$545,000 Stormwater Project.** Marine Shale Processors Inc. of Morgan City, La., was scheduled to begin construction in September on a \$545,000 stormwater clarifier project that it hopes to have in operation by early December, according to the September issue of the company newsletter *The Communicator*. According to the newsletter, the clarifier will employ a Lamella Gravity Settler/Thickener System purchased from the Parkson Corp. of Fort Lauderdale, Fla. The system should treat up to 4,000 gallons of stormwater per minute and reduce suspended solids in treated runoff to 22 parts per million. For details, contact Marine Shale Processors at (800) 872-6774.
- **Sampling Equipment for Rent.** "All of the stormwater sampling equipment necessary to obtain a representative sample" is available for rent from Keck Instruments Inc., according to a recent brochure from the company, a subsidiary of Environmental Science and Engineering. In addition to renting automatic samplers, velocity meters, flow monitors, stream gauges, weirs and flumes, Keck promises to provide "complete technical assistance including training, sampling procedures, and permit applications." For more information, contact Keck Instruments Inc., P.O. Box 345, 1099 W. Grand River Ave., Williamston, Mich. 48895; (517) 655-5616 or (800) 542-5681.
- **Product, Service Information Sought.** If you have a product or service of potential interest to *Bulletin* readers, please send a brief description to Andy Feeney, Thompson Publishing Group (TPG), 1725 K St. N.W., Washington, D.C. 20006. We are searching for product and service announcements to print as a service to subscribers, but will publish such items only as time and space permit. TPG does not assume responsibility for the accuracy of non-TPG product claims reprinted in the *Bulletin*. ■

Litigation

(Continued from page 1)

the permit was invalid when issued and that many of the alleged violations were caused by airborne deposition of metals or the interaction of acid rain with the facility's metal roof.

NRDC Alleges County Failed At Monitoring, Runoff Controls

According to NRDC's complaint against the County of Los Angeles, filed with the U.S. District Court for the Central District of California, stormwater pollution from "roads, parking lots, industrial facilities, construction sites, and other areas which the county controls, regulates, licenses or otherwise holds control over" is flowing into local receiving waters, often without treatment.

The county is responsible under its 1990 MS4 permit for developing a monitoring program for stormwater quality within the permit's jurisdiction, the suit further alleges.

According to NRDC's complaint, however, the county has failed to prepare and implement a stormwater monitoring program, adopt adequate legal authority to regulate illicit discharges and illicit connections, and implement best management practices and other measures to "prohibit the discharge of non-stormwater and to reduce stormwater pollution."

Donna Guyovich, a spokesperson for the Los Angeles County Department of Public Works, said Sept. 20 that the county was still reviewing NRDC's complaint and had not yet prepared a legal reply to

it. "It is quite lengthy, and we have not been able to evaluate all of their allegations at this time," Guyovich said.

Joining NRDC in the case are Santa Monica BayKeeper, Inc. and Terry Tamminen, officially known as "BayKeeper," who lives on a boat and works and recreates in Santa Monica Bay.

GM, EPA Trade Motions In Pontiac Stormwater Case

In the Pontiac case, EPA filed a motion for accelerated decision on July 27, contending that "there is no genuine issue of material fact" in the case and that EPA is entitled to a judgment as a matter of law. The objections General Motors has raised about airborne deposition or acid rain's interaction with the roof causing the alleged violations, and its contention that its permit was invalid when issued, are "immaterial" under the strict liability provisions of the Clean Water Act, EPA contended (see *Bulletin*, August 1994, p. 7).

In reply, General Motors has filed a cross motion for partial accelerated decision, requesting that the judge find that it has not discharged "pollutants" from the plant as defined under the Clean Water Act.

The company also contended that its permit, issued in 1988, was void "ab initio" because of a provision in the 1987 Water Quality Act banning stormwater permitting for all but specified classes of facilities. This legally dubious permit expired in 1990, General Motors added, and because the company did not renew it in time, it no longer applied to the factory when the alleged violations occurred later. ■

TPG Offers Multi-Sector Workshops

Thompson Publishing Group, in conjunction with John Whitescarver of JPW Group, has scheduled three workshops in January covering EPA's final "multi-sector" permit rule.

The workshops will be held in the Washington, D.C. area, and will offer in-depth discussion and analysis of sector-specific permit requirements and comparisons to EPA's general permit. The workshop dates are:

- Jan. 11, 1995 — Industry Sectors 1-8
- Jan. 12, 1995 — Industry Sectors 9-20
- Jan. 13, 1995 — Industry Sectors 21-31

Fees for each workshop are \$295 for *Stormwater Permit Manual* subscribers; \$395 for nonsubscribers. Workshop fees include workshop materials, lunch and refreshments.

Registration and payment must be received by Nov. 15, 1994. For more information, call (202) 872-4000.

To register, complete form and mail to:

Thompson Publishing Group
Attn: Stormwater Workshops
1725 K Street N.W., Suite 700
Washington, DC 20006

or call
(202) 872-4000

Yes, please sign me up for the following workshop(s):

- Jan. 11, 1995; Sector _____
Jan. 12, 1995; Sector _____
Jan. 13, 1995; Sector _____

- \$295 Subscriber \$395 Nonsubscriber
 \$195 Add'l subscriber \$295 Add'l Nonsubscriber

Check enclosed (payable to Thompson Publishing Group)

Charge my: Mastercard/VISA American Express

Account # _____ Exp. _____

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Fax (____) _____

Signature _____

Stormwater Permit Manual

Bulletin

Volume 4, Number 3

September 1994

STATE SURVEY:

Connecticut Eyes Draft 'Phase II' Stormwater Permit

Jumping the gun somewhat on the U.S. Environmental Protection Agency (EPA), which by law cannot issue permits for so-called "Phase II" stormwater dischargers until Oct. 1, 1994, Connecticut regulators have already begun to consider a draft "Phase II" general permit for commercial businesses—a category of dischargers currently exempt from most stormwater regulation.

According to Chris Stone of the Connecticut Department of Environmental Protection (DEP), state officials were reviewing the provisions of a draft general permit for commercial dischargers in early August. The proposed provisions of the permit are "considerably less stringent" than those of Connecticut's industrial general permit, Stone added.

"It's possible that no commercial facility will need to do stormwater sampling under the general

permit. Right now, at least, we're leaning in that direction," Stone said, adding, "The draft permit also envisions very few commercial sites having to prepare full stormwater pollution prevention plans (SWP3s). I won't say that there will be no SWP3 requirements, but the state is leaning toward requiring a much less technically sophisticated kind of SWP3 for these facilities."

Stone added that the final commercial site general permit may prescribe certain low-cost and no-cost best management plans for inclusion in a facility's SWP3, rather than giving the business owner a menu of best management practices to select from. "The aim," he said, "is to make the permit much easier to use by the average person."

Stone cautioned, however, that the commercial site general permit is not yet available in final form.

(Continued on page 2)

'PHASE II' PERMITTING:

EPA May Begin Work Soon On Its Phase II Rules

The U.S. Environmental Protection Agency (EPA) may begin work this fall on writing a permitting rule for certain classes of currently unregulated "Phase II" stormwater dischargers, Michael Cook, director of the Office of Wastewater Enforcement and Compliance, said on Aug. 17. Along with its efforts to write a proposed Phase II permitting rule, EPA may also develop a proposed general permit to cover some Phase II facilities, Cook predicted.

Under the 1987 Water Quality Act, which amended the Clean Water Act, EPA was initially prohibited from issuing stormwater permits to all

(Continued on page 8)

Inside this issue. . .

- Consultant Reviews Impact of Draft Municipal Permits 4
- EPA Says Final Multi-Sector Permit May Be Late 7
- Municipal Management Group Meeting to Focus on Stormwater 7

**Thompson
Publishing
Group**

State Survey

(Continued from page 1)

DEP hopes to publish the final permit by the end of the year, he said.

Connecticut Also Is Revising State Industrial General Permit

In other stormwater news, Connecticut in early August was in the final stages of drafting revisions to the state's industrial general permit.

The draft revisions, which should be published for public comment by early September, are intended to plug certain loopholes in the state industrial permit that now allow some industrial facilities to escape regulation, Stone said. Certain kinds of transfer stations and bulk oil storage facilities now exempt from permitting will be covered if the changes are approved.

The proposed revisions in the industrial general permit also would tighten some sampling requirements for industrial facilities, while relaxing others, Stone said.

The following are some other highlights from this month's state stormwater program survey:

Maryland Prepares Draft Industry-Specific NPDES Permits

The Maryland Department of the Environment (MDE) has prepared six draft industry-specific general permits for certain classes of National Pollutant Discharge Elimination System (NPDES) permittees, according to MDE stormwater staffer Bill Fedock.

According to Fedock, the six draft industry-specific permits would cover:

- surface coal mines;
- surface mineral mines, including quarries and sand and gravel operations;

- seafood packing facilities;
- vehicle washes/wash downs;
- discharges from wells and pump tests; and
- pollutants discharged during the hydrostatic testing of pipes and tanks.

MDE is thinking about covering another four industries under industry-specific general permits as well, Fedock added.

Other Maryland Developments

MDE changed its stormwater permit fees for construction sites last spring. The new fee structure imposes a maximum permit fee of \$2,500 on construction sites disturbing 20 acres or more of land. In addition, said MDE construction site runoff official Lois McNamara, Maryland has eliminated a previous requirement for construction site operators to include signatures from county planning review authorities on their notices of intent (NOI) forms seeking coverage under the state construction site general permit.

"The counties hated the old signature requirement," McNamara said, "It also had the effect of making developers break up their projects into stages, adding to the number of NOI forms they submitted."

Under MDE's new requirement, developers still need the approval of local planning authorities before starting construction, but the signatures on NOIs no longer are needed. Consequently, a developer only needs to submit one NOI for an entire project, regardless of how many stages it involves.

Maryland also is in the process of revising its state stormwater management regulations, which are 10 years out of date, McNamara noted. And recently, MDE has been working with local officials in Baltimore, Harford and Carroll counties to seek out developers who have obtained local grading



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Senior Publications Director, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Administrative Services Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk, Jr., Attorney at Law, Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Attorney at Law, Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 7711 Anderson Rd., Tampa, Fla. 33634-3039. Please allow four weeks for change of address.

Copyright ©1994 by Thompson Publishing Group; 1725 K Street, N.W., Suite 700; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 7711 Anderson Rd., Tampa, Fla. 33634-3039. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

permits but who have not yet submitted NOIs seeking general permit coverage.

MDE sends letters to such nonfiling developers notifying them that they may need to submit NOIs or face \$500 penalties for noncompliance, McNamara said. So far, there has been a 95 percent response rate in the three counties.

Michigan Industrial Facilities Face Sept. 1 NOI Deadline

The Michigan Department of Natural Resources (DNR) has written approximately 15,000 industrial facilities, including many members of EPA-approved group applications, requesting that they submit NOIs by Sept. 1 seeking coverage under the state's new industrial general permit.

Michigan's industrial general permit was promulgated Feb. 15, 1994, but DNR put off asking industrial dischargers to file NOIs for coverage under it for several months. According to DNR, this was largely because the state wanted DNR's district offices to administer many aspects of the program, but had not yet delegated to them authority to do this.

According to DNR, the district offices received authority on Aug. 4 to issue certificates of coverage to industrial facilities under the stormwater program. To obtain the certificates, industrial discharges need to submit not only their NOIs, but also permit fees of \$200, which they were supposed to have sent to DNR by May 15. Facilities that are late paying the fees should now include the \$200 plus any interest that has accrued since May 15, Borsen said.

Pennsylvania Eyes Revisions To Industrial General Permit

The Pennsylvania Department of Environmental Regulation (DER) is planning to revise the state's industrial general permit for stormwater dischargers in the near future, according to DER official Cuong Vu. Proposed revisions should be published in the *Pennsylvania Bulletin* by Sept. 30 or by early in October, Vu said.

West Virginia Employs Staffer To Help With Applications

In a program that state official Jim Mason says may be the first of its kind, West Virginia's Department of Commerce, Labor and Environmental Resources (DCLER) is employing a stormwater official to spend most of his time driving around the state in an unmarked car helping industrial dischargers fill out state permit applications.

DCLER employee Leroy Gilbert has a "confidentiality clause" in his job description that basically puts him on the side of the industrial discharger in cases where someone seeking permit coverage has potential enforcement problems, Mason noted in an Aug. 2 interview.

Stormwater regulation in West Virginia is "a new program, and in some cases it targets facilities that never before have been regulated," Mason said. DCLER has enforcement staffers out in the field who regularly discover nonfilers and put "polite pressure" on them to comply with the permitting program, Mason noted.

Gilbert's job, however, is almost equivalent to acting as a "private consultant" for dischargers who need to obtain permit coverage but may lack the technical knowledge to apply. Such dischargers may contact Gilbert by telephone and request his assistance when he makes his next automobile trip through the state to help nonfilers fill out the proper forms.

"He arranges to make loops across the state, and tries to get as many facilities as possible covered on each trip. He doesn't wear a uniform or drive a state car, things which tend to make a lot of people cringe," Mason noted. "He's been very, very successful in getting people into the stormwater program, especially the small Mom and Pop facilities."

Washington Prepares BMP Guidance for Two Industries

The Washington Department of Ecology (DOE) is close to issuing a final guidance document for stormwater best management practices (BMPs) for the auto recycling industry, DOE staffer Stan Ciuba said Aug. 16. The final document should be available by early September, Ciuba predicted.

A second BMP guidance document, for non-silvicultural industries that have log sorting and storage activities underway at industrial sites, also is in the works, Ciuba said. The guidance document for log sorting and storage activities will not apply to timber harvesting sites in Washington, which are excluded from NPDES regulation and covered under the state's forest practices regulations instead. Primarily, Ciuba said, the BMP guidance document will cover sawmills, paper mills and log shipping sites in the state.

Washington state stormwater permittees face a November 1994 deadline for implementing "operational" BMPs and simpler BMPs that do not require construction to install, Ciuba noted. Permittees have until November 1995 to implement BMPs identified in a facility's stormwater pollution prevention plan that require construction.

In other Washington state news, DOE now is preparing to reissue its state baseline general permit by Nov. 18, 1995, Ciuba said. State officials may decide to split the single baseline general permit into one general permit covering industry and a second permit covering construction sites, Ciuba added, but this has not been decided yet. ■

Consultant Reviews Draft Municipal Permits, Their Likely Impacts on Industrial Dischargers

Paul Traina, a member of the Stormwater Permit Manual's editorial board of advisors, is a consulting engineer with Camp Dresser McKee (CDM), a consulting engineering firm with more than 70 offices around the world. Along with a number of other CDM staff members, he has worked for the last few years on developing municipal separate storm sewer system (MS4) permit applications for CDM's municipal clients. For more than 30 years before joining CDM, Traina worked with the U.S. Environmental Protection Agency (EPA) and predecessor agencies in various regulatory positions. Before joining CDM, he was director of enforcement activities for EPA Region IV in Atlanta. The following is excerpted from a Thompson Publishing Group (TPG) interview with Traina on Aug. 3, 1994.

TPG: What kind of effort has Camp Dresser McKee been making to track the development of MS4 permits?

Traina: What we've done is prepare municipal applications, both Part 1 and Part 2 applications, for cities and counties to submit to state agencies and EPA. The problem is that so far, there's been very little feedback from the agencies. However, we have gotten some draft permits back. These include, in Region IV, a draft permit for Sarasota County, Fla. In Region V, we've seen a draft permit for the city of Columbus, Ohio, issued by the state; in Region VI, we've seen what I would term a "model" permit, which then evolved into a draft permit for the city of Tulsa, Okla.; and in Region IX, we've seen a draft permit for the city of Tucson, Ariz., and one that the state of California issued for the city of Stockton.

So we have seen some of these permits. But given that 200 or so applications were sent in, this is a small percentage of permits. As I understand it, EPA has until October 1 to issue MS4 permits.

TPG: Do you think they're going to make that deadline?

Traina: Based on this schedule, I can't see how they're going to do it.

TPG: Based on the permits that you've seen, what kinds of overall patterns are you seeing in EPA's approach to MS4 regulation?

Traina: Basically, there are two approaches that are being used in drafting these permits. The first approach is what I'll characterize as the Region VI "generic" approach. In Region VI, what they did initially was to put out a model permit which they said they wanted to apply to all of the cities in the region. In Region VI, most of the states are not delegated to administer the National Pollutant Discharge Elimination System (NPDES), so EPA runs the NPDES program. And what Region VI did, in fact, is just take the November 1990 stormwater permitting regulations and rewrite them as permit conditions for their model permit. The problem with that is that everybody knew what the 1990 regulations required in terms of applications and submitted that information. In my view and in the view of

a lot of others who submitted comments on this, EPA did not take into account the cities' specific applications—and frankly, those applications cost the cities quite a bit of money.

The process envisioned by the 1990 regulation was that the cities were, in a two-part process: first, to identify their legal, technical and financial resources to control stormwater; and then, in the second part of their applications, to propose stormwater programs. Then EPA was to review those programs and determine whether they met what the law required in terms of reducing stormwater pollution to the "maximum extent practicable."

Well, Region VI, in my view, took a very easy way out by not even looking at the applications, or by giving them a minimal review, and just regurgitating the 1990 regulations as municipal permit conditions. Thanks to challenges, there have been a lot of changes in those proposed Region VI permit conditions, but the last draft I saw, which was dated March 1994, basically still used the same approach.

TPG: What's the other approach? You said Region VI represented one of two basic approaches to MS4 permitting.

Traina: The other approach is the one that Region IX has used for Tucson, Ariz. Arizona is a non-delegated state, so here again, the region issues the permit. In Tucson, Region IX reviewed the application in detail, and then the permit incorporated the program proposed in the application. In its fact sheet to Tucson's draft permit, the region indicated that with a few minor exceptions, Tucson had essentially met what was required. But where the region felt that the application was deficient, it added conditions to the permit.

For example, in the city's proposal for commercial and residential controls, the region said that information was not provided on current and proposed practices for catch basin cleaning. They wanted to include that. In another example, the region said the city's application did not include best management practices (BMPs) for the city's maintenance and storage yards for waste transportation equipment. That was put in. But as the region pointed out in its

fact sheet, these additions to the city's proposed plan were somewhat minor.

TPG: However, they did show that EPA Region IX was paying attention.

Traina: Absolutely. The region reviewed the application in great detail and came back with very specific additions to it. You can see that they took the city's application seriously and relied on it, with some additions and modifications, in writing the permit.

TPG: Supposing that the five draft permits are representative, and are adopted in final form, can you generalize about what added requirements the final MS4 permits will place on the cities?

Traina: It's hard to generalize. You've got to remember that this program was set up to be very site-specific. Cities were sent out to look at their own situations and to develop stormwater management plans based on their own situations, including their legal, technical and financial restraints. That makes it hard to generalize what cities are going to have to do. Under the Region VI, approach, however, which attempts to generalize requirements for regulated MS4s, they added requirements such as establishing and maintaining a household hazardous waste collection system, and also a used motor oil disposal and collection system. These were controversial requirements in Region VI's proposed model permit. If they remain in the final permits issued by the region, they could have a tremendous financial impact upon the cities.

Also, Region IX proposed that Tucson develop a comprehensive stormwater management ordinance, which is not required by the EPA regulation.

Now, another requirement that could be costly is based on existing regulations, but its impact is going to depend on how the regulations are interpreted. It has to do with new and significant development programs. For instance, if you're going to have a new subdivision or shopping center in your area, the regulation says that you have to look at this new development in terms of what kind of stormwater control programs will be required. Well, in the Tulsa permit, the requirement is that the city basically develop a comprehensive master planning process. That requirement also shows up in the Columbus permit. I'm not saying that this is a bad thing to do, but requiring a comprehensive stormwater planning process obviously could have major financial impacts on the cities.

TPG: Any other major new requirements?

Traina: The other one is monitoring. The way that the regulations were set up is that for the Part 2 applications, the cities were to develop a wet weather sampling program and characterize the

stormwater discharges from industrial, commercial and residential areas. Based on that characterization, they would then develop stormwater management plans to deal with the pollutants coming from those areas. Well, some of these permits—again, the ones for Region VI—continue that characterization program for the life of the permit. Well, sampling is an expensive proposition, and you have to wonder what the need for all this sampling data is. For instance, looking at the Tulsa permit, there's a list of things—biochemical oxygen demand, chemical oxygen demand, solids, nitrogen—that they want the city to sample for four times a year at each of the city's eight stormwater outfalls. They want continuous monitoring for these throughout the life of the permit. When Tulsa submitted their Part 2 application, they already did that, but the proposed permit would require that this level of monitoring continue for the life of the permit.

TPG: Are there other draft permits that don't require additional monitoring?

Traina: In the Sarasota County permit, the permit does require wet weather monitoring, but the permit says the purpose of it is to assess the effectiveness of the control measures implemented; estimate the annual loadings, which again is a requirement of the regulations; identify and prioritize portions of the MS4 requiring additional controls; and identify water quality improvements. Although there is a requirement for monitoring, it is specific to certain conditions of the permit; it isn't just monitoring for monitoring's sake, which appears to be the case in Region VI.

The Tucson permit requires that sampling be done to develop seasonal loading estimates, for each of the pollutants. But this again is an application requirement. There's not a requirement in the EPA proposal for continued monitoring for the life of the

“Permits requiring a comprehensive stormwater planning process obviously could have major financial impacts on the cities.”

permit. However, I should add that another condition that EPA added to the Tucson permit, with regard to monitoring, is that the city must conduct acute toxicity tests for stormwater runoff, a requirement not specifically contained in the EPA stormwater regulations and one which can have significant impact. The city of Tucson is challenging that requirement.

(Continued on page 6)

Traina Interview

(Continued from page 5)

TPG: Do they have any requirement to bring the toxicity down to a certain level?

Traina: It's just a testing procedure at this point; there's no effluent criterion that they have to meet.

TPG: What kinds of added requirements, if any, do you see the MS4 permits placing on regulated industrial dischargers?

Traina: The Columbus permit has a condition, which the city proposed in its application, that the city has to identify, control and inspect high-risk pollutants from: municipal landfills; treatment, storage and disposal facilities for municipal wastes; and hazardous waste recovery facilities subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA). Under the industrial and related facilities program contained in the draft permit, Columbus must prepare an inventory of these SARA Title III, Section 313 facilities and then conduct inspections of such facilities based on certain priorities.

Priority 1 facilities are required to be inspected once a year, and are identified based on the results of the city's dry weather sampling program for its Part 1 application. Priority 2 facilities must be inspected once in every two years, and consist of facilities that reported more than 10,000 pounds of emissions in

"The permit sets up the city of Columbus as an inspector for Ohio EPA."

1990. Priority 3 facilities are to be inspected once every three years, and consist of the remaining high-risk pollutant facilities. After the inspections, Columbus is to notify the Ohio Environmental Protection Agency (Ohio EPA) of any permit violations. So the permit sets up Columbus as an inspector for Ohio EPA.

Under the 1990 permit regulations for construction activities, every project disturbing five or more acres needs to get a permit directly from EPA or the state NPDES permit authority. Everything disturbing less than five acres falls under a city's stormwater management program. In Columbus, the draft municipal permit reflects the city's erosion and sediment control requirement of mandating BMPs for construction sites disturbing 2,500 square feet.

Under the 1990 regulations, too, industries covered by stormwater permitting requirements deal directly

with the state and federal permitting authorities. Once they obtain permit coverage, they are required to develop stormwater pollution prevention plans (SWP3s), and those SWP3s must be kept on site. But except for the Columbus requirement for enforcement monitoring that I mentioned above, none of the draft permits I've seen calls for the cities to impose any additional permit requirements on already permitted industrial dischargers.

The way the regulatory system is designed to work, when a city develops its stormwater management program, the program addresses three classes of facilities—commercial, residential and industrial. The city may require BMPs for certain of these facilities—say, shopping centers. Or the city may decide to handle shopping center stormwater discharges through city-operated detention ponds. In either case, the city will be addressing the issue of shopping center runoff in its stormwater management plan.

The draft permits that I've seen indicate that the cities are going to deal with residential and commercial areas under their own management plans for controlling stormwater. I haven't seen specific BMP requirements for, say, shopping centers. In the management plans that I've examined, the cities are proposing to address these facilities by, for example, routing their runoff into detention basins. The cities may have to impose some structural BMPs on new developments and areas of significant redevelopment, but they won't be imposing structural BMPs on existing developments.

TPG: Are there other ways that the MS4 permits you've examined are likely to have an impact on regulated business?

Traina: Another whole element in the comprehensive stormwater management plans required of MS4s concerns how the cities propose to finance their management plans. One of the areas that CDM has specialized in, in its work with MS4 clients, is the development of stormwater utility fees. CDM has developed a fairly sophisticated system for imposing fees on stormwater dischargers based on the volume of their discharges into the storm sewer systems. The amount that different facilities discharge, in turn, is related to the impervious surface area at each discharger's site. This way a shopping center, for instance, would pay a much higher fee than a residence. These fee structures provide revenues for the cities to use in developing their stormwater management plans and also provide a financial incentive for stormwater dischargers to minimize their impervious surface areas. Of the five municipalities whose draft stormwater permits CDM is examining, Stockton and Columbus are developing such fee structures, and Sarasota County and Tulsa already have them. ■

Storm Warnings

Stormwater-Related News in Capsule Form

- **Final Multi-Sector Permit May Be Late, Says EPA Official.** The U.S. Environmental Protection Agency (EPA) still is attempting to meet its proposed Oct. 1 deadline for issuing a final "multi-sector" model general permit for industrial dischargers, Michael Cook, director of the EPA Office of Wastewater Enforcement and Compliance, said on Aug. 4. However, Cook acknowledged, doing so would be difficult for the agency. Cook said EPA staffers and contract employees have summarized the public comments submitted on the proposed permit (see *Bulletin*, July 1994) and have decided "what to do on most of the issues." What remained to be done in early August, Cook said, was writing up the final document and doing the required revisions.
 - **For Marina Industry, the Baseline General Permit Isn't So Bad, Says Consultant.** For regulated marina facilities, "EPA's baseline permit is a good deal," veteran stormwater consultant John Whitescarver observed recently in an article written for *Dock Sides*, a publication of the International Marina Institute (IMI). Whitescarver, a former stormwater official with EPA and a recent critic of some aspects of the agency's proposed "multi-sector" general permit (*Bulletin*, January 1994, p. 1), noted that the proposed "multi-sector" provisions for the marina industry include quantitative sampling requirements, although EPA's "baseline" industrial general permit issued in 1992 does not require sampling. "This makes the baseline permit significantly better than the proposed permit," Whitescarver advised IMI members. In an overall assessment of the EPA stormwater program for IMI, Whitescarver added that although EPA has "created national confusion in its effort to implement the stormwater permit program," the permit program's requirements actually are "cost-effective and easy to implement." For more information, contact John Whitescarver, JPW Group, P.O. Box 16525, Washington, D.C. 20041; (703) 777-9384.
 - **Stormwater Market Volume Should Expand Dramatically Over Next Decade, Market Survey Firm Reports.** Industrial stormwater dischargers spent an estimated \$50 million on stormwater management in 1992 and should be spending up to \$100 million annually by 1997, according to a 1993 *Survey on Stormwater Management* prepared by Richard K. Miller and Marcia E. Rupnow for Future Technology Surveys Inc. of Lilburn, Ga. Regulated municipalities spent an estimated \$1 billion on stormwater management in 1993 and will probably be spending approximately \$1.5 billion on stormwater annually by 1997, the survey adds. Regulated construction sites were estimated to have spent \$150 million on stormwater controls in 1993 and were projected to spend approximately \$300 million on stormwater annually in 1997.
- Future Technology Surveys, a division of the Fairmont Press Inc., creates its reports on technological and market trends by surveying panels of experts already working in specified fields, according to the introduction to the survey. The stormwater survey was based on a questionnaire distributed to 27 stormwater experts, including 15 private consultants, nine government officials and three industry representatives.
- Among the other results of the survey, the report indicates, the experts found California, Florida, Maryland and New Jersey to have the best state stormwater permitting programs. Seattle, Santa Clara County, Calif., and Austin, Texas, were chosen as the cities with the best municipal stormwater management programs. The survey identified a number of likely trends in the evolution of stormwater technology over the next few years, including advances in pollution prevention techniques, future breakthroughs in sampling methods and new developments in materials recycling.
- The experts queried by Future Technology Surveys Inc. also had a number of complaints to make about the federal stormwater permitting program. According to one comment listed in the report, "The stormwater regulatory program has been one of the worst managed government regulatory programs ever seen. It has been poorly conceived and extremely poorly executed. The result has been to 'jerk industry around' in attempting to meet constantly evolving regulations."
- For more information, contact Future Technology Surveys Inc., 700 Indian Trail, Lilburn, Ga. 30247.
- **Stormwater Regulation To Be Theme of Municipal Management Group's Annual Meeting.** "Stormwater Management—From Washington to Reality" will be the theme of this year's annual meeting of the National Association of Flood and Stormwater Management Agencies (NAFSMA). The meeting will occur Oct. 26-Oct. 29 in Seattle. Attendance fees for the meeting are \$325 for public agencies and \$400 for private firms. Those registering after Oct. 7 will pay \$25 extra. For more information, contact Susan Gilson, NAFSMA, 1225 Eye St. N.W., Washington, D.C. 20005; (202) 682-3761, ext. 239. ■

Phase II Rules

(Continued from page 1)

but a specified list of discharger categories—notably including industrial sites, large construction sites and “large” and “medium” municipal storm sewer systems—until Oct. 1, 1992. Lobbyists for potentially regulated sources subsequently persuaded Congress to extend that moratorium to Oct. 1 of this year.

This summer, Cook said, municipal lobbyists have reportedly been pressuring Congress to extend the Phase II permitting moratorium again, while environmentalists have been working to block the move. As of mid-August, neither the House nor the Senate appeared to be contemplating legislation containing a moratorium extension, raising the possibility that potential Phase II permittees will be legally liable for their stormwater discharges after Oct. 1.

If Congress fails to extend the Phase II exemption and EPA does not issue Phase II regulations by Oct. 1, as it almost certainly will not, potential Phase II permittees such as small cities could face legal liabilities for their stormwater discharges after Oct. 1, even though there is no federal regulation specifically targeted at controlling their runoff, Cook indicated.

EPA’s final policy proposals on handling Phase II dischargers are not known at this time. Cook has said previously that the agency is preparing to issue a final report to Congress soon on the regulation of Phase II sources (*Bulletin*, July 1994, p. 1), but he now indicates that this final report will not be made public until late September or early October, at the earliest.

In Connecticut, meanwhile, state stormwater regulators already are at work on a draft permit for certain categories of Phase II dischargers, making it likely that commercial stormwater dischargers in the Nutmeg State will face state Phase II regulation before federal regulations are available (see related story, p. 1).

Legal Risks Said To Be Slight

In general, Phase II stormwater sources may face relatively small legal risks for discharging stormwater after Oct. 1 without state or federal permits, Cook indicated, adding, “We certainly won’t be bringing enforcement actions against them.”

Although environmental groups could decide to bring third-party lawsuits against facilities that discharge stormwater without state or federal permits after the moratorium ends, Cook added, it is not clear how most judges would rule in such cases, given the absence of an EPA Phase II permitting regulation.

Still, there is some potential for legal liability, Cook indicated. To avoid such liability, Phase II sources have the option of seeking coverage now by applying to EPA or the states for individual stormwater permits.

If EPA does develop a Phase II permitting rule and an accompanying general permit, Cook predicted, getting the final regulation and rule adopted may require two years or more.

“If we make use of a negotiated rulemaking, which I favor in the case of Phase II regulations, we might have a proposed rule published for public comment in about a year,” Cook said. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$348
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center, 7711 Anderson Rd., Tampa, Fla. 33634-3039

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 4, Number 2

August 1994

CLEAN WATER ACT REAUTHORIZATION:

Senate Proposes Stormwater Controls for Larger CSOs

Some 30 cities of more than 100,000 population that have been exempted from stormwater controls because of their combined sewer outfalls (CSOs) would be subject to permitting under the Clean Water Act reauthorization bill now before the Senate.

Previously listed as S. 1114 (see *Bulletin*, March 1994, p. 1), the Senate's Clean Water Act reauthorization bill was revised by the Senate Environment Committee and renumbered as S. 2093, then reported to the floor in May. The renumbered bill deletes several provisions of current law requiring municipal stormwater permits only for cities and counties of more than 100,000 population with municipal "separate" storm sewer systems (MS4s).

According to the Senate report on the bill (Senate Report 103 257), the striking of the word "separate" in key portions of the law would result in

stormwater permitting for combined sewer systems in the following major cities: San Francisco, Chicago, Detroit, Newark, St. Louis, Buffalo and Pittsburgh.

In addition, stormwater permitting would extend to Bridgeport, Hartford, New Haven and Waterbury, Conn.; Peoria, Ill.; Evansville, Gary and South Bend, Ind.; Springfield and Lowell, Mass.; Livonia and Lansing, Mich.; Elizabeth, Jersey City and Patterson, N.J.; Albany, Rochester, Syracuse and Yonkers, N.Y.; Erie, Pa.; Providence, R.I.; Alexandria, Va.; and Spokane, Wash.

Smaller cities and portions of counties in urbanized areas adjacent to the cities listed above also would need to obtain stormwater permits, according to the report.

Section 402(p) of the bill, however, indicates that the permitting of the CSOs would occur separately

(Continued on page 3)

STATE SURVEY:

Michigan, California Programs Hit by Legal Actions

Water regulations in Michigan and California were the targets of two significant legal actions uncovered in this month's state survey. In California, however, the effects on most stormwater permittees should be slight. In Michigan they could be considerable, but will be delayed if they occur at all.

In Michigan, the National Wildlife Federation (NWF) and its state affiliate sued Region V of the U.S. Environmental Protection Agency (EPA) this spring, alleging that EPA granted general permitting authority to Michigan last November without proper notice (see *Bulletin*, February 1994, p. 3).

(Continued on page 2)

Inside this issue. . .

- National Debate Could Be Shaping Up Over Copper in Stormwater 5
- General Motors, EPA Trade Legal Arguments in Pontiac, Mich., Case 7
- Clean Water Lobbyist Bob Adler Leaves NRDC 8

**Thompson
Publishing
Group**

State Survey

(Continued from page 1)

The suit added that Region V acted without first completing an investigation of NWF's 1991 legal challenge to a controversial reorganization of the state Department of Natural Resources (DNR), as it had promised.

Approval of DNR general permitting last fall, NWF argued in its complaint to the Sixth Circuit Court of Appeals in Cincinnati, "comprised a determination that the Michigan ... program complied with applicable federal requirements," prejudging the outcome of the investigation.

Although it puts future general permitting in doubt, the suit has not yet directly affected Michigan dischargers. In mid-July, DNR staffers were planning to mail 22,000 application packages for the state industrial general permit to eligible dischargers by early August.

California Water Plans Negated by Court

A state Superior Court ruling in March invalidated water quality standards for 68 "water priority" toxic pollutants in California's state Inland Surface Waters Plan and its Enclosed Bays and Estuaries Plan. The final decision by Judge James Long followed a similar preliminary ruling last October (see *Bulletin*, December 1993, p. 1).

State Water Resources Control Board (SWRCB) official Dave Carlson said final court action on the case, which had not occurred at press time, will leave California with no state standards for the 68 pollutants. Final action was expected by early August, SWRCB attorney Kathy Keber said.

In the absence of numeric standards, California temporarily will rely on narrative standards in basin water quality plans, Keber said. Because state stormwater permits do not contain numeric limits, there should be little effect on most stormwater permittees.

Under the now-vacated bays and estuaries plan, however, regulators had proposed to require sharply reduced copper emissions by the Santa Clara Valley municipal stormwater program (see related story, p. 5). That proposal now seems to be in legal limbo.

Following are other highlights of this month's survey:

Delaware

The state hopes to issue individual permits soon for several dischargers, including selected metal salvage yards, stormwater staffer Chuck Schadel said. Regulators still are reviewing several draft proposals for industry-specific general permits.

New Jersey

Reversing former Gov. James Florio, Gov. Christine Whitman has reorganized the former New Jersey Department of Environmental Protection and Energy to be just the "Department of Environmental Protection" (DEP) again. DEP hopes to publish a draft general permit for auto and scrap metal recyclers by the end of August, said stormwater staffer Ed Frankl. DEP also is working on three new watershed permitting initiatives, including one for the New York Harbor area.

Ohio

On May 27, Ohio published one draft general permit reauthorizing the state industrial general permit and a second draft general permit with no monitoring, for exclusive use by former group members. The state hopes to issue final permits by early September, said official Mohammed Islam.

Virginia

The Department of Environmental Quality (DEQ) has issued four final general permits for stormwater, said staffer Michelle Hooper. The new five-year permits resemble one-year emergency permits that DEQ issued last year, Hooper said. However, they require no special monitoring by toxic release inventory reporters. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washington, D.C. USPS #0008-384.

Editorial Advisory Board: William Funderburk, Jr., Attorney at Law, Radcliff, Brestoff and Frandsen; Susan E. Hoffman, Partner, Cohen, Shapiro, Polisher, Shiekman and Cohen; Jeffrey S. Longworth, Attorney at Law, Collier, Shannon, Rill and Scott; Dr. Jerry E. Perrich, Associate Vice President, Environmental Science & Engineering; Paul Traina, Consulting Engineer, Camp, Dresser & McKee; John Whitescarver, President, JPW Co.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 7711 Anderson Rd., Tampa, Fla. 33634-3039. Please allow four weeks for change of address.

Copyright ©1994 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 7711 Anderson Rd., Tampa, Fla. 33634-3039. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

Clean Water Act

(Continued from page 1)

from the permitting of "large" and "medium" MS4s already subject to state and federal stormwater controls.

CSO permitting for the 30 cities would occur pursuant to Section 402(q) of the amended act, which is devoted to CSOs rather than to stormwater. However, stormwater permit requirements already applying to municipal separate storm sewer systems would apparently be extended to the 30 cities, along with the act's other CSO requirements.

Bill Would Exempt Many Small Cities

Current law sets a moratorium until Oct. 1, 1994, on stormwater permitting for smaller municipalities and commercial, non-industrial stormwater dischargers. S. 2093 would delete the moratorium language (which soon will be obsolete) and provide a permanent exemption for most small cities.

Like the old S. 1114, however, S. 2093 would require municipal stormwater permitting for "urbanized" areas surrounding MS4s that already are required to obtain permits. The Bureau of the Census defines "urbanized areas" as areas with populations of at least 50,000 and densities of at least 1,000 per square mile.

'Maximum Extent Practicable' Defined

Under current law, permitted MS4s must reduce stormwater pollutant loadings to the "maximum extent practicable." S. 2093 states that the "maximum extent practicable" requirements could be met by pollution management measures consistent with the federal urban nonpoint pollution control guidelines for implementing Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA).

S. 2093 also would require the U.S. Environmental Protection Agency (EPA) to reissue the CZARA Section 6217 guidance within two years "to include, if practicable, minimum and objective performance standards" for pollution control measures.

However, to reassure municipal officials who worry about eventually having to comply with costly numeric controls, S. 2093 provides that permits issued within the first 10 years after enactment of the law would not require compliance with numeric effluent limitations.

"When this period expires, National Pollutant Discharge Elimination System permits for stormwater discharges must include enforceable numeric effluent limitations," the report indicates.

Other Municipal Provisions

Other provisions of S. 2093 would require permits for smaller "municipal storm sewer systems"—presumably including CSOs—that EPA and the states determine to be contributing to violations of water quality standards, or contributing significant pollutant loads to U.S. waters.

To determine which municipalities need permitting under this provision, Section 402(6) would require EPA to promulgate, within three years of enactment, a list of "each municipal storm sewer system" otherwise unregulated, whose discharge is "the sole or principal cause for the failure of receiving waters ... to achieve a designated use or other water quality standard."

EPA would need to revise this list every three years and could not require municipalities to submit monitoring data to indicate whether they belonged on the list. In preparing the list, however, EPA could consider monitoring data received from citizen groups.

A municipality included on EPA's list would need to apply for stormwater permits within three years of being listed, unless EPA first determined that the municipality had implemented "management measures" to correct water quality impairments caused by its stormwater. In addition, municipalities could be excused from permitting if the sources of their stormwater pollution were beyond the legal control of municipal governments.

New Permitting Deadlines

S. 2093 likewise would establish new permit application schedules for municipalities previously exempted from stormwater regulation. Municipalities previously exempted because they did not have "separate" storm sewer systems would be required to apply within four years.

Smaller municipalities in targeted urbanized areas would need to submit applications when the larger municipal systems in their areas apply for reissuance of their permits. However, these smaller municipalities would not have to apply until at least three years following enactment of the law.

Commercial, 'Light' Industry Provisions

When the current moratorium on stormwater permitting for non-industrial private dischargers expires on Oct. 1, 1994, some 7.7 million commercial facilities and "light" industrial facilities could face stormwater permitting requirements, according to the Senate report.

To avoid this, S. 2093 would authorize EPA to exempt from stormwater permitting "a class or category of commercial and light industrial discharges" if EPA determines that stormwater

(Continued on page 4)

Clean Water Act

(Continued from page 3)

discharges from the class or category have "minimal effect on water or sediment quality."

The language of S. 2093 suggests that regulators, to make this determination, would need to consider "controls and management measures installed at sources in the class or category." The Senate report, however, indicates that EPA also could exempt commercial enterprises and other facilities whose activities are "entirely sheltered from rainfall" and "have little effect on water or sediment quality."

House Bill Still Under Discussion

In the House of Representatives, efforts to reauthorize the Clean Water Act are significantly behind the schedule set by the Senate, and provisions of the House's clean water act reauthorization bill, H.R. 3948, seemed to be in flux at press time.

An April 21, 1994, draft of H.R. 3948 obtained from the House Public Works and Transportation Committee, however, states that municipal stormwater permittees cannot be required to comply with numeric effluent limits before Dec. 31, 2009, except "to the extent necessary for implementation of management measures."

The initial version of H.R. 3948 also would require municipal permittees to implement stormwater controls to attain applicable water quality standards by Dec. 31, 2009.

It would require that MS4 permits renewed after enactment of the reauthorization law include such "additional" pollution control provisions as state and federal regulators determine are "necessary for reasonable progress" toward "attainment or maintenance of applicable water quality standards."

The bill would extend municipal stormwater permitting to all MS4s serving "urbanized areas" of greater than 50,000 population, and require EPA to establish permitting regulations for these new municipal permittees by Oct. 1, 1997.

Applicants would need to file for permits by Oct. 1, 1998, and in theory regulators would issue the new municipal permits by Oct. 1, 1999, with compliance required within an additional three years.

Exemptions for Light Industry, "Group Permits" for Group Applicants

Like the Senate bill, H.R. 3948 as currently written would explicitly give EPA the authority to exempt those stormwater discharges that have not contacted significant materials, and apparently would exempt from stormwater permitting small construction sites disturbing less than five acres of land.

In addition, the bill specifically authorizes EPA and the states to issue "group permits" for industrial stormwater discharges. If the House bill were enacted into law, this would effectively reverse current EPA policy, which has been to authorize participation of industrial dischargers in group applications, but only for the purpose of obtaining individual permits or coverage under general permits.

Enactment of this provision of H.R. 3948, therefore, might provide relief to group members and group organizers that complain of having participated in EPA's stormwater group application process, only to be forced into state baseline industrial general permits in the end.

Can Clean Water Legislation Pass This Year?

The provisions of H.R. 3948 listed above are reportedly provisional and may be subject to unexpected changes. According to Jessica Landman, an environmental lobbyist with the Natural Resources Defense Council (NRDC), the House bill was still "fluid" in mid-July, with negotiations over its final shape still occurring between various affected interest groups and the bill's chief sponsor, House Public Works Committee Chairman Rep. Norman Mineta, D-Calif.

Judging from interviews with NRDC's Landman and other lobbyists and Hill staffers, the chances for a Clean Water Act reauthorization bill being enacted during this Congress seem slim.

In June, in reaction to moves on the Hill to alter several aspects of the previous version of H.R. 3948, the Sierra Club sent a mailing to members warning that H.R. 3948 as then constituted could "gut the Clean Water Act." The mailing included a form letter for members to send to their representatives, asking "that you not proceed with the Clean Water Act in this Congress."

On July 18, however, Landman said environmentalists still were negotiating with Mineta's staff over H.R. 3948, and suggested that they might welcome passage of a bill this year if it met their standards.

Charles Ingram, however, head of the Clean Water Industry Coalition at the U.S. Chamber of Commerce, said July 18 that industry opposes the House moving forward with H.R. 3948 at this time. Industry still objects to several provisions of the bill addressing water quality standards and enforcement, Ingram said.

Given Congress's expected early adjournment this fall, Washington environmental attorney Jeffrey Longworth predicts that there is "no way" for a clean water bill to be enacted this year. Several other sources say there still is a possibility that a clean water compromise will be achieved at the last minute, but concede that this is unlikely. ■

Heavy Metal Discord: National Debate Shapes Up Over Sources, Impacts of Copper in Stormwater

One of the most common stormwater contaminants detected in the National Urban Runoff Program (NURP) study in the early 1980s also may prove to be one of the most controversial.

Copper, found in more than 90 percent of the NURP samples taken, today may be emerging at the center of a national stormwater debate as industry, municipalities and regulators argue over the sources and significance of the copper discharged by stormwater permittees around the country.

For most industrial dischargers regulated under the U.S. Environmental Protection Agency's (EPA) Nov. 16, 1990, permitting rule, the debate still may seem somewhat academic. At present, EPA's "baseline" industrial general permit contains numeric effluent limitations only for pH and total suspended solids in coal pile runoff. Numeric effluent limits for copper are lacking.

GM Case Raises Acid Rain, Airborne Deposition Issues

General Motors Corp. (GM), nevertheless, is already battling with EPA to relax or rescind the copper effluent limits in two individual stormwater permits issued to GM facilities in Michigan and New Jersey (see related stories, p. 7 and p. 8).

In its legal arguments against the Michigan permit, GM has blamed excessive levels of copper and other heavy metals in its effluent in part on acid rain leaching metals from its facility's copper roof (*Bulletin*, May 1994, p. 1).

In both the New Jersey and Michigan cases, GM also argues that airborne deposition of heavy metals, in wet or dry form, is responsible for much of the copper discharged by the two facilities.

Moreover, GM contends, copper roofs are common—with the U.S. Capitol roof and Statue of Liberty, for example, both having surfaces that consist wholly or in large part of copper. Given the prevalence of acid rain, GM has rhetorically suggested, doesn't consistency demand that EPA set copper runoff limits for other copper-covered structures across the nation?

EPA's own atmospheric data show airborne deposition of metals to be a common environmental problem on the East and West Coast and along the Great Lakes shoreline, GM representatives also have argued. Consequently, shouldn't the copper limitations at the Michigan and New Jersey facilities in question be relaxed?

Debate Over GM's Arguments

In recent interviews with consultants, regulators and environmentalists on the copper issue, the

Bulletin has received widely differing answers to such questions.

Several consultants note that copper is commonly found in certain soils, and that environmental background levels therefore may greatly exceed the concentrations found in the stormwater discharges from many regulated industries.

EPA stormwater chief William Swietlik, however, doubts that background sources contributed all of the copper measured in "Part 2" monitoring data from group stormwater permit applicants that EPA now hopes to permit under its proposed "multi-sector" general permit.

Following EPA policy, Swietlik declines to comment on GM's two enforcement cases. But for certain industrial sectors addressed in the multi-sector proposal, Swietlik said recently, group monitoring data show concentrations of copper and other metals "far in excess of what the GM data show."

"I think it's safe to say that if we were looking at the results of acid precipitation alone, we'd see concentrations substantially lower than what we're finding," Swietlik concluded.

Environmental engineer Diane Cameron, who follows stormwater for the Natural Resources Defense Council, is scornful of GM's argument that because of acid rain and airborne metals falling on its facilities, the company is not responsible for meeting its copper effluent limits.

Nevertheless, Cameron said recently, GM has a point about acid rain and copper roofs causing a nationwide emissions problem.

The NURP data showed copper and zinc to be "ubiquitous in urban runoff," Cameron noted, and NURP surveys in some cities did suggest that some of the copper could be from metal roofs.

To address copper problems, Cameron added, "reformist movements within the architecture and building trades professions" should work to develop and popularize building materials that are less susceptible to leaching in rain. In addition, society must move much more effectively to control acid precipitation.

San Francisco Bay's Copper Controversy

In California, meanwhile, copper is at the center of a long-standing controversy over how to regulate stormwater discharges into the southern part of San Francisco Bay, known locally as the "South Bay."

In 1989, South Bay was designated as a "non-attainment" water for nine heavy metals, including

Continued on page 6

Copper Controversies

(Continued from page 5)

copper, under Section 304(l) of the Clean Water Act. By law, "individual control strategies" must be prepared for such non-attainment areas by state regulators, to provide for their cleanup.

To address stormwater pollutant loadings in South Bay, some 13 cities discharging into the bay joined with the Santa Clara Valley Water District and Santa Clara County—essentially, the governmental units responsible for sewers in California's famed Silicon Valley—to form a stormwater program called the Santa Clara Valley Nonpoint Source Pollution Control Program.

Santa Clara's Stormwater Permit

In June 1990, some months before EPA's issuance of its final stormwater permitting rule, the San Francisco Regional Water Quality Board (RWQCB) issued the Santa Clara Valley program one of the nation's first municipal stormwater permits.

Despite the objections of environmentalists, who unsuccessfully sued EPA for approving it, the permit contained best management practices for stormwater control, but no numeric effluent limits.

In April 1991, however, California adopted statewide water quality standards for a number of toxic pollutants, including copper. Subsequently, the San Francisco RWQCB proposed a waste load allocation for copper discharged into South Bay.

As proposed, the waste load allocation would have required the Santa Clara Valley stormwater program to reduce its copper loadings (an estimated 17,000 tons a year) by some 20 percent by 1998.

The board proposed similar reductions in the estimated 4,000 pounds of copper discharged annually by three municipal sewage treatment plants serving Sunnyvale, San Jose and Palo Alto, Calif.

Today, however, the legal status of the proposed waste load allocation is cloudy, at best. According to RWQCB stormwater coordinator Tom Mumley, the waste load allocation was based on California's Enclosed Bays and Estuaries Plan, which was invalidated by a California court this spring, along with the State Inland Surface Waters Plan (see related story, p. 1).

The State Water Resources Control Board (SWRCB) therefore has since remanded the proposed waste load allocation to RWQCB. However, Mumley says that a "copper dialog" now underway among local dischargers will keep alive the idea of significantly reducing copper discharges to South Bay.

The court's hostility to the Enclosed Bays and Estuary Plan, by most accounts, centered around the

state's alleged failure to consider economic factors in adopting the regulation. Some critics of the San Francisco RWQCB, however, contend that the copper allocation should have been remanded on its technical merits as well.

EPA Copper Standards Too Stringent, Says Engineering Consultant Fred Lee

G. Fred Lee, a consulting engineer in El Macero, Calif., is one prominent critic of the waste load allocation. With a long professional background in water toxicology, Lee also is the author of a May 1993 report to the Institute for Interconnecting and Packaging Electronic Circuits on "Regulating Heavy Metals in Surface Waters in a Technically Valid, Cost-Effective Manner."

In this and numerous other studies, Lee has argued that given the approach adopted in EPA's 1992 National Toxics Rule, there is "great likelihood that heavy metals will be over-regulated, resulting in waste of large amounts of funds."

In his work on South Bay, Lee acknowledges that copper levels in the bay do exceed both state and federal water quality standards.

However, Lee contends, an understanding of aquatic chemistry and recent research both show that most copper discharged into South Bay is quickly converted to non-toxic forms, in part through combination with organic and inorganic materials.

Because EPA's method of determining water toxicity essentially ignores the aquatic chemistry of heavy metals, Lee claims, the federal criteria for copper and several other metals are technically invalid.

Applying EPA standards to South Bay, Lee argues, "will cause the expenditure of billions of public and private funds for copper control," but with almost no environmental benefit. Lee's figures are hotly contested by Mumley of RWQCB, who says the true costs will be "in the hundreds of thousands or low millions."

Last October, the San Francisco RWQCB eased copper limits on South Bay dischargers by promulgating a more site-specific water objective for copper, raising the allowable level from 2.9 mg/l to 4.9 mg/l.

But the "water effects ratio" approach used to derive this higher standard is still too conservative, Lee contends, and copper already present in bay sediments means that even a 4.9 mg/l objective cannot be met—even if all Santa Clara Valley dischargers comply with the proposed waste load allocation.

Environmentalists Dispute Lee Findings

Deborah Johnston, environmental specialist for the California Fish and Game Department, argues

against both Lee and the regional board, saying that the study the RWQCB used in raising the copper limit was "not scientifically defensible." The RWQCB promulgated its looser limit on the basis of research involving just one species and 10 data points, Johnston complains.

Johnston also argues against Lee's position on copper toxicity. Although Lee claims that actual studies of South Bay toxicity show the water having virtually no affect on bay organisms, even at copper levels far above current standards, Johnston replies that copper-resistant diatoms already have replaced more sensitive dinoflagellates in parts of the bay.

The local shrimp fishery also has significantly decreased, Johnston adds. And although Lee contends that particulate copper becomes virtually harmless once desposited in sediments, Johnston replies that mollusks can convert particulate copper to dissolved copper in the acidic environment of their guts, casting doubt on Lee's theories.

Silicon Valley Connection Alleged

Greg Karras of Citizens for a Better Environment also argues that South Bay already is badly damaged by copper, and implies that the copper cleanup plans now being considered by the Santa Clara Valley stormwater program are questionable.

In recent years the Santa Clara Valley program commissioned two studies by Woodward-Clyde

Consultants which indicated that pesticide use, copper poisons used in controlling roots in sanitary sewers, auto scrap yards and wear on copper brake linings account for much of the copper reaching South Bay, Karras notes.

But according to Karras, "industrial discharges" are probably the most significant sources of copper in the bay. Particularly important, Karras suspects, are discharges by the electronics industry—one industry whose discharges were not addressed in the two Woodward-Clyde studies.

Is 'National Rollback' Underway?

According to Karras, the debate over copper in South Bay could be the start of a "well-financed national campaign to roll back cleanup standards under the Clean Water Act."

Karras offers little confirming evidence for this claim. Last April, however, Lee did write SWRCB chairman John Caffrey to argue that if EPA compels California to continue imposing strict copper standards on the bay, "then if necessary this matter should be taken to the courts for judicial review."

As GM's arguments on copper limits wend their way through EPA's appeals process, then, stormwater observers should not be too surprised to see other challenges also being raised to state and federal controls on copper in stormwater. ■

GM, EPA Trade Charges in Acid Rain and Runoff Case

The source of heavy metals found in stormwater from a closed General Motors (GM) plant in Pontiac, Mich., continues to be a bone of contention in an administrative law proceeding between GM and the U.S. Environmental Protection Agency (EPA).

Recently, GM initiated an administrative proceeding appealing a \$125,000 penalty that EPA Region V had assessed against the company for alleged violations of copper, zinc and lead limits in stormwater, under an individual permit for a shuttered Pontiac Fiero plant in Pontiac, Mich. (see *Bulletin*, May 1994, p. 1).

Following a prehearing exchange over the case, both GM and EPA filed replies to each other's prehearing arguments in mid-May. GM's reply repeated the company's earlier argument that the alleged violations were caused in part by acid rain leaching copper, lead and zinc from the facility's roof.

In addition, GM argued, precipitation in the Great Lakes Basin regularly contains copper, lead and zinc. "[T]o the extent the metals discharged are deposited on the site by atmospheric deposition ... GM is not responsible for removing them," GM contended.

GM also argued, as it has previously, that its state stormwater permit for the facility, issued in 1988, is void. Until amended, the 1987 Water Quality Act prohibits EPA from requiring stormwater permits from all but a specified list of dischargers, including those "associated with industrial activity," GM noted.

The shuttered factory is not engaged in industrial activity, GM pointed out, and neither EPA nor the state has made a formal determination that the plant's runoff is contributing to a water quality problem. Therefore, GM argued, the facility's stormwater permit is invalid.

In its reply to GM's prehearing exchange, EPA essentially repeated points made earlier in the case. If GM disliked the permit, it should have appealed in 1988, EPA argued, and it has now lost the legal right to do so. EPA also argued that given GM's earlier failure to contest its permit, the presence of heavy metals in the facility's environment is now irrelevant for enforcement purposes.

On June 17, GM filed a discovery request in the case with EPA. At press time, EPA had just filed a rebuttal to that request. ■

Storm Warnings

Stormwater Related News in Capsule Form

- **Clean Water Lobbyist Robert Adler Leaves NRDC.** Robert Adler, an environmental attorney with a strong interest in stormwater regulation who formerly worked on Clean Water Act reauthorization for the Natural Resources Defense Council (NRDC), has left NRDC to teach environmental law at the University of Utah. NRDC attorney Jessica Landman will succeed Adler as head of the organization's clean water program. A new NRDC hire, Peter Lehner, is expected to take over some of Landman's former duties in September and probably will work out of NRDC's New York office.
- **General Motors Challenges Metals Limits in New Jersey Stormwater Permit.** General Motors Corp. (GM) has filed another administrative appeal of heavy metal effluent limits in an individual stormwater permit, arguing that contamination already in the environment makes the specified limits on these metals impracticable. Earlier this year, in a case involving a closed factory in Pontiac, Mich., GM argued that it should not be penalized for violating permit limits for copper, lead and zinc because alleged violations of these limits at the factory were caused in part by airborne pollutant deposition, in part by acid rain leaching metals from the facility's roof (see related story, p. 7).

In a new appeal filed June 21 with the New Jersey Department of Environmental Protection (DEP), the big auto maker has raised a somewhat similar

objection to new effluent limits in an individual stormwater permit for a GM property in Clark, N.J., the site of an old, now-dismantled Hyatt Clark Industries facility.

GM argues in part that "copper and zinc are present in precipitation in the vicinity of this property," and that rain falling near the site has a lower pH than the limit set in the permit (pH 6). Consequently, GM argues, New Jersey should delay imposing tighter stormwater limits on copper, zinc and pH for the site, pending the implementation of a remedial action work plan.

Moreover, GM suggests, "while certain mitigation measures can be taken to control dust and dirt during any construction activities," it would be "inequitable" for regulators to set an "unduly restrictive effluent limitation" for total suspended solids at the site. Such a limitation could be "unintentionally violated while the permittee is in the process of remediating a more substantial environmental problem," GM contends.

GM wrote New Jersey in January 1993, stating that sampling of one rain event in the area had found copper concentrations exceeding the proposed effluent limit by a factor of two. GM also reported finding zinc in the sample, but "at a level below the draft permit limit."

More recently, GM has pointed to EPA's "Great Waters Report," published in May 1994, as evidence of significant air deposition of heavy metals along the East Coast, West Coast and Great Lakes shoreline. In mid-May, nevertheless, New Jersey issued a modified permit for the Clark facility that included some of the disputed effluent limits. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$348
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$349
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
7711 Anderson Rd., Tampa, Fla. 33634-3039

Call Us Toll-Free At 1-800-879-3169

J48STRM

Stormwater Permit Manual

Bulletin

Volume 3, Number 12

June 1994

GROUP APPLICATIONS:

Auto Recyclers, Scrap Processors, Wood Preservers Criticize EPA's Proposed 'Multi-Sector' General Permit

Judging from the number of public comments received by the U.S. Environmental Protection Agency (EPA), the nation's automobile recycling facilities, scrap metal processors, and wood preserving companies are shaping up as major critics of EPA's proposed "multi-sector" model general permit.

Of approximately 700 sets of public comments that EPA has received on its Nov. 19, 1993, proposed multi-sector permit (see *Bulletin*, December 1993, p. 1, and *Stormwater Permit Manual*, Tab 200), a little more than 300 comments were submitted by auto salvage yards, many of them small businesses apparently represented by the Automotive Recycling Association. Large numbers of additional comments were submitted by scrap iron and steel processors and wood treatment facilities.

EPA also received comments on the proposed "multi-sector" permit from the American Petroleum Institute and several oil companies, as well as coal and mineral mining companies, chemical manufacturers, electric power generating firms, airports and airport trade associations, and representatives of metal fabricating and processing firms.

Other comments from industrial dischargers represented food processors, consumer electronics firms, motor freight transportation facilities, railroads, at least one large timber products company, paint and coatings manufacturers, cement makers, and certain other regulated industries.

Non-business commenters on the proposed permit ranged from the Hampton Roads, Va., sanitation district and the Navajo Nation to the

(Continued on page 4)

STATE SURVEY:

New Jersey's Non-Filers Receive Penalty Warnings

New Jersey industrial stormwater dischargers that have not filed for coverage under the state industrial general permit should soon receive "nasty-grams" from the Department of Environmental Protection and Energy (DEPE) warning them to notify the state about their stormwater permitting status or face possible penalties, DEPE staffer Ed Frankl said May 14.

The "nasty grams," officially known as "final notices of non-response," will be the fourth mailing from the state to potential stormwater permittees believed to be in need of coverage, Frankl said.

(Continued on page 2)

Inside this issue. . .

- Silt Is Number One Waterways Problem, says EPA Study 6
- Maryland Cracks Down on Litter as MS4 Pollutant 7
- Will Clinton Supreme Court Nominee Breyer Champion "Effective" Risk Regulation? 7
- Scanner Compatible NOI Form Introduced in Maryland 8

State Survey

(Continued from page 1)

The letters will be sent by certified mail to approximately 3,500 industrial facilities that already have received three previous notices, the last including a "non-applicability form" on which recipients could indicate that the stormwater regulations do not apply to them.

Of more than 9,000 facilities recently receiving the non-applicability forms, about 5,700 have written DEPE claiming that they aren't eligible for stormwater permitting, Frankl said. State inspectors are beginning to check on some non-applicability claims that they suspect to be ill-founded, he added.

The 3,500 facilities receiving "final notice of non-response" warnings will be informed that they have 30 days from their receipt of the notices to file non-applicability forms, requests for authorization to obtain general permit coverage, or applications for individual stormwater permits, Frankl said.

Those who do not file in time will be referred to DEPE enforcement personnel for inspections, Frankl added. If an inspection shows a facility to be in need of stormwater permit coverage, he added, the New Jersey Water Pollution Control Act "requires the department to consider imposing significant civil administrative penalties."

An earlier version of the "nasty-grams" specified the amount of the fines that might be imposed. Rumors circulating within U.S. Environmental Protection Agency (EPA) headquarters in Washington at one time put the amount of the threatened fines at \$5,000 apiece. However, Frankl said, DEPE subsequently deleted the specific fine amount from the warning letters.

Nevertheless, Frankl said, "We don't want people to think this is just another form letter from the state. This is serious." Within one or two weeks after the 30-day deadline expires, he predicted, DEPE will begin selecting non-complying facilities for inspections.

Two Industry-Specific Permits Being Drafted

In other New Jersey stormwater permitting news, Frankl said, DEPE is now working to develop draft industry-specific general permits for two sets of industries in the state: a sector including both scrap iron recycling and auto recycling facilities, and another sector comprised of ready-mix concrete facilities.

The state is working closely with the two affected industries on the permits, Frankl added, and may publish a draft permit for the recyclers by late June or early July. The draft permit for ready-mix concrete facilities probably will take longer.

Although DEPE helped EPA develop its proposed "multi-sector" model general permit, Frankl indicated that New Jersey will not adopt the final multi-sector permit as a whole. Instead, the state is using the draft multi-sector permit "as one source of information for developing state sector-specific permits," he said.

The following are other highlights from this month's survey of state stormwater programs.

Illinois

The Illinois Environmental Protection Agency (IEPA) wrote stormwater group permit applicants on April 29 stating that IEPA intends to cover their facilities under the state industrial general permit. "The agency believes that coverage under the Illinois general permit will be more appropriate," the letters stated, adding that the state general permit is only 11 pages long, versus 684 pages for the federal "multi-sector" permit proposal, and that the state general permit has no additional monitoring requirements and less stringent inspection and reporting requirements than EPA's document.

Indiana

Indiana Gov. Birch Bayh has signed Senate Enrolled Act 417, authorizing a permit fee structure for the Indiana Department of Environmental Management (IDEM) and potentially rescuing IDEM from a severe budget crunch, IDEM's deputy director of external affairs Connie Barron



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washinton, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 7711 Anderson Rd., Tampa, Fla. 33634-3039. Please allow four weeks for change of address.

Copyright ©1994 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 7711 Anderson Rd., Tampa, Fla. 33634-3039. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

said in early May. The new law authorizes IDEM permit fees for two years only, however, and requires the governor to appoint a 24-member Environmental Quality Service Council to study IDEM's funding needs and make recommendations for changes to the 1996 state General Assembly. The legislation also sets limits on the time that IDEM may spend in considering permit applications and limits the enforcement penalties the agency may charge certain facilities.

Assuming that the permit fees allow IDEM to raise an expected \$18.7 million in new revenue, Barron said, the agency should be able to hire 300

If inspections this summer show that non-filers needed permits, New Jersey law requires the state to consider 'significant' administrative penalties.

new employees for IDEM's air, hazardous waste and National Pollutant Discharge Elimination System (NPDES) water pollution permitting programs. However, it will take time for the new hires to come on duty. The new one-time permitting fee for construction sites regulated under the Indiana construction site stormwater general permit is \$100. Industrial stormwater dischargers covered by the state industrial general permit must pay \$100 annually.

North Dakota

North Dakota is in the process of reissuing its state stormwater general permit for mining facilities, Randy Kowalski of the North Dakota Department of Health and Consolidated Laboratories (DHCL) said in early May. A proposed reissuance of the permit was published in April, with a comment period ending May 13.

The permit reissuance proposal would provide new ways for certain mining and oil and gas facilities to be exempted from North Dakota stormwater permitting, so long as they have not had recent releases of reportable quantities of hazardous substances, Kowalski said. The proposal also would abolish the general requirement for regulated mines and oil and gas facilities to do stormwater sampling. However, facilities could be held to the old monitoring requirements at DHCL's request.

Nevada

Nevada will not issue its own version of the entire EPA "multi-sector" model general permit, according to Rob Saunders of the state Department of Conservation and Natural Resources (DCNR). However, Saunders said, "We are going to look at it. There's always a possibility that we will use a part of it." He added that Nevada will take no immediate action to require members of EPA-approved group applications to seek alternative

coverage. Instead, DCNR staffers plan to wait for EPA to issue a final multi-sector permit, then either to require group members to obtain state general permit coverage or, alternatively, to issue "a bunch of industry-specific state general permits" reflecting the multi-sector provisions.

Ohio

Ohio Environmental Protection Agency (OEPA) regulators hope to publish two draft "baseline" general permits for industrial stormwater dischargers this month, OEPA stormwater unit supervisor John Morrison said. One of the proposed permits released for public comment will be a proposal to reissue the state's industrial general permit for another 18 months, Morrison predicted. The second will be a baseline general permit for stormwater group permit applicants in Ohio.

OEPA will propose no monitoring requirements in this second baseline permit, which will be available only to members of EPA-approved group applications, Morrison predicted in mid-May.

Ohio wants to see "how the dust is going to settle on EPA's multi-sector general permit" in terms of monitoring requirements before establishing its own state monitoring requirements for group members, he explained. Also, requiring no monitoring will reward eligible facilities for monitoring work they have already done through the group application process.

The permit term for the proposed group baseline permit will probably be five years, but OEPA may later "break out" certain industries from the permit and cover them under industry-specific permits before the five-year term expires, Morrison indicated.

Tennessee

Tennessee stormwater regulators currently plan to adopt EPA's "multi-sector" model general permit once it is final, Robert Haley of the state Department of Environment and Conservation (DEC) said.

Ohio regulators are 'waiting for the dust to settle' on the multi-sector permit before requiring more monitoring by group members.

However, Tennessee will need at least nine months to issue its own multi-sector permit once the final federal permit is available. In the meantime, DEC may notify group applicants that they must seek temporary coverage under the state's baseline general permit, although this has not been decided yet. DEC currently is preparing industry-specific state general permits for three industrial sectors: airports, ready-mix concrete facilities, and transportation facilities in Standard Industrial Classification codes 41, 42 and 43. ■

Group Applications

(Continued from page 1)

Oklahoma Wildlife Federation and the Commonwealth of Massachusetts Riverways Programs.

Among the significant topics addressed in the comments were EPA's proposed quantitative sampling requirements for 17 industrial sectors covered by the proposed permit, the agency's "benchmark" pollutant values for stormwater dischargers, and the proposed monthly or quarterly requirements for certain industries to perform "visual" sampling of stormwater outfalls.

Among other topics, commenters also expressed concern about EPA providing rewards for industrial dischargers that participated in the group application process, the proposed permit's requirements for "co-located" facilities, the appropriateness of particular best management practices (BMP) and EPA's proposed requirement for permittees to certify their compliance with the Endangered Species Act and Historic Preservation Act.

Scrap Recyclers Cite Costs to Small Business

Many of the comments by scrap iron processors appear to be based on a 62-page set of comments developed for the scrap recycling industry by the Institute for Scrap Recycling Industries (ISRI), which earlier commissioned an economic study by Woodward-Clyde Consultants and ICF Inc. to determine the economic impact of the proposed permit on scrap recycling facilities.

A common theme voiced by the auto recyclers and scrap processors is that EPA's proposed permit would be prohibitively burdensome on small, family-owned recycling firms, even to the extent of putting some of them out of business. Both industries also strongly challenge EPA's proposed monitoring requirements, finding them overly comprehensive and unnecessarily costly.

ISRI's economic study of prospective stormwater costs, submitted with the organization's comments, contends that for scrap metal recyclers with metal shredding equipment, the capital costs of complying with the multi-sector proposal would average \$220,000 per facility, while the mean cost of operation and maintenance of stormwater controls would be \$83,000 annually.

For the somewhat smaller scrap metal recyclers that do not have shredders, the ISRI study suggests that stormwater compliance capital costs would average \$145,000 and that yearly operations and maintenance costs would average \$56,000. Smaller compliance costs are predicted for paper, plastic and glass recyclers: about \$22,000 in mean capital costs and average annual operations and maintenance costs of \$11,600.

"The draft multi-sector permit total annual compliance cost for the ferrous recycling industry of \$338.4 million would constitute 37 percent of the total industry payroll costs," the ISRI study contends, and "could be expected to result in layoffs for the industry as facilities either cease operation or are forced to employ fewer workers."

A form letter submitted by numerous scrap metal recyclers to EPA's public comments docket contends that the annual costs of compliance for small scrap metal processors would be approximately \$140,000.

"We are a company of 31 employees in a very competitive world market. This kind of added cost could put an added burden on many small companies that could contribute to lost jobs and taxes," a representative of Electro Cycle, a Madisonville, Ky., scrap processor, argues in comments on the draft permit.

EPA, by failing to take better account of the costs of the proposed permit to small business, violated the provisions of the Regulatory Flexibility Act, ISRI adds in its comments.

Benchmarks 'Inappropriate' for Now

ISRI also contends that EPA's development of "benchmark" values for pollutants in stormwater runoff is not appropriate at this stage of the stormwater program, particularly given EPA's past publication of a four-tier regulatory strategy that appears to put the development of general permitting and watershed-based permitting before that of industry-specific requirements.

EPA "has yet to conduct the necessary investigations of receiving waters or prepare watershed plans," ISRI argues. "Consequently, EPA appears to be acting in a manner inconsistent with its own announced strategy of identifying receiving watersheds that have been adversely affected by industry stormwater discharges ... before developing requirements for controlling those discharges."

In addition, ISRI notes, benchmarks "could certainly be misused and interpreted to act as numerical stormwater effluent standards or limitations. Any establishment benchmark levels also could serve as a basis for imposing best management practice (BMP) or other permit requirements at a future stage of EPA's regulatory program."

Scrap Processor Monitoring Seen As 'Overwhelming'

Imposition of stormwater monitoring requirements on the scrap metal industry would impose "overwhelming administrative burdens" on both EPA and the industry, ISRI's comment package also contends.

This would "force scrap processing and recycling facilities to allocate their limited financial resources

toward complying with these onerous and expensive requirements, rather than in investing in implementing BMP measures," the institute argues.

EPA has proposed to require scrap metal recycling facilities to perform analytical monitoring for 11 parameters, ISRI notes. These include chemical oxygen demand (COD); total Kjeldahl nitrogen; nitrate plus nitrite nitrogen; total recoverable aluminum, cadmium, copper, iron, lead, zinc and arsenic; and polychlorinated biphenyls (PCBs).

EPA's proposed benchmark values for some of these parameters are "unrealistic" and "cannot be technically achieved" by scrap processing and recycling facilities, "even if costly and stringent BMPs were implemented at these facilities," ISRI comments further.

The benchmark values for arsenic and PCBs are lower than most environmental testing laboratories can detect, ISRI adds, making it "highly doubtful that the benchmark levels for PCBs and arsenic would be achieved under any circumstances." For some proposed parameters, ISRI also contends, existing background levels of the pollutants in the environment are high enough to influence monitoring results at scrap metal recycling facilities.

ISRI argues further that total Kjeldahl nitrogen and nitrate plus nitrite nitrogen have "no known industrial sources" at scrap recycling facilities. The institute does not contend that COD, iron, arsenic or PCBs are absent from scrap recycling sites, but it contends that PCBs are "generally not a significant concern for surface water quality" and that arsenic and iron, although potentially of concern to human health, "are not harmful to aquatic life."

COD "has not been definitively tied to dissolved oxygen problems in receiving waters," ISRI adds. Thus, the institute contends that if scrap metal recyclers are required to do quantitative monitoring at all, they should not have to monitor for COD, PCBs, arsenic, iron or nitrogen pollutants in their runoff.

Most scrap metal facilities that have high lead concentrations in their runoff also have high concentrations of other toxic metals, ISRI adds, so that "if monitoring is, in fact, required, the most cost-effective and reasonable approach would be to limit monitoring to lead."

Auto Recyclers Warn of Likely Bankruptcies

In letters apparently based on a model developed by the Automotive Recycling Association, hundreds of small auto salvage yards put the proposed permit's five-year compliance costs at approximately \$16,000 for the average auto recycling facility.

"Veneklasen Auto Parts' earnings regularly provide a profit margin which does not allow for additional, burdensome business expenses," con-

tends a letter from a small auto recycler in Holland, Mich. "The excessive cost of compliance with the requirements of the proposed multi-sector permit would cause extreme hardship to my business, without offering proven environmental benefits."

Like many other auto recyclers, however, Veneklasen Auto Parts objects most strongly to EPA's quantitative monitoring requirements in the proposed permits.

In language almost identical to that used by many other auto salvage yards, both large and small, the Veneklasen Auto Parts letter states, "My primary concern, however, focuses on the unwarranted costs associated with the chemical testing, detailed inspections and documentation requirements which will negatively impact my auto recycling efforts. These are no small costs—they could put me out of business!"

Many comments submitted by auto salvage yards therefore urge EPA to drop quantitative monitoring for the industry. Instead, they suggest, EPA should require the industry to perform visual monitoring of stormwater only, at a frequency of no more than twice per year.

A somewhat differently focused letter from All GM Recycling of San Bernardino, Calif., expresses concern about the potential impact of the multi-sector permit on small business, adding, "Unfortunately, our business does not currently enjoy economic prosperity, and this could be a serious blow."

According to scrap metal processors, some benchmark values may not be achievable 'under any circumstances.'

Rather than recommending specific changes in the proposal, however, the comment suggests that EPA seek "that delicate balance between realistic environmental protection and sound economic policy" by arranging to meet with a "representative" group of auto dismantlers to jointly develop "a program that meets the need of our environment and the parties involved."

In a more extended comment on the challenges facing auto recyclers, Paul Parker of Ram Auto Parts in Dallas offered eight pages of comments on EPA's proposal and included 38 specific recommendations for changes.

Added Concerns Voiced By Wood Preservers

Many comments submitted by wood preserving firms are significantly less critical of EPA's proposal, but still suggest that EPA's monitoring requirements would be unnecessarily costly and complex given the stormwater problems commonly found in the wood preserving industry. ■

Storm Warnings

Stormwater Related News in Capsule Form

- **Silt Is 'Number One Waterways Problem,' Says EPA.** Siltation, caused by sediment in stormwater runoff, is the "number one problem threatening America's waterways," U.S. Environmental Protection Agency (EPA) Administrator Carol Browner said April 20. Speaking just two days before Earth Day at a heavily silted-up Bladensburg, Md., marina located on the Anacostia River, a tributary of the Potomac River and Chesapeake Bay, Browner said silt turned up as the leading cause of pollution in EPA's 1992 National Water Quality Inventory. The siltation of the Anacostia, Browner suggested, made the river a symbol "of two things: that America's waters are in trouble, and that we have the power to solve the problem."

The National Water Quality Inventory is based on biennial water quality assessments submitted to EPA by the states under Section 305(b) of the Clean Water Act. They showed siltation affecting 45 percent of impaired river miles, 22 percent of impaired lake acres, 12 percent of impaired estuarine areas, and about 29,000 acres of impaired wetlands surveyed.

The latest 305(b) figures reflect only that fraction of the nation's waters that the states have recently assessed, EPA noted. The 1992 survey covered approximately 18 percent of the nation's river and stream miles; 46 percent of its lake, pond and reservoir acres; 74 percent of its estuaries; and 99 percent of the Great Lakes shoreline. However, the survey reflected state assessments of just 6 percent of the coastal waters and 4 percent of the nation's wetlands.

- **Nutrients, Metals, Pathogens Also Identified as Major Threats.** In addition to silt, nutrients constituted another important kind of pollution noted in the 1992 National Water Quality Inventory (see above). According to EPA's figures, nutrients affect 37 percent of impaired river miles, 40 percent of impaired lake acres, and 55 percent of impaired estuary square miles assessed in the inventory. Also important were heavy metals, which affected 47 percent of impaired lake acres assessed; and biological pathogens, which affected 42 percent of the square miles of impaired estuaries assessed.
- **Farm, Municipal Runoff Called Prime Pollutant Sources.** Agricultural runoff, municipal point sources, and urban runoff are the leading sources of the different forms of water pollution identified in the 1992 National Water Quality Inventory, EPA Administrator Browner said in her

April 20 speech. According to accompanying press materials, agricultural runoff affected 72 percent of impaired rivers and 56 percent of impaired lake acres assessed in the 1992 inventory. Urban runoff affected 43 percent of impaired estuary square miles and 24 percent of impaired lake acres assessed. Municipal point sources affected 53 percent of impaired estuary square miles assessed.

- **Citing Water Quality Woes, EPA Urges Quick Action on Clean Water, Safe Drinking Water Acts.** The 1992 National Water Quality Inventory indicates that overall, some 40 percent of the nation's assessed rivers, lakes and streams are "too polluted" for designated uses, Browner said at her April 20 press conference (see above). Browner added that the solution to contemporary water degradation lies in the Clinton administration's proposals for reauthorizing both the Clean Water Act and the Safe Drinking Water Act. Browner indicated that the administration will make a major effort to get both laws reauthorized before the 103rd Congress adjourns in late 1994.

The chances of Congress passing Clean Water Act legislation this year were deemed "excellent" by Sen. Max Baucus, D-Mont. Baucus, who chairs the Senate Environment and Public Works Committee handling Clean Water Act issues, joined Browner at the April 20 event.

- **Clinton Proposals Will Help Cure 'Unfunded Mandates,' Browner Vows.** It is unclear at press time whether supporters of the administration and Senate proposals on clean water and safe drinking water have gained enough support yet for passage of the bills in Congress. Many cities and municipalities, for instance, have strongly criticized both the existing Clean Water Act and the existing Safe Drinking Water Act for imposing "unfunded mandates" on financially struggling local governments (see *Bulletin*, May 1994, p. 1).

In her April 20 speech, Browner indicated that EPA's reauthorization proposals would do much to address the "unfunded mandates" issue by giving local governments needed flexibility in their implementation of the laws. EPA previously made this same argument in its March 1994 report *President Clinton's Clean Water Initiative: Analysis of Benefits and Costs* (see *Bulletin*, April 1994, p. 7).

Many of the administration's claims for addressing the unfunded mandates problem rely on

proposals to limit the number of currently unregulated, "Phase II" stormwater dischargers that would be subject to National Pollutant Discharge Elimination System (NPDES) permitting. EPA officials have said that "Phase II" stormwater permittees potentially number in the millions. The administration's clean water initiative, though, would limit NPDES stormwater permitting to just 396 "urbanized areas" of 50,000 population or greater. According to EPA, this could help save municipalities upwards of \$20 billion each year on stormwater controls.

- **Tough Maryland Law Targets Litter as Source of Storm Sewer Pollution.** Trash and debris is "extensive throughout the entire Anacostia River stream system" that EPA Administrator Browner chose to dramatize the nation's water pollution problems at her April 20 press conference, according to a regional commission working on the cleanup of the Anacostia and the wider Potomac River basin of which it is part. Such common constituents of urban litter as polystyrene foam cups, beverage bottles and cans "make up a good deal of what eventually gets into the streams from storm runoff," adds a 1993 report by the Interstate Commission on the Potomac River Basin (ICPRB). The commission report notes further that illegally dumped trash and debris are a source of pollution that "damages small boats, hinders (the establishment of) aquatic plants and stream vegetation, and pollutes wildlife and aquatic life habitat."

Partly to address stormwater trash and debris, Maryland's attorney general and state legislature last year revised the Maryland Litter Control Law to provide much stiffer penalties for violators. Under the revised law, which went into effect Oct. 1, 1993, illegal dumpers of large quantities of trash may be fined up to \$10,000 and required to clean up what they have dumped. Individuals convicted of dumping illegally for commercial purposes may be fined up to \$25,000 and sentenced to five years in jail.

- **'Sector' Task Forces on Multi-Media Regulation May Get Started Soon.** EPA originally hoped to designate several "sector-specific" task forces to consider multi-media environmental regulation in selected industries by Earth Day, EPA Assistant Administrator for Water Robert Perciasepe said April 20 (see *Bulletin*, February 1994, p. 4). However, Perciasepe added, it has been difficult to select industries for inclusion in the task force initiative, which EPA is calling its "Green Centrist Program" or "Common Sense Initiative," because of the large amount of interest shown by many industries. Although the initiative is late getting started, EPA hopes to have it

underway by early summer, Perciasepe said.

In late April, one of Perciasepe's aides said EPA was considering the following industries for possible participation in the initiative: animal feedlots; automobile assembly plants; electronics and computers; environmental technology; freight transportation; iron and steel; metal fabrication, forming, plating and finishing; petroleum refining; photo manufacturing and processing; plastics; printing; and pulp, paper and paperboard manufacturing. This list is not exclusive, the aide added, and largely reflects industry interest in the initiative.

- **Will Clinton's Supreme Court Choice Go Easy on Small Environmental Risks?** Industries seeking relief from excessive environmental regulation may have a friend in President Clinton's new Supreme Court nominee Judge Stephen Breyer, according to a May 16 *Wall Street Journal* article on Breyer by reporter Paul Barrett. Breyer, a former aide to Sen. Edward Kennedy (D-Mass.), worked to persuade Kennedy to join Senate conservatives in advocating airline deregulation in the 1970s, the article notes. In 1992, when Breyer delivered the Oliver Wendell Holmes Lecture at Harvard, he chose as his topic "Breaking the Vicious Cycle: Toward Effective Risk Regulation." In that lecture he complained of "regulatory gridlock" and stated, "Efforts to regulate small risks to health are plagued by serious problems of tunnel vision, random agenda selection, and inconsistency." In that lecture, Breyer asked rhetorically, "Is it possible to cut the Gordian knot?"

According to the May 16 article, however, Breyer is not a conservative, but a "professional centrist" who is "a skeptic of government interference with economic matters." By nominating him, Clinton reportedly hopes to avoid a confirmation fight in the Senate, which would have been likely had the White House nominated Secretary of the Interior Bruce Babbitt, whose views on conservation are controversial among many Western senators.

- **Gulf of Mexico Issues to Be Discussed in National Get-Together of Environmental Professionals.** Regional environmental issues affecting the Gulf of Mexico will be one topic covered by the 19th Annual Conference and Exposition of the National Association of Environmental Professionals (NAEP) held June 12-15 in New Orleans. Other subjects to be addressed at the NAEP conference include risk assessment, environmental management, biodiversity preservation, sustainable development, environmental equity, environmental ethics and interna-

(Continued on page 8)

Storm Warnings

(Continued from page 7)

tional environmental issues. There also will be seminars before and after the conference on ethics, negotiating skills, dealing with the media, project management and the National Environmental Policy Act. Attendance fee is \$325 for members, \$495 for non-members. For more information, call (800) 526-6237 or (202) 966-1500, or fax NAEP at (202) 966-1977.

- **Federal Facility Environmental Courses to Look at Stormwater Regulation.** A forthcoming series of three-day Government Institute training courses on "Environmental Compliance for Federal Facilities and Industry" will include discussions of stormwater regulation as well as other Clean Water Act compliance issues. Additional issues to be addressed include Clean Air Act compliance, compliance with Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986, compliance with underground storage tank and aboveground storage tank regulations and the Endangered Species Act, National Environmental Policy Act compliance, and hazardous waste management under the Resource Conservation and Recovery Act. Courses available over the next few months are scheduled for June 13-15 in Virginia Beach, Va.; July 11-13 in Denver; Aug. 1-3 in Arlington, Va.; and Sept. 12-14 in Anchorage. Attendance fee is \$999 per individual. For more information contact Government Institutes, 4 Research Place, Suite 200, Rockville, Md. 20850; (301)921-2345.

- **Stormwater Compliance Course Scheduled for September.** A Government Institutes course on "Stormwater Management: How to Comply With General Permits" is scheduled for Sept. 19 in Alexandria, Va. Attendance fee is \$499. For more information contact Government Institutes, 4 Research Place, Suite 200, Rockville, Md. 20850; (301) 921-2345.

- **Maryland Introduces Scanner-Compatible Notice of Intent Forms.** The Maryland Department of the Environment (MDE) has introduced two new notice of intent (NOI) forms for use by construction sites seeking state stormwater general permit coverage, according to MDE staffers.

The information applicants must provide on the new forms is essentially the same as that required on the old NOIs, but applicants must now fill in "bubbles" on the form with a No. 2 pencil, so that the forms can be read by electronic scanner.

According to MDE, the old forms required permittees to "interpret questions and often led to inaccurate or ambiguous data," whereas the new NOI forms "allows for less interpretation and therefore should result in more accurate data collection." The new forms also include all necessary instructions, eliminating the possibility of an NOI filer losing the filing instructions, MDE reports. Moreover, the electronic processing should expedite the permitting process. One scanner-compatible NOI form is for construction projects in the private sector; a second is for exclusive use by state or federal projects. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$348
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$298
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
7711 Anderson Rd., Tampa, Fla. 33634-3039

Call Us Toll-Free At 1-800-879-3169

J46STRM

Stormwater Permit Manual

Bulletin

Volume 3, Number 11

May 1994

CLEAN WATER ACT REAUTHORIZATION:

'Don't Pick On Us; Regulate Industry,' Developers, Municipalities Urge in New Stormwater Report

Pollution associated with urban stormwater has been "overstated," according to a recent report commissioned by the National League of Cities and the National Realty Committee. The report adds that "many pollutant sources attributed to urban runoff" are "not caused by discharges from residential and commercial activities," but instead are caused by "marine vessels, shipyards, marinas, leaking septic systems, industrial sites, and the erosion of stream channels and shorelines."

Accordingly, the report recommends that regulators:

- correct runoff problems associated with combined sewer outfalls (CSOs), sanitary sewer overflows into storm drains, and illicit connections of sanitary sewers and industrial discharges to municipal storm drains;

- do more research on "industrial site stormwater runoff which may have higher pollutant concentrations" than runoff from residential and commercial areas; and
- "exercise great care" in imposing new stormwater controls on cities, "without first considering the results of ongoing programs to control more significant stormwater pollution sources."

According to the report, such "significant" sources specifically include industrial site stormwater runoff, as well as CSOs and sanitary sewer overflows. The report, *Defining the Urban Stormwater Runoff Problem*, was prepared by Gwendolyn Buchholz and Sandra Siems of Montgomery Watson, an engineering consulting firm specializing in water and wastewater planning and design for federal, state and local agencies.

(Continued on page 3)

STORMWATER ENFORCEMENT:

Can Runoff Be Penalized If Acid Rain's To Blame?

This spring, General Motors Corp. (GM) is facing a possible \$125,000 Class II administrative penalty from Region V of the U.S. Environmental Protection Agency (EPA) for 92 alleged stormwater violations at a long-closed GM factory in Pontiac, Mich. According to GM, however, no past or present industrial activities at the plant caused the alleged violations. Instead, they are partly the result of acid rain falling onto the facility's metal roof and leaching copper, lead and zinc into the storm drains.

(Continued on page 2)

Inside this issue. . .

- Additional States Decide on 'Multi-Sector' Permit 3
- Interview: Engineer/Surveyor Offers Advice on Control of Monitoring Costs 4
- NRDC, Other Environmental Groups Sue Port of Long Beach 6
- Municipal Stormwater Permitting: Illegal Dumping 'Hotline' Launched in Los Angeles County 8

**Thompson
Publishing
Group**

General Motors

(Continued from page 1)

In a case now being heard by an EPA administrative law judge, GM is arguing that it cannot be held responsible for heavy metals in stormwater runoff which are the result of acid rain interacting with the structural materials in the Pontiac plant's roof.

The facility does not discharge "pollutants" as defined under the Clean Water Act when it discharges metals dissolved by acid rain, the company argues. Instead, whatever contamination exists at the plant is caused by "an act of God and/or nature" for which GM is not legally responsible.

GM attorney Jim Walle also has noted, in arguing that the permit exceedances were beyond GM's control, that copper, lead and zinc are fairly common in the environment. Copper is often found in Michigan's Upper Peninsula and has been removed in the form of huge boulders from Lake Superior, Walle observes.

Moreover, GM has observed that numerous other structures besides its Pontiac facility—notably including the U.S. Capitol Building, the Statue of Liberty, and other government buildings and churches—also have roofs or other surfaces of copper and other metal alloys that are known to corrode when exposed to acid rain. Acid rain, GM adds, is widespread in the United States.

"Congress could not have intended that copper dissolved from statues or gutters is a pollutant. Otherwise, to be consistent, EPA's position in this case would require the Statue of Liberty to be painted or its stormwater runoff pretreated!" GM wrote to EPA Region V attorney Cathleen Martwick in May 1993.

Singling out GM for enforcement while other facilities exposed to acid rain are allowed to discharge heavy metals without penalty, the company has argued, violates its right to due process under the U.S. Constitution.

The dispute, ironically, comes when stormwater exceedances at the Pontiac plant apparently have ceased. GM received its Michigan Department of

Natural Resources stormwater permit for outfall 002 at the Pontiac facility on June 30, 1988, but subsequently closed the plant on Aug. 16, 1988.

The closed plant subsequently violated its metal effluent limits 88 times from 1989 through 1992, GM admits, but on discovering the acid rain problem GM paid approximately \$120,000 to coat horizontal portions of the 1-million-square-foot roof. This brought metals within permit limits from May 31, 1992, through July 29, 1993.

In late summer of 1993, the plant again began exceeding permit limits, GM says, but it corrected this by taking additional actions to control runoff from the roof.

Region V proposed its penalty against the facility in March 1993, apparently after work on the roof began. In correspondence with EPA, GM has suggested that the company is being punished for being "ahead of the regulatory curve" in addressing stormwater problems.

EPA Region V contends that the prevalence of acid rain and heavy metals in the environment is not at issue in the case, but only GM's failure to comply with the terms of the 1988 permit. Moreover, EPA contends, the permit exceedances began in May 1989, but GM only began investigating them in February 1990.

In a March 31, 1994, prehearing exchange with GM, Martwick added that the Clean Water Act is a "strict liability statute" and that GM has no defenses at law against the proposed penalty.

At press time, EPA and GM sources said no further proceedings in the case had yet been scheduled. ■

New Multi-Sector Permit Deadline

The U.S. Environmental Protection Agency (EPA) hopes to issue a final "multi-sector" model general permit for stormwater dischargers by the end of the fiscal year, or late September, Michael Cook, director of EPA's Office of Wastewater Enforcement and Compliance, said in April. Some private stormwater consultants, however, are skeptical that EPA will meet the September deadline. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washinton, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, Subscription Service Center, 7711 Anderson Rd., Tampa, Fla. 33634-3039. Please allow four weeks for change of address.

Copyright ©1994 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, Subscription Service Center, 7711 Anderson Rd., Tampa, Fla. 33634-3039. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

NLC/NRC Report

(Continued from page 1)

Are Added Urban Runoff Controls Redundant?

The report, commissioned in 1993, comes as the U.S. Environmental Protection Agency (EPA) proposes to address currently unregulated, "Phase II" stormwater sources primarily by extending regulation to "urbanized areas" identified by the U.S. Census Bureau as serving populations of 50,000 or more (see *Bulletin*, March 1994, p. 5).

In addition, the chief Clean Water Act reauthorization bill under consideration in the Senate, S. 1114, would extend stormwater controls to "urbanized areas" adjacent to municipal separate storm sewer systems (MS4s) regulated under existing law. The new report, therefore, appears to represent a plea by smaller cities against the thrust of the Phase II strategies favored by the Senate and EPA.

Existing stormwater regulations, the report contends, may yet reduce urban stormwater pollution "to such an extent that further treatment may not be necessary."

Kudos for Watershed Permitting

The president of the National League of Cities, Mayor Sharpe James of Newark, N.J., stated in an accompanying press release that the report had identified urban runoff as "a relatively small component of the overall nonpoint-source pollution problem," but one that would "necessitate an enormous expenditure by local governments" to comply with EPA requirements.

Moreover, James said, the report points out that "effective watershed management and nonpoint

pollution prevention programs can achieve comparable improvements in stormwater at a much lower cost."

Metal Control Costs Appear Central to Study

The control of heavy metals in runoff appears to be the one stormwater requirement that the cities find most objectionable. A chart in the report indicates that operation and maintenance (O&M) costs for "level 5" heavy metal controls alone could amount to more than \$500 billion annually.

The stormwater pollution threat posed by heavy metals is prominently mentioned in EPA's draft "Phase II" report to Congress (see *Bulletin*, this issue, p. 6). That report indicates that metals ranked as the number one contaminant of polluted lakes in EPA's 1990 National Water Quality Inventory, as well as the fifth most important contaminant of impaired rivers. Conflict over heavy metals, then, could be a major source of future stormwater disputes between EPA and cities.

Opposition to future numeric effluent limits on municipal runoff, which has long been voiced by many cities, also is a strong thrust of the report. Imposing numeric effluent limits on municipal runoff, the report contends, would greatly increase urban stormwater management costs.

The report's cost estimates are drawn from an earlier study by the American Public Works Association/Southern California Chapter. However, EPA sources say this earlier report appears to rely on an exaggerated, "worst-case" scenario of what stormwater regulations ultimately will require in the way of structural controls. Generally, EPA encourages cities to find less costly alternatives to structural controls, notes Michael Cook, director of EPA's Office of Wastewater Enforcement and Compliance. ■

Additional States Decide On 'Multi-Sector' Permit

Several states surveyed for this month's update of the *Stormwater Permit Manual* have recently come to decisions concerning the U.S. Environmental Protection Agency's (EPA) proposed "multi-sector" general permit.

Colorado will not use the EPA proposal now, but may use the final "multi-sector" permit as an information source when reissuing state general permits in a few years, said state stormwater official Sarah Johnson.

Illinois soon will cover group members under its industrial general permit unless they object strongly, said state stormwater staffer Sue Epperson. Those who object in writing may receive alternative coverage.

Iowa will not issue a state multi-sector permit, but plans to use EPA's final permit as the basis for issuing individual permits to group members,

stormwater official Monica Wnuk said.

Maryland now advises inquiring group applicants to seek coverage under its state industrial general permit, according to stormwater staffer Elaine Lennon. However, the state has not yet decided whether to use the multi-sector permit, either as model or guidance, in issuing new or revised state permits.

New York cannot issue a permit like the multi-sector permit and will soon urge group applicants to use the state industrial general permit, stormwater official Ken Stevens said.

Pennsylvania's stormwater task force has set up a subcommittee to seek ways to make the state industrial general permit more like EPA's multi-sector proposal, state official Stuart Gansell said. The task force also has reached agreement on some ways to simplify Pennsylvania's notice of intent form. ■

PE/Surveyor Sees Continued Need for Sampling; Offers Tips to Permittees on Keeping Costs Down

Jon Phillippe, a licensed professional engineer and surveyor based in Northern Virginia, has worked in the engineering field for approximately 30 years. Earning a bachelor's degree in 1962 and a master's in 1968 from Virginia Polytechnic Institute, Phillippe subsequently worked as an engineer for a variety of private companies, including Paciulli-Simmons, a land development firm in Reston, Va.; Michael Baker Engineers of Beaver, Pa.; and Ogden Environmental and Energy Services of Alexandria, Va. He also has taught university courses, participated in a consulting partnership, and headed up his own Alexandria, Va., engineering and surveying firm. Recently Phillippe served as project manager for Ogden Environmental on the development of a municipal separate storm sewer system (MS4) permit application for Chesterfield County, Va., and also assisted the Texas-based consulting firm of Carter & Burgess in preparing the Dallas "Part 2" MS4 permit application. Phillippe predicts that both regulated MS4s and many industrial stormwater permittees will continue to face quantitative monitoring requirements for years to come. Professional surveyors, he adds, can help regulated facilities meet their monitoring requirements quickly, reliably, and fairly inexpensively. The following is based on a Thompson Publishing Group (TPG) interview with Phillippe on April 11, 1994.

TPG: You've said that you used surveyors to do some of the monitoring work for the Chesterfield County MS4 application, and that you were quite satisfied with the results. Why—apart from your own professional self-interest, of course—do you think surveyors are particularly well-suited to doing stormwater monitoring?

Phillippe: The reasons are fairly straight-forward. First, there's the question of training: surveyors are mathematically trained, and they're good at taking notes. They can be trained to take a good sample, if you get them together beforehand to tell them what you want and provide them with the right materials. Second, there's the question of personnel availability. When it's raining, usually you can't do much surveying, so it's not that hard to get surveying crews to come to your site on a rainy day to do sampling. They're used to getting up early in the morning and staying out late at night, so sampling at odd hours is not that much of a problem for them. And third, they're usually fairly rugged people, and the trucks they drive are generally well-equipped for safety. That's a plus if you need stormwater sampling done in remote locations.

TPG: With the stormwater program going the way it seems to be at present, and with the U.S. Environmental Protection Agency (EPA) proposing reduced sampling requirements for some industries in its draft "multi-sector" general permit, do you think there will be enough stormwater sampling work in the future for anyone to make money at it?

Phillippe: I think MS4 sampling is going to be an ongoing requirement. Stormwater permitting for MS4s, I think, will become somewhat similar to state and federal permitting of municipal sewage treatment plants, which have an ongoing requirement for regular monitoring. I think what the EPA is going to require of municipal stormwater permittees is going to be similar to this.

"I think there will be more monitoring and sampling as time goes on, but it will be more focused than it is now."

As far as industrial dischargers are concerned, I think we'll find that there are certain stormwater streams that can be separated from process wastewater streams and others that can't be. Where we can't separate process wastewater streams from stormwater, we'll have industrial waste discharges that we need to permit; and for this situation, continued monitoring may be required. Perhaps a facility will have two stormwater outfalls, and outfall 01 will respond a bit better to best management practices, and will not require further monitoring. But outfall 02 will not respond as well, and will require monitoring. Basically, I don't see the need for sampling and monitoring going away. I think there'll be more sampling and monitoring as time goes on, but I think it will be more focused than it is now.

TPG: The market for sampling and monitoring services, then, should continue to be good.

Phillippe: I think that there's probably going to be a pretty good market for grab samples and basic laboratory analyses of simple substances found in stormwater. In the MS4 permitting field, I think there's definitely going to be a continued market for the outfall screening kits put out by Lamotte, Chemetrics, and Hach. These come with prepackaged chemicals and colorimetric tests for municipal outfalls. They give you results on the spot. We used these kits in the MS4 "Part 1" application process, and I see a continued market for them and similar kits in future MS4 applications.

TPG: Based on your past use of these kits, why do you believe that the Lamotte, Chemetrics and Hach screening kits are so good?

Phillippe: These three companies offer testing kits that are quite inexpensive, and that were useful in the Part 1 pre-screening process for indicating the possibility of pollutants coming from MS4 outfalls. These field-grade kits help you test for the presence of things like phenols, chlorine, detergents, and copper in municipal runoff. A base kit costs less than \$500, and usually there are enough chemicals in there to run 40 to 50 tests. We use these kits primarily to flag possible problem areas in MS4 systems, so that we know where to look further. Other companies, of course, make sampling kits for other purposes.

TPG: What are some MS4 monitoring requirements that are turning out to be particularly costly?

Phillippe: Under EPA's permit requirements for regulated MS4s, cities have been asked to characterize their runoff from certain test watersheds. That's proving to be very expensive, because you have to test for organic chemicals and what-have-you in the runoff. Just one set of lab tests screening for organics and the full suite of specified pollutants will cost a municipality more than \$3,000. Besides the straight laboratory costs, there are also a host of complications and logistical difficulties in getting valid samples that meet stringent EPA criteria, and this adds to your costs.

When we prepared the permit application for Chesterfield County, we found no organics in any of five targeted watersheds, but we had to spend more than \$3,000 for each watershed, in lab costs alone, to demonstrate this. I think that these particular MS4 monitoring requirements may be more for EPA's benefit, so that it can characterize urban stormwater discharges, and less for the purpose of solving any real-world environmental problems.

TPG: Judging from EPA's draft report to Congress on currently unregulated or "Phase II" stormwater dischargers, it looks as if the agency is really intent on cracking down on illicit discharges to MS4s. In fact, industrial dischargers today already are supposed to correct illicit connections before filing for general permit coverage. Will detection and correction of illicit discharges be a major challenge for the cities, then?

Phillippe: I think so. This is particularly true for older cities, where you're more likely to have illicit discharges. It's not so true for the newer cities. I know that one problem we faced with the Dallas MS4 application was that maps and plans for the stormwater system could not be found, and in some cases manholes had been sealed over during repaving of the streets. Historically, of course, "out of sight, out of mind" was the standard for stormwater, so long as no major problem turned up.

There are technologies that can help MS4s reconstitute their sewer system maps, however. There are

geographic information systems, which build up maps using a series of overlays, and also there is the global positioning satellite (GPS) technology system. GPS technology, by relating field observations to at least three of the 24 global positioning satellites in geosynchronous orbit around the earth, can determine the locations of municipal outfalls to an accuracy of within one centimeter. Or, with about \$15,000 worth of equipment, you can get locations that are accurate within three feet.

TPG: The satellites help you position the outfall accurately once you've found it, right? I don't see quite how they could find an outfall in the first place.

Phillippe: No, you usually find your outfalls and your underlying storm drains visually. You can do dye tests and use deductive logic to find the outfalls, then use the satellites to determine their geographic locations accurately.

TPG: How should an industrial permittee check for possible illicit connections?

Phillippe: You can either do it in-house, or hire outside consultants for this. Typically, what you worry about at an older industrial site are floor drains, which may discharge to either storm or sanitary sewers. You can do dye testing to see if a given floor drain goes through to the storm sewer. It's relatively inexpensive if the dye you put in the drain comes out in the outfall you expected. If the dye disappears or comes out somewhere else, dye tests can get more expensive.

"Many cities are gearing up to detect illicit discharges. I think many industrial dischargers will be facing this issue in a year or so ... Some may be facing it now."

TPG: EPA's stormwater enforcement strategy for fiscal years 1994 and 1995 doesn't place a big priority on enforcing against illicit connections. Does industry need to worry about them right away, or can this wait—despite the language in the baseline industrial general permit?

Phillippe: I think people should start looking for these problems and correcting them, and documenting it. I think that's what EPA wants. I don't see EPA doing a lot of enforcement on this now, but many MS4s are getting geared up to detect illicit connections. I think that this is an issue that's going to face industrial dischargers within a year or so. In some cases, industries may be facing it now. ■

For more information on sampling and monitoring issues, subscribers should see EPA's answers to commonly asked monitoring questions in this month's Manual update.

Storm Warnings

Stormwater Related News in Capsule Form

- **Environmentalists Bring Stormwater Suit Against Port of Long Beach.** Three environmental groups filed a citizens' suit on April 7 against the Port of Long Beach, Calif., for alleged stormwater violations. According to sources with the Natural Resources Defense Council (NRDC), which is joining Heal the Bay and Santa Monica Baykeeper Inc. in the suit, the citizens' complaint turns in part on the port's alleged failure to control polluted runoff by its 45 industrial tenants, which engage in a variety of heavy industrial activities on the site. The port's monitoring techniques also are at issue in the suit, NRDC attorney Gail Ruderman Feuer has told the trade press.
- **ASCE Offers Stormwater Permit Compliance Seminars in May, June.** The American Society of Civil Engineers (ASCE) has scheduled several upcoming seminars on compliance with construction site and industrial National Pollutant Discharge Elimination System (NPDES) stormwater permits. Seminars will be held May 16-17 in Rochester, N.Y.; May 19-20 in Cincinnati; June 6-7 in Salt Lake City; and June 8-9 in Phoenix. Fee for ASCE members is \$345 for one day only, \$645 for both days of seminar. Non-members pay \$395 and \$745 respectively. Those who cannot attend seminar can get six-hour audiotape overview and workbook for \$149. For details, contact ASCE Continuing Education, P.O. Box 830, Somerset, N.J. 08875-0830 or call (800) 548-2723 or (212) 705-7668.
- **ASCE Training Program Video Available.** ASCE also offers a stormwater compliance video for employee training programs. Cost is \$350 plus \$8.50 shipping and handling. Call (800) 548-2723 for details.
- **Michigan Offers More Stormwater Training Sessions for Construction Site Operators.** The Michigan Department of Natural Resources (DNR) is offering additional training and certification courses in June for construction companies that must soon have state-certified "stormwater operators" on site. Courses are scheduled for June 2-3 in Ann Arbor, Mich.; June 6-7 in Spring Lake; June 7-8 in Houghton Lake; June 9-10 in Lansing; June 13-14 in Farmington; June 14-15 in Grand Rapids; June 16-17 in Mt. Clemens; and June 21-22 in Romulus. For details, contact Howard Selover, DNR Operator Training Unit, at (517) 373-0397.
- **EPA Releases Watershed Strategy Guidance for Regions.** On March 21, the U.S. Environmental

Protection Agency (EPA) released a guidance document for EPA regions on watershed protection efforts using the NPDES permitting program. The strategy document focuses on "key action items for the NPDES program," but also suggests that the NPDES watershed initiative will be coordinated with other EPA watershed initiatives, including the National Estuary Program championed by the Office of Wetlands, Oceans and Watersheds (OWOW) and EPA's comprehensive state groundwater protection and wellhead protection programs implemented by the Office of Ground Water and Drinking Water. OWOW's national watershed protection approach will guide the overall watershed effort, the strategy indicates.

The strategy calls for EPA regions to complete several key actions by Sept. 1, 1994, to support state watershed efforts, including: (a) regional state-by-state assessments and action plans to assess the watershed planning efforts of each state and identify how the regions can support state progress toward national goals in fiscal year 1995; (b) state/EPA "work plan agreements," identifying specific state activities to promote key watershed protection concepts; and (c) internal coordination activities, involving the development of "integrated regional strategies" to ensure support for watershed planning.

- **Will Watershed Programs Address Biodiversity, Environmental Justice Issues?** Watershed protection, according to the EPA watershed strategy, should address "all stressors within a hydrologically defined drainage basin" and involve "all affected stakeholders" in making decisions about the protection and restoration of aquatic ecosystems. The strategy also suggests that the watershed approach be used to focus regulatory attention on "all aspects of water quality," including chemical and physical water quality, habitat quality, and biodiversity, as well as "principles of environmental justice."

To do all this, the strategy urges regulators to foster integrated decision-making and a "common understanding of the roles, priorities and responsibilities" of all stakeholders within a basin. Basins and states also should allocate limited resources to address environmental priorities as efficiently as possible; identify specific action items and "measurable environmental and programmatic milestones" in addressing watershed problems; and revise any current NPDES requirements "that interfere or conflict with" designated environmental priori-

ties. EPA also suggests that regions consider revising monitoring requirements in other regulatory programs to promote "comparable data collection, analysis, and utilization by all stakeholders."

- **'More Rigorous Stormwater Permits' Envisioned for Some Watersheds.** In its NPDES watershed strategy, EPA identifies more than two dozen specific "strategy components" that regions should address to fulfill watershed protection objectives. Those that may affect stormwater dischargers include the permitting of both "minor" and "major" pollutant sources that pose significant environmental threats within targeted basins, the establishment of "point source ambient monitoring requirements," where appropriate, to support assessment of watershed conditions; and possible targeting of high-risk basins for reviews of stormwater pollution prevention plans and "early implementation of more rigorous stormwater permits."
- **Great Lakes, Coasts May Be Most Affected by Stormwater Woes.** If watershed-based stormwater permitting ever becomes common, the Great Lakes could well be one basin considered for priority action. EPA's 1993 draft report to Congress on currently unregulated or "Phase II" stormwater discharges (see *Bulletin*, April 1994, p. 4) cites state regulators as reporting that storm sewer discharges may affect 45 percent of all "impaired" lake acres surveyed in the Great Lakes region. Excluding the Great Lakes, the draft report indicates, just 7 percent of impaired lake acres reportedly are affected by storm sewers. States cited in the draft report's "Appendix B" also estimated that stormwater runoff affects 35 percent of impaired estuary areas and some 20 percent of impaired coastal resources other than estuaries.
- **Groundwater Impacts of Runoff Vary, EPA Finds.** The draft Phase II report finds two significant stormwater-related threats to groundwater. First, development that increases surface runoff and decreases groundwater infiltration can lower water tables and make drinking wells more costly to operate, EPA notes. Second, polluted runoff discharged into the ground can contaminate aquifers if the contaminants do not adsorb to soil particles before reaching the water table.

Adsorption rates, EPA adds, depend both on local subsurface geology and the pollutants involved. Some contaminants found in stormwater runoff are adsorbed readily and therefore pose little groundwater threat. But pollutants that are highly soluble in water are especially dangerous when discharged into the ground,

because they may flow through soil into groundwater "without attenuation." Examples include nitrates and chlorides, including chlorides from road salt used on winter highways.

- **Will Illicit Connections Be a Focus of Phase II Regulations?** Judging from EPA's draft Phase II report, EPA may see illicit connections to storm drains as a high priority for future regulation. The draft report's Appendix C focuses solely on "Non-Stormwater Discharges to Stormwater Conveyances," notably including illicit connections. Illicit connections are especially likely to be present in older cities where storm sewers were installed before sanitary sewers and in older industrial sites where redevelopment has occurred, EPA suggests.
- **Region VI, Cities Squabble Over Household Wastes.** Some municipal separate storm sewer systems (MS4s) seeking stormwater permits from EPA Region VI in Dallas reportedly object to the region's proposed requirements for household hazardous waste (HHW) collection programs. According to certain critics, Region VI originally proposed to require weekly HHW pickup programs by regulated MS4s. It now has fallen back to requiring that MS4s instead maintain collection centers where citizens can dispose of such wastes year-round. Some MS4s, the critics say, object to the cost of staffing year-round centers and the potential liabilities of holding HHW on an extended basis.

Region VI press officer Roger Meacham and Region VI staff scientist Paulette Johnsey, in early April, confirmed that there has been some conflict between the region and certain MS4s over HHW. They contended, however, that Region VI is more flexible on this issue than the critics recognize. According to Johnsey, Region VI does intend to require all permitted MS4s to have HHW disposal programs that are "readily available" to residents and that have "emergency access provisions" for households that must dispose of HHW quickly. But Johnsey said that the region "is not dictating to the cities what they have to do" to meet this goal. So long as MS4s meet general HHW objectives, she said, Region VI may even consider programs that rely on private parties to dispose of waste.

Region VI still is writing a general permit for regulated MS4s under its jurisdiction, and "nothing is set in concrete" until a final permit is issued, Meacham added. According to Meacham, the proposed MS4 permit for Tulsa, Okla., originally may have been interpreted as requiring curbside HHW pickup. However, he indicated, the proposed permit now has been reworded so that this clearly is not required. ■

Municipal Stormwater Permitting Notes

- Los Angeles County Sets Up Illegal Dumping Hotline.** To help keep non-stormwater waste out of its storm drains, the County of Los Angeles Department of Public Works (DPW) has established a free telephone hotline number to help local residents report illegal dumping. According to Frank Kuo, program administrator of DPW's Waste Management Division, the hotline is operated by DPW in coordination with the county district attorney's environmental crimes unit. Dispatchers receiving tips about illegal dumping over the hotline (1-800-303-0003) are trained to respond in "the most expeditious manner in order to apprehend illegal dumpers," and convey the tips to the police department and appropriate regulatory agencies in the particular city in the county where a dumping incident has occurred.

"If it's a hazardous materials situation," Kuo notes, "the county's hazmat cleanup crew also will be out there to assess what's been dumped, berm up the area as necessary, and take care of the substance appropriately." As noted previously (see *Bulletin*, April 1994), Los Angeles County has an immensely complicated stormwater runoff system, with more than 2,500 miles of storm drains. Generally speaking, many of the county's 88 co-permittees have been slow to implement the county's municipal separate storm sewer system (MS4) permit. The hotline, however, seems to be winning acceptance county-wide.
- Unregulated MS4 Eyes "Stormwater Master Plan."** At a time when some municipalities are complaining about the costs of MS4 stormwater

permits, Charlotte County, Fla., is unusual. Although not yet subject to federal stormwater permitting, the southwestern Florida county is negotiating with the engineering consulting firm Carter & Burgess (C&B) to create a "Stormwater Master Plan" identifying its stormwater quantity and quality problems. According to C&B stormwater coordinator Steve Veal, the master plan will not be exactly equivalent to an MS4 stormwater management plan, but it should help prepare the county to meet MS4 permit requirements once this is necessary. "We know regulation is coming: we're bound to hit that magic 100,000 population number sooner or later," notes Jay Johannson, project manager at the Charlotte County Public Works Department. "So we're doing stormwater planning sooner than they're forcing us to. We'll also get the benefits sooner." Johannson says one big benefit for Charlotte County will come from addressing serious flooding that some residents experience during heavy rains. The master plan also should reduce the flow of pollutants to Charlotte Bay, where water quality problems now are under study by the Southwest Florida Water Management District.

- 'Insight' Article Offers MS4 Overview.** Paul Traina, an engineering consultant with Camp, Dresser & McKee, offers an overview of current MS4 permitting issues in this month's update to your *Stormwater Permit Manual*. Traina's "Insight" article is an addition to Tab 400 of the *Manual*. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$348
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$298
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group, Subscription Service Center,
7711 Anderson Rd., Tampa, Fla. 33634-3039

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 3, Number 10

April 1994

STATE SURVEY:

Michigan, Virginia Issue Final General Permits; Regulators' Views Vary on 'Multi-Sector' Proposal

After repeated delays, the Michigan Department of Natural Resources (MDNR) finally has issued a final general permit for industrial stormwater dischargers. However, MDNR is not yet implementing the Feb. 15 permit, state stormwater staffer David Drullinger said in March.

The reason is that top MDNR officials as of March 18 had not yet delegated regulatory authority over the National Pollutant Discharge Elimination System (NPDES) stormwater program to the nine MDNR district offices. MDNR decided several months ago to have the districts administer the permit, Drullinger said.

Michigan Omits Sampling, Requires Operator Certification

As previously predicted (see *Bulletin*, February 1994, p. 3), Michigan's industrial general permit

requires no monitoring. Once the permit becomes effective, permittees will have 18 months to prepare stormwater pollution prevention plans (SWPs), 24 months to implement nonstructural stormwater controls specified in the SWP3s, and 36 months to implement structural controls.

One unusual feature of the new Michigan permit requires that within a year of receiving coverage, industries must have state-certified stormwater operators on hand to supervise the implementation of stormwater treatment and control measures. Construction sites regulated under Michigan's 1992 "permit by rule" also must have state-certified stormwater operators by Nov. 14, 1994.

MDNR will host 16 free training and certification sessions in May and June for construction site stormwater operators. Sessions coming up soon are

(Continued on page 2)

REAUTHORIZATION DEBATE:

House Eyes Rewrite Of Clean Water Act

A Clean Water Act reauthorization bill, H.R. 3948, was introduced in the House of Representatives on March 3 by Rep. Norman Mineta (D-Calif.) and Rep. Sherwood Boehlert (R-N.Y.). Less comprehensive than the Senate's massive reauthorization measure, S. 1114, the House bill would focus heavily on controlling nonpoint-source pollution, including, as a priority, "particularly difficult or serious nonpoint pollution problems in urban areas."

(Continued on page 4)

Inside this issue. . .

- Stormwater Hotline to Be Discontinued 3
- EPA Chart of 'Potential' Phase II Permittees 4
- Los Angeles County MS4 Permit Takes Watershed Approach 5
- Senate Marks Up S. 1114; Stormwater Controls Urged for Mississippi Basin 7

State Survey

(Continued from page 1)

scheduled for May 3-4 in Romulus, Mich.; May 10-11 in Grand Rapids; May 16-17 in Pontiac; May 17-18 in Saginaw; May 19-20 in Mt. Clemens; May 23-24 in Flint; May 24-25 in Kalamazoo; and June 1-2 in Marquette.

Virginia Board OKs Four General Permits

In other stormwater developments, Virginia's State Water Control Board on March 21 approved four general permits for state stormwater dischargers. The four general permits are for construction sites; "light" industry; heavy industry; and a fourth category consisting of transportation facilities, landfills, land application sites, steam electric power generating facilities, and scrap metal and auto recycling facilities.

The board's action on March 21 determined "the substance of these regulations," said Michelle Hooper, a stormwater official with the Virginia Department of Environmental Quality. However, the general permits approved by the board must be published for another 30 days of public notice before becoming final.

Board Rejects WET Tests, SARA 313 Monitoring

Virginia regulators say the general permits have dropped special monitoring requirements for stormwater dischargers subject to "community right to know" reporting under Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986. The permits also were modified to eliminate proposed whole effluent toxicity testing. Other monitoring requirements reportedly echo those of EPA's baseline general permits.

According to Fred Heitman, vice president of the Jaycor Environmental consulting firm in Vienna, Va., the changes should have "a very positive impact on industry in Virginia" and could save industry "millions of dollars a year throughout the state."

Virginia has not yet decided how to use EPA's proposed "multi-sector" general permit, Hooper said. The state eventually may issue the multi-sector permit as a separate permit or use it to revamp the state general permits when they expire, she suggested.

Virginia group applicants should receive letters soon directing them to seek coverage under either a state general permit or an individual NPDES permit, Hooper indicated. She said that until then, group members do not need to take further action on stormwater permitting.

Recent stormwater developments from other states include the following:

Delaware

Delaware hopes to issue draft industry-specific general permits for 10 industries by the end of April, state stormwater official Chuck Schadel said. If all goes well, industry-specific general permits could be available by as early as July 1, Schadel indicated. He said Delaware is thinking of using EPA's proposed multi-sector general permit "as guidance" in developing its own permits, which are likely to focus on reducing stormwater exposure. Delaware also may follow the proposed multi-sector permit in sharply reducing monitoring requirements, he suggested.

Georgia

The end of April is the soonest that Georgia might issue a final construction site general permit, state stormwater official Will Salter said March 17. Probably the permit will not be published until May. Georgia has been working to change its runoff regulations at construction sites following a court decision last year that struck down its old construction general permit. Salter said Georgia probably will not use EPA's proposed multi-sector permit, at least not soon.

Idaho

Joe Wallace, formerly with EPA in Idaho, has replaced Steve Bubnick as stormwater coordinator for EPA Region X in Seattle, which handles NPDES



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washinton, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1994 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

stormwater permitting for both Idaho and Alaska. Wallace's professional background includes a stint as a private-sector mining engineer and three years of work for EPA on NPDES issues.

Indiana

A bill authorizing environmental permit fees passed the Indiana House in late February, officials with the Indiana Department of Environmental Management (IDEM) said. Indiana Gov. Evan Bayh is expected to sign the legislation, thereby providing IDEM with authority to raise up to \$18.7 million annually in fee revenue. The new fees should make it unnecessary for IDEM to return delegation for water and toxic and hazardous waste permitting programs to EPA, as proposed last year. Under the new fee system, regulated construction sites will pay one-time fees of \$100 for stormwater general permit coverage. Industrial dischargers must pay \$100 permit fees each year.

North Carolina

North Carolina is using EPA's proposed multi-sector permit as guidance in developing several new industry specific general permits, according to state officials. Over the next few years, one source predicts, state regulators also may incorporate into North Carolina's existing 13 general permits EPA's idea of using "benchmark" values to set future monitoring requirements.

Regulators reportedly hope to issue draft general permits in May or June for ready mix concrete plants, textile mills, furniture manufacturing facilities and small airports. Eventually, general permits may also be written for hot mix asphalt facilities, marinas, and steam electric power plants, although action on steam electric plants is somewhat doubtful.

Ohio

Ohio's general permits for both construction site and industrial stormwater dischargers are scheduled to expire April 26, notes Bob Phelps of the Ohio Environmental Protection Agency (Ohio EPA). "What's going to keep us busy this year is renewals," Phelps predicts, adding that Ohio also faces a challenge in writing permits for municipal separate storm sewer systems (MS4s).

Partly because of limited resources, Phelps suggests, Ohio EPA does not plan to make immediate use of EPA's proposed multi-sector general permit. Phelps advises members of EPA-approved group applications, however, to "sit tight" for now. "They still have valid permit applications at this time," he notes.

Pennsylvania

Pennsylvania's Department of Environmental Regulation (DER) has agreed to participate with representatives of EPA-approved group applicants

in a state stormwater task force. According to DER official Cuong Vu, the task force's goal is to examine ways to administer the Pennsylvania stormwater program so as to lessen the bureaucratic burdens on group members. The group's first meeting occurred March 4, with a follow-up scheduled for March 30.

Issues that the task force will consider, Vu added, include: • how DER can best incorporate the EPA multi-sector permit proposal into the state's baseline industrial general permit; • how regulated facilities can save money on complying with both EPA's federal SWP3 guidance and state guidance for drawing up Preparedness, Prevention and Contingency (PPC) plans; and • proposed changes in state notice of intent (NOI) forms.

Changes in the NOIs requested by industry, Vu said, include the deletion of questions about the discharge of toxic chemicals by permittees, their estimated runoff coefficients, and the total volume of stormwater they discharge.

Despite the existence of the task force, Vu added, Pennsylvania group applicants still must submit NOIs to request coverage under the state industrial general permit. The deadline for NOI submissions, he reminded group members, has already passed.

Utah

Utah regulators currently plan to use EPA's proposed multi-sector permit, according to Harry Campbell of the Department of Environmental Quality (DEQ). DEQ probably will break the massive EPA document into four or five pieces and use them as the basis for industry-specific general permits, Campbell said. Eventually, he added, DEQ may require industrial facilities now permitted under the state baseline general permit to reapply under the new industry-specific permits. ■

EPA to Close Stormwater Hotline

The U.S. Environmental Protection Agency (EPA) is closing its national stormwater information hotline as of April 15, according to Gary Hudiburgh, EPA branch chief for the National Pollutant Discharge Elimination System. The agency will create a new interactive telephone information system to handle "brief" stormwater inquiries and shift some hotline functions to the regions and states, Hudiburgh indicated. Budget considerations reportedly are the main reason for the shift in functions. ■

House Clean Water Bill

(Continued from page 1)

The stormwater provisions of H.R. 3948 are complex, and one or two appear to have been badly drafted. For example, the bill indicates that the U.S. Environmental Protection Agency (EPA) may issue construction site stormwater permits only for construction sites that disturb "less than five acres of total land acre." This is the exact opposite of current law, which requires stormwater permits only for construction sites disturbing more than five acres of land. At press time, House staff members had not yet returned reporters' calls on this apparent discrepancy.

In other provisions, H.R. 3948 apparently would limit future stormwater permitting by EPA and the states to:

- dischargers already regulated under EPA's existing "Phase I" program, as specified in the Water Quality Act of 1987; and
- discharges from municipal separate storm sewer systems (MS4s) in "urbanized areas," as defined by the Census Bureau, with populations of between 50,000 and 100,000. The bill would give EPA an Oct. 1, 1995, deadline for issuing permitting regulations for these MS4s, which would need to apply for permits by May 1, 1997.

Effluent Limitations Banned Until 2009

The Mineta-Boehlert bill would require MS4 permittees to make "reasonable progress" toward attainment of applicable water quality standards "as expeditiously as possible, but not later than Dec. 31, 2009."

Until then, EPA and the states could not require MS4s or other stormwater permittees to comply with numeric effluent limits or applicable water quality standards, "except to the extent necessary for implementation of management measures" that MS4s would have to adopt under a new provision of the law.

MS4 management measures would be "economically achievable measures" for the control of municipal stormwater pollution, potentially including "best management practices, technologies, siting criteria, operating methods" and "other" measures for controlling stormwater pollution to the maximum extent practicable. EPA would be directed to establish "objective minimum performance standards" for each management measure.

H.R. 3948 also would require monitoring of receiving waters—although not municipal runoff, apparently—to track the progress of permitted MS4s in moving towards the attainment of applicable water quality standards by the 2009 deadline.

EPA's List of "Potential" Phase II Industrial Sectors

Potential Permitting Sector	Number of Facilities
Automotive Service	369,870
Machinery & Electrical Repair	135,744
Intensive Agricultural Chemical Use (e.g. by nurseries, farm chemical suppliers & distributors)	121,861
Wholesale, Machinery	77,562
Laundries	51,376
Wholesale, Wood Products	48,593
Livestock, Feedlots	43,421
Petroleum Pipelines & Distributors	35,319
Photographic Activities	30,684
Various Utilities	22,242
Extensive Agricultural Chemical Use (e.g. by large lawns, golf courses)	18,992
Transport, Rail and otherwise	14,808
Wholesale, Metal Products	14,303
Wholesale, Food	11,372
Laboratories	10,683
National Security	4,611
Municipal Services, Vehicle Maintenance	2,414
Wholesale, Coal & Ores	1,384

Source: EPA's Draft Phase II Report to Congress, October 1993, Page 4-21.

'Non-Exposure' Exemption, Group Permits Endorsed

For industrial stormwater dischargers, H.R. 3948 would let regulators exempt from permitting those facilities whose stormwater discharges are not contaminated by, or do not come in contact with, a variety of potentially polluting materials and processes. The bill also specifically gives regulators authority to issue "general or group permits" for industrial dischargers showing sufficient similarity.

EPA Issues Draft Phase II Report

In related news, EPA has issued a draft "Phase II" report to Congress that attempts to address contamination associated with point sources of stormwater not yet regulated under the 1987 amendments to the Clean Water Act. The lengthy report finds little reliable data on stormwater problems associated with Phase II sources nationwide. However, it identifies several business categories potentially associated with polluted runoff and potentially warranting regulation, as noted in the chart above. EPA officials emphasize that the draft report does not represent the agency's official position on Clean Water Act reauthorization, as outlined in the Clinton administration's "Green Book" on rewriting the law (see *Bulletin*, March 1994, p. 5). EPA now plans to submit a final Phase II report to Congress by this summer, agency officials say. ■

MUNICIPAL STORMWATER PERMITTING:

L.A. County Permit Employs 'Watershed' Approach

Compared to most other municipal separate storm sewer systems (MS4s) regulated by the national stormwater program, the MS4 operated by the County of Los Angeles is one of enormous complexity.

Responsible for some 2,500 miles of storm drains, most of them channelized streams that thread through some 85 small California cities within its service area, Los Angeles County has little or no legal authority over local land uses that have the potential to contribute pollution to those storm drains.

Within the county, the City of Los Angeles operates an additional 1,200 miles of storm drains independently of the system run by the County's Department of Public Works (County DPW). Also snaking through both city and county are hundreds of miles of freeway operated by the California Department of Transportation (CalTrans), which operates storm drains of its own.

Moreover, parts of the city and county MS4s drain into Santa Monica Bay, which was designated for special protection as a "national estuary" under the 1987 amendments to the Clean Water Act.

According to Rainer Hoenicke, a staff scientist with the Santa Monica Bay Restoration Project now working with local governments and constituency groups to produce a comprehensive conservation plan for the bay, stormwater runoff contributes an average of 25-30 percent of the mass loadings of several pollutants entering the bay. The bay restoration project in 1989 therefore played a critical role in negotiations that ultimately resulted in California issuing its 1990 MS4 permit for Los Angeles County.

Getting all the cities in the county to cooperate in controlling runoff in a manner that will protect the bay, however, is shaping up as a very complex task.

A 'Monster Program' Based On Watersheds

To handle that task, suggests Eugene Bromley, stormwater coordinator for Region IX of the U.S. Environmental Protection Agency (EPA), local officials and regulators agreed with environmental groups and other constituencies in 1990 on what was essentially a "watershed-based" approach to stormwater permitting in Los Angeles County.

The decision was made, Bromley says, to bring all of the smaller cities into the County MS4 permit as co-permittees, rather than to concentrate on permitting Los Angeles and Los Angeles County first and regulating the small cities later.

According to Bromley, "This produced a monster program. The fact that all these little cities were

brought in meant that the permit was more expensive to implement than the national program." However, Bromley adds, "I think the involvement of all the cities in the watershed, and the watershed approach that was taken, are some of the strong points of the program."

Under the County MS4 permit, some 88 co-permittees were covered, including the 85 small cities, Los Angeles, CalTrans and a part of neighboring Ventura County. The area covered by the permit was divided into five or six portions, more or less based on watershed boundaries. Both for political and for practical reasons, Bromley recalls, the permit mandated a phased approach to stormwater compliance by these watersheds.

Deadlines Scheduled in Phases

The Santa Monica Bay drainage area, for example, was targeted for the first phase of the permit. The San Fernando Valley and San Gabriel Valley watersheds were scheduled to begin compliance in the permit's second phase, two years after compliance efforts began for the first phase. A third phase of compliance efforts, covering the Lower Los Angeles River, Lower San Gabriel River and Santa Clarita Valley, was scheduled to begin a year after work began in the second-phase watersheds.

The phases, Bromley says, partly gave municipalities in watersheds targeted for later compliance a chance to learn from the experience of the first-phase cities. In part, however, the uses of phases was suggested by politics.

When the County MS4 permit was issued in July 1990, Bromley notes, EPA had not yet issued its national stormwater permitting rule. "We didn't know if there would be lawsuits throwing a monkey wrench into the whole program," Bromley says. "There was a possibility that implementation of the national program could be significantly delayed."

Therefore, Bromley says, Los Angeles area municipalities had a bargaining chip to use in arguing for a phased approach, as they negotiated permit terms with regulators and environmental groups. "The cities could say, 'Under a phased approach, we at least will comply with the permit eventually. Under the national stormwater program, you might not get anything,'" Bromley recalls. "The environmentalists had to agree."

Program Delays Criticized By Environmentalists

Environmentalists with the Natural Resources Defense Council (NRDC) and the Santa Monica group Heal the Bay subsequently have offered harsh criticism of the pace of compliance under the permit.

(Continued on page 6)

Los Angeles County

(Continued from page 5)

"Compliance, overall, has been very disappointing," charges Mark Gold, a staff scientist with Heal the Bay. "Although there are exceptions, most cities who have embraced the permit have been very late in implementing their stormwater programs. Most cities in the county, in the fourth year of a five-year permit, are just now completing second-year requirements."

According to Everett DeLano III, an environmental attorney working on an NRDC lawsuit against three smaller cities for alleged noncompliance, some cities in Los Angeles County had done virtually nothing under the permit until NRDC threatened them with legal action last year.

Coordination Problems Also Alleged

The structure of the Los Angeles County MS4 permit, DeLano adds, is deeply flawed because no central organization firmly coordinates compliance efforts by the 88 co-permittees.

DeLano contends that the County DPW, for example, is not playing nearly the central role that the Santa Clara Valley Nonpoint Source Pollution Control Program plays in coordinating the award-winning Santa Clara Valley MS4 program in Northern California (see related story, *Bulletin*, November 1993, p. 5).

Echoing some but hardly all of DeLano's comments, County DPW engineer Gary Hildebrand acknowledges that implementing the county permit has been "a tremendous challenge" for his agency.

One of the County DPW's major tasks has been to "approach non-participating cities and get them to sign on," Hildebrand reports. Arguably, this has significantly slowed program implementation.

Are Delays Inevitable In Watershed Permitting?

Environmentalists everywhere say cities are too slow in controlling stormwater, Bromley says in response to such criticisms of the permit. Municipal stormwater permitting is very new, he adds, and it is difficult to tell whether the initial permit deadlines were realistic. Therefore, Bromley suggests that some of the delays the environmentalists criticize may not be as important as Heal the Bay and NRDC indicate.

Nevertheless, Bromley now says that phased permitting may have caused some unnecessary delays in implementing the Los Angeles County permit. Using phases was an "experiment," he notes, and delayed requirements built into the phasing may have outweighed the benefits that were supposed to result from municipalities in later phases learning from those in earlier phases.

Bromley also contends that the sheer size of the county permit has made some delays inevitable. By using a watershed approach to involve all 88 co-permittees, he emphasizes, the permit did assure that all cities in the county would at least start efforts to control stormwater pollution, rather than delaying their programs indefinitely. The complex interactions of 88 different co-permittees, however, inevitably caused coordination problems.

Bright Side of Permit Seen In Los Angeles Program

Along with Torrance, Santa Monica and Manhattan Beach, the City of Los Angeles is praised even by environmentalists for making substantial progress in complying with the permit requirements.

In response to two legal consent decrees involving stormwater problems at its Hyperion sewage treatment plant, Los Angeles in 1990 imposed a stormwater pollution abatement charge (SPAC) of approximately \$2 per year on the average homeowner. The SPAC, eventually increased to approximately \$23 annually per homeowner, has since generated more than \$45 million to fund stormwater control activities.

Among other things, Los Angeles has used the money for structural stormwater controls at city water and sewer facilities, invested in a geographic information system to aid the Department of Public Works (City DPW) in storing stormwater data, hired dozens of new stormwater abatement employees, begun efforts to systematize the cleaning of clogged catch basins, installed trash receptacles to reduce litter at bus stops, started household hazardous waste collections, and launched an ambitious public education program.

With Heal the Bay, the City DPW also has worked with inner-city teenagers from the Los Angeles Conservation Corps on a storm drain inlet stenciling project that pays the teenagers to stencil inlets in their communities and inform neighbors about the effects of illegal dumping.

The program has built self-respect among the teenagers, notes City DPW public information officer Angela Franklin, and last year stenciled 5,500 storm drain inlets. Los Angeles and Heal the Bay now hope to expand the program to reach all city inlets.

Despite daunting social problems and a slumping economy, Los Angeles is generally agreed to be making significant advances in addressing its stormwater runoff problems. Whether most of its municipal co-permittees permit will make similar progress, however, is something that the environmental groups say still remains to be seen. ■

This is the second of two articles on Los Angeles area stormwater programs.

Storm Warnings

Stormwater Related News in Capsule Form

- **Senate Panel's Markup of S. 1114 Alters Some Stormwater Language.** The Senate Environment and Public Works Committee on Feb. 23 marked up S. 1114, the Clean Water Act reauthorization bill recently released by its Clean Water, Fisheries and Wildlife Subcommittee (see *Bulletin*, March 1994, p. 1). Among the changes that the full committee approved was an amendment by Sen. Lauch Faircloth (R-N.C.) deleting authority for the U.S. Environmental Protection Agency (EPA) to identify "pollutants in stormwater ... originating from commercial products" and to "eliminate or reduce" products or substances so identified. EPA officials say that the agency lacks the resources to perform the studies indicated, and Senate staffers say the amendment therefore was adopted without much debate. The full committee's markup of S. 1114 also altered language in the subcommittee's bill that might have required EPA to issue stormwater permits for up to 8 million currently unregulated, "Phase II" dischargers. The bill now allows EPA to exempt new business categories from permitting if it determines, "based on available information," that their discharges will have "minimal effect on receiving waters."
- **Expanded Stormwater Controls Urged for Mississippi River Basin.** In amending the Clean Water Act, Congress should "expand and strengthen stormwater permits" and "activities for controlling urban runoff" to provide special protection for the Mississippi River Basin, according to a new report from two environmental groups. The February 1994 report by the Natural Resources Defense Council and the Izaak Walton League of America, *Restoring the Big River: A Clean Water Act Blueprint for the Mississippi*, declares the Mississippi to be a "national historic and ecologic treasure ... one of the most rare and complex riverine ecosystems in the world." However, the authors complain, the river has too long been neglected and degraded, with some of the degradation coming from "polluted runoff."

Many of the Mississippi's worst runoff problems are associated with farming, mining and timber harvesting, the report contends. However, stormwater runoff from smaller cities and urbanized areas also threatens surface water quality. The report recommends several measures to address runoff problems, including directing states to establish "mandatory enforceable programs for reducing polluted runoff," largely under a strengthened Section 319 of the Clean Water Act; requiring farmers, timber companies, mines and developers to adopt and implement "site specific" water quality plans; increasing funding for nonpoint source pollution control; and expanding the federal government's stormwater efforts.

The report recommends, among other measures, new stormwater requirements concerning the preservation of natural drainage areas and the limitation of impervious surfaces in new real estate developments, revegetation efforts and the partial reclamation of impervious surfaces in existing developments; controls on chemicals used by lawn service companies; and the use of "conventional stormwater treatment devices" such as extended detention ponds to control discharges from existing stormwater control systems. Another recommendation is that Congress mandate the establishment of water quality criteria for "pollutants presently excluded from standards," including "polluted runoff." For a copy of the report, contact the Natural Resources Defense Council in Washington at (202) 783-7800.
- **Big Stormwater Savings Promised for Clinton's Clean Water Plan.** The approach to Clean Water Act reauthorization outlined in the Clinton administration's recently published "Green Book" (see *Bulletin*, March 1994, p. 5) could save the nation more than \$14 billion each year in stormwater control costs, according to a new EPA report released in March. The report, *President Clinton's Clean Water Initiative: Analysis of Benefits and Costs*, acknowledges that the measures proposed in the Green Book would require regulators and regulated entities to pay up to \$1.67 billion more annually for stormwater controls than they do now. But unless the current law is amended, the report adds, provisions already in the Clean Water Act eventually will require the nation to spend \$15.7 billion to \$17.5 billion more on stormwater annually. According to EPA, many stormwater savings in the Green Book would come from exempting facilities with no significant stormwater exposure from permitting; others from dropping National Pollutant Discharge Elimination System (NPDES) permit requirements for certain businesses outside "urbanized areas" identified by the Census Bureau.
- **Today's Stormwater Permits Cost Industry \$3.99 Billion Yearly, EPA Says; Municipalities Pay Up to \$2.6 Billion.** The cost of existing, "Phase I" stormwater controls to industry is \$3.99 billion annually, under a "stringent"

(Continued on page 8)

Storm Warnings

(Continued from page 7)

interpretation of the Clean Water Act, according to the EPA report *President Clinton's Clean Water Initiative: Analysis of Benefits and Costs*. The costs of Phase I regulations for municipal separate storm sewer systems (MS4s) are "estimated at between \$1.6 billion and \$2.6 billion annually," the report adds.

MS4 dischargers will pay an extra \$1.8 billion to \$2.7 billion annually if the current moratorium on stormwater permitting of smaller cities expires, the report predicts. But it says enactment of the administration's clean water proposal, by exempting certain classes of municipalities from regulation, would cut this increase to just \$1.03 billion to \$1.91 billion annually.

- **EPA Denies Intent to Use 'Multi-Sector' Benchmark Values for Developing Numeric Effluent Limits.** EPA has not proposed "benchmark" values in its proposed multi-sector general permit as the first step in developing numeric effluent limits on stormwater dischargers, Michael Cook, director of EPA's Office of Wastewater Enforcement and Compliance, said March 17. Responding to charges aired at a recent Carter & Burgess seminar on the multi-sector proposal (see *Bulletin*, March 1994, p. 1), Cook said, "We don't want to turn the benchmark values into numeric effluent limits; I, for one, would resist that very strongly. We want the benchmarks as some indication of whether facilities in certain sectors have best

management practices (BMPs) in place." Further developments in stormwater permitting, Cook predicted, ultimately will be driven by state and federal water quality standards, not benchmarks, and it is conceivable that BMPs can be adjusted to water quality standards without the use of numeric limits.

- **EPA Watershed Planning Guidance for Regions Expected Soon.** EPA is pushing its regional offices to draw up strategies by early September for encouraging watershed-based permitting and enforcement by the states, according to agency sources. Michael Cook, director of EPA's Office of Wastewater Enforcement and Compliance, said in March that headquarters was hoping to publish a draft guidance document by April 1 for the regions to use in developing watershed strategies. The guidance document will indicate the necessary elements of good state watershed programs and how states can develop such programs, Cook said. It also will ask regions to track the progress of individual states in developing watershed programs and to create plans for moving laggard states further along.

Cook indicated that EPA will encourage states to do considerable amounts of planning and analysis to identify priority problems in targeted watersheds, before they decide how to tackle these problems. Cook added that, although watershed-based regulation will rely in part on the establishment of closer ties among different dischargers in targeted watersheds, there also will be a significant role for enforcement activities. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$295
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$348
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$298
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

J44STRM

Stormwater Permit Manual

Bulletin

Volume 3, Number 9

March 1994

PROPOSED 'MULTI-SECTOR' PERMIT:

Group Representatives Attack Multi-Sector Database; Seek Relaxed Monitoring, Reporting Provisions From EPA

There are serious flaws in the way the U.S. Environmental Protection Agency (EPA) used monitoring information from the group application process to organize its database for the proposed "multi-sector" general permit, according to group representatives who attended a recent Carter & Burgess (C&B) forum on the proposed permit.

At the Jan. 27 gathering in Crystal City, Va., C&B stormwater coordinator Steven Veal said that an examination of EPA's sector-specific data for the wood-preserving industry showed that of 13 wood-preserving facilities that had submitted group monitoring data on arsenic emissions, only five were represented in EPA's database for the sector.

EPA apparently used data from some facilities more than once and did not use data showing zero

concentrations in samples, Veal added, and it threw out additional data where group members had failed to specify that the units being expressed were in mg/liter.

Veal added that in handling data for total Kjeldahl nitrogen that had been submitted by auto recycling facilities, EPA "arbitrarily" threw out data for which no units of measurements were assigned. There were problems with the food industry database also, he said.

"If all of EPA's sectors show similar problems, EPA made some fundamental errors in handling its database," Veal charged.

Environmental attorney Kevin Bromberg, who has previously criticized EPA's handling of the database, also argued that in some cases even

(Continued on page 3)

CLEAN WATER ACT REAUTHORIZATION:

Senate Proposes Stormwater Controls on Commercial Sites

A new version of the Senate's Clean Water Act reauthorization bill, which was sent to full committee for markup in February, would allow regulators to extend stormwater permitting now applicable only to "industrial" facilities to both industrial and commercial sites.

The new version of Senate bill S. 1114, a Clean Water Act reauthorization bill introduced last year by Sen. Max Baucus, D-Mont., and Sen. John Chafee, R-R.I., was released earlier this year by Sen. Robert Graham, D-Fla. Graham chairs the Subcommittee on

(Continued on page 4)

Inside this issue. . .

- New York Still Undecided on Multi-Sector Proposal; Indiana Hopes for Fee Bill 2
- EPA 'Green Book' Eyes New Runoff Controls 5
- Los Angeles MS4 Permittees Face Little Earthquake Damage 6
- EPA Releases Stormwater Enforcement Strategy 8

STATE SURVEY:

New York Still Deciding On EPA's Multi-Sector Permit

New York regulators still have not decided whether to make use of the U.S. Environmental Protection Agency's (EPA) proposed "multi-sector" general permit, according to Department of Environmental Conservation (DEC) stormwater official Ken Stevens.

"The options range from simply ignoring the silly thing to implementing it entirely, with several positions in between," Stevens said on Feb. 10. He said that he personally favors using some parts of EPA's proposal but is uncertain what his superiors will decide.

Stevens said he believes that the monitoring provisions of EPA's multi-sector proposal are "much more rational than those of the baseline general permit," and that EPA's sector-specific pollution prevention requirements also are superior. Once EPA begins using the final multi-sector permit in Massachusetts, he added, industry will pressure New York to offer it also.

In Indiana, the House hasn't acted yet, but regulators are hoping for a new fee law to finance water and other permitting programs in the state.

On the negative side, the sheer bulk of the multi-sector permit makes it cumbersome for DEC to handle. If DEC does adopt all or part of the multi-sector permit proposal, Stevens predicted, "it's going to take a lot longer to send regulated facilities their permits." Stevens said he recently circulated a memo outlining DEC's options, adding, "I think we're going to have to do something on this relatively soon."

Georgia Eyes Legal Angles of Proposed Construction Permit

Following an unfavorable court ruling last year, the Georgia Department of Natural Resources

(DNR) redrafted its construction site general permit and again proposed it for public comment. The comment period ended Dec. 10. Stormwater staffer Will Salter says DNR now is studying the legal implications of the new version and could issue it shortly, depending on what the lawyers decide.

Indiana Unlikely to Use Multi-Sector Proposal

Indiana stormwater official Laura Bieberich said Feb. 14 that the Indiana Department of Environmental Management (IDEM) does not plan to use EPA's multi-sector permit for now, in part because of procedural difficulties. "We'd have to go through our whole rulemaking process again, and I don't think we have the staff or the resources for that," Bieberich said.

IDEM probably will notify group applicants in two months that they must file for coverage under the state baseline general permit, Bieberich added. Those notified likely will have 90 days to file notices of intent for baseline permit coverage and another 365 days to develop pollution prevention plans.

In other Indiana news, the State Senate recently passed fee legislation to support water and solid/hazardous waste permitting. At press time, the House still was considering the fee bill, but IDEM sources were hopeful of obtaining enough funding to avoid returning delegation for the two state permitting programs to EPA.

Virginia Is Still Discussing Proposal

Virginia regulators have discussed the proposed EPA multi-sector permit and still have differences of opinion on it, Department of Environmental Quality (DEQ) staffer Michelle Hooper said Feb. 14. "I don't know how we will be utilizing it at this point," Hooper said. In other state news, DEQ on Jan. 26 closed its comment period on four draft general permits for stormwater dischargers. Staffers plan to redraft the proposals based on the comments received and submit them to the DEQ board for a vote by March 21, Hooper said. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washinton, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1994 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

Multi-Sector Database

(Continued from page 1)

accurate group monitoring data merely reflects environmental background levels of certain pollutants. The inclusion of such background values, Bromberg contended at the forum, further reduces the database's validity.

Given the existence of such errors, C&B vice president John Whitescarver said, industry probably can go "sector by sector finding problems" and possibly "destroy the credibility of their database." This being the case, Whitescarver added, "Where do we go from there?"

As in a previous C&B forum on the multi-sector proposal (*Bulletin*, January 1994, p. 1), several attendees expressed deep opposition to EPA's setting so-called "benchmark" values in the multi-sector proposal for 45 specified stormwater pollutants.

The benchmark values may form the basis for EPA's later adopting water quality-based numeric effluent standards, warned Fred Heitman of Jaycor Environmental, a consulting firm. Heitman added: "We're on a slippery slope here. This is frightening."

Several group representatives who had attended EPA hearings on the multi-sector proposal, however, said EPA officials have told them privately: "Don't expect to win on the benchmark issue." These forum participants said that EPA's position is that if a facility does not like the benchmarks, it is free to seek alternative coverage under the existing "baseline" general permit for industry.

Several forum attendees recommended that rather than attacking the benchmarks directly, industry should use questions about the database to roll back EPA's monitoring requirements.

In its Nov. 19, 1993, fact sheet on the proposed permit (58 FR 61168), EPA said it determined monitoring requirements for 13 sectors based on these sectors allegedly having median sampling values that are above the benchmark values for five or more pollutants. (In four additional sectors, EPA indicated, inadequate group monitoring or a review of the sectors' stormwater exposure and materials subject to exposure justifies continued monitoring).

Several forum participants therefore suggested that by showing the median values are wrong, commenters on the proposal have a chance to undermine the sector monitoring requirements. "I think what we're talking about is a strategy for destroying monitoring requirements for 17 industrial sectors," Whitescarver said.

In reply to a question about EPA potentially responding by requiring further monitoring by all

facilities, however, Bromberg suggested that such comments will not really "destroy" the database. Instead, he predicted, they merely will require EPA to reconstitute it using better quality control.

But if industry demands that EPA correct its database before reproposing monitoring for specific sectors, Bromberg and Whitescarver both predicted, the process will drag on for years. Accordingly, EPA may "never" issue new monitoring requirements, Bromberg joked.

To ensure that EPA addresses this issue, attorney Jeff Longsworth of Collier, Shannon, Rill and Scott suggested that all forum participants find several problems with the database and mention them in comments on the proposal.

A few participants objected to eliminating all monitoring, suggesting that limited monitoring may help some industries prove they are clean. But Longsworth disagreed, saying, "Some people will fight monitoring to the death, because they're afraid of what monitoring will lead to—such as water-quality-based effluent limits."

Subsequent to the Jan. 27 meeting, EPA officials declined to comment on the database issue. At press time, William Swietlik, head of the stormwater program, had not returned repeated telephone calls on the subject.

Other Multi-Sector Issues Debated

In forum discussions of other proposed requirements, Lisa Beal of the American Trucking Associations strongly recommended that EPA be induced to scale back its visual monitoring requirements for sectors that do not do quantitative sampling. The permit should require visual monitoring no more than once annually, Beal said.

Beal and some other forum participants also objected to EPA's requiring certain industrial sectors to provide annual or even semi-annual stormwater training to employees. One-time training should be enough, they argued.

John Rugg of the National Asphalt Pavement Association strongly objected to EPA's proposing to require permittees with several "co-located" activities on site to meet multiple sector-specific requirements.

Instead, Rugg said, such permittees should only have to meet requirements for primary activities at a site.

Kevin Sall of the National Paint & Coatings Association and Sheree Brown of the Automotive Recyclers Association said they had requested an extension of the deadline for comments on the proposal, but other attendees opposed any extension as delaying further the issuance of a final permit. As of mid-February, it was unclear whether EPA would extend its Feb. 17 comment deadline. ■

Senate Clean Water Bill

(Continued from page 1)

Clean Water, Fisheries and Wildlife in the Senate Committee on Environment and Public Works.

In early February, Graham's subcommittee sent the bill to the full Senate Environment and Public Works Committee, where a markup was expected on Feb. 23.

Bill Could Affect 8 Million Sites, EPA Says

The Graham version of S. 1114 has the potential to add up to 8 million new facilities to the stormwater program, said Michael Cook, director of the Office of Wastewater Enforcement and Compliance at the U.S. Environmental Protection Agency (EPA).

However, Cook said in a Feb. 10 interview, intense negotiations on revising the bill were underway, making it likely that the version of S. 1114 emerging from the Feb. 23 markup would be quite different from Graham's subcommittee bill.

Graham's legislation, in addition to allowing EPA and the states to impose stormwater regulation on commercial facilities, also would allow EPA to exempt certain classes of industrial and commercial facilities from regulation.

EPA could allow such exemptions for a given category of dischargers, however, only after determining "that, as the result of controls and management measures ... no facility in the class or category will discharge stormwater that contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States."

Possible Ban Proposed On 'Polluting Products'

The Graham bill also would require EPA to identify "pollutants and substances in stormwater discharges originating from commercial products" and to study the availability, practicality and costs of potential substitutes for such products.

In a case where substances originating from a certain product were found to contribute to significant water quality impairments through stormwater discharges, and cost-effective and practical substitutes were readily available, EPA could require the product manufacturer to "eliminate or reduce the pollutant or substance identified." Alternatively, EPA could establish effluent limitations to prevent the product from damaging water quality.

In a memorandum summarizing the effects of the bill, Senate staffers suggest that this provision essentially would authorize EPA to "study the contribution of stormwater pollutants from sources such as motor vehicles and household products," and in some cases to require "reduction or substitution of the pollutant or its source."

To address currently unregulated municipal storm sewers, the Graham legislation would extend EPA's municipal stormwater permitting authority to municipal storm sewer systems in "urbanized areas," as designated by the Census Bureau. Urbanized areas would be covered, however, only if they already had some discharges regulated under EPA's existing stormwater requirements for "large" and "medium" municipal separate storm sewer systems (MS4s).

In essence, this would mean that permits for urbanized areas, which under Census Bureau definitions must have populations of at least 50,000 and a certain level of population density, would be folded into existing permits for the larger MS4s. In this way, S. 1114 would control stormwater runoff in the rapidly urbanizing edges of large cities, where environmentalists say much of the nation's still-unregulated stormwater pollution is occurring.

Municipal 'MEP' Standard Defined

The Graham bill would clear up an ambiguity in existing MS4 regulations, which require permitted MS4s to control stormwater pollution "to the maximum extent practicable."

The bill would define "maximum extent practicable" to be the application of management measures, as defined in Section 6217(g)(5) of the Coastal Zone Act Reauthorization Amendments of 1990, that "attain and maintain water quality standards," in the judgment of state or federal regulators.

In another provision potentially affecting municipalities, the bill would require EPA to compile a list of municipal storm sewer systems, not already regulated as "urbanized areas" adjacent to larger cities, whose stormwater discharges are "the sole or principal cause" for the failure of receiving waters to achieve designated uses or water quality standards.

Within six years of the bill's passage, such listed municipalities would have to obtain stormwater permits, although some exemptions would be allowed for cause. EPA could not require small cities to conduct monitoring to determine if they should be listed. But it could consider "data submitted by citizens' monitoring groups" in preparing its list.

The bill would further require EPA to issue MS4 guidance that includes, "if practicable," certain "minimum and objective performance standards" pertaining to municipal stormwater management measures.

However, EPA could not require MS4s to comply with "numeric effluent limitations or water quality standards" for at least 10 years following enactment of S. 1114's provisions.

In related news, EPA has issued its own, somewhat different recommendations on Clean Water Act reauthorization (see related story, next page). ■

EPA 'Green Book' Calls for New Stormwater Controls

In its long-awaited "Green Book" on Clean Water Act reauthorization, the U.S. Environmental Protection Agency (EPA) recommends a phased approach to stormwater permitting for smaller cities and calls for federal land managers to have greater leeway in prioritize cleanup efforts directed at abandoned mining sites.

The agency further recommends that the deadline for issuing new stormwater regulations for currently unregulated "Phase II" sources be extended to late 1997, and that municipalities with adequate regulatory authority be allowed to administer existing "Phase I" regulations within their boundaries.

EPA also proposes a process for defining the term "maximum extent practicable" as it applies to municipal separate storm sewer system (MS4) permits and recommends that in future rounds of permitting, MS4 permittees might be required to meet "water quality based effluents, where necessary."

However, the Green Book also calls for state regulators to review their implementation of water quality standards "to reflect the episodic nature of stormwater runoff" and "the potential resilience of natural ecosystems to some infrequent, temporary incremental loadings."

The so-called Green Book, officially titled "President Clinton's Clean Water Initiative," was published by EPA on Jan. 31. Some of the report's recommendations have been proposed by EPA.

The report, for example, recommends that Congress exempt from individual stormwater permitting those industrial facilities that can certify that they do not have exposure of "significant materials" to stormwater.

Essentially, EPA appears to be calling again for Congress to overturn by legislation a recent decision by the U.S. Court of Appeals for the Ninth District, which struck down the agency's attempt to exempt from existing regulations certain "light industry" facilities without stormwater exposure.

In addressing yet-unregulated point sources under Phase II of the stormwater program, EPA would like to focus on places designated by the Census Bureau as "urbanized areas," much as Sen. Robert Graham, D-Fla., has proposed in his recent rewrite of the Senate Clean Water Act reauthorization bill, S. 1114 (see related story, p. 1).

Unlike S. 1114, however, the Green Book rejects direct regulation of commercial facilities outside of urbanized areas, instead calling for their regulation under an improved system of nonpoint-source controls. The report also calls for extending Phase II controls to some 396 urbanized areas containing

about 65 percent of the U.S. population—more than S. 1114 apparently would affect.

EPA calls for somewhat more comprehensive regulations for 138 urbanized areas associated with municipalities already subject to MS4 permits, and somewhat less sweeping regulations for another 258 urbanized areas. All 396 urbanized areas would have to regulate runoff problems associated with rapid development.

To address inactive mining sites on federal lands, EPA recommends issuing statewide permits to federal land-management agencies. The permits would give such agencies flexibility in regulating individual mining sites but require them to meet certain water quality objectives within ten years. ■

Lobbyist: Clean Water Act May Not Pass in 1994

"The jury is still out" on whether Congress will enact a bill this year amending the Clean Water Act, industry lobbyist Russell Frye told attendees at a Jan. 27-28 Executive Enterprises conference.

Frye, a partner with Chadbourne & Parke and a participant in the Clean Water Industry Coalition, noted that Congress has some political incentives to pass clean water legislation before the 1994 elections. Key members of the Senate Environment and Public Works Committee also have said that reauthorizing the law this year is their major priority, Frye added.

However, Frye suggested, clean water could be crowded off the congressional agenda by debates over health care or by efforts to alter the Superfund program. The House of Representatives also has yet to produce its own Clean Water Act reauthorization bill, Frye noted.

"It will be very difficult to finish reauthorization this year," Frye predicted. Whether Congress succeeds, he added, will depend on many factors, including the amount of controversy surrounding reauthorization.

Other speakers at the conference discussed steps that EPA has taken recently to regulate toxicity in point-source discharges, the formulation of water-quality based effluent standards, the EPA Great Lakes Water Quality Initiative, and issues affecting stormwater regulation, sediment quality criteria, criteria for heavy metals, and anti-degradation and anti-backsliding regulations. ■

L.A. Earthquake Caused Little Storm Drain Damage; But City, County Permittees Face Many Other Problems

The earthquake that shook Los Angeles on Jan. 17 did surprisingly little damage to the metropolitan area's storm drains, local government officials and environmental groups report. The disaster did cause some oil pipelines to break, releasing a significant oil spill into the Santa Clara River, but neither the Los Angeles area's storm sewers nor its sanitary sewer system suffered any major failures.

According to Mark Gold, a staff scientist with the Santa Monica environmental group Heal the Bay, "We really thought that there would be sewage system failures, but the environment made out quite well in the earthquake."

The earthquake mostly caused "an up and down bouncing motion, rather than a shifting motion," according to Frank Kuo, program administrator of the Waste Management Division of the Los Angeles County Department of Public Works (County DPW).

Los Angeles County's storm sewer system somehow had the flexibility to withstand this vertical bouncing quite well, Kuo adds: "As far as we're concerned, there is no significant damage to storm drainage infrastructure."

The County DPW, which administers approximately 2,500 miles of storm drains in the county, also experienced little damage to its flood-control dams upstream of the metropolitan area in the San Gabriel Mountains, according to County DPW engineer Gary Hildebrand.

Some 88 co-permittees share responsibility for stormwater management under the Los Angeles area municipal permit. The area's economic problems, some say, have triggered a "rebellion" by many small cities against the permit requirements.

In the City of Los Angeles, where the earthquake's epicenter was located, a ruptured water main in the San Fernando Valley area ruptured. But according to Angela Franklin, a public relations staffer with the Los Angeles Department of Public Works (LA-DPW), city engineers have found no major earthquake impacts to the city's approximately 1,200 miles of storm drains.

It's likely that during the fires associated with the disaster, contaminated water used in firefighting

flowed into the storm drains and was released into Santa Monica Bay far downstream, Franklin acknowledges.

But at the time, she notes, monitoring for stormwater contamination was not a major priority for most city employees, and it is hard to quantify whatever damage was done.

CalTrans Storm Drains Were Damaged

The quake did inflict "extensive damage" on the highway storm drainage facilities maintained by the California Department of Transportation (CalTrans), according to Wayne Ballentine, Engineering Services Division branch chief for the highway agency's operations in Los Angeles County and neighboring Ventura County.

In a Feb. 7 interview, Ballentine said CalTrans did not yet have a quantitative damage assessment of the disaster. However, he said a consultant had been hired to produce an assessment, which should be available soon.

Recovering from the earthquake clearly will require a major expenditure of resources, but should not interfere with CalTrans meeting its stormwater obligations as a co-permittee to the Los Angeles County municipal separate storm sewer system (MS4) permit, Ballentine indicated. The agency's work on meeting its permit obligations, he said, is continuing, "pretty much undeterred by the earthquake."

An MS4 Permit Plagued By Administrative Complexity

The earthquake aside, however, local public officials and environmentalists say that the Los Angeles area faces extremely daunting challenges as Los Angeles County and its co-permittees near the end of their first five-year MS4 permit. Issued in the summer of 1990, before the publication of the federal stormwater permit regulations, it is one of the first such permits issued anywhere in the nation.

Fundamental to the region's difficulties in handling stormwater, Hildebrand suggests, is the political and administrative complexity of the Los Angeles area and its storm sewer system.

There are 88 co-permittees to the County MS4 permit, including 86 independent cities, CalTrans, and a portion of adjacent Ventura County, Hildebrand notes.

In response to serious flooding that occurred in the 1930s, local governments long ago established a

regional flood control district. That district, now administered by the County DPW, operates 2,500 miles of storm drains in various smaller cities outside the City of Los Angeles. The Los Angeles storm drain system of about 1,200 miles is operated separately from the county system.

Many of the small cities were established to provide residents with control over their own land-use policies, Hildebrand reports. Consequently, the County DPW lacks legal authority to regulate land uses that may contribute to stormwater pollution, although the agency is responsible for the county's storm sewers themselves.

*"If you have policemen
being laid off and
social services being cut,
it is not always effective to
say that everyone must now
focus on stormwater."*

—County Official

"For flood control, this arrangement worked fine. But now, with the area facing regional water-quality issues, the structure isn't so convenient," Hildebrand says.

Adding to the difficulties are tremendous social, economic and environmental problems that Los Angeles recently has experienced—notably including complex ethnic antagonisms, a deep and continuing recession, the 1992 Los Angeles riots, and the severe fires of 1993, among other woes.

"Let's be realistic," Kuo says in discussing these local problems. "If you have members of the police force being laid off, if you have a local economic downturn, if you have social services being cut back, it is not always effective for a government bureaucrat to say that everyone must now focus on stormwater as a problem."

*Water quality enforcement is
'almost non-existent,' says
local environmentalist.*

The fiscal difficulties of smaller cities in the county, adds Gold, have provoked a "rebellion" over the past few years against unfunded regulatory mandates.

The rebellion, Gold charges, has made the MS4 stormwater program "largely ineffective," although there are exceptions to that rule. In Gold's opinion, the cities of Los Angeles, Santa Monica, Torrance and, more recently, Manhattan Beach all have done a fairly good job of meeting MS4 requirements.

But "most cities who have embraced the permit have been very late in implementing programs," Gold argues. A business backlash against regulation at the state level also has combined with California's fiscal woes to make enforcement of water-quality regulations in the area "almost non-existent," Gold further charges.

This is the first of a two-part article on Los Angeles. In part two, we will report on some of the steps that local officials have taken to deal with the area's stormwater problems. ■

Court Turns Down Request To Dismiss NRDC Lawsuit

The U.S. District Court for Central California on Feb. 7 denied motions by the cities of Beverly Hills, El Segundo and Hermosa Beach to dismiss cases filed against them by the Natural Resources Defense Council (NRDC) for allegedly violating the conditions of a municipal stormwater permit for the County of Los Angeles, according to NRDC attorney Everett DeLano III.

The cities had requested the court to throw out NRDC's case, on the grounds that the environmental group lacked standing to sue under a recent Ninth Circuit Court of Appeals decision denying the use of citizen suits to enforce state water quality standards (see *Bulletin*, February 1994, p. 1).

Despite the severe Jan. 17 earthquake that struck the Los Angeles area, NRDC is proceeding with its lawsuits against the three cities, as well as its lawsuit against the California Department of Transportation (CalTrans), DeLano said. He acknowledged that the cities and CalTrans may face some challenges in responding to the earthquake, but said this should not interfere with their obligations as co-permittees under the Los Angeles County stormwater permit.

In the NRDC lawsuit against CalTrans for alleged permit violations, the parties have agreed on a hearing date "on or around Sept. 1," DeLano said. However, he added, NRDC may well petition the court for preliminary relief as early as April, on the grounds that waiting for the trial to run its course would likely ensure that another California rainy season would pass without CalTrans taking significant action to mitigate its stormwater discharges. ■

Storm Warnings

Stormwater Related News in Capsule Form

- **Stormwater Enforcement Strategy Released by EPA.** The U.S. Environmental Protection Agency (EPA) at last has published its stormwater enforcement strategy for fiscal years 1994 and 1995. The strategy calls for EPA regions (and delegated states, if they so choose) to place priority on enforcing stormwater regulations against municipal separate storm sewer systems (MS4s) that have not filed their "part 2" applications on a timely basis, and against industrial dischargers that have not filed permit applications or notices of intent for general permit coverage. Within the industrial stormwater program, the strategy calls for priority to be given to "facilities outside the jurisdiction of a regulated MS4."

Given the huge number of facilities regulated under the stormwater program, the strategy recommends that EPA regions use innovative enforcement mechanisms to reach non-complying facilities. For example, each region should undertake at least one "sweep" each year to identify and enforce against facilities that have not filed permit applications, with such "sweeps" targeting particular watersheds, geographic locations or industrial categories. Regions also should integrate stormwater enforcement activities with inspections under other environmental programs and expedite the use of administrative penalty orders, EPA recommends. Reviewing discharge monitoring reports and stormwater pollution prevention plans is "not a high priority" for now, the strategy document suggests, but regulators may choose to monitor such compliance

activities by individual facilities causing environmental problems.

- **Engineer/Photographer Produces Stormwater Pollution Art, for Possible Use in Employee Training Efforts.** A consulting engineer and professional photographer formerly with CH2M Hill in Portland, Ore., says he has found a way to turn stormwater contamination into art, thereby offering industries and municipalities a visually striking way to demonstrate the risks of polluted runoff to employees and the public at large. Kevin Coulton, a registered professional engineer now operating his own small startup company, has developed a large portfolio of abstract photographs of oil sheens called "Pollution in Abstract." The photographs, which have received very favorable notices from several municipal stormwater permit programs, have been exhibited more than two dozen times in locations ranging from EPA national headquarters to the Nike Corporate Campus in Beaverton, Ore.

Coulton also has developed a stormwater slide show based on the photos that he has shown to the Bonneville Power Administration in Vancouver, Wash. According to Coulton, the images dramatize stormwater issues in an attractive way and therefore are potentially usable as a best management practice (BMP) to help meet stormwater permit requirements for employee education and training. Coulton currently is developing a poster series for employees of stormwater dischargers featuring oil sheen art and is thinking of producing a pollution-oriented computer screen saver. For more information, contact Coulton at 7450 S.W. Canyon Lane, Portland, Ore. 97225; (800) 278-4266. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following publications to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Environmental Compliance Tool Kit \$395
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Risk Management Program Handbook \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$298
- Ozone Depleter Compliance Guide \$398
- Environmental Compliance Tool Kit \$395

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

J43STRM

Stormwater Permit Manual

Bulletin

Volume 3, Number 8

February 1994

Court Denies Standing To Environmental Groups For Lawsuits to Enforce State Water Quality Standards

In a decision that could have implications for future stormwater litigation, the U.S. Court of Appeals for the Ninth Circuit has denied a citizen group, Northwest Environmental Advocates, standing to sue Portland, Ore., for combined sewer outfall (CSO) discharges that the group alleges are violating Oregon water quality standards.

In a Dec. 13, 1993, decision upholding an earlier district court ruling, Judge William Ingram wrote for the majority of the Ninth Circuit panel that "citizen suits cannot be used to enforce water quality standards."

Citing the legislative history of the Clean Water Act, Ingram wrote that previous experience with the old Federal Water Pollution Control Act proved that water quality standards are virtually unenforceable, prompting Congress in 1972 to jettison the water

quality approach in favor of enforceable, permit-specific effluent limitations. Today, Ingram concluded, "Water quality standards are unenforceable by way of a citizen suit unless they have been translated into end-of-the-pipe effluent limitations."

In a partial dissent, Judge Harry Pregerson replied that Congress's adoption of a simpler enforcement mechanism in 1972 did not prove it wished to foreclose citizen suits to enforce water quality standards. Indeed, Pregerson argued, such suits are "necessary to complement enforcement of effluent limitations."

Three California cities recently sued by the Natural Resources Defense Council for alleged stormwater violations (see related story below) have cited Ingram's decision in arguing that the cases should be dismissed. ■

STORMWATER LITIGATION:

Hearing Set in NRDC Case Against California Cities

As part of a campaign to improve compliance with California stormwater regulations (see *Bulletin*, September 1993, p. 1), the Natural Resources Defense Council (NRDC) has sued three California cities, alleging that they have violated provisions of the Los Angeles area municipal separate storm sewer system (MS4) permit to which they are co-permittees.

According to NRDC attorney Everett DeLano III, the complaints filed against Beverly Hills, El Segundo and Hermosa Beach are very similar to those in a suit filed earlier against the California

(Continued on page 2)

Inside this issue. . .

- Michigan to Issue General Permit: Several States Cool to Multi-Sector Permit 3
- Interview: New EPA Water Chief Robert Perciasepe Sees Multi-Media Pollution as Future Regulatory Priority 4
- MS4 Permitting: San Antonio Stresses Recycling; Public Education in English, Spanish 6

NRDC Litigation

(Continued from page 1)

Department of Transportation, or "CalTrans" (see *Bulletin*, November 1993, p. 3).

Among other things, NRDC charges the three cities with discharging contaminated stormwater from roads, parking lots and other areas into local storm drains. NRDC further alleges that these discharges are introducing pollutants such as nutrients, polynuclear aromatic compounds, sediment and certain toxic heavy metals into stormwater that ultimately reaches Santa Monica Bay.

Beverly Hills, El Segundo and Hermosa Beach have moved to dismiss the case, saying Portland ruling leaves NRDC with no standing to sue.

A hearing is scheduled for Feb. 9 in the U.S. District Court for the Central District of California, DeLano said in early January.

The three cities, he noted, have requested that the court dismiss the complaint, on grounds that NRDC allegedly lacks standing to sue under a recent Ninth Circuit Court of Appeals decision in *Northwest Environmental Advocates v. City of Portland*, 93 DAR 15644 (Dec. 13, 1993). The majority opinion in that case rejected the use of citizen suits to enforce water quality standards (see related story, page 1).

DeLano said he had little concern about the Ninth Circuit ruling, adding, "The issue in that case was very different from the issue here."

The Ninth Circuit in the Portland case ruled that water quality standards must be incorporated into other permit conditions to be enforceable through third-party lawsuits, DeLano noted. The MS4 permit for Los Angeles, he added, "has the very permit conditions that the Oregon water quality standards lacked."

DeLano noted that in addition to charging the three defendants with polluting Santa Monica Bay,

NRDC is accusing them of violating a number of specific requirements of the Los Angeles MS4 permit, including requirements concerning documentation of existing best management practices, preparation of municipal stormwater monitoring programs, and documentation of adequate legal authority to operate municipal stormwater quality management programs.

CalTrans Replies to NRDC's Complaint

In a separate legal development involving NRDC, CalTrans last November submitted an answer to NRDC's complaint charging it with violating various terms of the Los Angeles area MS4 permit, to which CalTrans also is a co-permittee.

In its reply, filed by attorneys Charles Belenky and Maurice Kane, CalTrans denied that "any runoff from roads contains noxious pollutants," that stormwater runoff from its Los Angeles area road system is flowing untreated into storm drains, that Los Angeles municipal storm drains are adversely affecting water quality in adjacent coastal and riparian zones, that Caltrans is discharging the specific pollutants named by NRDC, and that the MS4 permit requires it to prevent non-stormwater discharges into storm drains.

NRDC, however, says the Los Angeles permit "has the very conditions that Oregon's water quality standards lack."

CalTrans also contends that the MS4 permit sets no limits on stormwater concentrations of certain pollutants and that Los Angeles has not required it to develop a monitoring program. Finally, the agency argues that "defendants have implemented all and additional best management practices and early action best management practices to the maximum extent practicable, which is all that is required under the permit."

BULLETIN

At press time, an earthquake had just caused extensive damage to Los Angeles and the CalTrans freeway system in the Los Angeles area. It is unclear how this may affect NRDC's proceedings against CalTrans and the three cities. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washinton, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1994 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

STATE SURVEY:

Michigan to Issue Industrial General Permit Soon; Several States Cool to EPA's Multi-Sector Proposal

Despite predictions last year that the Michigan Department of Natural Resources (DNR) faced new delays in proceeding with its proposed industrial general permit (see *Bulletin*, December 1993, p. 7), DNR unexpectedly received general permit authority from Region V of the U.S. Environmental Protection Agency (EPA) on Nov. 29, 1993. Michigan stormwater official David Drullinger now says that DNR hopes to issue a final general permit for industrial stormwater dischargers by March 1.

Under new fee legislation approved last fall by the state legislature, DNR already has imposed one-time permit fees of \$125 on construction sites regulated under the state's permit-by-rule for construction site runoff. Industrial stormwater dischargers will have to pay annual permit fees of \$200. This year, DNR will send bills for the fees to industrial permit applicants by March 29 and require them to submit payment by May 1.

Next year, however, facilities with industrial stormwater permit coverage will be billed by Feb. 1 and must pay the fees to DNR by March 15. Michigan's current fee legislation expires after 1995, Drullinger says, because it is anticipated that Congress or EPA may create national stormwater permit fees by then, with some of the proceeds going to states. At least for now, Michigan does not anticipate using EPA's proposed multi-sector permit, Drullinger said.

Details of Michigan's final industrial general permit were unavailable at press time. However, DNR is expected not to require any quantitative monitoring by industrial dischargers. Instead, facilities will be required to have DNR-certified stormwater operators working at their sites within a year of being permitted.

Because this probably will delay compliance, industrial permittees are expected to have 18 months after receiving coverage to prepare stormwater pollution prevention plans, 24 months to implement non-structural stormwater controls, and 36 months to install structural controls, Drullinger said. He added that DNR and the Michigan Water Environment Association will hold two seminars on the new permit this month, on Feb. 17 in Farmington Hills and on Feb. 24 in Kalamazoo.

Earlier, Region V delayed granting stormwater general permit authority to Michigan pending EPA review of the state's delegation agreements for the National Pollutant Discharge Elimination System (NPDES), Clean Air Act, and Resource Conservation and Recovery Act programs. The review, requested by Michigan environmentalists, was

needed to determine the effects of a wholesale reorganization of state regulatory agencies by Gov. John Engler, EPA indicated last year.

Region V still plans to review Michigan's delegation for these programs, EPA officials said in January. But in the meantime, DNR will continue to implement all the programs in question.

This month's survey also turned up new stormwater program developments in these states:

Arkansas

Arkansas will make use of EPA's newly proposed multi-sector permit to write new industry-specific general permits for industries that would face more stringent monitoring requirements or effluent limits under the permit than they would under the Arkansas baseline general permit, according to Department of Pollution Control and Ecology (DPCE) engineer Steve Patrick.

However, Patrick says, DPCE probably will not write new general permits for industries for which Arkansas requirements are now as stringent, or more stringent, than those in the multi-sector proposal.

This probably means that new industry-specific permits will not be forthcoming for landfills, primary metal facilities, wood treatment facilities, battery reclaimers, large airports, large auto salvage yards, lime storage piles, concrete and ready-mix concrete plants, meat packing and food processing facilities, coal piles at steam electric generating plants, or facilities exposed to stormwater and also subject to reporting under Section 313 of Title III of the 1986 Superfund Amendments and Reauthorization Act, Patrick suggests.

"Monitoring data from many of these facilities shows that they have problems with total suspended solids, or in some cases they have failed biomonitoring tests. I think that's one reason that we won't issue new permits for them," Patrick said.

However, he said, the next batch of monitoring data, from samples taken after facilities are required to install best management practices (BMPs), may show better results and indicate that the BMPs are working. According to Patrick, DPCE's water quality section will be reviewing facilities that fail their biomonitoring tests, "to see if there are water quality problems in particular areas."

Mississippi

Mississippi's Department of Environmental Quality (DEQ) is preparing to send notices to

(Continued on page 8)

STORMWATER INTERVIEW:

New EPA Water Chief Bob Perciasepe Sees Watersheds, Multi-Media Pollution as Future Priorities for His Office

Robert Perciasepe, confirmed last November as President Clinton's assistant administrator for water at the U.S. Environmental Protection Agency (EPA), has 18 years of public-sector experience in handling environmental management, pollution control and urban planning issues. The recipient of recent conservation awards from the American Lung Association, America's Clean Water Foundation and the Sierra Club, Perciasepe was first educated as an environmental and regional planner, earning his master's degree in regional planning from Syracuse University in 1976. He joined the Baltimore Planning Department in 1976 as its principal environmental planner and became chief of planning in 1979 and assistant director in 1986. While working at the department, Perciasepe completed six capital planning budgets, supervised the computerization of the capital spending program, and established Maryland's first computerized flood warning system. He also oversaw the development of Baltimore's first floodplain management and open space plan, as well as the city's Flood Hazard Area Acquisition Program.

Moving to state government in 1987, Perciasepe served successively as assistant secretary, deputy secretary and secretary of the Maryland Department of the Environment (MDE) under Gov. William Donald Schaefer, a former mayor of Baltimore. Among Perciasepe's achievements at MDE were coordinating the development of the state's revolving loan fund for financing water pollution control projects; reorganizing MDE to cope with a 13-percent staff cutback and a 30-percent drop in state funding; directing an interstate reevaluation of the Chesapeake Bay Program's nutrient-reduction strategy for watersheds in three Bay states and the District of Columbia; and developing long-range financing plans for Maryland's water pollution control, water supply and solid waste disposal programs.

In addition, Perciasepe served in Schaefer's cabinet, participating in a number of committees and task forces established by the governor to address hazardous waste, solid waste, cancer control, pesticide use and lead-poisoning prevention issues. In 1991, he helped organize and served as the first chair of the North East Ozone Transport Commission, examining air pollution problems from Virginia to Maine. Until recently, Perciasepe also was vice-chair of the Appalachian States Low-Level Radioactive Waste Compact. The following is excerpted from a Thompson Publishing Group (TPG) interview with Perciasepe on Jan. 7, 1994.

TPG: Now that you're EPA assistant administrator for water, what are your major priorities for the EPA Water Office over, say, the next four years?

Perciasepe: At the moment, both the Clean Water Act and the Safe Drinking Water Act are up for reauthorization by Congress. There is a strong possibility that both will be reauthorized during this Congress, providing an opportunity to incorporate some new perspectives in both laws. For EPA, that's both a major challenge and an opportunity, so I'm spending a lot of time figuring out where we ought to be going with our programs under these two laws.

I think the administration has a real opportunity to fix some of the problems with the two acts—particularly the Safe Drinking Water Act, which currently has very real problems. It's also an opportunity for us to get the government's clean water programs re-energized.

TPG: "Re-energized" how?

Perciasepe: Examining the water program over the past two decades shows that we have made real progress under the program, but we really haven't adequately addressed threats to aquatic life. We also really haven't controlled the problems caused by nonpoint source pollution. I see a real opportunity

to address these issues through greater reliance on watershed management within both the Clean Water Act and the Safe Drinking Water Act programs.

Let's face it: there are no drinking water supplies in this country that are not threatened in the long haul. By focusing on source protection under both acts, and by giving states greater flexibility in implementing these acts, we may have the opportunity to integrate the requirements of both laws, so that implementation of both of them could be done on the same watershed basis.

TPG: How would that integration of the two laws occur?

Perciasepe: If we can do what we want on safe drinking water, there will be more requirements under the act for state source-protection programs. That's potentially much less costly than imposing a lot of treatment requirements on drinking water once it's polluted. At the same time, we want to require the states under the Clean Water Act to do more watershed management. If we can give the states more flexibility in terms of implementing the two laws, they might not have to write two different sets of new regulations, but only one.

TPG: What else do you see as a water program priority?

Perciasepe: We obviously have to do more on nonpoint source pollution and work on integrating EPA programs to deal with the whole issue of persistent toxics. We need some new tools in the tool box to address the persistent toxics problem. For example, this might involve using a multi-media approach to deal with all sources of these pollutants, including airborne contaminants and other non-water discharges of pollutants that contribute to

"There are no drinking water supplies in this country that are not threatened, in the long haul."

water quality problems with persistent toxics. There should be some mechanism in the Clean Water Act whereby the agency can call on the full array of regulations that we have in order to deal with persistent toxics in water—for example by using the new Clean Air Act's maximum achievable control technology (MACT) standards to reduce the amount of airborne toxics reaching a particular watershed.

TPG: Do you have a sense of how that use of MACT standards and other regulatory mechanisms would work?

Perciasepe: I'm not a lawyer; I can't give you the details. But in terms of handling multi-media pollution problems in general, one of the things that we're in the initial stages of doing is this: there are a number of initiatives going on in EPA for reaching out to a number of different industrial sectors in a soup-to-nuts fashion, to address multi-media problems. Administrator Browner, who has initiated this effort, has asked me and Mary Nichols, the assistant administrator for air, to chair a task force on this. We're not going to do all industrial sectors, but we'll pick a couple of them and have public meetings and technical working sessions with them to look at the whole array of EPA interactions with their industries.

We'll also look for mutual ideas on how to improve those interactions—say, in terms of rulemakings, reporting requirements, inspections, enforcement and other regulatory actions. How can we do all these things more efficiently? Can this kind of exercise help us with pollution prevention? Are there things we're now requiring of these industries that are ineffective in terms of improving the environment? Once we look at those questions, we can then get into the issue of whether we can legally make changes in our policies. There are hints, at least, that there is low fruit out there ripe for the picking.

TPG: What industrial sectors have you chosen for this multi-media task force to address?

Perciasepe: The sectors actually have not been chosen yet. The task force should get going in January or February, though.

TPG: In its recently proposed "multi-sector" general permit for stormwater, EPA has proposed to group much of American industry into 29 different sectors for regulatory purposes. Some consultants predict that you'll be using these same sectors as you move toward more sector-specific regulation in the future. Do you care to comment on this?

Perciasepe: I don't know if the 29 sectors proposed for the stormwater program will necessarily be the sectors chosen for other regulatory purposes. Think of environmental regulations as a matrix, with one axis representing different kinds of industries and the other axis representing different pollution problems. As you move across the matrix in a straight line to look at a given kind of pollution, some industries will have that problem and some will not. For another kind of pollution, moving across the matrix might turn up a different set of industries.

TPG: Do you agree, though, that some form of sector-by-sector regulation is the wave of the future?

Perciasepe: I don't know if we will always be regulating by sectors, but we'll be doing more coordination by sectors. There will be occasions when that could result in regulation by sectors.

TPG: Given your experience in Maryland, which has been a leading state in addressing stormwater runoff—particularly runoff from construction sites—what potential changes, if any, do you see as being desirable in the EPA stormwater program?

Perciasepe: Obviously, I was proud of what we were doing in Maryland. I still view our stormwater program as a pioneering effort. And I do feel that we need to do more on stormwater than what EPA is currently doing in the Phase I program. For example, we need to be doing more in addressing stormwater runoff in urbanizing and near-urban

"In addressing stormwater pollution, we need to be more targeted in our approach, so that we don't spend money where we don't need to."

areas. I also feel that in addressing stormwater pollution, we need to be more targeted, more focused in our approach, so that we don't spend money where we won't get any environmental benefits—where we don't need to. That brings me back to the whole subject of watershed management.

TPG: Anything else that's a priority?

Perciasepe: Another overarching issue is creating a fundamentally different partnership with the states.

TPG: What kind of "fundamentally different" partnership?

(Continued on page 7)

San Antonio Program Stresses Public Education, Recycling, Better Disposal of Household Wastes

With no heavy industry sector to regulate, the municipal stormwater management program set up by the San Antonio Water System (SAWS) in San Antonio, Texas, has been somewhat slow in adopting ordinances to control grading and paving activities and illicit discharges of non-stormwater pollution into city storm drains. In the opinion of SAWS engineer Jay Aldeane, however, the Texas water utility's public education program is "one of the better ones that we've seen," anywhere in the country. San Antonio's public education efforts may therefore be of interest to other municipalities as they go about implementing their municipal separate storm sewer system (MS4) permit requirements.

"San Antonio is not a heavily industrialized city. In trying to comply with the U.S. Environmental Protection Agency's (EPA) municipal stormwater permitting program, we thought we had to do things to prevent future pollution problems," explains John Boggess, a SAWS public relations official. "To do that, we figured we had to focus on the educational front."

Fees Based on Impervious Surface Areas at Sites

San Antonio, a city of around 935,000 people, is served by SAWS as well as two other water utilities, the Bexar Metropolitan Water District and the Lackland City Water Co., which also serve parts of surrounding Bexar County, Texas. Within the San Antonio city limits, all three utilities collect stormwater fees from residential and business customers to finance an \$11.3 million per year stormwater management program.

The fees generally are based on the estimated amount of impervious surface present at residential and business sites, according to SAWS. The city also imposes fees on some San Antonio electricity users who are not served by public water systems.

The ordinance allowing the fees to be added to local utility rates, passed by the city council last May, provoked some controversy. Local dissatisfaction helped to motivate San Antonio's U.S. Representative Henry Bonilla, R-Texas, to deplore "unfunded mandates" in Congress and introduce legislation to make municipal stormwater requirements dependent on a locality's ability to pay (*Bulletin*, January 1994, p. 6).

Information Program Helped to Sell Fee Concept

The SAWS public education program, however, helped prepare the public for the fees, in part by explaining to city residents that the stormwater

permitting requirements were federally mandated and therefore inescapable.

The public education effort also has helped to correct common misperceptions about stormwater. According to Boggess, "In 1992, when we did a survey on this, we found that 75 percent of the people here did not know that the storm drains connect directly to the creeks and rivers in Bexar County. One thing we tried to convey in a tabloid newsletter we mailed to all our customers in December 1992 is that stormwater runoff is the main source of pollution to rivers and streams in Bexar County."

Noting the dependence of San Antonio's water supply on the large Edwards Aquifer underlying parts of the city and county, the SAWS "Clean Stream Update," mailed in December, informed the public of the proposed stormwater fee structure. It also referred customers with questions to a bilingual stormwater hotline and offered homeowners useful hints about the proper disposal of several kinds of potential stormwater contaminants.

Apparently in response to the mailing, Boggess reports, calls to the stormwater hotline rose from 81 in November 1992 to a peak of 158 in December 1992, then fell off significantly afterwards.

When the stormwater fees went into effect last summer, the initial number of complaints was fairly large, Boggess acknowledges, and "our customer service department had a pretty hard time of it." Many complaints simply reflected customer concerns about being placed in the wrong rate category, however. After a few months, the number of complaints effectively dwindled to zero.

English, Spanish Brochures Outline Waste-Disposal Options

In addition to establishing the hotline and publishing the December 1992 newsletter, SAWS officials have promoted stormwater education by appearing on local radio talk shows, meeting with churches and civic groups, and issuing a packet of brochures in both Spanish and English briefly summarizing "The Facts About Stormwater." The brochures also offer detailed suggestions on how to dispose of, or find alternatives for, a variety of wastes that might otherwise end up in storm drains, including:

- household products;
- garage and workshop products ranging from car wax and antifreeze to latex paints and wood preservatives;

- automotive products, particularly used oil;
- lawn and garden products; and
- "miscellaneous products"—including shoe polish, photographic chemicals, and gun cleaning solvents and ammunition.

The brochures also list local businesses that recycle used oil and lead-acid batteries; local distributors of "environmentally sensitive" cleaning products, and a number to call for information on city collection days for household hazardous waste.

Other Features of San Antonio's Program

The San Antonio information program builds on a similar state program called "Clean Texas 2000," according to Aldeane, and reflects the provisions of a new Texas law banning the landfilling of used oil. With strong encouragement from stormwater regulators in EPA Region VI, San Antonio will use some revenue from its stormwater fees to fund solid waste disposal activities and a new household hazardous waste disposal program for the city.

SAWS has contracted with the U.S. Geological Service (USGS) to establish its stormwater monitoring and testing program. "They're expensive and slow, but they're very, very good," according to Aldeane. "Their data is almost irrefutable, and we may end up getting more monitoring data from them than we want. One reason we have contracted with USGS is that in the past, we've had some problems with private laboratories providing us with inconsistent data."

San Antonio currently pays for daily street sweeping in the downtown area, to increase the city's attractiveness to tourists. Under the stormwater program, street sweeping will be extended to the entire city, on a quarterly basis. The new stormwater program also allocates about \$800,000 annually to the city's public works department for regular maintenance of storm drains.

SAWS is preparing a new clearing and grading ordinance and an illicit discharge ordinance to submit to the city council for approval, although Aldeane and Boggess said in a Dec. 17, 1993, interview that the council had not yet voted on the idea.

SAWS also ultimately plans to have San Antonio stormwater inspectors check on compliance with EPA's industrial stormwater regulations, according to Aldeane. He adds, "Basically, we'll incorporate all of what EPA requires as a part of our permits. We have made the EPA requirements our requirements, and we can enforce them on the local level, which will save EPA from having to come down here to enforce them." A fee probably will be charged for site inspections, Aldeane adds.

As of last December, EPA had not yet approved

San Antonio's part 2 application for a municipal separate storm sewer system (MS4) permit. Reviewing San Antonio's progress on the permit application, Aldeane noted, "The funny thing about this program is that a lot of cities have done more in the ordinance end of the program than we have. But in San Antonio, I think we have done more of what EPA really wanted us to do."

Although ordinances to control illicit discharges and regulate grading and clearing are needed under the program, he added, "Along with the ordinances comes the responsibility and the opportunity to educate the public about what they need to do regarding stormwater." And in this aspect of the program, he suggested, San Antonio may be far ahead of some other MS4 permit applicants. ■

Perciasepe Interview

(Continued from page 5)

Perciasepe: We need to provide more flexibility for them under both the Clean Water Act and the Safe Drinking Water Act. Looking at watershed management, we need to create an incentive-based framework for their participation. We might not review every one of their watershed plans, for example. We might also give them more flexibility in permit terms, more flexibility in consolidating grants, and just more flexibility in general in doing watershed management.

In the reauthorization of both laws, we'd like to see fee systems put in place to give the states more revenue for running certain programs. We also would like to keep constant the amount of grant money now going to them, while providing them with backstop revenues from the fees. If we can give them more program flexibility and they also have more revenue, it will amount to a fundamentally different partnership. We also need to change the framework under which the states forge partnerships with the federal agencies. ■

California Workshops Scheduled

A course on compliance with California's industrial general permit and the implementation of state stormwater monitoring programs and pollution prevention plans is being offered Feb. 24 in Pasadena, March 9 in Ontario, Calif., and March 15 in Long Beach, by Ecotek, a Southern California environmental consulting firm. The attendance fee is \$175. For more information contact Ecotek, 5855 Naples Plaza, Suite 311, Long Beach, Calif. 90803; (310) 433-3663. ■

State Survey

(Continued from page 3)

approximately 400 group applicants asking them to file for coverage under the state's existing general permits, DEQ stormwater staffer Louis LaVallee said in mid-January. Depending on when the notices are mailed, recipients will have from April 1 to April 20 to submit their notices of intent.

According to LaVallee, DEQ does not plan to adopt EPA's proposed multi-sector permit now, but may make use of it when Mississippi's existing general permits expire in 1997.

Mississippi does not want similar facilities in the state to face two different sets of permit requirements, LaVallee said, and also is uncomfortable "just blindly following the multi-sector permit" for all of the industrial facilities covered by the proposed permit's sector 3, regulating chemical manufacturing facilities.

This is particularly the case given EPA's failure to send Mississippi detailed sampling data for various kinds of facilities in the sector, LaVallee said, adding, "In 1997, we will reassess what EPA is requiring and why they are requiring it, based on the analytical data submitted by them."

Pennsylvania

In recent workshops industry discussing EPA's proposed multi-sector general permit, it was noted that Pennsylvania Department of Environmental Resources (DER) stormwater coordinator Cuong Vu is requiring Pennsylvania group applicants to come under the state's baseline general permit, rather than waiting for multi-sector permit coverage. However,

certain workshop participants suggested, some DER regional offices may follow a different policy.

"This is not true. At least it is not supposed to be true," Vu contended in a Jan. 14 interview with the *Bulletin*. "If any regions are doing that, I am not aware of it."

Vu said he will review the multi-sector proposal, but that he could not say yet whether Pennsylvania will use all or parts of it. If DER does chose to use parts of the multi-sector permit, Vu added, "It will probably be three years from now when our general permit is due to expire."

On Jan. 13, Vu added, he sent out 1,800 information packages to group applicants in Pennsylvania urging them to file for coverage under the state general permit "as soon as possible" and indicating that those that do not file are in violation of state law. However, Vu would not discuss stormwater requirements for the hardwood timber industry. DER official Stewart Gensell now handles stormwater policy for that industry, he said.

South Dakota

South Dakota received NPDES delegation and general permitting authority from EPA at the beginning of the year, according to state stormwater coordinator Norma Job. At press time, it appeared that there may be a transition period during which EPA Region VIII continues to administer some NPDES functions while South Dakota gradually assumes responsibility for them.

According to Job, the South Dakota Department of Environment and Natural Resources is still deciding whether or not to make use of EPA's proposed "multi-sector" general permit. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Stormwater Permit Manual \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$298
- Ozone Depleter Compliance Guide \$398
- Environmental Compliance Tool Kit \$395

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

J42STRM

Stormwater Permit Manual

Bulletin

Volume 3, Number 7

January 1994

GROUP APPLICATIONS:

Industry, Consultants Critique 'Multi-Sector' Proposal

The proposed "multi-sector" stormwater permit that the U.S. Environmental Protection Agency (EPA) recently published for 29 broad industrial categories is good, but should be better, according to consultants, attorneys and trade association officials who recently met in Washington to analyze the proposal.

"We have an opportunity to help EPA make this the best permit possible," John Whitescarver, vice president of Carter & Burgess Inc. (C&B), said at a Dec. 7, 1993, C&B "strategy session" on the proposed permit. Proposal details also were discussed at a Dec. 6 C&B seminar.

Participants at the two meetings raised a number of concerns about the proposal. But under Whitescarver's leadership, they focused particular attention on EPA's use of so-called "benchmark" pollutant concentration values to determine whether

facilities in selected industrial sectors will need to do quantitative sampling of their stormwater discharges.

The overall monitoring requirements in the proposed multi-sector permit, for many but not all industries, would be significantly less costly than those in EPA's existing "baseline" general permit. Nevertheless, Whitescarver and some other observers fear that industries exceeding benchmark values could be judged "dirty" industries, and perhaps subjected to numeric effluent limits in the future.

What's more, voluminous calculations that C&B has done based on group application monitoring data suggest that for certain industries, "some of these benchmark values will be very hard to meet," C&B stormwater coordinator Steven Veal contends.

After discussing alternatives to the particular methods that EPA used in calculating the bench-

(Continued on page 2)

Is EPA's Baseline Permit Fated to Be Replaced?

Within a few years, the U.S. Environmental Protection Agency (EPA) will use its newly proposed "multi-sector" general permit to cover virtually all industrial stormwater dischargers, claims an attorney for several industries whose monitoring data EPA used in writing the multi-sector proposal.

Speaking on Dec. 7 at a Carter & Burgess Inc. seminar on the proposed permit (see related story, this page), Jeffrey Longworth of Collier, Shannon, Rill and Scott added, "The baseline general permit is going to die in four years, and EPA wants the states and industry to realize that."

EPA officials do not explicitly say that they will abandon the baseline general permit when it comes

(Continued on page 8)

Inside this issue. . .

- Senate Clean Water Bill Isn't Affordable, States Warn 4
- NRDC Book Sees Some Water Protection Efforts Going 'Backward' 5
- Washington Faces Cryptosporidium Scare 6
- Kansas Gets General Permitting Authority 7

**Thompson
Publishing
Group**

Multi-Sector Permit

(continued from page 1)

marks, Whitescarver and some other meeting participants decided that in their comments on the proposal, regulated industries should try to "kill" the benchmark concept.

Some trade association officials participating at a Dec. 13, 1993, meeting of the Stormwater Industry Coalition organized by attorney Kevin Bromberg expressed similar concerns about the benchmark values, as well as other aspects of the proposal.

In reply, William Swietlik, branch chief of the National Pollutant Discharge Elimination System (NPDES), said the numbers EPA chose for benchmarks may, in fact be "too high"—implying that if affected industries try to eliminate the benchmarks, EPA may select numbers that are more stringent.

Debates over the benchmarks and other aspects of EPA's massive proposal, then, are expected at forthcoming public hearings this month.

Background on the Multi-Sector Proposal

Published on Nov. 19 (58 FR 61145), the proposed multi-sector permit addresses stormwater permitting requirements on a category-specific basis for facilities in 29 designated industrial sectors.

Comments on the massive proposal, which along with an accompanying preamble runs to more than 450 pages in the *Federal Register*, must be submitted by EPA in triplicate by Feb. 17, 1994.

To elicit different views about the proposed permit, EPA has scheduled a number of public hearings and public meetings this month in Boston, Jan. 12-13; Hato Rey, Puerto Rico, Jan. 18; Tampa, Fla., Jan. 10; Tallahassee, Fla., Jan. 13; Baton Rouge, La., Jan. 10; Oklahoma City, Okla., Jan. 12; Dallas, Jan. 18; Albuquerque, N.M., Jan. 19; and Phoenix, Jan. 13.

According to EPA, both members of group applications and other facilities that now are regulated under EPA's "baseline" industrial general permit will be eligible for coverage under the final

multi-sector permit, once it is available. EPA is not making definite predictions about when this might be, and some observers do not expect it for at least a year.

Trade Groups Agree to Coordinate Public Comments

Both the C&B meetings and the Stormwater Industry Coalition meeting served as networking sessions for participants interested in making changes to the EPA proposal. Organizers have scheduled follow-up sessions this month for interested parties. The follow-up session for C&B seminar participants will be Jan. 27 and that for Bromberg's coalition will occur Jan. 14. Both meetings are planned for the Washington area.

Participants at the C&B strategy session appear to have agreed informally to coordinate their comments on the proposal. Whitescarver also urged them to attend several of the EPA public hearings, where he suggests that industry has an important opportunity to "sway" influential EPA regional officials.

In its Nov. 19, 1993, preamble and fact sheet on the multi-sector proposal, EPA specifically requested public comments on 25 different aspects of the proposed permit. Participants at the stormwater meetings in December raised additional issues. Beside the concerns about benchmarks noted above, industry's major points of concern appear to include the following:

Visual Monitoring. For some industries, the proposed permit would require quarterly visual inspections of stormwater samples taken from facility outfalls. For others, monthly visual inspections would be required. Visual inspections are cheaper and easier to perform than sampling and quantitative laboratory analysis for particular pollutants. However, some industry representatives say monthly inspections would be burdensome, especially since EPA encourages each permittee to have the same employees do the inspections each month.

Whitescarver suggests that if several months of visual inspections in a row show an outfall is always clean, EPA should relieve the permittee of



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washinton, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1994 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

continued visual monitoring there. Bromberg suggests that after several months of checking at the same spot, many permittees may be tempted to cheat on further visual inspections.

However, Brian Forrestal, manager of environmental services for Laidlaw Waste Systems Ltd., suggested at the Dec. 7 seminar that requiring monthly visual samples might be beneficial, by encouraging facility managers to "get out and walk their facility perimeters," a practice that can detect unsuspected problems at sites.

To address the visual inspection issue, some trade associations may try to argue for a small business exemption from this requirement, an idea mentioned at the Stormwater Industry Coalition meeting.

The Co-location Issue. Under the baseline general permit, facilities are eligible for coverage only if the standard industrial classification (SIC) codes of their "primary" activities on site fall within certain categories. Stormwater pollution prevention plan (SWP3) requirements for different activities covered by the permit also are virtually the same.

Under the multi-sector proposal, however, permittees would be responsible for SWP3 requirements covering any regulated "co-located" activities at their sites, and these activities might fall under several different permit sectors. For facilities having a number of co-located activities, the sector requirements would overlap.

Some trade association representatives at the December meetings grumbled at this change, apparently more because of the confusion it may cause than because of the cost burden. Many permittees, industry observers predict, cannot or will not follow regulatory requirements scattered throughout four or five different sector-specific parts of the permit. They indicate that it would be better to have a simpler way of organizing the permit so that it is easier for individuals to understand.

Endangered Species Certification. Unlike the baseline permit, the proposed multi-sector permit would require each permittee to certify that its stormwater discharges do not adversely affect structures protected under the National Historic Preservation Act or species listed as "threatened" or "endangered" under the Endangered Species Act.

Whitescarver says that these requirements simply put EPA in compliance with federal law regarding the agency's own responsibilities under the two statutes. Some trade association representatives, however, are concerned about potential liability under the Endangered Species Act requirement, as well as the costs some facilities could face in determining their impacts on listed species.

Industry still may benefit from the endangered species and historic preservation requirements,

Whitescarver suggests, because EPA may legally be required to reopen the baseline permit to fulfill its obligations under these two laws. When this occurs, Whitescarver suggested on Dec. 7, industry can argue for other desired changes in the baseline, although EPA now is resisting such changes.

SARA 313 Facility Certifications. Bromberg and environmental attorney Jeffrey Longworth have argued against EPA's proposal to require professional engineers to certify pollution prevention plans for industries subject to the toxic reporting requirements of section 313 of Title III of the 1986 Superfund Amendments and Reauthorization Act (SARA). Such certifications are unnecessary, they contended. Whitescarver, however, joked that "this is a debate between the professional engineers and the lawyers" over who will get the business from SARA 313 facilities.

Grab Samples and Effluent Guidelines. For a few sectors where industries already face stormwater effluent guidelines, EPA proposes to make those guidelines part of the permit and to require that facilities meet numeric effluent limits. Conceptually, this isn't a new requirement for these industries, but EPA appears to call for the use of grab samples rather than more costly composite samples in determining compliance. Whitescarver suggests that affected industries comment on this, because grab samples produce a "worst case" reading of pollutant levels.

Errors Found in EPA's Summary Materials

There are some errors in EPA's Nov. 10 press packet summarizing the multi-sector proposal's requirements, C&B's Steve Veal warns. (For a summary of that press packet, see Tab 200, Appendix A in the *Stormwater Permit Manual*.) In particular, benchmark values for zinc, ammonia and total Kjeldahl nitrogen (TKN) are wrong. Veal urges stormwater professionals to read the proposed permit itself for the right values, although the values for zinc differ for various sectors. The correct value for zinc, Veal says, is 0.065 mg/L. The value for ammonia should be .093 mg/L, and the correct TKN value is 1.5 mg/L. ■

Seminar Workbook Available

Subscribers interested in comparing benchmark values with group monitoring data, or seeking a quick overview of the sector-by-sector requirements in the proposed permit, may wish to obtain C&B's seminar workbook on the proposal. It is available for \$95 from Carter & Burgess at (703)777-9384 or (817)735-6161. ■

Senate Bill 1114 Just Isn't Affordable, States Warn

S. 1114, the chief Clean Water Act reauthorization bill introduced in the Senate last year, contains "ludicrous" assumptions about permit fees and would create a "patchwork of unachievable demands" on already overburdened state regulators, according to the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA).

That is the gist of a strongly worded Nov. 2, 1993, letter from ASIWPCA Executive Director Roberta Savage to Sen. Robert Graham, D- Fla., chair of the Senate Environment Committee's Subcommittee on Clean Water, Fisheries and Wildlife. According to ASIWPCA, the letter was a response to an earlier request by Graham for a state estimate of the potential costs of the bill.

S. 1114 Too 'Prescriptive' for NPS Program Success

Among other things, Savage's letter contended that S. 1114's overly "prescriptive" approach to regulation "prevents states from turning their attention to priority problems such as nonpoint sources."

At the same time, Savage also criticized the Senate bill's prescriptive approach to nonpoint source pollution, saying that it was unaffordable.

In devising better nonpoint source control programs, the letter advised, "States must be able to target problems, prioritize and manage programs efficiently and effectively to achieve [program] goals."

Workloads Would Redouble, Regulators Predict

The enactment of the 1987 Water Quality Act, which amended the Clean Water Act, already has more than doubled states' work load compared to pre-1987 levels, "while at the same time providing less financial resources," Savage's letter explained. It added that "S. 1114 will more than double the program's cost for the second time in six years."

It is "ludicrous" to imagine that regulated industries and municipalities could afford the permit fees that would be required to support the bill's proposed \$900-million program, the letter further contended.

"Experience clearly demonstrates that prescriptive approaches do not work in most circumstances, especially when there are limited funds for implementation," the letter added. "States will have a very difficult time trying to justify the requirements of S. 1114 before the American taxpayers and regulated community."

In a brief interview with the *Bulletin* explaining the letter's overall thrust, Savage said that "nobody is talking about repealing" any of the existing provi-

sions of the Clean Water Act. However, she said, there are now problems "across the board" with funding state implementation of these provisions.

Savage added, "It doesn't matter what we now write in the law, there isn't the money to administer this program, and it doesn't look as if there is going to be the money to administer this program. Under these circumstances, further increasing the workload on the states and cities is insane."

Existing Stormwater, Toxics Rules Criticized

In a follow-up interview, ASIWPCA Deputy Director Linda Eichmiller indicated that "extremely prescriptive stormwater provisions" of the present Clean Water Act already are a problem for the states.

Eichmiller added that "a lot of very specific point-source pollution requirements and regulations relating to toxics" also have helped to divert state regulators from nonpoint source pollution priorities. Eichmiller's comments on toxics reflected a major theme of Savage's Nov. 2 letter to Graham.

If S. 1114 passes, problems in setting state water quality standards will increase, Savage's letter warned. "States are predicting that the level of acrimony between the U.S. Environmental Protection Agency, states, local government and [pollution] sources will increase to the point that certain aspects of the program could become dysfunctional."

The 1987 Water Quality Act already has generated "a tremendous amount of litigation over state water quality standards" and has helped to create a situation in which "a very high number of permits are under appeal," Eichmiller said.

Such litigation, she said, also has been generated by anti-backsliding provisions of the law and by high penalties for noncompliance. Both make operators of regulated facilities increasingly concerned about whether they can live with their Clean Water Act permits as initially proposed by regulators, Eichmiller indicated.

The National Pollutant Discharge Elimination System (NPDES) permit program for point source discharges "already is on a very dangerous edge in terms of the permit reissuance backlog," Eichmiller continued. "S. 1114 could make it worse."

Graham to Meet on Possible S. 1114 Revisions

Speaking in late November, Eichmiller said that Graham, as a former governor of Florida, appears to understand the financial burden that unfunded mandates place on states. ASIWPCA hoped to discuss possible changes to S. 1114 with Graham before the end of the year, Eichmiller indicated. ■

BOOK REVIEW:

NRDC Cites Progress, Problems Under Clean Water Act

The United States has made significant progress since 1972 in controlling point sources of chemical-related water pollution under the Clean Water Act, according to a new book by three Natural Resources Defense Council (NRDC) staff members concerned with the law's reauthorization.

Yet despite real advances in controlling chemical pollution, the book contends, "large amounts of toxic and other chemicals continue to be dumped into our nation's waters each day." Moreover, the authors add, American society actually is "moving backward" in terms of restoring the overall biological health of the nation's waters.

Published on Dec. 1, 1993, by Island Press, *The Clean Water Act: 20 Years Later* was co-authored by NRDC attorneys Robert Adler and Jessica Landman and NRDC environmental engineer Diane Cameron.

According to Adler, Landman and Cameron, when the 20th anniversary of the Clean Water Act's enactment occurred in 1992, "no one had written a meaningful, comprehensive analysis of the successes and failures of the Clean Water Act on a national scale."

The book attempts to use previous research on particular water problems, as well as water quality data that states submit to the U.S. Environmental Protection Agency (EPA) under the Clean Water Act's Section 305(b) program, to produce such a "comprehensive" analysis. Based on this evidence, the authors argue that the nation "still has a long way to go to eliminate water pollution altogether."

The Clean Water Act: 20 Years Later uses state and national data on beach closures, shellfish bed closures, outbreaks of water-borne disease, fishing bans and fishing advisories, and reported fish kills to demonstrate that a third or more of U.S. waters still do not meet the "fishable, swimmable" criteria for public health protection mandated by the Clean Water Act.

A 1992 EPA report on the National Study of Chemical Residues Found in Fish indicated that the levels of pollutants found in fish from waters around the country "posed significant risks of cancer and other health effects to average fish consumers," the authors contend.

The contamination of seafood by chemical and non-chemical pollutants poses even greater risks to low-income people and certain ethnic minorities, including Asian Americans, African Americans and Native Americans, the book argues. This is because members of such groups tend to consume more fish than the average U.S. resident.

Turning to pollution impacts on the fish themselves, the book cites a 1982 study by EPA and the

U.S. Fish and Wildlife Service that allegedly found fish in 81 percent of the nation's waters were "adversely affected by a variety of factors."

A 1979 American Fisheries Society study also found 251 North American fish species to be endangered, threatened or otherwise of "special concern," the book adds. A 1989 follow-up report concluded that 364 of such fish species, or some 40 percent more than a decade earlier, warranted "protection due to rarity."

In addition to the fish officially listed under the Endangered Species Act, more than 25 percent of North America's amphibian species, more than 60 percent of its crayfish and more than 70 percent of its mussels now are rare or threatened, according to a 1990 Nature Conservancy study cited by the authors.

Several federally listed birds and mammal species also may be indirectly affected by water-related habitat losses and/or poor water quality, according to *The Clean Water Act: 20 Years Later*. Such species include the Florida manatee, stellar sea lion, whooping crane, wood stork, and brown pelican.

The authors blame many alleged threats to the biological integrity of watersheds on wetlands losses, other forms of habitat destruction and "non-existent poison runoff controls" on agriculture.

However, the authors suggest that runoff from urban development, silvicultural activities and mining sites, and deficiencies in EPA's industrial pretreatment program, also are important—if lesser—causes of water degradation.

"Inadequate monitoring and public information" are significant contributing factors to other water quality problems, the authors emphasize. They conclude, "Only a small fraction of waters are tested routinely for toxic and other pollutants ... Most alarming is the absence of comprehensive, consistent programs to detect and warn the public about serious health threats from contaminated swimming and fishing waters." ■

How to Get NRDC's Book

In upcoming Clean Water Act reauthorization debates, environmentalists are likely to use *The Clean Water Act: 20 Years Later* to argue for significant changes in the law. A copy of the book may be obtained for \$29.95 from Island Press, Box 7, Covelo, Calif. 95428; (800) 828-1302. There is an additional charge of \$4.25 for postage and handling. For larger orders, add \$4.25 for postage and handling for the first copy and \$1 for each additional copy. ■

Storm Warnings

Stormwater Related News in Capsule Form

- **Heavy Rains, Turbidity Lead to Cryptosporidium Scare in Washington.** Nearly 1 million residents of the District of Columbia and Northern Virginia were put on alert for possible cryptosporidium contamination in their drinking water in December, after two weeks of rain caused heavy agricultural runoff into the Potomac River upstream of the Washington area. On Dec. 8, U.S. Army Corps of Engineers officials reported increased water turbidity at Washington's Dalecarlia water treatment plant, leading the U.S. Environmental Protection Agency (EPA) to warn the public of possible cryptosporidium pollution in the water supply. EPA said the increased turbidity was similar to that observed in Milwaukee last spring, before cryptosporidium in drinking water there caused more than 300,000 cases of intestinal disease and contributed to an estimated 40 premature deaths.

EPA advised Washington-area residents to boil tap water before drinking it, at least until the water supply could be tested. Many local institutions, including public schools and the Pentagon, responded by shutting off drinking fountains and in many cases distributing bottled water to employees. The well-publicized alert ended after a few days when the cryptosporidium tests proved negative. Officials say the increased turbidity probably was caused by Dalecarlia treatment plant operators' failure to add enough coagulant to the water to remove turbidity-causing contaminants.

- **Senate Bill's Polluted Runoff Provisions 'Must Be Rewritten,' Environmentalists Say.** The nonpoint-source pollution control provisions of S. 1114, a Clean Water Act reauthorization bill introduced last year by Sen. Max Baucus, D-Mont., and Sen. John Chafee, R-R.I., are "seriously flawed and must be rewritten," according to Izaak Walton League of America lobbyist Marchant Wentworth. In a letter last fall to the Senate Environment Committee's Subcommittee on Clean Water, Fisheries and Wildlife, Wentworth contended that S. 1114's polluted runoff provisions are "unworkable and may actually undercut nonpoint control programs in present law." The conservation group further blasted S. 1114 for "largely discretionary" programs that allegedly fail to give states and cities the guidance they need to control nonpoint source runoff and contended that the bill's proposed nonpoint source provisions lack "effective sanctions in the event of noncompliance."
- **EPA Calls for Tougher Runoff Controls in S. 1114.** EPA official Geoffrey Grubbs, director

of the Office of Water's watershed protection division, is calling for "substantially tougher" nonpoint source control provisions in the Clean Water Act than those included in S. 1114, according to a recent article in the trade press. Last spring, EPA Administrator Carol Browner said Congress should continue to emphasize voluntary approaches to control nonpoint source pollution, but said that "backup enforcement requirements at the state and federal levels are needed when voluntary approaches fail." (see *Bulletin*, June 1993, p. 3). In the trade press article, Grubbs essentially affirmed Browner's basic approach, saying that S. 1114 needs tougher enforcement mechanisms for "bad actors" who ignore nonpoint source guidelines. At press time, the Senate subcommittee is expected to mark up a bill revising S. 1114 during the first week of February (see related story, this issue, p. 4).

- **Rep. Bonilla Introduces Bill Addressing 'Ability to Pay' by Municipal Stormwater Permittees.** Contending that "unfunded federal mandates place a terrible toll on our state, county and city economies," Rep. Henry Bonilla, R-Texas, has introduced a bill (H.R. 3380) to amend the Clean Water Act to require regulators to consider the ability of permittees to pay when issuing permits for municipal storm sewer systems. The one-page bill, introduced Oct. 27, 1993, also would require regulators to consider the environmental impacts of issuing municipal stormwater permits.

According to Bonilla, federal stormwater mandates have forced his home town of San Antonio, Texas, to impose new fees on municipal water customers, increasing the water bills of some local businesses from \$30 to \$200 per month. "These burdens are hurting businesses, threatening jobs and lowering the quality of life," Bonilla wrote last summer to Rep. John Conyers Jr., D-Mich., chair of the House Committee on Government Operations. A Bonilla staffer said that H.R. 3380 has been referred to the Government Operations Committee, Public Works Committee, and Merchant Marine and Fisheries Committee in the House. No hearings on the bill have been scheduled at this time.

- **Multi-State Stormwater Project Begins on Lake Superior.** A three-state stormwater project began last year under the auspices of the Lake Superior Binational Program to develop stormwater monitoring and management plans for 11 different municipalities in Michigan, Wisconsin and Minnesota, according to a recent announcement by the Minnesota Pollution

Control Agency (MPCA). The Wisconsin Department of Natural Resources (WDNR) has taken the lead role in the project, which last summer involved the U.S. Geological Survey in conducting stormwater monitoring in the 11 municipalities for conventional water pollutants and nine bioaccumulative substances of concern to regulators.

The 11 municipalities now are developing stormwater management plans to control their discharges, according to MPCA. In the future, the project is expected to expand its activities to deal with runoff from industrial sites as well as municipalities. For more information, contact Jeff Prey, WDNR, at (608) 267-9351.

- **Conference on Stormwater Management and Modeling Scheduled for Feb. 28-March 4 in Toronto.** A two-day conference and three days of workshops on stormwater management modeling have been scheduled for late February and early March in Toronto by EPA, the Ontario Ministry of Environment and Energy, and the Water Resources Council of the American Society of Civil Engineers.

The conference and workshops will focus on the use of "SWMM4," an EPA stormwater management and modeling computer program, which conference organizers describe as "a comprehensive model for continuous and single-event simulation of runoff quantity and quality." Abstracts of papers to be presented at the conference and requests for permission to set up displays must be submitted by early February to the Canadian consulting firm Computational Hydraulics International (CHI), which is sponsoring the workshops.

The workshops form a cohesive series, and "serious" participants should plan on attending all three for the package price, according to CHI. Attendance fee for the conference is U.S. \$165; attendance fee for the workshops is \$565 for those who bring their own computers, \$645 for those who borrow computers from CHI. For more information, contact Evelyn James, CHI, 36 Stuart St., Guelph, Ontario, Canada, N1E 4S5; (519) 767-0197; fax (519) 767-2770.

- **Stormwater Management Course Scheduled for March 30-31 in Arlington, Va.** Government Institutes has scheduled a two-day course of stormwater management for March 30-31 in Alexandria, Va. The tuition is \$499. For more information, contact Government Institutes, 4 Research Place., Suite 200, Rockville, Md. 20850; (301) 921-2345.
- **Erosion Control Conference Set for Feb. 15-18 in Reno.** The 25th annual conference and trade

exposition of the International Erosion Control Association will be Feb. 15-18 in Reno, Nev. For more information, contact International Erosion Control Association, P.O. Box 4904, Lincoln Ave., Suite 103B, Steamboat Springs, Colo. 80477-4904; (303) 879-3010; fax (303) 879-8563.

- **Conference Proceedings on Storm Drainage Available.** Proceedings from the Sixth International Conference on Urban Storm Drainage, held in Niagara Falls, Ontario, in September 1993, are now available for purchase. For more information, contact Seapoint Publishing, 2880 Seapoint Drive, Victoria, B.C. V8N 1S8, Canada; fax (604) 472-1057.
- **New York Erosion Control Manuals for Sale.** Two manuals on sediment and erosion control in New York state are being offered for sale by the Empire State Chapter of the Soil and Water Conservation Society. One 180-page manual recently issued by the New York State Department of Conservation, *Reducing the Impacts of Stormwater Runoff from New Development*, is primarily written for municipal officials and explains their opportunities to address runoff-related water quality problems. It includes a model stormwater and erosion control ordinance and may be obtained for \$5. The second manual, *New York Guidelines for Urban Erosion and Sediment Control*, is more than 300 pages long and is available for \$25. Originally developed by a committee chaired by the U.S. Soil Conservation Service, it contains standards and specifications for commonly used erosion control measures at construction sites and is written for contractors and engineers as well as local officials. Send checks payable to "Empire State Chapter-SWCS" to Empire State Chapter, SWCS, P.O. Box 7172, Syracuse, N.Y. 13261-7172.
- **Kansas, Eight Other State Program Descriptions Updated in Manual.** EPA has granted stormwater general permitting authority to the Kansas Department of Health and Environment (KDHE), according to KDHE stormwater official Donald Carlson. A new state program description for Kansas is one of nine included in this month's *Stormwater Permit Manual*.

The following state updates are included:

¶890.1 Alabama
¶890.15 Indiana
¶890.17 Kansas
¶890.23 Michigan
¶890.24 Minnesota
¶890.26 Missouri
¶890.38 Oregon
¶890.48 Washington
¶890.55 Puerto Rico. ■

Baseline General Permit

(Continued from page 1)

up for reissuance in 1997, Longworth admitted, "but that's what is between the lines."

According to Longworth, this presents a dilemma to industries whose compliance requirements under the multi-sector proposal are more stringent than those under the baseline permit.

If such industries obtain coverage under the baseline permit now and follow its requirements for stormwater pollution prevention plans (SWP3s), Longworth said, they may have to switch to the multi-sector permit coverage after 1997.

In that case, Longworth added, some firms making the switch could face new SWP3 requirements for which they are not well prepared. Consequently, it may be difficult for them to decide today on whether to seek one permit or the other.

Not everyone involved in the group application process shares Longworth's view about the baseline permit's likely future. William Swietlik, for example, branch chief of EPA's National Pollutant Discharge Elimination System, stated almost the opposite view at a Dec. 13 meeting of the Stormwater Industry Coalition convened by attorney Kevin Bromberg.

"I don't know if we're looking that far ahead," Swietlik replied to a question about the baseline permit. "But I don't think that in four years, we're going to shelve the baseline permit and use the multi-sector permit. If anything, we may go back to the baseline and revise it."

However, Swietlik also told the Stormwater Industry Coalition that the proposed multi-sector general

permit is "a better permit," adding, "The least we can do is to inform the states that it's a better permit."

Sectors Could Be 'Wave of Future'

According to Michael Cook, director of EPA's Office of Wastewater Enforcement and Compliance, some of the concepts incorporated in the multi-sector permit proposal are "the wave of the future."

In a Dec. 16 interview, Cook added, "I think that if the baseline general permit expired today and were up for renewal, we'd renew it in a way that looked a lot more like the multi-sector permit."

Cook warned, though, that EPA has almost no experience with either the multi-sector or the baseline permit, so that definite predictions at this stage are premature.

Whatever happens to the baseline permit, says Carter & Burgess vice president John Whitescarver, there is a trend throughout EPA toward a sector-by-sector approach to regulation. Therefore, Whitescarver predicts, the sector designations in the stormwater multi-sector permit may become the basis for many regulations to come.

Whitescarver therefore advises all industries eligible for the proposed multi-sector permit to scrutinize the sector designations carefully and submit comments to EPA on perceived problems with them.

"You might as well like your sectors," he told attendees at the Dec. 7 seminar, "because you may see them a lot in the future." Even dischargers who do not belong to group applications, he adds, may end up being seriously affected by the multi-sector permit, whether they realize it or not. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Stormwater Permit Manual \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$298
- Ozone Depleter Compliance Guide \$398
- Environmental Compliance Tool Kit \$395

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

J41STRM

Stormwater Permit Manual

Bulletin

Volume 3, Number 6

December 1993

EPA Releases Proposed 'Multi Sector' General Permit

At long last, the U.S. Environmental Protection Agency (EPA) has issued a proposed "multi-sector" model general permit for members of EPA-approved group stormwater applications. The proposed permit would dramatically relax stormwater monitoring requirements for some industries, but impose somewhat tougher monitoring requirements on others. The permit would be open to non-group members in 29 specified industries, if they are located in states where EPA administers the National Pollutant Discharge Elimination System (NPDES) permit program.

In the 39 states and territories that administer the NPDES program, state regulators will decide whether to use the multi-sector general permit and whether to extend it to industrial facilities that are not group members. According to a Nov. 10 EPA briefing, 23 NPDES states and territories have indicated that they may use the multi-sector permit

as a model for revising their stormwater permits in some way.

Thirteen states have said they will not use the multi-sector permit, EPA indicated. They include Alabama, California, Connecticut, Georgia, Indiana, Minnesota, Missouri, Montana, Nevada, Vermont, Washington, West Virginia and Wyoming. But at least a few of these 13 states probably will look at the multi-sector permit, at least in deciding how to modify their own stormwater regulations, said Cynthia Dougherty, director of the Permits Division in the EPA Office of Wastewater and Compliance.

At press time, EPA anticipated that the proposed multi-sector permit, an enormous document that runs to more than 1,500 double-spaced pages when an accompanying fact sheet is included, would be published in the Nov. 19, 1993, *Federal Register*. There will be a 90-day period for public comments

(Continued on page 6)

LITIGATION:

California Court Nixes Two State Water Plans

In a "tentative" decision, a Sacramento, Calif., Superior Court judge recently invalidated two state water plans that include California water quality standards adopted under the mandates of the federal Clean Water Act.

If the decision stands, it could significantly affect California's ability to set numeric effluent limits in National Pollutant Discharge Elimination System (NPDES) wastewater permits. However, state officials say the ruling may not have much impact on California stormwater permits, which do not include effluent limits.

(Continued on page 8)

Inside this issue. . .

- Negotiated Rulemaking Eyed for Some "Phase II" Sources 2
- CSX to Prepare Railroad BMP Manual Under Clean Water Consent Decree 3
- Interview: Acting NPDES Chief Gary Hudiburgh Discusses Stormwater 4
- Perciasepe Confirmed for EPA Water Program Post 7

**Thompson
Publishing
Group**

Negotiated Rulemaking Eyed for 'Phase II' Sources

The U.S. Environmental Protection Agency (EPA) may consider a negotiated rulemaking to develop stormwater regulations for some "Phase II" stormwater dischargers not now regulated under the Clean Water Act, according to an agency source.

The 1987 Water Quality Act amendments to the Clean Water Act required EPA to develop two reports to Congress by Oct. 1, 1993, on stormwater discharges not currently regulated as "associated with industrial activity," associated with construction site runoff, or associated with "large" or "medium" municipal separate storm sewer systems. The first report was to characterize Phase II sources and the pollutants associated with them, according to EPA chemical engineer and stormwater staffer Kevin Weiss. The second was to propose methods of controlling Phase II pollution.

EPA stormwater staffers have been saying for some time that the Phase II reports would be late. Now, however, it appears that preparation of the two documents has been put on the back burner while EPA prepares a so-called "Green Book" for Congress outlining the Clinton administration's positions on Clean Water Act reauthorization.

The Green Book took priority over the Phase II reports last summer because there was a sense in EPA that Congress, in marking up Clean Water Act reauthorization legislation, might resolve some Phase II questions that the reports would otherwise need to address, Weiss said in a recent interview. However, Congress has taken longer in addressing Clean Water Act reauthorization than some EPA observers anticipated.

On Nov. 5, Weiss said that EPA now hopes to circulate a review draft of the first Phase II report, characterizing Phase II pollutant sources only, beginning in mid-November. Once comments are received on the draft, EPA plans to revise the document and circulate it for agency "red border review," Weiss added, "but I suppose we're still in the early stages" of issuing a report.

At press time, it appears that one unresolved issue that may be helping to delay the report's completion is uncertainty over which Phase II sources should be subject to regulation. In the summer of 1992, EPA began holding "focus group" workshops through the Rensselaerville Institute of Rensselaerville, N.Y. concerning how to approach Phase II dischargers.

Report will refer to Rensselaerville findings, but "not incorporate them verbatim"

In a report issued late last year (see *Bulletin*, January 1993, p. 1) the Institute indicated that certain industries were "known problem sources" of stormwater in need of control. However, some industry representatives strongly disputed this finding during an EPA public comment period on Phase II last fall.

The draft Phase II report that soon will be circulated for comment will make reference to the Rensselaerville Institute findings, Weiss predicted, but it will "not incorporate them verbatim."

Weiss added that although "Rennsselaerville came through with some recommendations as to which industries we should regulate under Phase II, we have had a hard time determining some of the problems coming from these sites. Hopefully, we can get more data on them when we send out the report for review."

Perhaps because of the unexpected congressional delays in marking up a Clean Water Act bill, Weiss suggested, lower-level stormwater staffers are starting to hear from upper EPA management "that we should be considering a negotiated rulemaking on developing some of the Phase II regulations."

The draft Phase II report will be circulated to an internal working group and "external interested parties," Weiss said. It is not clear yet which individuals outside EPA will be selected for the external review. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washinton, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1993 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 750-8400.

STORMWATER ENFORCEMENT:

CSXT to Prepare BMP Manual for Railroads In \$7 Million Clean Water Act Consent Decree

CSX Transportation, Inc. (CSXT) has agreed to develop a stormwater best management practices (BMP) manual for use by the entire railroad industry, as part of a \$7 million consent decree with the U.S. Environmental Protection Agency (EPA) over alleged violations of the Clean Water Act.

According to a Sept. 29 announcement by EPA Region IV in Atlanta, CSXT has agreed to pay a \$3 million penalty and implement "environmentally beneficial projects," including the development of the stormwater BMP manual, that are valued at more than \$4 million.

Region IV Acting Administrator Patrick Tobin, in announcing the consent decree, said it included "the largest Clean Water Act penalty action in our region and ... one of the largest Clean Water Act penalties in the history of the agency." An environmental spokesman for CSXT, Richard Berry, essentially confirmed the accuracy of EPA's press release, but said the company has no further comment on the agreement at this time.

The settlement arises from a civil complaint that the U.S. Department of Justice filed for EPA in April 1992 against four CSXT facilities in Jacksonville, Fla.; the company's Winston railroad yard in Lakeland, Fla.; and its railroad yard in Rocky Mount, N.C., EPA said. According to EPA's press release, EPA had accused the company of violating effluent limitations in its National Pollutant Discharge Elimination System (NPDES) permits for each of the facilities. "Stormwater runoff contaminated with oil and detergents" was one source of alleged violations.

"These violations were of NPDES permits predating the stormwater regulation program," according to Allen Dion, associate regional counsel for EPA Region IV. However, Dion said, the Region IV enforcement staffers are aware of stormwater runoff problems existing at railroad sites around the country.

Accordingly, the settlement agreement requires the company to perform NPDES compliance audits at all its rail yards under Region IV's jurisdiction, to perform "multi-media environmental compliance audits" at its rail yards nationwide, and to establish a national environmental awareness training program for its supervisors and managers.

Preparation of the railroad BMP manual for stormwater should cost the company around

\$100,000 and will culminate in CSXT's hosting two seminars for the industry on the manuals, one targeted at rail facilities in Region IV and one intended for a national audience, Dion said. The agreement allows EPA to review CSXT's draft manual and includes a schedule stating that the final manual will be the subject of the first railroad industry seminar, in Atlanta, by Aug. 29, 1994.

The alleged violations at the company's Jacksonville facilities involved stormwater from refueling and cleaning operations becoming contaminated with oil, grease and cleaning solvents and being sent to CSXT oil/water separators for treatment, Dion indicated.

"The oil/water separators were exceeding their discharge limits in some cases," Dion said. To correct this, CSXT has now shut its East End and West End yards in Jacksonville. It is rerouting stormwater discharges from its Montcrief and Baldwin yards to a local municipal sewage treatment plant. Therefore, none of the four yards still discharges polluted runoff to waters of the United States, Dion said.

The company also has upgraded treatment facilities at its Lakeland and Rocky Mount yards, where the problems were somewhat different from the simple release of stormwater containing oil, grease and solvents, Dion said. In a Nov. 2 interview, Dion added, "There is no more remedial work required at these sites. They're in compliance now." He added that the large size of the penalty in the agreement stems from the length of time that the alleged violations continued.

As part of the settlement, Dion said, CSXT has agreed to perform risk assessments at its inactive rail sites nationwide and to propose corrective actions for addressing the risks identified. EPA will review the assessments and proposed remediation measures. Conflicts between EPA and CSXT may be resolved under a dispute resolution clause in the consent decree or, alternately, in court. Ultimately, the company will implement the corrective measures mandated by the dispute resolution process or the court.

Dion said two fairly common problems at old rail yards are abandoned storage tanks and stormwater exposure to railroad ties releasing creosote. However, he did not predict what the company's audits are expected to find. ■

STORMWATER INTERVIEW:

Gary Hudiburgh, Acting NPDES Branch Chief, Discusses Current Stormwater Issues Facing EPA

On Oct. 18, 1993, veteran U.S. Environmental Protection Agency (EPA) staffer Gary Hudiburgh became acting chief of the National Discharge Elimination System (NPDES) branch in the Office of Wastewater Enforcement and Compliance (OWEC), replacing former NPDES branch chief Ephraim King. Hudiburgh, who describes himself as "a bureaucrat," has been with EPA since September 1980 and primarily has worked within the NPDES program. He served as a staff attorney from 1980 through 1989 handling permit issues in "what I guess would now be the water quality and industrial permits branch," and spent considerable time there handling permit variance requests and other issues affecting the metals industry and the pulp and paper industry. In 1989 he became section chief of OWEC's Regulatory Implementation Section, where he worked on issues involving state water permitting programs, evidentiary hearings, objections to permits, and similar NPDES implementation problems. In 1992 Hudiburgh served briefly as acting branch chief of OWEC's pretreatment multi-media branch. In the summer of 1993, before accepting his present position, he served as acting chief of the construction grants branch in OWEC's municipal support division.

Hudiburgh is both a lawyer and an engineer. He has a law degree from Duquesne University, a master's degree in metallurgical engineering from the University of Missouri at Rolla, and a bachelor's degree in engineering from the Colorado School of Mines. He worked in the process metallurgy division of the research and development department at National Steel Corp. in Weirton, W.Va. for five and one-half years before joining EPA. The following is excerpted from a somewhat longer interview with Hudiburgh by Thompson Publishing Group (TPG) on Oct. 25, 1993.

TPG: The NPDES branch deals with a number of permitting programs, of which stormwater is only one. Has your background helped prepare you for dealing with stormwater issues, or are they somewhat new to you?

HUDIBURGH: I have been in the permits division for a significant period of time, and I understand the NPDES program. Stormwater is a very important component of that program that I clearly need to understand a little bit more about, but I don't think it's so unique that my knowledge is not transferable to stormwater.

I think it's important to remember that while I am being provided the opportunity to act as branch chief, in fact, the staff members directly covering stormwater—stormwater program head Bill Swietlik, his staff and the folks in the regions—are not changed. My upper management, who have taken a strong personal interest in dealing with many stormwater issues—Cynthia Dougherty and Mike Cook—have not changed. So while I am new to this, everybody above me and below me is familiar with the program.

TPG: We asked one private sector source who deals regularly with the agency, "What does it mean that Ephraim King is leaving and Gary Hudiburgh is coming in as head of NPDES?"

This source replied, "I don't know. But Hudiburgh is a smart guy, and he is going to be doing something about implementation. EPA has just put forward this huge stormwater program, and Hudiburgh probably doesn't know a lot about stormwater, but he's an implementation guy,

while Ephraim King is more of a policy guy. Hudiburgh will be bringing his implementation background to stormwater."

What's your reaction to this comment? Are you in fact bringing more of an implementation focus to the NPDES program? Without repudiating what King did, what do you expect to do that's different?

HUDIBURGH: I don't know that I necessarily will do anything different from what Ephraim King did. Again, you've got the same staff; you've got the same management; so I just honestly don't know that I will be much different. Clearly, there may be some occasions where a decision or direction will be different, coming through me rather than through Ephraim, but I quite honestly am unable to give you any examples of where I think that this will happen.

The stormwater program is much farther along thanks to the three or four years that Ephraim has been branch chief. He has done a tremendously outstanding job in developing the program. I just hope that I can continue with that.

TPG: What do you see as the main challenges still facing the stormwater program?

HUDIBURGH: I think that, with regard to stormwater, there are several different issues. First, the multi-sector general permit is a continuation of EPA's process of establishing controls on stormwater discharges from industrial activities, and we are moving forward with that.

Second, another important component of the program that we're dealing with is the establish-

ment of permits for municipalities that are covered by our stormwater regulations. As you know, that's something that the regions and states are working on, and it's something that we hope to continue to support.

A third task is to deal with some of the stormwater issues connected with the mining industry. The Ninth Circuit Court of Appeals, in a ruling issued a couple of years ago, indicated that we had the authority to regulate stormwater discharges from mining, and that is something that we hope to move forward with this fiscal year.

Fourth, we have a question of what we do with Phase II sources—those stormwater dischargers not already regulated under the existing stormwater regulations mandated by the 1987 Water Quality Act. We are moving forward with our report to Congress on how to deal with Phase II sources. We also have the question of potential amendments to the Clean Water Act that may address Phase II permitting.

TPG: It sounds like a full plate, when you put all those tasks together. How soon will you be dealing with the idea of setting limits for the municipal permits? That seems to be a pretty controversial issue.

EPA is hoping to address stormwater regulations for the mining industry—perhaps this fiscal year.

HUDIBURGH: While I'm aware that this is something that I have to focus on, it's something that I haven't gotten into to any great extent—yet. In a practical sense the regions and the states are moving forward with MS4 permits at this time. A lot of what we need to do will involve working with the regions and states in that effort.

TPG: What kinds of thoughts do you have about how you are going to proceed with regulating stormwater discharges from the mining industry?

HUDIBURGH: I think we're in the formative stages of developing a federal agency position on that. It's something we still have to work out ourselves, and also with our sister federal agencies. I am really not in a position right now to talk about the range of issues we will consider, or where we're going on mining issues.

TPG: What about Phase II? The last time that the *Bulletin* interviewed OWEC director Mike Cook, EPA had not yet formulated recommendations for the Phase II report to Congress, and Cook suggested that there was a question as to how closely that should be coordinated with the EPA position paper being prepared on Clean Water Act reautho-

zation. Do you have any sense of how the Phase II report and the EPA position paper will fit together?

HUDIBURGH: I do have a sense, but I'm not going to talk about it publicly at this time. But we will, in fact, be consistent in any drafts of our report to Congress that are put out in the public domain and what we include in the Administration position paper.

TPG: Where is EPA now in terms of issuing a proposed multi-sector general permit for group applicants?

HUDIBURGH: We are working very hard to finalize the proposed multi-sector permit. We have essentially broken down the group applications into 29 different sectors to cover, nominally, 40,000 to 45,000 stormwater discharges from industrial America. It is our hope that the *Federal Register* notice will be signed by various regional administrators by the end of October.

TPG: It appears that, in states where you administer the NPDES program, EPA intends to use those 29 "sector" permits to regulate not only group applicants but also, potentially, other industrial facilities that may not be group applicants.

HUDIBURGH: That's correct; they may take advantage of these permits.

TPG: Do you foresee that happening in NPDES-delegated states also?

HUDIBURGH: The authorized states can make that decision on their own. Obviously, we would have no objection if they followed EPA's lead.

TPG: Let's suppose somebody has already submitted a notice of intent for general permit coverage, say, in an EPA-administered state. Let's say also that the facility now has general permit coverage. Now EPA will issue a multi-sector model general permit, for which this facility did not apply as a group member. How is the transfer of coverage supposed to work?

HUDIBURGH: If a facility is covered by an existing EPA general permit, they may submit a notice of termination for that general permit, and we will accept a notice of intent for them to be covered by the multi-sector permit.

TPG: Will facilities be required to do this? Or allowed to do it?

HUDIBURGH: They will be allowed to do it. People who are members of a group also will be allowed to submit NOIs to be covered by our existing baseline general permit.

TPG: So they can go either way.

HUDIBURGH: Yes, that's correct. ■

Multi-Sector General Permit

(Continued from page 1)

on the proposal, EPA said. Public hearings on the proposed permit will be held in several cities across the nation:

- Boston—Jan. 12 and 13, 1994;
- Hato Rey, P.R.—Jan. 18;
- Tampa, Fla.—Jan. 10;
- Tallahassee, Fla.—Jan. 13;
- Baton Rouge, La.—Jan. 10;
- Oklahoma City, Okla.—Jan. 12;
- Dallas—Jan. 18;
- Albuquerque, N.M.—Jan. 19; and
- Phoenix—Jan. 13.

Sector-Specific Monitoring, Regulatory Requirements May Be Controversial

As proposed, the multi-sector permit would divide industrial group applicants into 29 broad industrial sectors. Some sectors, like the one covering the manufacturing of chemicals and allied products, include several industrial subcategories.

Because the proposed permit requirements, particularly those for monitoring, are based on the sectors, some industries may object to being placed in overly broad sectors, according to environmental attorney Jeffrey Longworth of Collier, Shannon, Rill and Scott. EPA is specifically asking for comments on whether the sectors should be broken down further into sub-sectors.

Based on its analysis of sampling data submitted in "part 2" applications by group members, EPA is proposing somewhat limited sampling and analysis requirements for 17 of the 29 sectors. The proposal would require the remaining 12 sectors to perform only regular visual inspections of stormwater samples to document "observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indications of stormwater pollution."

Facilities in all categories could avoid sampling and testing requirements if they could certify annually that they have no stormwater exposure to potentially polluting processes or materials. Those facilities required to monitor, moreover, would not do so annually. Instead, they would analyze stormwater grab samples—instead of more costly composite samples that EPA formerly proposed for certain industries—as many as four times annually during the second year of the five-year permit term.

If a facility's average values for the stormwater parameters sampled were below certain "benchmark" values, the facility would not need to do further sample analysis during its permit term. If the average values exceeded the benchmark for enough parameters, the facility would have to analyze stormwater samples up to four times annually during the fourth year of the permit.

The proposed sampling requirements are much more lenient than the annual and semi-annual monitoring that EPA's "baseline" industrial general permit now imposes on some industries. According to Dougherty, the change reflects EPA's decision not to require further monitoring to "characterize" stormwater discharges, but only "to provide feedback to regulated facilities on the effectiveness of their best management practices (BMPs)."

EPA Drops Special TRI Monitoring

The proposed multi-sector permit, Dougherty also noted, requires no special monitoring by facilities subject to the reporting provisions of Section 313 of Title III of the 1986 Superfund Amendments and Reauthorization Act.

The proposal would require registered professional engineers to certify the stormwater pollution prevention plans adopted by Section 313 facilities, would subject some Section 313 facilities to the sampling requirements for particular industries, and would include some limited BMP requirements specifically designed for Section 313 facilities.

Unlike EPA's "baseline" general permit, however, the proposed permit has no special monitoring based on toxic release inventory (TRI) status alone. Environmental attorney Kevin Bromberg, who has long campaigned against special TRI requirements (see *Bulletin*, March 1993, p. 4), hailed the proposed change, saying, "I think we have succeeded, in a small way, in reinventing part of government."

The proposal includes industry-specific BMP requirements for the various sectors and some other industry-specific requirements.

Several EPA charts summarizing the highlights of the extremely complex proposal are included in this month's update to Tab 200 of your *Stormwater Permit Manual*. The update also includes an "insight" article on the proposed permit by consultant John Whitescarver of Carter & Burgess Inc. ■

Meeting Notice

Carter & Burgess Inc. (C&B), which held a strategy session last summer for group organizers, has scheduled follow-up meetings on the U.S. Environmental Protection Agency's (EPA) new multi-sector permit proposal. Instructors will include C&B vice president John Whitescarver and Steven Veal, lead engineer for C&B's stormwater research and permitting efforts. Full-day seminars on the EPA proposal will occur Dec. 6 in Washington and Dec. 8 in Dallas. Attendance is \$195; price of a workbook alone is \$95. A free half-day forum on developing group strategies on the EPA proposal will occur Dec. 7 in Washington. For more details contact Whitescarver at (703) 777-9384 or Veal at (817) 735-6161. ■

Storm Warnings

Stormwater Related News in Capsule Form

- **Printed Copies of Proposed Multi-Sector Permit Available From TPG.** As a service to readers, the *Bulletin* will mail printed copies of EPA's Proposed Multi-Sector General Permit and its accompanying fact sheet to subscribers for \$85, postage and handling included. For a package containing the 1,824-page document, send checks to Thompson Publishing Group, ATTN: TPM, 1725 K ST. N.W., Suite 200, Washington, D.C. 20006.
- **New York Schedules Workshops on Industrial, Construction Site General Permits.** The New York Department of Environmental Conservation (DEC) has scheduled public workshops for Dec. 8, in Albany, and for Dec. 17, in Elmsford, N.Y., on the state's stormwater general permits for industry and construction sites. Prospective attendees are requested to register by mail or fax at least one week beforehand to inform DEC about questions they wish the workshops to address. To register, write: Stormwater Workshops, NYS DEC, 50 Wolf Rd., Albany, N.Y. 12233-3501, or contact DEC by fax at (518) 485-7786.
- **New Jersey Issues Guidance on Stormwater Pollution Prevention Plans.** The New Jersey Department of Environmental Protection and Energy (DEPE) has recently published a brief, easy-to-read document on "Industrial Stormwater Pollution Prevention Plan Guidance" in New Jersey. Appendices to the document include blank worksheets for developing a stormwater pollution prevention plan (SWP3) and a model SWP3 developed for a fictitious company. For more information, contact the DEPE Stormwater Hotline at (609) 633-7026.
- **Michigan's Industrial General Permit Delayed Again.** In October, Michigan's Gov. John Engler signed legislation allowing the state Department of Natural Resources (DNR) to charge stormwater permit fees, giving DNR the potential financial capability to implement an industrial general permit program. However, a recent Michigan Supreme Court decision upholding Gov. Engler's proposed DNR reorganization (see *Bulletin*, October 1993, p. 6) has caused Region V of the U.S. Environmental Protection Agency (EPA) to delay approval of Michigan general permit authority until it first reviews the state's memorandum of understanding to operate the NPDES program. Press officials for EPA and Engler say EPA does not necessarily disapprove of the DNR reorganization. However, Region V says it must receive and review written descriptions of how the reorganization will affect NPDES permitting, wetlands regulation, hazardous waste and air quality programs in Michigan. Michigan officials say approval of state general permitting authority may be delayed until the review is finished, a process that could require several months.
- **EPA, States Announce Great Lakes Enforcement Strategy.** In October, EPA announced a new "Great Lakes enforcement strategy" for taking enforcement actions against Great Lakes polluters who do not meet NPDES permit limits, particularly for various persistent toxic chemicals. The new strategy, developed in partnership with the eight Great Lakes states, is part of a larger Great Lakes protection effort including the proposed Great Lakes Water Quality Guidance Initiative, according to EPA. As part of the strategy, EPA and the states will reportedly give priority to reissuing "major" and "minor" permits containing tough new water-quality-based effluent limits.
- **Robert Perciasepe Confirmed as EPA Assistant Administrator for Water.** Robert Perciasepe, Maryland's former secretary of the environment, has been confirmed by the Senate and taken office as EPA assistant administrator for water. Former acting administrator Martha Prothro has returned to her old job as deputy assistant administrator for water.
- **EPA Headquarters Reshuffles Enforcement Office.** Administrator Carol Browner recently announced a reorganization of EPA's enforcement effort that she said will enable EPA headquarters to focus enforcement more on particular economic sectors and particular regions of the country. The new structure consolidates enforcement activities concerning air, water, soil, and hazardous substances under a new Office of Enforcement and Compliance Assurance (OECA).
Within OECA, a new Office of Compliance will take a lead role in strategic planning for enforcement, while also providing "compliance assistance" to affected industries, apparently on a sector-by-sector basis. The compliance office will oversee several smaller programs, including an Environmental Targeting Division; a Data Analysis and Management Division; and three "sector" divisions addressing the energy and transportation sectors, manufacturing and commercial sectors, and "agricultural, ecosystem and municipal" sectors of the economy. A separate office under OECA, the new Office of Regulatory Enforcement, will support EPA in bringing enforcement cases against environmental violators. The reorganization will take several months to implement and will not immediately affect EPA regions, Browner said. ■

California Court Decision

(Continued from page 1)

According to the decision by Judge James Long, the State Water Resources Control Board (SWRCB) improperly adopted its California Inland Water Plan and California Enclosed Bays and Estuary Plan without preparing environmental impact reports or equivalent documents required under the California Environmental Quality Act for projects with "significant" environmental impacts.

SWRCB also improperly failed to consider the beneficial uses and environmental characteristics of individual water bodies to which the plans apply, violating the state's Porter-Cologne Act, the decision states. SWRCB also violated state law by failing to consider the plans' economic impacts, the judge ruled.

The Oct. 15 decision, which partly turns on claims that municipal governmental bodies in Sacramento had raised concerning the alleged cost of treating stormwater runoff, was not final at press time. For various reasons, press officials said, SWRCB in early November had not yet decided whether to appeal if the decision becomes final.

If the decision becomes final and is not stayed during an appeal, SWRCB assistant chief counsel Craig Wilson said, California could be temporarily without state water quality standards for some waters. This might require state permit writers to fall back on "best professional judgment" in writing or revising NPDES permits, Wilson said. Wilson also suggested that the ruling, by requiring a painstaking waterway-by-waterway approach to setting standards, could significantly delay implementation of state water quality standards.

Wilson noted, however, that the U.S. Environmental Protection Agency (EPA) would then have authority to set water quality standards for California. On Oct. 26, the Natural Resources Defense Council wrote EPA Region IX urging EPA to take exactly this action under section 303 of the Clean Water Act.

Judge Long's decision was issued partly in response to a petition filed by the California cities of Sacramento, Sunnyvale, San Jose and Stockton; Sacramento County; the Sacramento County Water Agency; and the Sacramento Regional County Sanitation District, which challenged water quality standards for several heavy metals in waters entering San Francisco Bay.

Simpson Paper Co. also filed a petition challenging the Inland Surface Waters Plan, primarily objecting to standards affecting discharges of tetrachloro-dibenzo dioxin and equivalent chemicals into the Sacramento River.

Several of the petitioners contended that complying with the contested standards would produce significant environmental and economic impacts, including those associated with building and operating costly new tertiary treatment plants, thus triggering the need for environmental and economic review. Sacramento also claimed that it would need to collect virtually all its stormwater runoff and treat it to meet the contested standards.

The court essentially accepted these arguments, brushing aside SWRCB's reply that a recent study by Citizens for a Better Environment, an environmental group, had demonstrated ways for affected cities to avoid such impacts by using pollution prevention.

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Clean Air Permits: Manager's Guide to the 1990 Clean Air Act. \$298
- Chemical Process Safety Report \$349
- Stormwater Permit Manual \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$298
- Ozone Depleter Compliance Guide \$398
- Environmental Compliance Tool Kit \$395

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

J3DSTRM

Stormwater Permit Manual

Bulletin

Volume 3, Number 5

November 1993

90-DAY COMMENT PERIOD PROMISED

Draft Multi-Sector Model Permit Expected This Month

The U.S. Environmental Protection Agency's (EPA) repeated delays in issuing a draft "multi-sector" model general permit for group stormwater permit applicants may finally be ending, Michael Cook, director of EPA's Office of Wastewater and Compliance, indicated in mid-October. Cook said that EPA—which earlier this year promised to publish a proposed permit by "mid summer"—now was predicting that the proposal would be issued by early November.

"It'll be tough to meet that schedule, but we won't miss it by much," Cook added. He said that two draft versions of the proposed permit have now been circulated for review by the EPA regions. The second draft, although incorporating regional comments, provoked "lengthy discussions" on some issues, Cook said on Oct. 12, "but I think all the major policy questions are resolved now." After briefings for the acting and proposed assistant

administrators for water, Cook said, the massive document should be printed in the *Federal Register*.

In a one-page memorandum sent to group members, EPA recently stated that there will be a 90-day comment period on the proposal when it is published. The memo added that Oct. 1 was the deadline for group members to receive permits, but indicated that those afraid of missing this deadline could submit notices of intent (NOIs) for coverage under EPA's baseline general permit and later switch back to the multi-sector permit when it is finalized.

Several consultants have expressed irritation with the timing of the memo, which is dated Sept. 28, but appears to have been mailed after Oct. 1. John Whitescarver of Carter & Burgess, however, notes with approval that EPA now explicitly says that group members may wait for a final multi-sector

(Continued on page 4)

EPA Misses October 1 'Phase II' Deadline

The U.S. Environmental Protection Agency (EPA) missed its Oct. 1 deadline for giving Congress a "Phase II" report on stormwater dischargers not covered by current regulations, director Michael Cook of the Office of Wastewater Enforcement and Compliance said. The report is "probably several weeks away," Cook stated on Oct. 12. Cook added that by mid-October EPA had not fully decided on the Phase II report's conclusions and might link them to those in a Clean Water Act position paper that EPA hopes to send Congress soon. Cook said EPA hopes to complete the position paper by late October or early November, but added that the agency is unsure of meeting this schedule. ■

Inside this issue. . .

- Florida Firm, Hit With Stormwater Penalty, Plans 'Zero Discharge Facility' 2
- Litigation: NRDC Sues CalTrans; Georgia Permit Remanded 3
- Stormwater Personnel Shift at EPA 4
- How Municipal Stormwater Permits Could Affect Industry 5

**Thompson
Publishing
Group**

ENVIRONMENTAL COMPLIANCE:

Stung by EPA Fine, Florida Firm Vows to Construct 'Zero Runoff' System Suitable for Use in Hurricanes

What may be the nation's first "zero discharge" system for handling stormwater from a large industrial plant now is under construction in Florida, according to a press packet issued by Florida Tile Industries Inc., a ceramic tile maker operating near Lake Wire in Lakeland, Fla.

Recently, Florida Tile faced stormwater-related penalties from the U.S. Environmental Protection Agency (EPA) for alleged violations of its National Pollutant Discharge Elimination System (NPDES) wastewater and stormwater permit.

Last July, the company signed a proposed consent decree with the Department of Justice, acting on EPA's behalf (see 58 FR 42747), that would obligate it to pay \$439,000 in fines, meet certain limits on dissolved oxygen and pH in its interim stormwater discharges, and take long-term action to eliminate further stormwater discharges to Lake Wire. The proposed settlement also would direct the company to experiment with the use of reformulated tile glazes containing less zinc oxide.

A provision of the proposed consent decree states that it does not constitute "any evidence or admission of liability or fault" by Florida Tile Industries. But for the future, the company indicates, it will install a \$2.3 million management system designed to capture nearly all of the 27 million gallons of stormwater that the Lakeland facility would otherwise discharge in an average year.

The management system will be gravity-driven so that it can operate without electricity in a hurricane, according to Michael Kelley of Florida Engineering and Design, the consulting firm that designed the system. A computer program connected to a rooftop weather station should make it versatile enough to handle "a possible return of Hurricane Donna, the worst weather catastrophe in Lakeland history."

According to a report prepared last summer by Kelley, Florida Tile's individual NPDES permit sets "very difficult limits" on stormwater runoff quality, notably by requiring zinc and lead concentrations in runoff of only about 30 parts per billion. By way of contrast, the report states, the drinking water standard for zinc is approximately 5,000 parts per billion.

The company tried many approaches for handling lead and zinc before 1991, including construction of a treatment system with a lined pond and flocculation and filtration measures, according to Kelley. Early in 1991, however, Florida Tile recognized that it was still having difficulty with runoff.

The company now has "essentially eliminated" lead use in its Lakeland plant, the report states. To handle discharges that might contain zinc, it will build two underground concrete reservoirs to hold more than 6 million gallons of runoff, as well as an evaporative roof cooling system designed to air-condition work areas while consuming about 90 percent of the stormwater normally falling on the Lakeland facility.

Designed to use around 45,000 gallons of water daily in normal weather, the cooling system will be capable of an alternative operation mode in which it can consume 170,000 gallons in 24 hours, Kelley indicates.

Another 10 percent of the runoff will provide the plant with non-potable water, according to Kelley's report. Essentially, the complete system should make possible nearly zero stormwater discharge and "substantially no discharge of lead or zinc into the environment."

Florida Tile also is "actively pursuing the reduction of zinc in our product," but does not plan on eliminating it entirely, according to a brochure published by the company. "Zinc is important to the finish of tiles." ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washinton, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1993 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

NRDC Sues California Department of Transportation

The Natural Resources Defense Council (NRDC) has filed suit in federal district court against the California Department of Transportation (CalTrans) for alleged violations of state stormwater regulations in the Los Angeles area. According to NRDC, these violations are injurious to the Pacific Ocean and Santa Monica Bay.

Joining NRDC in the case (*Natural Resources Defense Council v. California Department of Transportation*, No. 93-6073-ER(JRC) (D. C. Cal. Oct. 7, 1993)) are two co-plaintiffs, Santa Monica BayKeeper Inc. and Terry Tamminen, an employee of Santa Monica BayKeeper.

According to NRDC, CalTrans allegedly has failed to comply with the terms of a municipal separate storm sewer system (MS4) permit for the Los Angeles region to which it is a co-permittee.

Santa Monica Bay also is being harmed by contaminated runoff from "such varied sources as state highways and freeways and CalTrans's maintenance yards," NRDC alleges. According to NRDC's complaint, CalTrans is illegally discharging pollutants, "including, but not limited to, nutrients, polynuclear aromatic hydrocarbons, sediments, and toxic heavy metals such as silver, cadmium and mercury," into stormwater reaching the bay.

In a separate attachment to the complaint, the plaintiffs accuse CalTrans of 19 specific violations of the MS4 permit requirements, many of them consisting of failure to submit documents required by the permit by the deadlines specified. The missing or late information allegedly includes various kinds of water quality monitoring data, documentation of existing best management practices, documentation of existing CalTrans procedures to detect illegal discharges, and work plans for correcting stormwater problems.

In an Oct. 15 interview, NRDC attorney Everett DeLano III contended that CalTrans does not appear to have submitted some of this information at all, much less in time to meet the deadlines.

NRDC requests the federal district court for the central district of California to issue an injunction forcing CalTrans to comply with the Clean Water Act and the terms of the MS4 permit, to require CalTrans to pay civil penalties of \$25,000 per day for violations that in some cases appear to date back to 1991, and to order CalTrans to pay NRDC court costs and attorneys' fees.

CalTrans attorney Anthony Russolo said on Oct. 14 that CalTrans was preparing a response to the complaint, but had not filed it yet. ■

ALJ Strikes Georgia's General Permit for Construction

On Sept. 24, administrative law judge Mark Dickerson of the Georgia Board of Natural Resources remanded to state regulators Georgia's general stormwater permit for construction sites, in part because it does not contain numeric effluent limits for turbidity.

The judge also found that Georgia's Department of Natural Resources (DNR) had issued the construction general permit in violation of procedural rules that require DNR to respond publicly to all comments submitted during the comment period prior to a permit's issuance. DNR received comments from conservationist Terence Hughey on Oct. 28, 1992, but issued the permit on Nov. 19 without publicly addressing them, the judge ruled. Subsequently, DNR officials met with Hughey to discuss the permit and sent him a letter discussing it further, but the judge ruled this did not constitute "substantial compliance" with the procedural rules.

Addressing a more substantive argument of Hughey's, the judge also ruled that the construction general permit violated Paragraph 12-7 of Section 6(18) of the Georgia Erosion and Sedimentation Control Act. This provision sets effluent limits on

turbidity for runoff from land-disturbing activities of no more than 50 nephelometric turbidity units (NTUs) above the turbidity of receiving waters, although DNR may vary the limit where warranted by local conditions.

The general permit specifically stated that Paragraph 12-7-6(18) "shall not be incorporated into any part of this permit," the judge noted. Although the permit required the use of best management practices to minimize the discharge of pollutants associated with runoff, it contained "no limitation on the turbidity of discharges comparable to Section 6(18)."

Stating that Georgia rules require general permits to "incorporate any limitation established by Georgia law which is more stringent than the limitations required by federal regulations" for National Pollutant Discharge Elimination System permits, and saying that the rules also require general permits to include applicable state numeric limits "where feasible," the judge remanded the permit to DNR for reissuance. A state official said on Oct. 15 that DNR will reissue the permit soon, but did not say when. ■

Draft Multi-Sector Permit Expected in November

(Continued from page 1)

permit before opting for coverage under it—if they are located in states that accept this particular EPA policy.

EPA only has authority to assure that the memo's policies will be followed in the 12 states where it directly administers National Pollutant Discharge Elimination System (NPDES) permitting. In a separate memo on the model multi-sector permit that EPA recently sent to state water program directors, Cook said that EPA will use the permit to regulate "approximately 11,000 industrial facilities that participated in (group applications) and are located in the twelve non-NPDES states."

This memo to the states also suggested that where it has authority, EPA will extend multi-sector general permit coverage to "any other industrial facilities or activities that fall within the eligibility provisions of the permit," whether or not these facilities belong to group applications.

In states delegated to administer NPDES permits themselves, however, state policies on group applications will apply. Most NPDES states have said they plan to make use of the final multi-sector permit, but some have announced other intentions (see *Bulletin*, September 1993, pp. 4-5).

Whitescarver predicted that by allowing for a 90-day comment period, EPA will significantly push back its publication of a final multi-sector permit—possibly until as late as fall 1994. This reaffirms the importance of group members "hedging" on the multi-sector permit by seeking coverage under state or EPA baseline general permits in the meantime, Whitescarver said, repeating advice he offered to group members last summer (*Bulletin*, July 1993, p. 4).

Other consultants contacted by the *Bulletin*, however, expressed fears that such a long delay in issuing a final multi-sector permit could increase pressures on some states to pull out of the group application process.

Groups with large numbers of members also will find it fairly costly to pay the fees needed in many states to submit NOIs seeking baseline general

permit coverage, one consultant suggested, adding, "This makes it more important than ever to keep track of what the states are thinking."

Asked what he planned to advise his clients concerning EPA's latest announcement, this source replied, "Right now, I don't quite know."

Some confident clients may decide that they already have complied adequately with stormwater permit regulations and do not need to pay the added NOI fees, the source said. However, timid clients and those worried about third-party lawsuits for missing the Oct. 1 deadline might well choose to pay the fees and obtain baseline general permit coverage for the sake of security. The source added that once group members submit NOIs for general permit coverage, in most cases they will start the clock ticking on deadlines for subsequent compliance with state general permit or EPA baseline general permit requirements.

If EPA takes as long as expected to issue the multi-sector permit, this source predicted, group members who have hedged by sending in NOIs could find that they have effectively committed themselves to meeting state or EPA baseline requirements for stormwater pollution prevention plans (SWP3s) and best management practices (BMPs), rather than the SWP3 and BMP requirements eventually included in the multi-sector permit.

The legal consequences that EPA and group applicants may face as a result of missing the Oct. 1 permit deadline are somewhat unclear at press time. So far, the Natural Resources Defense Council (NRDC) does not seem to be threatening to sue EPA over being late in issuing the multi-sector permit. In a recent interview, however, NRDC attorney Bob Adler indicated that the environmental group is very irritated with EPA over the delays and wants the agency to complete stormwater permitting soon.

Carter & Burgess plans to hold workshops in Washington and Dallas on the proposed multi-sector general permit very soon after it is published. For workshop information, contact Carter & Burgess at (703) 471-9196. ■

Ephraim King Leaves NPDES Stormwater Post

Ephraim King, who has been extensively involved in developing the stormwater program at the U.S. Environmental Protection Agency (EPA), has left his position as National Pollutant Discharge Elimination System (NPDES) branch chief. On Oct. 18, King became head of the watershed protection task force of the permits division in EPA's Office of Wastewater Enforcement and Compliance.

Gary Hudiburgh, a veteran EPA staffer who for several years served as chief of the regulatory implementation section in the NPDES branch, has been selected as acting NPDES branch chief to replace King. According to EPA sources, the personnel shift is not expected to result in any changes in stormwater policy. William Swietlik will continue as section chief of the NPDES stormwater program. ■

MUNICIPAL STORMWATER PERMITTING:

'Large' Municipal Stormwater Permits, Due This Month, May Mean Added Controls, Opportunities for Industry

Under the U.S. Environmental Protection Agency's (EPA) Nov. 16, 1990, stormwater regulation, as amended, large municipal separate storm sewer systems (MS4s) serving populations of 250,000 or more were required to submit elaborate "part 1" applications for stormwater permits by November 1991 and follow-up "part 2" applications by November 1992.

For large MS4s that have met these deadlines, state and federal regulators are supposed to issue final municipal stormwater permits within one year of receiving the part 2 applications—that is, by November 1993. Medium MS4s serving populations of between 100,000 and 250,000 face slightly more lenient deadlines. However, regulators are supposed to issue final permits for these municipal systems by May 1994.

It currently appears that some MS4 permits will be late, in some cases because the municipalities involved have been delinquent in completing their applications. Nevertheless, there is reason to believe that some final permits for large municipal storm systems may include provisions that have significant implications for regulated industry.

EPA Requirements for Municipal Programs

Under EPA's regulations, operators of large and medium MS4s must demonstrate that they have adequate legal authority to

- control the contribution of pollutants by discharges associated with industrial activity;
- prohibit illicit discharges of non-stormwater wastes to storm sewers, e.g., by detecting and eliminating illicit connections of sanitary or industrial waste drains to storm sewers;
- control the dumping of materials other than stormwater—such as used motor oil—into storm sewer inlets;
- control pollutant discharges from one segment of an MS4 from entering another segment;
- require compliance with local ordinances; and
- carry out inspections and surveillance of commercial, industrial and other facilities to assure compliance with local regulations.

Through their applications, MS4 operators also must complete extensive "dry weather" monitoring of their storm sewers for non-stormwater or illicit discharges and must provide for limited "wet weather" monitoring of selected storm drains.

The municipalities must further demonstrate that they have the capability for handling certain management tasks once their permits are in place.

However, just how EPA plans to enforce some municipal requirements, and just how closely various states will follow EPA's lead, still seems a little murky at this time.

A recent memorandum from the Maryland Department of Environment (MDE), which has long had a well-regarded program for controlling construction site runoff, notes that "While EPA's stormwater regulations detail the information that is required to be submitted...for application purposes, guidance has been unavailable in terms of minimum standards for management programs to control storm sewer system discharges."

In the absence of EPA guidance, the Maryland agency added, it is establishing its own "minimum acceptable criteria" for MS4 stormwater management.

MS4s need authority to control both illicit dumping and industrial discharges. But will they actually use all their authority?

MDE also has indicated publicly that Maryland regulators do not really feel that municipalities need to regulate industrial dischargers, because state authorities already are handling this under the National Pollutant Discharge Elimination System (NPDES).

How Much Will State MS4 Requirements Vary?

The reservations about direct municipal control over industrial dischargers expressed by Maryland—a leading state in controlling construction runoff—suggests that other states may vary significantly in how much industrial stormwater regulation they are willing to delegate to municipal governments.

However, through local programs to eliminate illicit discharges, even municipalities that leave industrial permits to the states still could impose new requirements on industry. At the same time, some large municipalities, to avoid discouraging local business activity, also are launching programs to assist industrial and commercial facilities with stormwater compliance.

To give subscribers an idea of the municipal requirements and opportunities that may lie ahead,

(Continued on page 6)

Municipal Permits

(Continued from page 5)

the *Bulletin* recently interviewed officials from three large MS4s about their stormwater programs.

Santa Clara County, Cal.

Santa Clara County's MS4 permit is one of the oldest in the nation and was issued by the California Water Quality Control Board (WQCB) for the San Francisco Region in June 1990, before the publication of EPA's stormwater regulation in November 1990. This year, the Santa Clara County MS4 received an EPA award for excellence for its handling of municipal stormwater management.

According to Keith Whitman, program manager for the Santa Clara County program, the county and its co-permittees primarily have focused on "Tier 1" stormwater control activities during their first five-year permit term. These activities include public outreach and education, detection and control of illicit discharges and getting a handle on illegal dumping of materials into public storm drains.

"Now we're getting ready for our second five-year permit term," Whitman says. He adds that it will involve the co-permittees in "Tier 2" activities that address specific pollutants and specific kinds of polluting activities.

With a population of about 1.5 million, Santa Clara County encompasses much of Silicon Valley. Some 15 agencies in the county are MS4 co-permittees, including the county itself, the Santa Clara Water Management District, and 13 cities ranging in size from San Jose, with a population of about 800,000, to Monte Sereno, with a population of about 5,000.

Santa Clara County even set up a toll-free number for stormwater dischargers.

The co-permittees spend approximately \$2 million annually on area-wide stormwater control activities and perhaps another \$3 million-\$4 million on stormwater activities involving particular cities or agencies, Keith estimates.

The regional WQCB has its own special stormwater general permit addressing NPDES stormwater permittees, so what the county program focuses on are "other industries and commercial activities not covered by the NPDES program."

Nevertheless, Santa Clara's program has conducted workshops on California NPDES stormwater general permits for regulated industry and construction sites, published information on industrial compliance, and even set up a 1-800 telephone line to handle questions about the California NPDES program. "About a year ago,

when the state general permit was issued, we were getting 300 to 400 calls a month," Whitman notes.

Roger James, chair of the MS4 program management committee, adds that the county has published model stormwater pollution prevention plans and best management practices as a service to local industrial dischargers. In the Walsh Avenue drainage area of Santa Clara, James notes, the MS4 is running a pilot program to inspect facilities suspected of illicit discharges and assist them in coming into compliance.

According to Whitman, "During the early stages of the program, we've been in a good-guy, friendly, educational role. Now, though, we're kind of beginning to make a transition to more of an enforcement role on illicit discharges."

Other county-wide initiatives not targeted at NPDES permittees have involved outreach to the auto service industry and the restaurant business, both of which are believed to contribute significantly to local stormwater pollution.

Under section 304 (l) of the Clean Water Act, the lower San Francisco Bay is a "non-attainment" area for several metals, including copper. Santa Clara County is under WQCB order to reduce copper emissions to the lower bay by more than 20 percent by 1998. To get more information on the copper problem, the county recently paid for a study by Woodward-Clyde Consultants that identified automotive brake pads, among other sources, as a significant cause of copper emissions to the bay.

A followup study on brake pads is now underway, Whitman says. Some brands appear to be much lower in copper emissions than others. The MS4 obviously cannot tell global auto makers what kinds of brake pads to install in new cars, Whitman says. However, county officials may push for a public education program or a model ordinance, for potential adoption by local governments, to restrict the sales of replacement brake pads in the San Francisco Bay area to discourage use of those with high copper content.

Alameda County, Cal.

In neighboring Alameda County, Calif., the local MS4 received its state stormwater permit a year later than Santa Clara County's. Jack Lindley of the MS4 county-wide management committee says, "We are trying to follow in Santa Clara County's footsteps." In both counties, Lindley, says, "There is a high priority placed on working proactively and cooperatively with industry, because we don't want to spook them or chase them out."

One way county officials have taken a "proactive" approach, Lindley says, is by spending some \$650,000 yearly on a public information and participation program to convey stormwater

information to industry, commercial businesses and homeowners through the use of newspaper ads, billboards and similar media.

Like Santa Clara County, Alameda County has a problem with copper emissions and has hired Woodward Clyde to study the problem. In addition to targeting copper brake linings, the research has revealed that Alameda County sometimes receives copper emissions from a local irrigation system maintained by the State Department of Water Resources, which occasionally uses copper-containing algicides that are discharged to county waters, Lindley says.

Alameda County places 'a high priority on cooperation with industry' ... but enforcement actions are beginning.

Lindley adds, though, that "We use ten times more pesticides on gardens and yards here in Alameda County than the farmers use for agriculture," making residential areas a significant source of stormwater pollutants.

To educate residents about their stormwater responsibilities, county officials have produced a brochure informing them, "The bay begins at your front door." The MS4 also has developed a "Bugs Brochure" telling homeowners how to handle garden pests without highly toxic pesticides.

To address the stormwater problems of the auto service business, the MS4 has produced a brochure for auto service facilities outlining industry "good housekeeping" practices.

Alameda County's MS4 includes 17 co-permittees, including the county government, the Alameda County Flood Control and Water Conservation District, Zone 7 of the Flood Control District, and 14 local municipal governments. The MS4 has developed a municipal BMP handbook to advise cities on street sweeping programs, the cleaning of stormwater catch basins, and other municipal stormwater management measures.

By law, Lindley notes, California MS4s have legal responsibility for "everything that comes into our stormwater systems," whether or not the dischargers have state NPDES permits. In Alameda County, the state is requiring county governments to do a certain number of hazardous waste inspections. So far, the MS4 has hired the Hazardous Materials Division of the Alameda County Health Agency to do much of this work.

Like regulators in Santa Clara County, those in Alameda County are cooperating with the local Congestion Management Agency, a state quasi-governmental agency set up to handle air pollution problems linked to automobile use, to explore links

between traffic congestion and stormwater pollution, Lindley says.

The county and its co-permittees also have inspectors actively checking county storm drains for illicit connections. "I don't think we have fined anybody yet for illicit connections," Lindley reports, "but we have brought some enforcement actions."

Lindley emphasizes that "80 percent of our work is oriented to source control," because full treatment of county stormwater pollution would be prohibitively costly. Nevertheless, Alameda County has experimented for several years with the use of a reconstructed 55-acre wetland, the so-called demonstration urban stormwater treatment (DUST) marsh near Fremont, to treat a small amount of runoff reaching the lower bay. The county hopes to use the study results to construct added artificial wetlands that may handle runoff even more effectively.

Prince George's County, Md.

Prince George's County, Md., with a population of around 700,000 and a land area of about 500 square miles, is a Washington, D.C., suburb located in the Anacostia River watershed, a tributary of the Potomac River. In 1992, Prince George's County received a national EPA award for its MS4 stormwater program, which incorporates a strong county grading ordinance for controlling construction site runoff under pre-existing Maryland law.

The MS4 now hopes to have the grading ordinance amended to address additional categories of stormwater pollution, says Jennifer Smith, senior engineer with the Watershed Program of the Prince George's County Department of Environmental Resources.

In Prince George's County, monitoring turned up rocket fuel in one storm drain. Officials are still seeking the source.

To control illicit discharges, Smith says, the county "Grading, Drainage and Erosion Control Ordinance" must become a "Grading, Drainage and Pollution Control Ordinance," with amendments giving the county authority over pollutants "that in any way contaminate stormwater runoff." This could include "dumping, chemical spills, the storage of chemicals and connections to storm drains that discharge pollutants," she adds.

Stormwater officials were discussing the proposed amendments with county legislators when Smith was interviewed in early October. According to MS4 official Stan Wildeson, the county also had contacted both the local Chamber of Commerce and the Suburban Maryland Business-Industry Association to explain the proposed ordinance.

(Continued on page 8)

What Municipal Permits Mean for Industry

(Continued from page 7)

"Once we explained its purpose, I think [the business groups] were supportive. At least they haven't said they totally oppose us," Wildeson says.

Wildeson emphasizes, however, that Prince George's County primarily intends to use public outreach rather than enforcement to encourage better stormwater management by residents, industrial facilities and commercial business.

During dry-weather monitoring for its part 1 application, Wildeson says, the county found evidence that perhaps 10-20 percent of the 500 discharge points sampled showed signs of illicit discharges. "In one storm drain we sampled, we identified rocket fuel," he adds. "We're still trying to determine where that came from." Other pollutants show evidence of coming from painting shops and the printing industry, among other local businesses.

The county already has a "pretty aggressive inspection program," Wildeson says. With 22 inspectors who check on local compliance with county grading and erosion control regulations, Prince George's County brings five or six enforcement actions against stormwater violators each month. Wildeson adds, "In fact, there is a particular day of the month that the district court has set aside just for sediment and grading cases." Under the new illicit discharge program, however, initial emphasis will be on contacting the facilities responsible and helping them determine what management measures they might use to address their problems. Only if cooperation is refused is enforcement activity likely.

So far, Wildeson says, "We're finding that the

industries we have dealt with are responsively working with us in eliminating the sources of the discharge."

On their own accord, with no prod from inspectors, three businesses in the county have actually approached MS4 officials with questions about recommended stormwater BMPs, giving Wildeson and Smith reason to hope that additional business cooperation will be forthcoming. The MS4 now is hoping to approach business groups in Bladensburg, Md., to elicit further cooperation, perhaps by linking stormwater cleanup to local economic revitalization.

In addition to its work with industry, Prince George's County has set up pilot projects to work with three selected residential neighborhoods on stormwater issues. The pilot projects, based in part on survey research, have targeted such residential pollutant sources as excessive use of lawn fertilizers and pesticides, improper auto care practices, and improper household hazardous waste disposal.

In another bid for local support, the county has set up a public participation program encouraging residents and businesses to adopt stream segments and join "stream teams" dedicated to their cleanup.

"It is too soon to see what kind of cooperation we will get from individual businesses," Smith concedes in discussing the county's program. "Still, this is an exciting program. I really feel strongly that industry and commercial businesses can make a difference on stormwater problems in the county. And I think that they will be cooperative." ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act \$298
- Chemical Process Safety Report \$349
- Stormwater Permit Manual \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$298
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

J3NSTRM

Stormwater Permit Manual

Bulletin

Volume 3, Number 4

October 1993

STORMWATER ENFORCEMENT

Violation Notices Sent to 96 Los Angeles Industrial Sites

The California Water Quality Control Board (WQCB) for the Los Angeles region sent 96 notices of violation in early September to industrial facilities suspected of not complying with the California stormwater program's notice of intent (NOI) requirements, according to WQCB stormwater chief Mark Pomfort.

Pomfort added that the Los Angeles WQCB will be sending out additional violation notices soon. "Our next batch will probably go out next week," Pomfort said Sept. 16. He added that WQCB had reviewed monitoring data from NOI filers and would begin spot checks of facilities with "abnormal values" for certain parameters by late September.

WQCB stormwater staff have identified facilities likely to be subject to state NOI requirements by examining a database of "significant industrial

users" discharging wastes to the city of Los Angeles' industrial pretreatment program, Pomfort said.

He indicated that WQCB staffers intend to review at least two other databases and receive the results of a database review now underway by the California State Water Resources Control Board (SWRCB) to identify additional facilities likely to be out of compliance with state NOI requirements.

WQCB in August also sent reviews of municipal permit compliance to 19 small cities that are co-permittees with Los Angeles in a joint municipal stormwater permit, Pomfort said. The Natural Resources Defense Council recently served several of these same cities with letters of intent to sue for alleged stormwater violations (see related story, p. 2). ■

NEWS FROM THE STATES

Indiana Seeks to Return NPDES, RCRA Permitting

In September, Indiana officially informed the U.S. Environmental Protection Agency (EPA) that it wants EPA to take back delegation for the state's permitting programs under the National Pollutant Discharge Elimination System (NPDES) and the Resource Conservation and Recovery Act (RCRA).

The request, included in a Sept. 8 letter from Gov. Evan Bayh to EPA administrator Carol Browner, represents the first time that a state has ever officially asked to relinquish NPDES delegation, according to Indiana Department of Environmental Management (IDEM) press official Connie Baron.

(Continued on page 6)

Inside this issue. . .

- Facilities Respond to NRDC's Warning Letter 2
- Chart: State Stormwater Enforcement Activity 4
- Maryland to Address Nutrient Buildup in Chesapeake Bay Tributaries 7
- EPA Plans to Issue Group Proposal in October 8

Outrage, Conciliation Greet NRDC Letters of Warning

Southern California industrial facilities, municipalities and state agencies recently served with notices of intent to sue by the Natural Resources Defense Council (NRDC) for alleged stormwater violations (see *Bulletin*, September 1993, p. 1) are showing a wide variety of reactions to the warnings, ranging from outrage to efforts at conciliation.

Representatives of five of the 12 industrial facilities that NRDC identified as allegedly not complying with California notice of intent (NOI) requirements have said that their facilities do not discharge stormwater to U.S. waters or have no significant materials exposed to stormwater. Several argue that they therefore qualify for a "category 11" permit exemption in California, a contention that NRDC attorney Everett DeLano III disputes.

NRDC has dropped its threat to sue one industrial discharger, Pete's Metal Reclamation of Sun Valley, Calif., saying that it does not discharge stormwater pollutants, DeLano said recently. Representatives for two industrial dischargers in Torrance, Calif., AlliedSignal Castings and Airco Gases, have said that they filed NOIs for their facilities with the state of California before being put on warning by NRDC.

According to Jim Merriam, an Airco Gases representative at corporate headquarters in Murray Hill, N.J., the company filed a California NOI in March and received a registration number for its Torrance facility from the State Water Resources Control Board on March 26.

"We were surprised when we received this letter from NRDC," Merriam added. "Basically, we are committed to meeting all environmental requirements, both state and federal."

In an Aug. 6, 1993, letter to NRDC from AlliedSignal Castings, company attorney Kenneth Berke contended that the AlliedSignal Castings facility is not violating the Clean Water Act because it is included in an NOI already filed by AlliedSignal covering four contiguous facilities in

Torrance. Berke added that a stormwater pollution prevention plan (SWP3) and a monitoring program for the facility are both in place.

In a second letter to NRDC concerning an AlliedSignal facility in El Segundo, Calif., Berke contended that the facility does not discharge stormwater to U.S. waters and requested that NRDC "formally withdraw the 60-day notice of intent to sue." For both the El Segundo and Torrance facilities, Berke also requested NRDC to "refrain from making any further inaccurate or misleading public comments" regarding the company's compliance with the Clean Water Act.

An employee of Star Biochemicals of Los Angeles said that NRDC had erred in alleging that the company is violating state stormwater regulations. An employee of Davis Colors of Los Angeles, which NRDC had identified in a press release as "Maxine Davis Color and Interiors," did not wish to make any comment. No one answered repeated telephone calls to the Blackhawk Oil Co. of Culver City.

Jim Havilchuck of the C.P. Hall Co. in Chicago, whose Torrance, Calif., facility had been served with a warning letter by NRDC, said that C.P. Hall staffers do not feel that the facility is covered by the California permit regulation. However, Havilchuck said that the regulation is somewhat difficult to interpret and suggested that the varied nature of C.P. Hall's business would make it easy for NRDC to make mistaken assumptions about the Torrance facility.

C.P. Hall has no intention to evade state environmental regulations, Havilchuck added, and will "do what needs to be done" if it becomes convinced that the facility does require a permit.

Several small business owners targeted by NRDC expressed surprise and anger, saying they believed themselves exempt from stormwater regulation. One or two also blamed the state and NRDC for piling new burdens on business during a severe regional recession.



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washinton, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1993 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

"I think that rather than attacking what little remains of the local employment base as the economy goes down the drain, they might offer to lend a helping hand," Allen Nugier, proprietor of Coast Enameling Co. in Marina del Rey, Calif., said of NRDC's warning letter. Nugier added that his company should be exempt from permitting because it has no significant materials exposed to stormwater, but said he was conferring with consultants to be sure.

Another small proprietor, Bill Webb, president of Fiberglass Production and Tooling Inc. of Torrance, said, "As I've told these people umpteen times, we don't have anything coming from the plant and getting into the storm drains ... I suspect that my \$250 filing fee is all that the state is after." Nevertheless, Webb said, he has now filed an NOI with the state.

Mary Wilk, owner of Electromatic of Los Angeles, also indicated that she would probably "just lie down dead and pay the fee," but expressed anger at an "unreasonable" stormwater permitting law and the mixed messages she said she has received from officials implementing it.

"In 1992 we were notified by the Stormwater Management Division of the City of Los Angeles that stormwater discharge permits were required *only if portions of the facility operation take place outside and are exposed to rain,*" Wilk said in a recent letter to NRDC (emphasis in original).

Wilk wrote that she also subsequently contacted the city engineer of Los Angeles to describe her operation and was told that "in this case, *no permit was required.* Now, it seems that some other government agency is contradicting what we had been told. How can we, as a small company with no expertise in law or regulatory affairs, hope to conform to conflicting rules?"

Charles Lamoureux of Environmental Compliance Management, representing Gebe Electronics of Los Angeles, called NRDC "extortionists" for threatening to sue his client, which he said is a tiny firm with no stormwater exposure, but said Gebe now has filed an NOI and that it already had an SWP3.

Several small municipalities named as alleged stormwater violators by NRDC did not return calls on the subject. However, representatives of Rancho Palos Verdes, El Segundo and Culver City all indicated that they were responding positively to the NRDC letter.

Generally speaking, the cities indicated that most of NRDC's complaints against them stemmed from problems in filing paperwork about their stormwater control measures with Los Angeles County and the regional Water Quality Control Board

under an elaborate "co-permittee" arrangement involving a joint municipal separate storm sewer system (MS4) permit for 87 cities in the Los Angeles region. The city officials expressed hopes that they could settle any legal disagreements with NRDC out of court. An attorney for the California Transportation Department had no comment on NRDC's allegations against the agency at this time. ■

Statement of Ownership, Management and Circulation

1. Title of Publication: Stormwater Permit Manual (0008-384)
 2. Date of Filing: October 1, 1993
 3. Frequency of Issue: Monthly
 - (a) No. of Issues Printed Annually: 12
 - (b) Annual Subscription Price: \$398
 4. Loc. of Known Office of Publication: 1725 K St. N.W., Ste. 200; Wash. D.C. 20006
 5. Location of the Headquarters of General Business Offices of Publisher: 1725 K St. N.W., Ste. 200; Wash. D.C. 20006
 6. Name and Address of Publisher, Editor, Managing Editor:
 - (a) Lucy Caldwell-Stair, 1725 K St. N.W., Suite 200; Wash. D.C. 20006
 - (b) Andy Feeney, 1725 K St. N.W., Ste. 200; Wash. D.C. 20006
 - (c) Jill Talbot, 1725 K St. N.W., Ste. 200; Wash. D.C. 20006
 7. Owner: Thompson Publishing Group, Inc.: Richard E. Thompson, 1725 K St. N.W., Ste. 200; Wash. D.C. 20006
 8. Known Bondholders, Mortgages and other Security Holders: None
- | 10. Extent and Nature of Circulation: | Avg. # Copies Each Issue During Preceding 12 Months | Act. # Copies of Single Issue Published Nearest to Filing Date |
|--|---|--|
| A. Total No. Copies (Net Press Run) | 3883 | 3300 |
| B. Paid and/or Requested Circulation | | |
| 1. Sales through dealers and carriers, street vendors and counter sales | 0 | 0 |
| 2. Mail Subscription (Paid and/or requested) | 3134 | 2798 |
| C. Total Paid and/or Requested Circulation (Sum of 10B1 and 10B2) | 3134 | 2798 |
| D. Free Distribution by Mail, Carrier or Other Means. Samples, Complimentary and Other Free Copies | 15 | 18 |
| E. Total Distribution (Sum of C and D) | 3149 | 2816 |
| F. Copies Not Distributed | | |
| 1. Office use, left over, unaccounted, spoiled after printing | 734 | 484 |
| 2. Return from News Agents | 0 | 0 |
| G. TOTAL (Sum of E, F1 & 2—should equal net press run shown in A) | 3883 | 3300 |
11. I certify that the statements made by me above are correct and complete. Lucy Caldwell-Stair, Publisher

Current State Stormwater Enforcement Activity

From a Thompson Publishing Group survey, July-August 1993

State	Enforcement Activity at Time of Survey
ALABAMA	State has sent warning letters to industrial facilities that have failed to file notices of intent (NOIs) seeking general permit coverage. Approximately 1,000 letters mailed by Aug. 9.
ALASKA	*
ARIZONA	*
ARKANSAS	Arkansas has "just started enforcement on a case by case basis," a Department of Pollution Control and Ecology (DPCE) staffer said in September. However, DPCE already has notified several industrial dischargers of their failure to file NOIs, sent inspectors to check some construction sites for compliance with best management practices (BMP) requirements, sent a mailing to industrial facilities notifying them of failure to file discharge monitoring reports, and held three negotiating meetings with industrial and construction site violators to get them into compliance. DPCE plans to conduct spot checks of compliance with industrial stormwater pollution prevention plan (SWP3) requirements after Oct. 1.
CALIFORNIA	California's State Water Resources Control Board (SWRCB) has begun searching industrial databases for names of facilities that probably should have submitted NOIs but have not done so. SWRCB staff in September sent a mass mailing to auto dismantlers urging compliance with NOI requirements and planned to contact facilities in several other industries identified through database searches. Regional Water Quality Control Boards (RWQCBs) have begun enforcement activities in some regions. RWQCB in Los Angeles recently sent notices of possible violation of NOI requirements to 96 industrial facilities. Board soon will begin reviewing some SWP3s.
COLORADO	State regulators brought major enforcement action against Denver International Airport in March. Settlement was being negotiated as of mid-August.
CONNECTICUT	Connecticut environmental inspectors checking compliance with other state permits also have begun checking for compliance with industrial stormwater regulations. State stormwater officials also had inspected about a dozen construction sites by mid-August. State has written to additional facilities requesting them to submit SWP3s for review and has reviewed about 50 plans.
DELAWARE	Because of limits on stormwater staff, Delaware has had some difficulty getting its industrial general permit program underway. Little or no enforcement activity appears to be occurring at this time.
DIST. OF COLUMBIA	*
FLORIDA	EPA Region IV administers Florida stormwater program, but delegates most construction site stormwater regulation to state Department of Environmental Resources (DER). DER officials said in August that an "enforcement blitz" was forthcoming against construction sites violating the regulations. Little information on "enforcement blitz" was available as of mid-September, but a DER staffer reported two cases in which the state had threatened enforcement action against construction contractors working on state highway department projects. Most enforcement cases are likely to arise from citizen complaints against particular facilities.
GEORGIA	Georgia issued an industrial general permit on June 14, 1993. Dischargers were required to file NOIs by Aug. 16, 1993. Little enforcement activity appears to be underway at present.
HAWAII	Hawaii lacks budget and staff resources to do much stormwater enforcement, state regulators suggest. However, state will send inspectors to check on a site's NOI and BMPs in response to citizen complaints. State has received "four or five" citizen complaints on stormwater.
IDAHO	*
ILLINOIS	State is inspecting stormwater dischargers in response to complaints. Field staff doing routine environmental inspections also are checking on NOI, SWP3 compliance. State has sent out some notices of violation, according to Illinois Environmental Protection Agency attorney Bruce Carlson, and is in the "pre-referral stage" in terms of bringing enforcement actions against violators "on a case by case basis."
INDIANA	Indiana has now officially started the process of seeking the return of authority for the NPDES permitting program, including stormwater, to EPA. Little enforcement activity occurring at this time.
IOWA	State Department of Natural Resources (DNR) primarily is concerned with encouraging and helping late filers to submit NOIs for general permit coverage. However, state will respond to citizen complaints of stormwater violation, including complaints generated by the local publication of NOI filings required by state law. State had received "several dozen" complaints by mid-August, including several on sedimentation and erosion from construction sites. Iowa is sending inspectors to check SWP3s at some sites.
KANSAS	Kansas still is seeking general permit authority. No state general permit is yet available. Little enforcement is occurring.
KENTUCKY	State had taken no enforcement actions as of mid-August.
LOUISIANA	*
MAINE	*
MARYLAND	Maryland regulators in mid-August were still working out stormwater enforcement approaches. However, state field inspectors have begun notifying inspected facilities that still need to submit NOIs.
MASSACHUSETTS	*
MICHIGAN	Under Michigan's 1993-1994 budget law, stormwater enforcement must be fee-supported. However, legislature has not yet enacted a fee package. For the immediate future, little enforcement is likely.
MINNESOTA	Limited enforcement is occurring in response to citizen complaints about particular facilities. No penalties had been assessed as of mid-August. Large-scale enforcement efforts may occur in summer of 1994, when SWP3s must be in place.
* Stormwater program is administered by EPA regional office, but state has some influence over program through consultation provisions of Section 401 of the Clean Water Act.	

MISSISSIPPI	Stormwater enforcement is occurring only in response to citizen complaints. However, Mississippi has begun reviewing SWP3s and returning comments on them to permittees for corrections.
MISSOURI	Missouri regulator Karl Fett said in September that the state enforcement effort involves "a little bit of everything." State has industry-specific general permits and does not require SWP3s of all industries, but regulators are pursuing some facilities for not filing permit applications and are inspecting industrial and construction sites for violations. State has mailed a few notices of violation, but no penalties or court cases are evident. Regulators are considering adding more field inspectors to increase stormwater enforcement efforts.
MONTANA	Montana has initiated no enforcement efforts against facilities failing to file NOIs. Policy is to encourage more facilities to file through outreach and education.
NEBRASKA	Nebraska has begun checking lists of industrial facilities for NOI submission. State also has responded to four or five complaints about construction site runoff.
NEVADA	No enforcement yet. State regulators sent out a mass mailing in June reminding industrial facilities in certain SIC codes of requirement to file NOIs.
NEW HAMPSHIRE	*
NEW JERSEY	New Jersey's Department of Environmental Protection and Energy (DEPE) has concentrated on outreach and information activities to bring industrial dischargers into the program. DEPE is now attempting to identify dischargers subject to permitting who have not sought permit coverage. By November, DEPE may attempt to contact non-compliers through mailings, telephone calls and site inspections. Non-compliers may receive notices of violation requiring permit applications within five days. DEPE has received "a few" complaints about construction site runoff, but state conservation districts have been able to resolve most of them.
NEW MEXICO	*
NEW YORK	New York only recently issued general permits. Little or no enforcement is underway at press time.
NORTH CAROLINA	North Carolina is "close to closing the window" on facilities who have not filed for general permit coverage, state official Steve Ullmer said. State is not checking SWP3s yet.
NORTH DAKOTA	State is not enforcing stormwater regulations yet, but "could be getting close," officials say.
OHIO	Ohio has begun some field inspections of construction sites and has sent letters to some facilities regarding their failure to file NOIs or implement BMPs. Ohio EPA hopes to use federal grant money to add five field inspectors to the stormwater program.
OKLAHOMA	*
OREGON	Regulators have sent notices of violation to approximately 10 construction sites and have brought two formal enforcement actions against one site, fining the operator for sedimentation and erosion control violations. State inspectors have inquired whether some industrial dischargers have completed SWP3s. Regulators hope to do mass mailing to facilities that still need to file NOIs, but have made no plans to do so yet.
PENNSYLVANIA	In some regions of Pennsylvania, Department of Environmental Resources regional staff have begun sending notices of violation to facilities that have not filed NOIs.
RHODE ISLAND	Rhode Island is concentrating on education and outreach rather than enforcement at this time.
SOUTH CAROLINA	Department of Health and Environmental Control (DHEC) has long history of enforcement under older stormwater provisions of South Carolina Pollution Control Act. Under the new NPDES stormwater program, DHEC has brought enforcement actions against several facilities that had not filed NOIs in cases involving violation of state water quality standards. No enforcement yet over NOI violations alone. DHEC district officers have inspected some facilities for SWP3s in response to citizen complaints.
SOUTH DAKOTA	* South Dakota lacks NPDES delegation, but is seeking it from EPA. Meanwhile, enforcement is under the authority of EPA Region VIII.
TENNESSEE	Field inspectors in the six regional offices of Tennessee's Department of Environment and Conservation have begun limited stormwater inspections. Priority given to stormwater varies by region. In Chattanooga area, field inspectors have reviewed SWP3s, noted deficiencies, and written permittees corrective action. Little enforcement at state level, but official Robert Haley says one or two enforcement cases involving construction sites are now in the processing stage.
TEXAS	*
UTAH	Utah regulators say no enforcement will occur until next year, when state intends to begin stormwater inspections. A few localities have offered to help with construction site enforcement.
VERMONT	Vermont recently received general permitting authority. Little enforcement activity is likely within the near future.
VIRGINIA	Virginia adopted four general permits on an emergency basis last summer. Little or no enforcement activity yet.
WASHINGTON	State budget cuts and dramatically lower-than-expected NOI filings meant that no enforcement activity has begun. "Unofficial grace period" for industrial applicants was in effect, but complaints about controversial construction projects mean that construction site enforcement issues "may be coming to a head."
WEST VIRGINIA	State has begun little or no enforcement activity. State enforcement actions on SWP3 preparation may begin after Oct. 1, stormwater official Jim Mason said.
WISCONSIN	Wisconsin probably will be unable to issue an industrial general permit until 1994 at the earliest. No enforcement activity at this time.
WYOMING	Wyoming regulators had not penalized anyone for not filing an NOI as of mid-August. State had conducted "maybe six to 10" spot checks of SWP3s, especially at construction sites near trout streams.
PUERTO RICO	*
VIRGIN ISLANDS	The Virgin Islands lacks the budget and staff resources to conduct stormwater regulatory activities at this time.
* Stormwater program is administered by EPA regional office, but state has some influence over program through consultation provisions of Section 401 of the Clean Water Act.	

State Survey

(Continued from page 1)

EPA must reply to IDEM within 60 days concerning a transition plan that the state must establish for accomplishing the transfer of delegation, Baron said. This in turn will establish a period of at least 180 days in which the transition will occur. However, Baron added, "What we're hoping, and everyone else is hoping, is that when our legislature comes back in session they will take care of the problem by establishing an adequate budget for IDEM."

IDEM commissioner Kathy Prosser currently is trying to mobilize support around the state for fixing the agency's budget problems and making the return of delegation unnecessary, Baron said. EPA also is likely to resist the change. According to Baron, "EPA has said repeatedly that they do not want the program back, and so they're not going to make it easy for any state to give the program back. It would set a precedent that they might find dangerous."

IDEM's request reflects severe budget problems that originated, in large part, in a successful industry lawsuit last year to strike down IDEM's permit fee regulations (see *Bulletin*, September 1993, p. 7). According to Jane Dustin, a veteran environmental activist with the Indiana chapter of the Izaak Walton League of America, regulated industry has used the lawsuit to cripple IDEM just as it was beginning to implement stringent new state water quality standards adopted in response to the federal Water Quality Act of 1987.

Indiana users of chlorinated organic chemicals also fear the stringent controls on four "bioaccumulative" chemicals proposed under EPA's Great Lakes Water Quality Initiative, Dustin charges. Consequently, she says, "The industrial polluters are fighting like tigers. And how else can you best maintain the status quo, except by ripping the regulatory agency to pieces?"

Some IDEM sources agree that opposition to the new water quality standards could have been one factor motivating industry to oppose IDEM's permit fees. According to Baron, however, industry will gain nothing if IDEM permitting is returned to EPA. "EPA will still enforce the state water quality standards that Indiana has set," she says.

Other state stormwater-related news includes the following:

Kansas

Kansas has submitted a draft proposal to EPA seeking general permit authority, according to stormwater official Don Carlson. The draft proposal had undergone preliminary review by mid-September. Kansas hoped to make corrections and return the proposal to EPA for final review before Oct. 1, Carlson said.

Michigan

On Sept. 2, the Michigan Supreme Court upheld the constitutionality of an executive order issued last year by Gov. John Engler abolishing the elected Water Resources Commission and making other controversial changes in the Department of Natural Resources (DNR).

According to DNR director Roland Harmes, "The net impact of the ruling is that the permit application process will be streamlined, while crucial environmental protections remain fully intact ... I also intend to empower our professional DNR employees to make more decisions on routine permit applications in the field."

The ruling probably will have little direct impact on stormwater regulation, state officials said.

In other Michigan news, the state Senate recently passed legislation allowing DNR to charge stormwater permit fees. However, the Michigan House had not approved fee legislation at press time.

Minnesota

The Minnesota Pollution Control Agency (PCA) has issued a final general permit for construction sites. According to PCA staffer Dan Sullivan, there will be a one-time permit application fee of \$85. Only sites at which construction begins on or after Jan. 1, 1994, need to seek coverage.

Nebraska

Nebraska probably will wait for EPA to publish a final multi-sector model general permit for group applicants rather than requiring group members to seek coverage under a state baseline general permit by Oct. 1, according to stormwater official David Ihrle. Previously, Ihrle had expressed uncertainty over whether Nebraska would wait for the multi-sector permit (see *Bulletin*, September 1993, pp. 4-5).

Tennessee

Tennessee now plans to wait for publication of EPA's multi-sector general permit, stormwater official Robert Haley said in September. "It looks as if we're not going to require people to apply for baseline general permit coverage—at least not in response to the Oct. 1, 1993, permitting deadline," Haley said. Tennessee may publish draft industry-specific general permits for ready-mix concrete plants, general aviation airports, and transportation facilities between December 1993 and April 1994, Haley added.

Vermont

Vermont has received authority from EPA to issue state general permits. According to stormwater staffer Brian Kooiker, regulators tentatively hoped to publish a draft construction general permit by the end of September. ■

Storm Warnings

Stormwater Related News in Capsule Form

- **Maryland to Tackle Stormwater Runoff, Other Problems Causing Nutrient Buildup in Chesapeake Bay Tributaries.** On Sept. 9, Maryland Gov. William Donald Schaefer and officials of Maryland's counties announced agreement on goals for reducing nitrogen and phosphorous pollution in tributary streams that contribute to excessive eutrophication of the Chesapeake Bay. According to Michael Sullivan, a spokesperson for the Department of the Environment (DOE), state regulators have divided Maryland watersheds into 10 tributaries and tributary regions as an organizational tool for reducing nutrient flows into the bay. By the end of 1993, DOE plans to develop draft strategies specific to each watershed for reducing nutrient emissions. By June 1994, final nutrient reduction plans should be approved for subsequent implementation by the counties. According to Sullivan, DOE data indicate that pollution from "developed land," a category that includes stormwater runoff, accounts for about 8.7 percent of the nitrogen and 7.9 percent of the phosphorous reaching Chesapeake Bay tributaries. Agricultural runoff contributes about 38.8 percent of the nitrogen and 49.6 percent of the phosphorous, with added pollution coming from forest land runoff, point source discharges and atmospheric deposition. Under the 1992 amendments to the Chesapeake Bay Agreement Maryland signed with Virginia, Pennsylvania and the District of Columbia, the state has agreed to reduce its bay loadings of nitrogen by 22.7 million pounds annually and its phosphorous loadings by 2.11 million pounds annually. Although DOE has categorized nutrient sources in Maryland, the agency has not yet apportioned where reductions should occur, Sullivan said.
- **Crushed Stone Trade Association to Write Manual on Pollution Prevention Plans.** The National Stone Association (NSA) is preparing a manual on stormwater pollution prevention plan (SWP3) development for facilities in the crushed stone industry, according to NSA official William Ford. The manual may be completed by as early as Oct. 1, Ford said. For more information, contact William Ford, National Stone Association, 1415 Elliot Place, N.W., Washington, D.C. 20007; (202) 342-1100.
- **Consultant Jerry Perrich Slated to Offer Several SWP3 Seminars.** Jerry Perrich of Environmental Science & Engineering, a consulting engineer who is a contributing editor to the *Stormwater Permit Manual*, is scheduled to explain industrial SWP3 development at several upcoming business seminars. According to Perrich, most participants, upon completing the seminars, will find that they can prepare their own SWP3s without further outside help. Perrich will give SWP3 presentations at seminars presented by the following organizations: Cincinnati Construction Owners Association for construction firms in Indiana, Ohio and Kentucky (Oct. 21, Cincinnati), contact Gregory Sizemore at (513) 563-4131; Business Development Associates seminar on pharmaceutical industry regulation (Oct. 26, Washington), contact Business Development Associates at (800) 394-9390 or (202) 737-1212; Ohio Manufacturers Education Council seminar on SWP3 preparation (Nov. 1, Cleveland), contact Mark Uher, Manufacturers Education Council, at (614) 846-1003; Executive Enterprises seminar on industrial environmental regulations, including stormwater regulation (Dec. 9-10, Orlando, Fla.), contact Amy Zagin, Executive Enterprises, at (212) 645-7880.
- **California Manuals on Best Management Practices Available.** Manuals on best management practices (BMPs) for stormwater discharges in California are now available from the Central California chapter of the American Public Works Association (APWA). Basic prices per copy are \$12.50 for a municipal BMP handbook, \$12.00 for a construction site handbook and \$13.00 for an industrial site handbook. In addition, recipients outside California must pay UPS shipping charges on a COD basis and a \$4 service charge. Recipients instate must pay a \$3.08 UPS fee for shipments of up to three handbooks. Send orders with checks payable to "BPS" to Blue Print Service, 1700 Jefferson St., Oakland, Calif. 94612; or contact BPS by telephone at (510) 444-6771.
- **California BMP Workshops Scheduled for Oct. 27-28.** The Central California chapter of APWA and the Metropolitan Flood Control District of Fresno, Calif., have scheduled several workshops on stormwater BMP implementation in California. Each workshop participant will receive a copy of the applicable state BMP handbook (see above). A municipal discharger workshop is scheduled for Oct. 27, from 8 a.m. to 12 p.m.; a construction site workshop, for Oct. 27, from 1 p.m. to 5 p.m.; and an industrial facility workshop, for Oct. 28, from 8 a.m. to 12 p.m. Attendance fees are \$75 for one workshop, \$140 for two and \$195 for three. For details contact the Fresno Metropolitan Flood Control District at (209) 456-3292. ■

EPA Hopes to Propose 'Multi-Sector' Permit This Month

The U.S. Environmental Protection Agency (EPA) now hopes to issue a proposed multi-sector model general permit for members of stormwater group permit applications "sometime in October," according to Office of Wastewater Enforcement and Compliance director Mike Cook.

EPA agreed in a settlement last year with the Natural Resources Defense Council to issue final permits for all currently regulated stormwater dischargers, including group applicants, by Oct. 1, 1993. Cook said in August that EPA would miss that deadline (see *Bulletin*, September 1993, p. 1).

In a Sept. 17 interview, however, Cook said that EPA is now "shooting" to publish a proposed permit in the *Federal Register* by "sometime in October." He added that EPA hoped to send a status report on the process to the states, with copies to all group members, by the end of September.

Consultant John Whitescarver, in a follow-up letter to individuals who attended a Carter & Burgess Inc. stormwater seminar last summer, suggested Sept. 13 that publication is being delayed because of "several controversial issues that remain unresolved."

Another source who did not wish to be named said one such issue is an unexpected objection to certain parts of the draft proposal by EPA Region IV, which reportedly found "inconsistencies" in the handling of different industrial sectors.

Cook indicated that many of the repeated delays in publishing a proposal stem from the fact that EPA is seeking to "tailor this permit to most of U.S. industry, and that's turning out to be a very ambi-

tious undertaking." Cook added, however, that "monitoring questions are kind of central to what we're working on right now."

EPA in mid-September was still reviewing "all monitoring data" received from part 2 group applications, Cook said. Recently, some observers criticized EPA for apparently basing its multi-sector permit provisions only on partial data submitted before Jan. 1, 1993. Cook's comment suggests that EPA is responding to such criticism.

One source recently told the *Bulletin* that EPA's working draft of the multi-sector permit reportedly runs to 1,500 typed pages. Cook would not confirm this, but said, "It is very big."

At press time, stormwater attorney Jeff Longworth of Collier, Shannon, Rill and Scott said that "time is of the essence" in publishing a proposed multi-sector permit, primarily so additional states will not drop out of the group process. Publication of a final permit, Longworth added, now is unlikely before next spring.

Stressing the resources already sunk in group applications, Longworth urged states to "stick with the program" despite the delays. He predicted that permits which ultimately emerge from the groups will be far superior to those that EPA and the states now have adopted. Environmental attorney Kevin Bromberg, who has often criticized EPA's proposed monitoring provisions, also urged states to stick with the groups. Recent statements by Cook, Bromberg said, now make him believe that the multi-sector permit "should be worth waiting for." ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act \$298
- Chemical Process Safety Report \$349
- Stormwater Permit Manual \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$298
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

JOSTRM

Stormwater Permit Manual

Bulletin

Volume 3, Number 3

September 1993

STORMWATER LITIGATION:

NRDC Signals Plans to Sue 19 California Dischargers

The Natural Resources Defense Council (NRDC) on July 27 announced that it may sue 12 industrial facilities, six municipal governments and the California Department of Transportation (Caltrans) for alleged noncompliance with stormwater regulations in the Santa Monica Bay area near Los Angeles.

In cooperation with a Santa Monica environmental group, Heal the Bay, NRDC said it was serving each entity with a 60-day notice of intent to sue. The environmentalists may bring lawsuits against some or all of the alleged noncompliers by late September, according to NRDC attorney Everett Delano.

However, Delano added, "NRDC has a policy of negotiating with polluters first before bringing suit. If these facilities come to us and indicate that they are complying and intend to comply with their permits, we could settle with them."

Alleged violators named in the NRDC press release included Caltrans and the municipalities of Beverly Hills, El Segundo, Culver City, Hermosa Beach, Rancho Palos Verdes and Westlake Village. Also named were the following industrial facilities: Allied Signal Inc. of El Segundo; Blackhawk Oil Co. of Culver City; Coast Enameling Co. of Marina del Rey; Electromatic, Gebe Electronic Services Inc. and Maxine Davis Color & Interiors, all of Los Angeles; Pete's Metal Reclamation of Sun Valley; and Aircro Gases, Fiberglass Production & Tooling Inc., Star Biochemicals Inc. and the C.P. Hall Co., all of Torrance, Calif.

NRDC is alleging that the industrial facilities have failed to file state notices of intent (NOIs) for coverage under the California industrial general permit, failed to develop stormwater pollution prevention

(Continued on page 2)

GROUP APPLICATIONS:

EPA Expects to Miss 'Multi-Sector' Deadline

The U.S. Environmental Protection Agency (EPA) will not publish a final "multi-sector" model general permit for stormwater group applicants before the Oct. 1, 1993, permitting deadline, according to Office of Wastewater Enforcement and Compliance director Michael Cook.

In a *Bulletin* interview, Cook said that EPA headquarters had sent part of a draft multi-sector permit—but without the controversial provisions dealing with stormwater sampling—to EPA regional offices for review and comment in early August.

(Continued on page 3)

Inside this issue. . .

- Chart: How States Currently Plan on Handling Groups 4
- Colorado Moves to Reinstitute Partial Exemption for "Light Industry" 6
- Indiana Considers Partial Return of NPDES Program 7
- Report to Congress on "Phase II" Expected Soon 8

**Thompson
Publishing
Group**

NRDC Signals Plans

(Continued from page 1)

plans, and failed to monitor their stormwater discharges as required under the state general permit, Delano said.

Caltrans and the municipal governments now face the third year of regulation for municipal separate storm sewer systems (MS4s) in the Santa Monica Bay drainage basin, Delano added. MS4 permittees were required to implement initial best management practices (BMPs) in 1991, to implement additional BMPs in 1992 and to report on their BMP implementation this year, he said.

This year, Delano alleged, Caltrans and the six municipalities have submitted virtually no information on BMP implementation. NRDC believes these MS4s are "significant contributors to the pollution of Santa Monica Bay," Delano said.

At press time, the *Bulletin* had not been able to contact representatives of the businesses and government agencies served with notices to hear their responses to NRDC's allegations.

A private attorney involved with California stormwater regulation, however, said there has been widespread noncompliance so far with the state's NOI requirements, a situation that is almost sure to inspire future lawsuits and state enforcement actions.

***"I think people choosing to ignore the regulations are playing Russian Roulette."
— Sampling Group Organizer***

Douglas Kramer, a scrap recycler who has helped organize a Metal Recyclers Monitoring Group to comply with California's sampling requirements, said, "I'm not surprised by what's happening. I think people who are simply choosing to ignore California's stormwater regulations are playing Russian Roulette. In our group, we recognize the potential for this type of scenario to occur, and it

has been our policy to take early action to prevent it from happening to our industry."

In NRDC's press release, Delano said the environmental group has found "rampant noncompliance with both municipal and industrial stormwater permits" in the bay area. According to NRDC, some 140 publicly owned storm drains operate in the area, 64 of them discharging directly into Santa Monica Bay. NRDC contends that these storm drains deliver up to 25 million gallons of untreated runoff per day during dry weather, and up to 10 billion gallons per day during wet weather.

***"Initial legal action will focus on Santa Monica Bay."
— NRDC Attorney Everett Delano***

Major pollutants present in this runoff include heavy metals, pesticides, and polynuclear aromatic hydrocarbons from petroleum products, according to NRDC. Delano said some municipalities also discharge significant loads of sediment into the bay.

Caltrans operates 1,170 miles of roadway in the Los Angeles region and is a particularly significant stormwater polluter, Delano alleged.

Delano said that of all the MS4s in the region, "It's safe to say that the City of Los Angeles has been doing a good job of complying with the regulations." He also cited Los Angeles County and the City of Santa Monica as MS4 dischargers that have complied well with their permits, which NRDC takes as evidence that other municipalities could do a better job.

NRDC may eventually threaten additional facilities with lawsuits for noncompliance with California stormwater regulations, Delano added. He said NRDC has names and addresses of more than 200 additional facilities that allegedly are not in compliance and may threaten to sue at least some of them in the future. "Our initial litigation program will focus on Santa Monica Bay, but over time I anticipate that we could bring lawsuits over stormwater in other parts of the Los Angeles region and Southern California in general," Delano said. ■

**Thompson
Publishing
Group**

Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. President, Richard Thompson; Publisher/Vice President, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000. Second Class Postage paid at Washinton, D.C. USPS #0008-384.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address. Second Class Postage paid at Washington, D.C. Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

Group Applications

(Continued from page 1)

Cook added that EPA headquarters was still hammering out a draft position on the permit's monitoring requirements.

"I hope to have the proposed monitoring requirements sorted out over the next several weeks," Cook said on Aug. 10. He added that EPA had not yet focused on what it will take to get the multi-sector general permit approved by the Office of Management and Budget (OMB).

Obtaining OMB approval, allowing the regions to respond to the draft proposed permit and allowing the public and states to comment on the proposed permit will take additional time, Cook acknowledged.

When asked whether EPA will meet an Oct. 1 deadline for issuing final permits to all eligible stormwater dischargers, as promised last year in a legal settlement with the Natural Resources Defense Council, Cook answered, "We won't. I think that's clear."

Legal Protection Offered to Groups In Non-NPDES States

Cook added, however, that group members in states without delegation for the National Pollutant Discharge Elimination System (NPDES) may file notices of intent for coverage under the EPA "baseline" industrial general permit, to protect themselves from possible legal challenges for discharging stormwater without a permit after Oct. 1.

Subsequently, Cook said, such facilities may transfer their coverage back to the multi-sector permit once it is published in final form. Cook did not speak about the situation facing group members in NPDES-delegated states where EPA does not directly administer the program.

A recent *Bulletin* survey, however, indicates that in most NPDES states, regulators will wait for EPA's multi-sector model permit even if this means missing the Oct. 1 deadline. "I guess we probably will handle the group applications as if the deadline didn't exist," the stormwater coordinator of one Midwestern state recently commented.

Several other state officials, although using less extreme language, have similarly said that they consider members of EPA-approved group applications to be in compliance with all applicable requirements until EPA publishes at least a proposed multi-sector permit for state review and possible adoption.

In a few states, however, regulators in mid-August were still unsure what to do about the

deadline or said that group members must obtain state general permit coverage. For a breakdown of how state NPDES programs currently plan to handle groups, see the chart on pages 4-5.

EPA Still Pondering Group Sampling Data, TRI Issue

According to Cook, preliminary examination of sampling data already submitted by group applicants indicates that for most members in most groups, "pollutant levels are quite low."

"But some industrial sectors have instances of very elevated pollutant levels, and there are indications that in terms of environmental risk, some sectors have more concentrated stormwater pollution than others," Cook added. "There seems to be a correlation between whether industrial facilities have large outdoor operations and whether there are elevated levels of pollutants."

Data showing low median concentrations of stormwater pollutants in general, but higher mean values in some industries because of a few facilities with very high concentrations, are "actually good news," Cook commented. "This suggests to me that many, if not all, sectors can do things to reduce their pollutant discharges to relatively low levels."

Cook declined to say what EPA's analysis of the group data shows about stormwater pollution associated with toxics release inventory (TRI) reporters subject to Section 313 of Title III of the 1986 Superfund Amendments and Reauthorization Act (SARA).

Recently, several trade associations including the Chemical Specialties Manufacturers Association, Roof Coating Manufacturers Association and American Feed Industry Association wrote EPA asking it to drop all additional stormwater requirements for SARA Title III, Section 313 facilities that are based solely on a facility's TRI reporting status (see *Bulletin*, August 1993, p. 4).

According to some industry representatives, notably environmental attorney Kevin Bromberg, group stormwater data already submitted show that there is no stormwater pollution problem associated with TRI chemicals.

Cook said, however, that EPA was still largely attempting to analyze group monitoring data on a sector by-sector basis, without considering whether certain facilities in the sectors are TRI reporters.

"It's not easy for us to cross over into discussing TRI facilities," Cook contended. "We have a significant number of high pollutant concentrations for some facilities, and intuitively it seems likely that some of these high 'hits' are TRI facilities. But we'll have to look at the data more carefully to be sure." ■

State Regulators' Plans for Group Members

Entries based on Thompson Publishing Group survey, July-August 1993

STATE	Policies Regarding EPA-Approved Group Applications and Forthcoming "Multi-Sector" Model General Permit.
ALABAMA	Under state law, Alabama cannot accept group applications for NPDES permits. Facilities must file notices of intent (NOIs) for state general permit coverage or seek individual stormwater permits.
ALASKA	*
ARIZONA	*
ARKANSAS	State will review EPA multi-sector model permit when it is available; may modify it or adopt it for state use. Members of EPA-approved groups are in compliance with application requirements until further notice.
CALIFORNIA	California requires industrial stormwater dischargers to file for coverage under state industrial general permit, but allows formation of state-approved "monitoring groups" under some circumstances.
COLORADO	Colorado has not declared yet whether regulators will make use of EPA multi-sector model permit. Group members may submit NOIs for coverage under state general permit, without endangering their status within EPA-approved groups.
CONNECTICUT	All industrial dischargers in Connecticut are subject to state baseline general permit issued in October 1992. Regulators do not plan to make use of EPA multi-sector model permit.
DELAWARE	Delaware regulators are working on category-specific state general permits for several industries. Once these state general permits are issued, group members will be required to use them. However, regulators will look at EPA multi-sector general permit if it is available before state general permits are issued; may use parts of multi-sector permit to cover specific industries.
DISTRICT OF COLUMBIA	*
FLORIDA	*
GEORGIA	Georgia issued a final industrial general permit June 14. All existing industrial dischargers subject to stormwater permitting were required to file state NOI forms for coverage under the permit by Aug. 16, or as soon as possible afterwards. Georgia regulators will look at EPA's multi-sector permit when it is issued, says one state official, "but we probably won't issue any industry-specific general permits based on it anytime soon."
HAWAII	Group members must leave group applications and seek coverage under state baseline general permit.
IDAHO	*
ILLINOIS	Group members may either remain with EPA-approved groups or seek coverage under state baseline general permit.
INDIANA	Indiana Department of Environmental Management (IDEM) is discussing possibility of returning delegation for NPDES permit program to EPA (see related story, this issue, p. 7). If carried through to completion, process will take at least six months. IDEM is unsure just how state will handle group applications.
IOWA	State regulators believe they will probably use EPA's language in multi-sector model permit when it is available. However, Iowa eventually will cover most group members under individual stormwater permits. Group members in particular industries that are sufficiently numerous in the state may petition for Iowa to write sector-specific general permits for them. Members of EPA-approved groups are in compliance with application requirements until further notice.
KANSAS	Kansas is seeking general permit authority from EPA, hopes to receive it in a few months, but will not issue state general permits before Oct. 1. State officials reserve judgment on EPA multi-sector model permit until it is available. Members of EPA-approved groups are in compliance with application requirements until further notice.
KENTUCKY	State will review EPA multi-sector model permit when it is available; may modify it or adopt it for state use. Members of EPA-approved groups are in compliance with application requirements until further notice.
LOUISIANA	*
MAINE	*
MARYLAND	State will review EPA multi-sector model permit when it is available; may modify it or adopt it for state use. Members of EPA-approved groups are in compliance with application requirements until further notice.
MASSACHUSETTS	*
MICHIGAN	Michigan Department of Natural Resources encourages members of EPA-approved groups to remain in groups. Alternative coverage of industrial stormwater dischargers under a state general permit is not yet available because of funding problems.
MINNESOTA	Minnesota regulators will not accept EPA-approved group applications. However, they will review the EPA multi-sector model permit and may use it as basis for issuing industry-specific general permits for some industries. State plans to begin work this fall on an industry-specific general permit for sand and gravel mining and asphalt and concrete pavement industries, and perhaps one other sector.
MISSISSIPPI	Mississippi is awaiting publication of EPA's multi-sector model permit. State regulators say members of EPA-approved groups are in compliance with application requirements until further notice.
MISSOURI	Missouri will not accept EPA-approved group applications. Regulators say they hope to have 20-30 industry-specific state general permits available for stormwater dischargers by the end of October.
MONTANA	Montana regulators say group members may either remain in EPA-approved group applications or seek coverage under state industrial general permit.
NEBRASKA	The Nebraska Department of Environmental Quality (DEQ) is unsure how it will handle group applications. One official said DEQ is concerned about missing the Oct. 1 deadline, but may wait for EPA to issue the multi-sector model permit. Any failure to meet the deadline will then be EPA's responsibility, the official suggested. State policy could change.
NEVADA	Nevada encourages members of EPA-approved group applications to remain in groups until process is completed. Once EPA multi-sector model permit becomes available, Nevada will decide which dischargers should be covered by it and which require alternative permit coverage.
NEW HAMPSHIRE	*
* Non-NPDES delegated state. Will follow EPA policy, but could add extra requirements to multi-sector general permit under certification requirements of Section 401 of the Clean Water Act, to assure compliance with state water quality standards.	

NEW JERSEY	By Oct. 1, all regulated industrial stormwater dischargers in New Jersey must apply for state industrial general permit, if they are eligible, or submit individual permit applications. State regulators plan to use individual applications to write additional, industry-specific general permits for stormwater. State will review EPA multi-sector model permit when it is available and may use all or a part of it.
NEW MEXICO	*
NEW YORK	Department of Environmental Conservation (DEC) says group members may either stay with groups or file NOIs for state baseline general permit coverage. DEC staff say it is too early to say how state will respond to EPA multi-sector model permit. Group members "could be in trouble" if multi-sector permit isn't available by Oct. 1, but DEC is not advising them on whether to leave groups or stay.
NORTH CAROLINA	State will review EPA multi-sector model permit when it is available; may modify it or adopt it for state use. State says members of EPA-approved groups are in compliance with application requirements until further notice.
NORTH DAKOTA	State will review EPA multi-sector model permit when it is available; may modify it or adopt it for state use. Regulators say members of EPA-approved groups are in compliance with application requirements until further notice.
OHIO	Regulators say members of EPA-approved groups are in compliance with application requirements until further notice. Ohio is waiting to see EPA multi-sector model permit before deciding whether to use it or provide coverage to group members under state baseline industrial general permit.
OKLAHOMA	*
OREGON	State has previously said it will not accept EPA-approved group applications. Dischargers must seek coverage under industry-specific state general permits.
PENNSYLVANIA	Pennsylvania's Department of Environmental Resources (DER) does not consider members of EPA-approved groups to have valid permit applications unless they submit state registration statement forms for coverage under the state industrial general permit. However, DER plans to review the EPA multi-sector model permit when it is available and may adopt or modify parts of it for state use. Partly reversing an earlier statement, DER officials say facilities may apply for coverage under the state industrial general permit without having to withdraw from group applications for the EPA multi-sector permit. Eventually, however, facilities must choose coverage under one permit or the other, not both.
RHODE ISLAND	State encourages members of EPA-approved groups to remain in groups. Regulators are unsure what use they will make of EPA multi-sector model permit; may use it as basis for state industry-specific general permits or as basis for individual permits.
SOUTH CAROLINA	All industrial stormwater dischargers in South Carolina must have permits by Oct. 1. State officials will consider adopting or modifying EPA's multi-sector model permit if it is available by this permitting deadline, however. To ease permitting burden on facilities that have invested in EPA-approved group applications, state offers a limited extension of the deadline for preparing stormwater pollution prevention plans to group members who file for coverage under the state general permit by Oct. 1.
SOUTH DAKOTA	South Dakota lacks NPDES delegation but is seeking to obtain such delegation soon. State regulators anticipate eventually adopting EPA general permit provisions with a few minor modifications.
TENNESSEE	Tennessee regulators have not yet reached a final decision on the group application process and the Oct. 1 permitting deadline. Regulators are leaning toward allowing group members to wait for publication of the EPA multi-sector model permit, but say this position could change.
TEXAS	*
UTAH	State will review EPA multi-sector model permit when it is available; may modify it or adopt it for state use. State regulators say members of EPA-approved groups are in compliance with application requirements until further notice.
VERMONT	Vermont does not yet have official position on group applications. However, state regulators anticipate requiring all industrial facilities to seek coverage under a state baseline industrial general permit, once such a permit becomes available. Vermont does not anticipate issuing an industrial general permit until late 1993 at the earliest.
VIRGINIA	In late June, Virginia adopted four state stormwater general permits on an emergency, one-year basis. Regulators plan to reissue draft general permits for adoption as regular five-year permits next year. Virginia plans to review EPA's multi-sector model permit, possibly adopt parts of it in the state general permits or use it as basis for issuing individual permits. State does not require members of EPA-approved groups to leave those groups, but says facilities will be out of compliance if they do not have permit coverage by Oct. 1. State sources predict that provisions of Virginia emergency general permits will be less stringent than those in multi-sector permit.
WASHINGTON	For now, all industrial stormwater dischargers in Washington must obtain coverage under the state baseline industrial general permit. The Department of Environmental Conservation may incorporate some elements of EPA's multi-sector model permit into state regulations when it reissues stormwater general permits in 1995.
WEST VIRGINIA	West Virginia will not use EPA's multi-sector model permit. Group members must seek coverage under state industrial general permit. However, group members may submit group monitoring data in lieu of the sampling data otherwise required by state stormwater application forms. Officials say stormwater dischargers who do not obtain general permit coverage by Oct. 1 are "pretty fair game for enforcement actions."
WISCONSIN	The legality of Wisconsin regulations allowing stormwater permitting has been successfully challenged by industry. State will not meet Oct. 1 deadline for issuing an industrial general permit for stormwater dischargers and will not require group members to leave EPA-approved groups for state general permit coverage. However, regulators see no advantage to dischargers in remaining in EPA group applications.
WYOMING	Wyoming will not make use of EPA's multi-sector model permit and encourages group members to leave groups and file for coverage under state industrial general permit. State general permit does not require monitoring and should be less stringent than EPA multi-sector permit, officials say.
PUERTO RICO	*
VIRGIN ISLANDS	Territory lacks budgetary resources to maintain a stormwater permit program at this time and seeks EPA grant money to launch a stormwater regulation effort in FY 1994. Territorial regulators are accepting stormwater permit applications, but express no position yet on the forthcoming multi-sector model permit.
* Non-NPDES delegated state. Will follow EPA policy, but could add extra requirements to multi-sector general permit under certification requirements of Section 401 of the Clean Water Act, to assure compliance with state water quality standards.	

Colorado May Partly Re-Adopt Category 11 Exemption

Colorado is close to reinstating a stormwater permit waiver for some "light" industrial facilities listed under the U.S. Environmental Protection Agency's (EPA) stormwater industrial "category 11" if they have no significant materials exposed to precipitation, according to state officials.

EPA's Nov. 16, 1990, permit exemption for "light" industrial facilities with no stormwater exposure was rejected last year in a Ninth Circuit Court of Appeals ruling on a lawsuit brought by the Natural Resources Defense Council (*NRDC v. EPA*, 966 F. 2d 1292 (9th Cir. 1992)). Although the court did not require EPA to issue permits for category 11 facilities with no stormwater exposure, it said EPA had not sufficiently justified exempting such facilities from regulation and remanded that portion of the stormwater regulations to EPA for further rulemaking (see *Bulletin*, August 1992, p. 10).

In Colorado, however, industry and state regulators "decided to make a case for the exemptions based on our own records, so that we would have a basis for this that doesn't depend on something already vacated by the courts," according to Department of Health (DOH) stormwater staffer Sara Plocher.

DOH invited industry to provide evidence to justify a state category 11 exemption for light industrial facilities with no stormwater exposure and received data from several industries, Plocher said. A rulemaking hearing was held July 6.

The state Water Quality Control Commission approved a reinstated exemption for some category 11 industries Aug. 2, staffer Kathy Dolan said Aug. 10. The exemption probably will become effective Sept. 30, barring unforeseen objections from state officials or environmentalists.

The permit exemption will not cover all industrial categories listed in EPA's original category 11, but likely will apply to these industries:

- food and kindred products;
- printing, publishing and allied industries;
- drugs;
- fabrication of metal products, except for machinery and fabricated structural metal;
- industrial and commercial machinery and computer equipment;
- electronic and other electrical equipment and components, except for computer equipment; and
- measuring, analyzing and controlling instru-

ments; photographic, medical and optical goods; and watches and clocks.

In a recent survey, Thompson Publishing Group also identified significant stormwater regulation changes underway in several other states:

- **Arkansas** regulators now plan to issue approximately 15-20 industry-specific general permits, according to stormwater staffer Mark Bradley.
- **Delaware** has issued a final baseline general permit for industrial dischargers and a final general permit for regulated construction sites, according to stormwater official Chuck Schadel.*
- **Georgia** issued a baseline industrial general permit June 14. All existing industrial dischargers in Georgia were required file notices of intent (NOIs) for coverage under the permit by Aug. 16, according to state stormwater official Will Salter. Georgia also issued a construction site general permit last fall, but implementation has been delayed because of an appeal filed by The Conservation Society, an environmental group led by Georgia conservationist Terence Hughey. An administrative hearing on Hughey's appeal occurred in June.*
- **Hawaii** experienced state budget cuts last year that resulted in a 30-percent loss in revenues for the Clean Water Branch of the state Department of Health. This year, therefore, there has been a 25-percent reduction in National Pollutant Discharge Elimination System (NPDES) permit writers, from eight permit writers to six. According to Health Department deputy director Bruce Anderson, "We're not a year into implementing the stormwater program, and we're already about four months behind in issuing permits."
- **Kansas** has adopted state regulations allowing the Department of Health and Environment to issue general permits, according to staffer Don Carlson. Kansas still needs EPA's approval for exercising general permit authority, however. Carlson hopes EPA will issue such approval within two months.
- **Michigan** regulators recently put off issuing an industrial general permit because the state legislature failed to adopt a permit fee system to finance its implementation, according to Department of Natural Resources staffer David Drullinger.
- **Minnesota** has completed its public comment period on a construction general permit and hopes to issue a final permit in September, Scott Thompson of the Pollution Control Agency

(PCA) said Aug. 13. PCA officials hope to issue a final industry-specific general permit for the sand and gravel mining industry and asphalt and concrete pavement materials industry by spring 1994. PCA also may issue other industry-specific general permits in the future.

- **Missouri** hopes to issue additional industry-specific general permits by Nov. 1, stormwater staffer Tim Stahlman said Aug. 5. Eventually, the state hopes to issue 20-30 industry-specific general permits.
- **Montana** issued a stormwater general permit for the mining and oil and gas industries in April.*
- **New Jersey** has established task forces to write industry-specific general permits for airports and for chemical manufacturing and petroleum facilities, according to stormwater staffer Steve Johnson. Regulators ultimately plan to issue additional industry-specific general permits as well, including some that may be based in part on existing individual permit applications.
- **Rhode Island** has an agreement with EPA to develop a "model" watershed-specific permit for the Pawtuxet River watershed and a second model permit for the Blackstone River, according to Chris Feeney of the Department of Environmental Management. Consequently, industrial stormwater dischargers in the Pawtuxet watershed face a one-time requirement this year to sample for these parameters: lead, copper, silver, zinc, cadmium, chromium, nickel and total suspended solids. Sampling was supposed to

occur by July 1, but many facilities are late.*

- **South Dakota**, which is not delegated for the NPDES is applying to EPA for delegation, according to state regulator Kent Woodmansey. A 45-day public comment period on the proposed delegation was tentatively scheduled to begin Aug. 17.
- **Tennessee** hopes to issue industry-specific stormwater general permits soon for ready-mix concrete plants, general aviation airports and the transportation industry, according to state official Robert Haley.
- **Vermont** in early August was on the verge of signing an agreement with EPA giving the state general permit authority. Nancy Manley of the Department of Environmental Conservation said a draft state construction general permit could be published by Sept. 1. However, an industrial general permit probably will not be available for at least six months.
- **Virginia's** Department of Environmental Quality (DEQ) adopted four draft stormwater general permits on an emergency, one-year basis in late June, according to DEQ staffer Michelle Hooper. The four emergency permits were scheduled to be officially issued in August. They will be re-proposed in 1994 as regular five-year NPDES permits, Hooper said.

* Revised program descriptions for these states are included in this month's update to your Stormwater Permit Manual. ■

Bulletin

Indiana Eyes Partial Return of NPDES Delegation

Indiana regulators facing a budget crisis have begun informal discussions about returning the state's National Pollutant Discharge Elimination System (NPDES) permit program to the federal government, a state agency announced in late July.

Citing a prospective \$4.76-million shortfall in its biennial budget for the coming two years, the Indiana Department of Environmental Management (IDEM) announced it was considering sharply curtailing solid waste permit activities in the state, laying off 85 temporary staffers, and returning NPDES and RCRA permitting authority to the U.S. Environmental Protection Agency (EPA), while possibly attempting to increase state enforcement activities.

IDEM adopted an enhanced fee system two years ago to fund its permit activities, according to

director of external affairs Pat Morrison. After Indiana municipalities successfully lobbied to have their fees waived, however, several industries sued IDEM contending that the remaining fees were discriminatory.

Last January an Indianapolis-area judge ruled for the plaintiffs, eliminating IDEM's fee revenues. The state legislature considered restoring the fees, but did not do so during its last tumultuous session. Added cuts mandated this year by Democratic Gov. Evan Bayh made the budget crisis worse.

No state ever has returned delegation for NPDES permitting before, Morrison said, but the formal process should take at least 180 days. So far, discussions with EPA still are in the informal stage, and IDEM hopes legislators will act next January to make the move unnecessary. ■

Storm Warnings

Stormwater Related News in Capsule Form

- **Report to Congress on "Phase II" Expected Soon.** The U.S. Environmental Protection Agency (EPA) anticipates issuing a report to Congress on the "Phase II" universe of yet-to-be-regulated stormwater dischargers within one or two months, an EPA staffer said Aug. 10. According to the staffer, the Phase II report probably will not be in the form of proposed regulations and probably will not appear in the *Federal Register*, but may be circulated for public comment after being sent to Capitol Hill. Options the report will examine may include covering Phase II stormwater dischargers through municipal permits issued to "urbanized areas" as defined by the Census Bureau, letting states regulate rural discharges under their own stormwater management programs, and letting states use their delegation authority to add new categories of dischargers to those already regulated under "Phase I," this source indicated. (Editor's Note: Ranking EPA stormwater officials have asked the *Bulletin* not to publish the names of subordinates involved in the stormwater program.)
- **Rhode Island to Host Oct. 15 Stormwater Workshop.** The Rhode Island Department of Environmental Management (RIDEM) will hold a free, three-hour workshop on stormwater permitting, including advice on SWP3 preparation, from 9:00 a.m. to noon on Oct. 15 in Cranston, R.I. For more information call Chris Feeney, RIDEM, at (401) 277-6519.
- **International Conference on Nonpoint-Source Pollution Set.** An international conference on "diffuse sources of water pollution" will be held Sept. 19-24 in Chicago. Organized by Marquette University, the event will be cosponsored by the Wisconsin Department of Agriculture, Federal Highway Department, U.S. Department of Transportation, and EPA Region 5, in cooperation with several professional organizations. For more information, contact Vladimir Novotny, Marquette University, Milwaukee, at (414) 288-3524.
- **Jean Nelson Nominated as EPA General Counsel.** President Clinton on July 19 nominated Jean Nelson to be EPA general counsel. Nelson, Tipper Gore's chief of staff during the 1992 election campaign, has been Tennessee's chief deputy attorney general for four years. In 1992 she chaired the organization of chief deputy attorneys general within the National Association of Attorneys General. A former law partner with Gullett, Sanford, Robinson and Martin, she also serves on the boards of several Tennessee environmental groups. ■
- **Ogden Environmental Preparing Video on Stormwater Pollution Prevention Plans.** Ogden Environmental and Energy Services Co. is developing a training videotape and manual to enable industrial dischargers to develop their own stormwater pollution prevention plans (SWP3s). The SWP3 training package will complement Ogden's existing *Storm Water Sampling* package. For more information, contact Jerry Kidwell, (800) 296-7246.

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$349
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$397
- Underground Storage Tank Guide\$279
- Community Right-To-Know Manual\$324
- Guide to Used Oil Regulations\$298
- Ozone Depleter Compliance Guide\$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

J39STRM

Stormwater Permit Manual

Bulletin

Volume 3, Number 2

August 1993

GROUP APPLICATIONS:

'Keep Up With States,' Members Advised As Groups Await EPA's Multi-Sector Model General Permit

At press time, the U.S. Environmental Protection Agency (EPA) is not saying when it expects to issue its "multi-sector" model general permit for industrial stormwater dischargers who have submitted approved group applications (see *Bulletin*, July 1993, p. 1). Consultants and trade association officials working on group applications say that EPA last indicated that it would issue a proposed multi-sector permit in late July or early August. However, there are rumors that EPA may now be slipping on meeting this schedule.

Will EPA, States Run Afoul Of Permitting Deadline?

Consultants say this delay may pose potential problems for group members. More delay increases the possibility that EPA will have difficulty in issuing a final multi-sector permit in time for states with National Pollutant Discharge Elimination

System (NPDES) delegation to issue their own final permits for group members before Oct. 1, 1993. Under a legal settlement reached late last year with the Natural Resources Defense Council, Oct. 1 is EPA's deadline for issuing permits for all industrial stormwater dischargers regulated under the 1987 Water Quality Act amendments to the Clean Water Act.

Consultant John Whitescarver, a vice president with Carter & Burgess Inc., says that EPA could handle the deadline dilemma by issuing a proposed multi-sector permit, then quickly adopting it on an emergency basis to meet the deadline. Once the deadline is passed, Whitescarver suggests, EPA could issue a final multi-sector permit more slowly, after enjoying sufficient time to respond to the large number of comments it probably will receive on the proposed permit.

(Continued on page 4)

STATE SURVEY:

New York DEC Issues Final General Permits

On July 15, stormwater staffers at the New York Department of Environmental Conservation (DEC) sent two final general stormwater permits to the state printing office for publication. The two general permits become effective Aug. 1 and provide stormwater permit coverage for larger construction sites and most industrial stormwater discharges in the state.

Initially, however, DEC intends to deny general permit coverage to most New York industrial

(Continued on page 8)

Inside this issue...

- EPA Eyes Proposed Enforcement Guidance Page 2
- Region 6 Enforcement Cases Address Stormwater Issues Page 3
- Trade Associations Offer Advice on Group Applications Page 5
- Environmentalists Blast Stormwater Language in Senate Clean Water Bill Page 6

**Thompson
Publishing
Group**

STORMWATER ENFORCEMENT:

EPA Eyes Draft Enforcement Guidance for 1994-1995

The U.S. Environmental Protection Agency (EPA) has prepared a draft guidance strategy for administering the national stormwater permitting program from a compliance monitoring and enforcement perspective, according to sources inside and outside of the agency.

The draft guidance document is the work of a panel of EPA regional officials and state regulators who have been discussing stormwater enforcement strategies since December 1992, said Anne Lassiter, chief of the enforcement support branch in the enforcement division of EPA's Office of Wastewater Enforcement and Compliance.

Copies of the draft had not yet been sent to the EPA regions for review, Lassiter said in mid-July, but they are expected to go out to regional stormwater officials for comment by early August.

Lassiter added that state stormwater officials will be allowed to review the draft enforcement guidance at some point, but said EPA has not yet decided whether to seek state comments on this early version of the document.

Lassiter added that it was possible that representatives of the "external community," including regulated industry and environmental groups, might get to review the guidance at some point. However, she stressed that allowing outside review is a particularly sensitive matter when agency enforcement policies are at stake.

The draft guidance as now written covers enforcement primarily in the 1994-1995 period, Lassiter said. She indicated that EPA may produce a revised guidance document on longer-term enforcement issues once the agency has more experience with the program.

"The draft document that we have so far is pretty rough," Lassiter added. "We still have a lot of work to do before we can come out with something that will stand the test of time." EPA strongly hopes to have the initial stormwater enforcement strategy in place by the end of 1993, Lassiter said, but cannot

make a firm commitment to this at this time.

Lassiter declined to comment on the contents of the draft document, other than to say that they were "still fluid" and subject to change.

An outside source close to EPA, however, indicated that the draft guidance appears to call for EPA regions to focus their enforcement efforts on stormwater dischargers who have yet to file notices of intent or submit permit applications, thereby failing to engage with the stormwater program in any way.

Bolstering this source's claims is a "Stormwater Program Fact Sheet" issued by EPA in April. The fact sheet indicates that, at least until recently, failure by the regulated community to comply with state and federal notice of intent (NOI) and permit application requirements has represented "a potentially very significant noncompliance issue" for the stormwater program.

Because "many regulated industries are still unaware of stormwater program requirements," the April fact sheet said, EPA has envisioned an oversight and enforcement strategy that "will initially focus heavily on outreach and public awareness." Enforcement options under this strategy might include:

- focusing initially on education and outreach rather than enforcement;
- encouraging dischargers to respond through incentive and reward mechanisms;
- working closely with regulated groups and making positive examples of "model" sites;
- conducting comprehensive annual audits; and
- taking enforcement actions against "demonstrated 'bad actors.'"

Whether EPA's draft enforcement guidance document currently reflects the fact sheet's emphasis, however, is unclear at this time. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address. Second Class Postage paid at Washington, D.C. Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on subscription copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

STORMWATER ENFORCEMENT:

Recent Region 6 Actions Address Stormwater Issues

The U.S. Environmental Protection Agency (EPA) may still be formulating national guidance on stormwater enforcement (see related story, page 2), but several recent administrative orders issued by EPA Region 6 demonstrate that some regions already are involved with stormwater-related enforcement cases.

Highway Department Cited Over NOI Issue

Last February, for example, Region 6 filed two administrative orders against the Texas Department of Transportation (TDOT). One alleged that TDOT was not fully implementing SWP3 requirements at a 68-acre construction project in Parker County, Texas. The second order alleged that TDOT had violated stormwater permitting requirements by failing to submit an application for a municipal separate storm sewer system (MS4) permit as a co-permittee with the city of Dallas.

According to a Region 6 staffer interviewed in mid-July, EPA is not doing much at present on the administrative orders against TDOT. The highway agency's failure to implement fully its SWP3 in Parker County was largely caused by a contractor holding up contract negotiations by attempting to "price gouge" TDOT on further erosion control work at a project already underway, the Region 6 source indicated.

TDOT's failure to file a timely MS4 application for co-permittee status in Dallas was partly caused by confusion over Region 6's requirements and partly by difficulties in getting the co-permitting arrangement approved by Dallas city government, the source added. Region 6 therefore has put its case against TDOT on hold while the highway agency pursues negotiations with the city, the staffer said.

TDOT environmental affairs director Roland Gamble, however, said in a July 15 interview that the letters sent by Region 6 "have led us to pay attention to some areas that may have needed attention." TDOT had submitted "part 1" MS4 stormwater permit applications to be co-permittees with seven large Texas municipalities, Gamble said. But in response to delays in negotiating co-permittee agreements, Gamble said, TDOT has now decided to file separate MS4 applications for its operations in Beaumont and Austin.

TDOT has reached co-permittee agreements with El Paso, Fort Worth and San Antonio, he indicated, and is still seeking city government approvals for proposed arrangements with Dallas and Houston.

TDOT has approximately 360 construction projects requiring SWP3s under EPA stormwater regulations, Gamble said. On some of these projects, he said, "We may have been a little lax in getting

work done in a timely manner. But I believe that now, we're in good shape on all these projects."

Storm Drain Involved in Reese AFB Dispute

In another recent enforcement case that indirectly involves stormwater runoff, Region 6 on June 3 signed an "imminent and substantial endangerment" order under the Resource Conservation and Recovery Act against Reese Air Force Base, a military installation about 35 miles from Lubbock, Texas.

The order, the first such order ever issued against a military installation, directs Reese officials to address groundwater contamination of the Ogallala Aquifer by tetrachloroethylene (TCE) and other contaminants allegedly coming from the base. Among other things, it also requires the Air Force to sample drinking water wells near the base and provide alternate drinking water for local households whose wells are found to be contaminated.

Reese, Region 6, the Texas Water Commission (TWC) and the U.S. Army Corps of Engineers are now consulting over how best to address the TCE contamination, according to a July 16 interview with Maj. Duncan Showers, base civil engineer. The base already has spent nearly \$8 million in addressing the TCE contamination problem and the drinking water testing and remediation requirements, Showers added. Negotiations still are continuing over the best way to address TCE pollution already in the aquifer some 100 feet below ground level, with EPA having rejected as inadequate a previous Air Force proposal to pump out the contaminated water, airstrip it of some of its TCE burden, and reinject it into the aquifer.

There also is continued disagreement among Reese and federal and state environmental officials over the role that storm drain runoff from a base airport parking ramp may be playing in the TCE problem.

According to Region 6 staffer Bobby Williams and Mark Weegar, a geologist with TWC, a dilapidated, clay-lined, 2,000-foot industrial drain line that once connected with floor drains in many of Reese's maintenance shops along the base's main flight line may be one source of TCE contamination.

Although Reese says it discontinued TCE use long ago and has recently plugged the last floor drains leading to the industrial drain line, stormwater runoff from the aircraft parking ramp still flows into the line and may be flushing TCE from broken parts of the line into groundwater, the regulators suggest.

Showers acknowledges that the old drain line is "suspect" as a possible source of TCE, but says that

(Continued on page 6)

Group Applications

(Continued from page 1)

The possible effects of further delay on NPDES states, however, makes EPA's slowness in issuing a proposed permit increasingly worrisome to some professionals involved with groups. According to John Oliver, a consultant with Resource Consultants in Falls Church, Va., "The longer EPA puts this off, the greater the likelihood that the states are going to give up on the group applications and go their own way, requiring facilities to drop out of group applications and obtain state baseline general permits. That worries everyone who has worked to put a group together."

Groups Advised To Watch State Developments, Prepare for Comments

Officials with several trade associations contacted by the *Bulletin* (see accompanying story) stress the importance of group organizers and group members keeping in contact with state regulatory officials, on a state-by-state basis, to determine which of them are still intending to consider EPA's multi-sector model permit.

Several association officials and consultants also urge group members to begin familiarizing themselves with the stormwater pollution prevention plan (SWP3) requirements in "baseline" general permits already issued by EPA and the states.

The SWP3 requirements of EPA's proposed multi-sector model permit should resemble EPA's baseline requirements, Oliver predicts. Therefore, he believes, understanding the baseline SWP3 regulations will help group members prepare to submit comments on the proposed multi-sector permit when EPA publishes it.

"I believe groups should be preparing to submit comments, and lots of comments, on this proposal," Oliver adds, voicing a sentiment shared by several other professionals involved in the group application process.

Differing Industry Views Emerge On Sampling Debate

As EPA works on the multi-sector general permit, differing views are surfacing among various trade industry representatives concerning the stormwater sampling requirements that EPA may include in the permit. Some trade association officials interviewed, such as Jamie Clover, director of environmental and labor affairs for the American Feed Industry Association (AFIA), strongly oppose further sampling requirements for members of their groups.

"EPA officials themselves have said that stormwater sampling data can vary from day to day and month to month, and that the data are therefore not

going to tell them anything they don't already know," Clover argues. "Our members in the feed grain industry consider themselves the good guys, and they are willing to provide information if that information means anything. But in my opinion, EPA's requiring blanket monitoring, just to appease environmentalists, is not the way to go."

Clover says AFIA has signed a letter urging EPA to drop all additional regulatory requirements for stormwater dischargers that are based strictly on a facility's status under the toxic release reporting requirements of Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA).

Recently, the Chemical Specialties Manufacturers Association and the Roof Coating Manufacturers Association wrote EPA a similar, but separate, letter calling for the cancellation of all additional environmental regulatory requirements targeted at SARA Title III, Section 313 facilities strictly on the basis of their reporting status (see *Bulletin*, July 1993, p. 5).

Some other trade association officials, however, say that political realities almost dictate further stormwater sampling by at least some industries covered by the forthcoming multi-sector permit.

"I think there's no question that there's going to be some kind of monitoring required, at some frequency," argues George Fuchs of the National Association of Printing Ink Manufacturers. "When you think about it, EPA can't get around this. They have to go to Congress in a few years to report on how they've handled stormwater, and they can't say that they're leaving the results of the program to the goodwill of industry alone. The question is, what kind of monitoring will be required?"

"I am not against some kind of reasonable monitoring ... but what monitoring will be required?"

Fuchs adds, "I am not against some kind of reasonable stormwater monitoring requirement. Obviously, I don't want EPA to require sampling on a quarterly basis for all 126 'water priority' chemicals. But occasional monitoring for just the five pollutants commonly found in stormwater—pH, oil and grease, biochemical oxygen demand, chemical oxygen demand and total suspended solids—wouldn't be so expensive."

Kevin Sall of the National Paint and Coatings Association, taking a different position, says his association has not lobbied EPA much on the monitoring issue. "We did say if you see a problem, address the problem, but don't require across-the-

board monitoring just for the sake of generating data," Sall says.

Certain other sources in the trade associations who do not wish to be quoted on the subject predict that EPA almost certainly will require sampling by certain industries—such as railroads and automobile scrap yards—that are widely perceived as having environmentally dirty outdoor operations.

A few industries may even want to have sampling requirements so that they can use the resulting data to defend themselves against political harassment by environmentalists, according to one source. The more common view, however, is that monitoring requirements are a regrettable political necessity for EPA that some industries will accept because they have no choice. ■

Advice From Trade Associations

The *Bulletin* recently asked several trade association officials who have helped to organize group stormwater permit applications about what they advise group members to do while waiting for the Environmental Protection Agency (EPA) to publish the multi-sector permit proposal. Here, in edited form, are some of their responses:

Jamie Clover, American Feed Industry Association (AFIA). AFIA has a group of 975 members located in 48 states, Clover says. Given uncertainties about the monitoring and sampling requirements EPA will include in the multi-sector permit and the growing number of states that are pulling back from group applications, "We can't advise people what to do yet. I am staying in touch with the states to see what they'll do, so that I can advise members on a state-by-state basis."

If EPA proposes stringent monitoring for AFIA members, Clover indicates, "It may be that the baseline general permit that EPA issued last year will be the better deal for our members. But until we see the proposed multi-sector permit, we can't advise them on this. When we see the proposal, we'll make a judgment." AFIA is now preparing a model stormwater pollution prevention plan (SWP3) for use by group members, Clover adds.

George Fuchs, National Association of Printing Ink Manufacturers (NAPIM). Until EPA issues a proposed multi-sector permit, Fuchs says, "There's not much you can do except wait." However, he adds that NAPIM has hired consultants to prepare a model SWP3 for its group of approximately 30 members.

Fuchs also suggests that operators of industrial facilities might want to contact state stormwater regulators at least once a month to ask them how they are handling stormwater requirements. NAPIM advises its members to contact state regulators after EPA issues the final multi-sector model permit and ask whether they will be using that permit. Some states are waiting to see the final permit before deciding whether to accept it, Fuchs reports.

Kevin Sall, National Paint & Coatings Association (NPCA). NPCA is advising group mem-

bers to review carefully the SWP3 requirements of the baseline general permit, Sall says. In a June 17 memorandum to group members, NPCA also has urged members to contact their state NPDES offices to ask whether the states will continue to accept EPA's group applications and to determine other state requirements applying to their facilities.

EPA is hopeful that some states that presently do not accept group applications may change their minds once a multi-sector model permit becomes available, Sall's memo suggests.

Charles Marvin, The Refractories Institute (TRI). TRI has five group applications covering 161 facilities owned by 51 companies in more than 20 states, Marvin indicates. Originally, the institute submitted a single "part 1" group application for all its members wishing to participate, but was told by EPA that it needed to submit four or five applications to cover group members in different Standard Industrial Classification (SIC) codes.

Marvin notes that after the refractories industry complied, at some expense, EPA decided to fold all group applicants into a single multi-sector model permit covering 31 different industrial sectors—partly negating the work TRI had done in response to its previous advice.

In response, TRI recently wrote Sen. Harris Wofford, D-Pa., to "communicate its disappointment with EPA's group permitting process," Marvin says.

Marvin wrote group members on June 30 encouraging them to compare EPA's proposed multi-sector permit requirements, when these are available, with state baseline permitting requirements to determine whether companies can save money and trouble by leaving the groups to obtain alternate coverage.

TRI's letter urged that "each company start now to obtain the specific permitting plans for each state in which facilities are located," so that state information will be readily available for comparison when a multi-sector proposal is published. ■

Region 6 Enforcement

(Continued from page 3)

monitoring wells have shown little or no TCE contamination at the line's outfall in a nearby playa lake. The main TCE plumes under the base occur under Reese's control tower and petroleum tank farm—not under the drain line, Showers also contends.

But even though there is no proof that the line is leaking TCE, Showers says, Reese plans to reroute its runoff from the aircraft parking ramp into a new storm drain system leading to the base's sewage treatment plant.

Reese and the regulators haven't yet agreed on whether the base should dig up the old drain line or simply seal it off and leave it in place, Showers says. However, Air Force officials at Reese would prefer to seal the line off and leave it buried, because digging it up might trigger RCRA requirements for

proper treatment of hazardous waste, causing large additional disposal costs.

Added environmental training for base personnel is one important step Reese is taking to prevent a recurrence of similar problems in the future, Showers adds. Although Reese capped the floor drains leading to the industrial drain line some time ago, it subsequently found that base personnel had apparently removed one or two of the caps, possibly to dispose of used motor oil or similar wastes, he says. The base has now plugged the pipes themselves to prevent this from recurring.

In addition, Reese has created an inspection team to check the drains regularly and has updated and computerized its site maps to ensure that all drains are listed. Finally, Showers says, the base has instituted a much more active environmental training program for all base personnel, "so that they don't unknowingly do something that results in releases of hazardous materials." ■

CLEAN WATER ACT REAUTHORIZATION:

NRDC Blasts Stormwater Section of Senate Proposal

The stormwater section of S 1114, the Clean Water Act reauthorization bill recently introduced by Sen. Max Baucus, D-Mont., and Sen. John Chafee, R-R.I., threatens to "repolarize the stormwater debate," Robert Adler of the Natural Resources Defense Council (NRDC) said at a June 23 Senate subcommittee hearing on reauthorization of the Clean Water Act.

In prepared testimony submitted to the Senate Environment and Public Works Committee's Subcommittee on Clean Water, Fisheries, and Wildlife, Adler added, "At this point, NRDC and other environmental groups believe we will have to oppose the stormwater provision of S 1114." Adler went on to urge Baucus and Chafee to reconsider Section 402, the bill's stormwater section.

The provisions of S 1114 addressing stormwater permitting of municipal separate storm sewer systems (MS4s) were the chief focus of Adler's criticism. The U.S. Environmental Protection Agency's (EPA) current stormwater regulations for MS4s under the 1987 Water Quality Act amendments to the Clean Water Act fail to set "substantive, prescriptive requirements" or clear performance standards for MS4 stormwater management controls, Adler contended.

He added that in the absence of clear performance standards, the review of MS4 stormwater permit applications by individual permit writers "will result in vastly different requirements, inconsistent water pollution control and potentially severe inequities in costs and water quality among communities."

S 1114 would perpetuate this situation by exempting many small communities from stormwater regulation entirely and by exempting even already permitted MS4s from numeric emissions limits or compliance with water quality standards for at least 10 years, Adler contended.

At the same hearing, however, Minneapolis Mayor Donald Fraser testified for the National League of Cities that the 10-year MS4 exemption from numeric emissions limits and water quality standards in S. 1114 provides the cities with "absolutely essential relief" and "cannot be amended or deleted," particularly if the bill's sponsors wish to keep the cities as allies in the Clean Water Act reauthorization debate.

In other testimony offered on June 23, EPA acting assistant administrator for water Martha Prothro said that immediate compliance with effluent limits or water quality standards "will simply not be possible for many cities," adding that a five-year or 10-year exemption from these requirements "may be a reasonable alternative."

Prothro also indicated that the Senate might want to consider giving EPA statutory authority to reinstate its former stormwater permitting exemption for "light" industrial facilities that do not have significant materials exposed to stormwater, thereby giving such facilities an added incentive for stormwater pollution prevention. EPA's previous exemption for light industrial facilities with no significant stormwater exposure was overturned by the Ninth Circuit Court of Appeals in response to an NRDC lawsuit. ■

Storm Warnings

Stormwater-related News in Capsule Form

- **Clinton Nominates Maryland's Robert Perciasepe for Assistant Administrator for Water Position.** On July 15, President Clinton nominated Robert Perciasepe, Maryland's secretary of the environment, to be assistant administrator for water for the U.S. Environmental Protection Agency (EPA). Perciasepe was deputy secretary and assistant secretary of the environment in Maryland before attaining his present position in 1990. Before joining state government in 1988, he worked as chief of planning for the Baltimore Planning Department from 1976 to 1986 and as the department's assistant director from 1986 through 1987. According to Izaak Walton League of America lobbyist Marchant Wentworth, Perciasepe has liberal environmental credentials and is acceptable to environmentalists for that reason. Primarily, however, he is viewed as bringing a state regulator's perspective to the Office of Water.
- **Aug. 17 Workshop to Address Airport Stormwater Pollution Prevention Plan (SWP3) Development.** The engineering consulting firm Carter & Burgess Inc. has scheduled a workshop on writing airport stormwater pollution prevention plans for Aug. 17 in Houston. According to Carter & Burgess vice president John Whitescarver, the workshop should enable attendees to prepare "substantially complete" SWP3s during the course of a day. Attendees, therefore, are advised to bring site maps of their airports to the workshop. The attendance fee is \$295. For more information, contact Susan Odum, Carter & Burgess Inc., P.O. Box 985006, Ft. Worth, Texas 76185-5006; (817) 735-6241.
- **SWP3s for Vehicle Maintenance and Refueling Operations Available.** The Environmental Development Corp., of Findlay, Ohio, says it has developed model SWP3s for vehicle maintenance and refueling facilities. According to the company, the SWP3s offer cost-effective options for complying with stormwater regulations applying to car and truck rental operations, truck stops, petroleum marketing terminals, railroads and airports, motor freight transportation facilities and public transit systems. For more information, contact Judy Long, EDC Customer Service, Environmental Development Corp., 823 South Main St., Suite 6, P.O. Box 854, Findlay, Ohio 45839-0854; (419) 422-1200.
- **Conference to Address Vehicle Maintenance and Refueling Regulations, Including Stormwater Rules.** The Environmental Resource Institute (ERI), of Findlay, Ohio, has scheduled a Sept. 19-22 "International Centennial Management Conference and Exposition" in Reston, Va., covering a wide range of environmental and health and safety issues affecting vehicle maintenance and refueling operations. Touted as commemorating the "100th anniversary of the American automobile," the conference will include discussions of "stormwater and vehicle washing issues" and many other auto-related regulatory matters, according to an institute press release. According to the release, outside organizations making presentations at the conference will include EPA, Midas International, Chevron Products USA, Amoco Oil Co., the National Automobile Dealers Association, and the American Trucking Associations. The fee for early conference registration is \$345, or \$295 for government officials. Late registration may be more costly. To register call ERI at (800) 783-6338 or (419) 422-6063.
- **Mine Drainage Caused by Snow Melt Blamed for Pennsylvania Fish Kill.** All aquatic life along a 15-mile stretch of the Casselman River in southwestern Pennsylvania was killed this past spring when a massive snow melt caused water levels to rise in a complex of long-abandoned coal mines upstream, spilling large quantities of acid and iron oxide and manganese ions into the river, state Department of Environmental Resources (DER) official Joel Pontorero recently told the *Bulletin*. Despite being triggered by snow melt, the fish kill technically was caused by groundwater pollution, Pontorero said. Therefore, the runoff is not subject to state or federal stormwater regulations.
- **Alleged Stormwater Pollution From Port Said to Be Under Investigation in California.** At press time, the *Sacramento Bee* newspaper reports that the Central Valley Regional Water Quality Control Board in California is investigating allegations of improper storm drain discharges by the Port of Sacramento into the Sacramento River Deepwater Ship Channel. The *Bee* quotes a West Sacramento police officer as alleging that workers at the port spent two hours on June 24 hosing down equipment encrusted with fertilizer and allowed a significant amount of heavily polluted wash water to run into storm drains discharging into the channel. The port has been cited by regulators before for runoff problems, the article alleges. However, a Port of Sacramento official quoted in the July 4 story said that the port is striving to comply with environmental regulations and that usually, only "fairly insignificant" amounts of pollution end up in stormwater from port operations. ■

State Summary

(Continued from page 1)

dischargers that require any other permits under the state Uniform Procedures Act (Environmental Conservation Law, 6 NYCRR Part 621). This prohibition may be waived, on a case-by-case basis, following DEC reviews of certain application data outlined in Appendix D of the state industrial general permit.

Generally speaking, the provisions of the industrial general permit largely resemble those of EPA's baseline general permit for industrial dischargers and include annual and semi-annual monitoring requirements for certain industries. The permit also requires development of stormwater pollution prevention plans (SWP3s) by industrial dischargers, requiring facilities in operation before Aug. 1, to prepare SWP3s by Feb. 1, 1994, and to implement them by Aug. 1, 1994.

The general permit requires facilities beginning industrial activity between Aug. 1 and Oct. 31, 1993, to prepare and implement SWP3s within 60 days of commencing such activity. It requires industrial facilities commencing operations after Oct. 31 to prepare and comply with SWP3s before submitting notices of intent (NOIs) for general permit coverage.

The provisions of the New York construction stormwater general permit differ from, and are more extensive than, EPA's baseline provisions for construction site runoff.

Among other things, New York stormwater management guidelines for new developments are

attached to the state construction general permit. They encourage permittees to install a variety of controls to reduce erosion at new development sites, maintain the biological functions of stream channels, and protect open space. Most developers probably will need to provide permanent structural controls on site to control the "first flush" of runoff released once construction is completed, the guidelines suggest.

The provisions of both the industrial stormwater permit and the construction site general permit are outlined in this month's update to Tab 800 of your *Stormwater Permit Manual*. Copies of the New York general permits and NOI forms are available from DEC regional offices or by calling (800) 952-2490.

Changes to Puerto Rico Permits Expected

In other state news, EPA Region 2 stormwater coordinator Jose Rivera says that EPA has received three comments on changes proposed April 14 to the Puerto Rico general permit requirements (58 FR 19427). EPA hopes to publish modified final general permit provisions for Puerto Rico by late August, Rivera adds. ■

CORRECTION

In our July 1993 issue, the *Bulletin* misspelled the last name of William Swietlik, head of the U.S. Environmental Protection Agency's stormwater permitting program. The editors apologize to Mr. Swietlik for the error. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$349
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$397
- Underground Storage Tank Guide\$279
- Community Right-To-Know Manual\$324
- Guide to Used Oil Regulations\$298
- Ozone Depleter Compliance Guide\$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

J38STRM

Stormwater Permit Manual

Bulletin

Volume 3, Number 1

July 1993

CLEAN WATER ACT

Stormwater Source Controls, Gas Station Regulations Proposed in Senate Clean Water Act Reauthorization Bill

The U.S. Environmental Protection Agency (EPA) would gain authority to require manufacturers to replace substances causing "significant impairments" in water quality through the discharge of those substances in stormwater pollution, under a proposed Clean Water Act reauthorization bill introduced June 15 in the Senate by Sen. Max Baucus, D-Mont., and Sen. John Chafee, R-R.I.

S 1114, proposed as the Water Pollution Prevention and Control Act of 1993, also would require stormwater permits in small municipalities located within "urbanized areas" with populations of 50,000 or more, as designated by the U.S. Census Bureau, for otherwise unregulated gasoline stations, municipal separate storm sewer systems (MS4s) and construction sites disturbing more than one acre but less than five acres of land.

Outside such designated urbanized areas, however, EPA and states specifically would not have authority to require stormwater permits for such

discharges. The discharges, instead, would be treated as nonpoint source pollution.

Under the bill's provisions, Baucus says, "the obligation for stormwater discharge permits for most small communities is eliminated."

A provision of S 1114 targeted at MS4s in general requires EPA to issue guidance specifying "management measures" that would be deemed adequate to meet the Clean Water Act's requirement that MS4s control water quality impacts from stormwater runoff "to the maximum extent practicable." The bill also would preclude EPA or state regulators from requiring MS4s to meet numeric effluent limitations or water quality standards during at least the first five-year term of their stormwater permits.

For at least 10 years, MS4s could not be directly required to meet numeric effluent limitations or water quality standards, although it appears that compliance with such standards could be required if

(Continued on page 3)

GROUP APPLICATIONS

'Sector' Sampling Provisos May Vary Widely, Says EPA

To the consternation of some consultants and attorneys who advised clients that they could save money by participating in the stormwater group permit application process, the U.S. Environmental Protection Agency (EPA) plans to require expensive stormwater sampling by at least some industrial sectors covered by the agency's forthcoming "multi-sector" model general permit for group members, an EPA stormwater official said on June 15. (See *Bulletin*, June 1993, p. 1)

(Continued on page 4)

Inside this issue. . .

- EPA Phase II Regs May Target "Urbanized Areas" Page 2
- New York, Other States Move Forward on Late General Permits Page 3
- What Should Group Members Do Now? Page 4
- Trade Associations Petition EPA To Reopen General Permit For SARA 313 Changes Page 5

Phase II Regulations May Target Mid-Sized Urban Areas

The U.S. Environmental Protection Agency (EPA) is thinking about focusing its attention on small "urbanized areas" with populations of 50,000 or more, as defined by the U.S. Census Bureau, as it begins to regulate point source discharges under "Phase II" of the federal stormwater program, according to EPA official Michael Cook.

Cook, director of EPA's Office of Wastewater Enforcement and Compliance, outlined a possible Phase II permitting strategy based on "urbanized areas" on June 3 at the first annual meeting of the National Association of Local Government Environmental Professionals (NALGEP).

In his address to NALGEP, Cook said EPA estimates that seven million facilities across the country are potentially eligible for Phase II regulation. However, EPA could address about 70 percent of the nation's yet-unregulated point source stormwater problems by focusing on urbanized areas with populations of 50,000 or more and contiguous areas with population densities of at least 1,000 persons per square mile, Cook said.

Through its existing permit requirements for "large" and "medium" municipal separate storm sewer systems, EPA already is writing Phase I stormwater permits for about 700 large and medium municipalities, Cook reported. Extending stormwater controls under Phase II to "urbanized areas" designated by the Census Bureau would increase the size of the municipal stormwater program to several thousand municipalities.

EPA also is considering granting regulated municipalities the authority to regulate other Phase II stormwater permittees, Cook added. "We really feel municipalities are in the best position to regulate facilities within their political boundaries and their drainage areas," he said.

Consultant John Whitescarver of Carter and Burgess, who shared the podium with Cook at the NALGEP meeting, said EPA's delegation of storm-

water permitting authority to municipalities in this fashion might result in a regulatory system similar to EPA's Clean Water Act pretreatment program, which is administered at the local level by publicly owned sewage treatment works.

EPA originally hoped to use a municipal permitting approach to handle many Phase I stormwater dischargers, Cook said. Having municipalities assume responsibility for the bulk of Phase II permitting, though, will require changes in the Clean Water Act. Cook said EPA is seeking such legal changes, but assured NALGEP members in attendance that EPA will seek to make it "optional" for urbanized areas to accept stormwater regulatory authority.

In the past, some municipalities objected to EPA's proposed regulations giving them regulatory authority for Phase I stormwater permitting, saying that they did not wish to have legal liability for industrial stormwater dischargers over which they had little control.

Cook said that EPA will probably seek to address the remaining Phase II stormwater problems outside of "urbanized areas" through its nonpoint source programs, including the new coastal nonpoint source program established under the Coastal Zone Amendments and Reauthorization Act of 1990.

Small commercial enterprises, gas stations and parking lots are among the facilities of greatest interest to EPA in devising a Phase II strategy, Cook suggested.

For more information on "urbanized areas" and Phase II stormwater permitting, see related story, p. 1.

According to organizers, NALGEP is a new association representing local environmental officials whose units of government both regulate local businesses and are regulated themselves by state and federal agencies. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeny; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. For information on multiple subscription discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

New York, Others Move Closer to Final General Permits

New York may issue final stormwater general permits for industrial dischargers and regulated construction sites by as early as mid-July, according to U.S. Environmental Protection Agency (EPA) Region 2 stormwater coordinator Jose Rivera.

In an interview in late June, Rivera said that New York's Department of Environmental Conservation (DEC) has taken longer than originally anticipated to issue state general permits, in part because of a DEC staffer's long illness and the large number of comments received on the state's draft construction site general permit. Discussions between EPA and DEC over some details in the state proposals also have stretched out the process, Rivera indicated.

But if all goes well now, Rivera predicted, New York may sign off on final general permits in time for DEC and EPA to hold at least two public workshops explaining them in late July or early August. The two workshops had not been scheduled at press time. Stormwater dischargers wishing to attend the workshops should contact the national stormwater hotline at (703) 821-4823 to be placed on a mailing list of potential attendees, Rivera said.

Progress in Other States

Several other states, meanwhile, have moved forward significantly on draft or final general permits. Nevada, for example, published three final general permits in mid-May, one for industrial

dischargers, one for construction sites and one specifically tailored for the mining industry.

Minnesota published a draft state stormwater general permit for construction activity on May 18, although state stormwater officials cautioned that a final general permit will not be issued until sometime this summer at the earliest.

On May 28, Michigan published a draft general permit for industrial sites that would relieve regulated industrial facilities of stormwater monitoring requirements. The draft Michigan permit, however, would require that stormwater treatment and control measures for a site be implemented under the supervision of a trained stormwater operator certified by the state Department of Natural Resources.

Missouri already has issued several final state general permits. At press time, the state also has seven additional draft industry-specific general permits for stormwater dischargers out for public comment. Public comment deadlines for the draft stormwater general permits range from July 8 at the earliest to as late as August 19.

This month's update to the *Stormwater Permit Manual* contains revised stormwater program descriptions for seven states, as well as a significant correction to the description of monitoring requirements for industrial dischargers in California. ■

Baucus, Chafee Introduce Clean Water Reauthorization Bill

(Continued from page 1)

the standards were reflected in approved "management measures." A section of the bill also would require regulated municipalities to monitor the water quality of receiving waters and to report on their implementation of required management measures.

It appears that the stormwater provisions of S 1114 may reflect EPA's preferred strategy for addressing "Phase II" of the National Pollutant Discharge Elimination System stormwater program, addressing point-source stormwater discharges that currently are unregulated by imposing regulations on new sources only through census-designated urbanized areas and adjacent built-up areas with population densities of 1,000 per square mile or greater.

S 1114 also would require EPA to develop a list of "highly bioaccumulative and toxic pollutants" to be phased out over time as safe substitutes become available. The bill also would expand the list of water pollution control projects eligible for funding under the Clean Water Act's state revolving loan fund to include "stormwater systems" and

nonpoint source pollution controls as well as traditional municipal wastewater treatment plants. S 1114 also would establish a national system of permit fees, apparently including fees for stormwater dischargers regulated under Section 402.

In addition, the bill would launch ambitious new initiatives for promoting voluntary watershed planning and strengthening existing state nonpoint source pollution control plans developed under Section 319 of the Clean Water Act. It would adopt EPA's recently proposed draft policy for controlling overflows from combined sewers (see 58 FR 4994, Jan. 19, 1993) and would give cities with combined sewer overflow problems up to 15 years to comply with water quality standards.

According to Baucus, the bill is intended to provide "a solid, bipartisan starting point for hearings and committee deliberation" as the Senate begins its efforts to bring a Clean Water Act reauthorization bill to the floor for a vote this year. For more information on S. 1114, see the June 15 *Congressional Record*, p. S7243. ■

Group Applications

(Continued from page 1)

Bill Swietlick, head of the stormwater permitting program in EPA's National Pollutant Discharge Elimination System (NPDES) branch, told a gathering of consultants convened by John Whitescarver of the engineering firm Carter and Burgess that monitoring requirements under the multi-sector permit will vary by industry. In some cases they may be less extensive than the monitoring requirements in EPA's "baseline" industrial general permit for stormwater dischargers issued last September, Swietlick said, but for other industries more monitoring may be required.

For facilities subject to the "right to know" reporting requirements of Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), Swietlick said, EPA primarily plans to "keep the requirements of the baseline general permit."

Swietlick suggested that monitoring requirements for some Section 313 facilities could be less stringent than baseline requirements, however, depending on the nature of the "Part 2" group application sampling data that such facilities have submitted. In other cases, he said, monitoring required by the

multi-sector permit may be more extensive than baseline requirements. If EPA wishes to gauge the effectiveness of best management practices (BMPs) implemented by Section 313 facilities, Swietlick suggested, frequent monitoring of stormwater discharges by such facilities may be needed.

EPA has been under pressure from some stormwater group organizers to relax monitoring requirements for group members to below the baseline levels. This should occur, according to some group organizers, partly so that group members will not feel that they have spent large amounts of money developing sampling data only to have EPA treat them no more favorably than dischargers who never joined groups.

Swietlick told the June 15 meeting attendees, though, "Anyone who went into the group application process with the idea that they were necessarily going to get a really nice, lenient permit probably went into it with the wrong idea."

He added that there are four reasons why EPA may require further sampling by some industries under the forthcoming multi-sector permit for group members. First, such sampling may be needed to

(Continued on page 8)

What Should Stormwater Group Members Do Now?

Advice Gleaned From Comments of EPA Officials, Selected Consultants

Consultant John Whitescarver of Carter and Burgess jokingly advertised his June 15 workshop on group applications (see related story, p. 1) as the "mother of all stormwater meetings." The meeting primarily focused on the concerns of consultants, lawyers and trade associations who have persuaded industrial dischargers to join group permit applications, often at considerable expense.

To remain "accountable" to group members, Whitescarver suggested, these group organizers need to begin strategizing on how best to serve their clients' interests as EPA prepares to issue its draft "multi-sector" model general permit as part of the group application process.

The June 15 discussions, which included a question and answer session with Bill Swietlick, head of EPA's stormwater permitting program, highlighted several issues that group members and organizers may want to consider as they determine their remaining regulatory compliance options. The following are highlights of key issues raised by attendees at the meeting.

Should Members Stay in Groups, Leave, or 'Hedge'? Noting the uncertainties still surrounding group applications, Whitescarver said group members have four strategy options:

- to maintain groups and negotiate with regulators over permit terms;

- to maintain groups and litigate over terms;
- to maintain groups but simultaneously seek alternative coverage under EPA or state "baseline" general permits; or
- to abandon groups and seek other coverage.

Whitescarver favors "hedging," the third option. Swietlick said EPA allows this, at least for now, in the 12 non-delegated states where it operates the National Pollutant Discharge Elimination System (NPDES). But in some NPDES-delegated states, state regulators may require group members to abandon groups before seeking baseline permit coverage. Whitescarver has suggested suing the state in such cases, but not everyone agrees. "Check with your state regulators in determining your permitting strategy," Swietlick suggested on June 15.

The Anti-Degradation Issue. One factor influencing the desirability of hedging is the Clean Water Act's "anti-degradation" policy, noted attorney Jeff Longworth of Collier, Shannon, Rill and Scott. Because of anti-degradation rules, will group members who hedge remain tied to the provisions of a state general permit even if EPA's multi-sector permit later offers them easier terms? Whitescarver said this is possible, adding that some group members may thus want to seek state general permit coverage, but not actually obtain it until they see the multi-sector permit.

'Wait and See' Strategy. EPA Region 6 generally discourages group memberships, and last fall Michael Cook, director of the EPA Office of Wastewater Enforcement and Compliance, suggested that members would be better off immediately dissolving groups and seeking general permits. On June 15, however, Swietlick outlined a different EPA position. He said that members should "wait and see" what the EPA multi-sector model permit contains before deciding whether to leave groups. In some industries the multi-sector permit will be tougher than the baseline general permit, but in others the reverse will be true, Swietlick said.

Swietlick said group members may seek alternative coverage at least until EPA's publication of a draft multi-sector model general permit sometime in mid-summer. He added that EPA "may" let members leave groups at least until the publication of a final multi-sector permit, but did not commit EPA to this position.

NOI, Pollution Prevention Plan Requirements. In many states, new industrial facilities must complete stormwater pollution prevention plans (SWP3s) before filing Notices of Intent (NOIs) seeking general permits. Group members who either wish to hedge or to drop out of groups now, therefore, should probably start work on their SWP3s immediately, so they later have the option of leaving the groups.

Other NOI Requirements for Groups. Although groups already have filed Part 1 and Part 2 applications, Swietlick said, EPA's position is that the law requires members to file additional NOIs seeking coverage under the EPA multi-sector model general permit, or under state general permits based on it, when it becomes available. However, members should not file NOIs for such coverage now because EPA probably will issue a modified NOI form for them to use later, Swietlick said.

Importance of Completing Group Sampling. Not all EPA-approved groups have submitted all data required by their Part 2 applications, even though applications were due months ago, various sources have noted. Group members who haven't submitted required sampling data should do so quickly, or EPA may exclude them from the groups, Swietlick suggested.

Swietlick said EPA also is considering whether to waive or reduce initial sampling under the multi-sector permit for groups that already have submitted all required Part 2 data. Groups that do not provide all required data may be ineligible for such a waiver.

Letting EPA Know When Members Leave. Swietlick urged group organizers to keep EPA informed when members leave their groups. Asked by one consultant whether a group could use sampling data submitted by a member who has left the group, Swietlick replied, "Yes. Send it in."

Lobbying Congress About Group Sampling Requirements. Longsworth, whose firm lobbies frequently on Capitol Hill, noted that group members currently consist of some 45,000 industrial facilities. Along with small cities disgruntled by EPA stormwater requirements, group members could lobby Congress very effectively for relief from further monitoring requirements, Longsworth suggested. Collier, Shannon, Rill and Scott plans to lobby for monitoring relief for its clients and is asking other groups if they want to join a coalition lobbying effort, according to firm partner, Jeff Leiter.

Lobbying State Regulators. Group members who dislike the multi-sector model general permit, or who object to their state's approach to adopting or rejecting the permit, should be sure to bring their concerns to state regulators, according to Whitescarver. "Just because the state regulator says you have to do something, it doesn't mean that you have to do it," Whitescarver advised meeting attendees on June 15. By talking to regulators, he has persuaded some state agencies that had vowed not to accept EPA-approved groups to change their minds, at least for particular clients, Whitescarver claimed. Other group organizers may wish to do the same. ■

BULLETIN

SARA 313 Groups Ask EPA, States To Reopen General Permits

In a June 18 letter to EPA, the Chemical Specialties Manufacturers Association (CSMA) and the Roof Coatings Manufacturers Association, with the assistance of small business attorney Kevin Bromberg, petitioned EPA and the states to drop all special stormwater permitting requirements for facilities subject to the toxic release inventory (TRI) reporting requirements of Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986.

Section 313 facilities have no problems associated with emitting TRI chemicals into stormwater, the letter contends. Therefore, the letter petitions EPA administrator Carol Browner to delete all "TRI-related, industry-specific provisions" from the multi-sector model permit, the existing EPA baseline general permit, and "all other permits for TRI facilities." The letter also requests all states to eliminate stormwater requirements "triggered solely by TRI reporting status."

According to CSMA's senior regulatory counsel John DiFazio, Section 313 reporters who wish to support the petition may want to write letters to EPA's Browner emphasizing that support. ■

Storm Warnings

Stormwater-Related News in Capsule Form

- **Will Stormwater Enforcement Be 1993 Priority in Coastal Areas?** The U.S. Environmental Protection Agency (EPA) this year will encourage the use of "collaborative" regulatory approaches involving cooperation among federal, state and local regulators to address pollution control and enforcement in "ecologically significant bays or estuaries," according to the February 1993 *National Environmental Enforcement Journal*. The journal is published by the National Association of Attorneys General in cooperation with EPA's enforcement office. According to this source, stormwater runoff, septic systems and combined sewer overflows discharging into coastal bays and estuaries all are pollution sources that will be targeted for greater control, which "could include enforcement activities." Stormwater permitting and enforcement activities may be of particular importance in areas covered by EPA's Gulf of Mexico and Chesapeake Bay programs, the article predicts.
- **Polluted Runoff, Stormwater Targeted as Clean Water Act Hearings Begin in Senate.** "Polluted runoff" is the nation's leading water quality problem today, EPA administrator Carol Browner said June 16 at the Senate's first 1993 hearing on Clean Water Act reauthorization. In testimony submitted to the Senate Environment and Public Works Committee's Subcommittee on Clean Water, Fisheries and Wildlife, chaired by Sen. Philip Graham, D-Fla., Browner indicated that some of the most serious runoff pollution is associated with agriculture. However, she added that runoff associated with increased population growth in "sensitive ecosystems" such as coastal areas and wetlands also poses "a serious threat to water body integrity." The administration favors stronger measures than reliance on the Clean Water Act's Section 319 program to handle nonpoint source runoff problems, Browner indicated, echoing her recent House testimony calling for "backup enforcement requirements" for nonpoint source controls when purely voluntary approaches fail. Among other things, EPA should help establish "clearer performance expectations and technical baselines for nonpoint source controls and management practices," Browner said.

Further Clean Water Act reauthorization hearings by the Subcommittee on Clean Water, Fisheries and Wildlife are tentatively scheduled for July 1, 14, 21 and 28 and August 4, according to a subcommittee staffer.
- **Stormwater Utilities Endorsed in Science Panel Testimony.** In June 16 testimony on Clean Water Act reauthorization submitted to the Senate Environment and Public Works Committee's Subcommittee on Clean Water, Fisheries and Wildlife, professor William Cooper of Michigan State University said that the risks associated with urban and suburban nonpoint-source pollution already are well known. Testifying for a panel of scientists convened a few years ago by EPA's Science Advisory Board to address water-related issues, Cooper said that to address nonpoint source pollution, the government should encourage local jurisdictions to create "stormwater utilities" with authority to charge fees for stormwater management and control. "New development activities should be required to meet stormwater control standards and to link to stormwater utilities for upkeep and maintenance," Cooper also recommended. Cooper further mentioned the possibility of creating a federal "Aquafund" program, similar to the federal Superfund program, to help finance water quality improvements around the country.
- **New Chesapeake Bay Protection Bill Targets Runoff.** Runoff from newly planted lawns and air pollution from added automobiles in the Chesapeake Bay watershed may be threatening efforts by federal, state and local governments to restore the bay's water quality, Rep. Benjamin Cardin, D-Md., recently stated before the House Public Works Committee's Subcommittee on Water Resources and Environment, which started hearings earlier this year on Clean Water Act reauthorization. To ensure continued water quality progress, Cardin and other bay-area lawmakers are introducing a "Chesapeake Bay Restoration Act of 1993." Among other things, the bill would authorize EPA to help states surrounding the bay "in implementing specific actions to reduce toxics use and risks," direct federal facilities in the region to act consistently with the interagency bay cleanup effort, direct EPA to undertake a comprehensive assessment of the 10-year-old bay restoration effort, and authorize an increase in federal spending on bay restoration.
- **Catalog Available on Urban Runoff Management Information Products.** At the initiative of an official in EPA Region 5 in Chicago, EPA's stormwater program and Region 5's water division have collaborated

with the consulting firm Tetra Tech Inc. in publishing a catalog of "Urban Runoff Management Information/Education Products." The catalog covers a wide range of information and educational products, including booklets on best management practices for auto-related industries and ways to reduce toxic runoff at construction sites, computer software and data bases, citizen action guides, information fact sheets, bumper stickers, pamphlets, newsletters, posters, slide shows, videos and books on a variety of water quality related subjects. According to EPA staffer Kimberly Hankins, who is helping to coordinate distribution of the catalog, the catalog eventually will be updated to include more products relating to storm-water pollution. Copies of the catalog are available for \$19.50, plus shipping and handling, from ERIC in Columbus, Ohio, at (614) 292-6717.

- **Dairy-Related Storm Runoff "Very Likely" A Factor in Milwaukee Cryptosporidium Outbreak, Says EPA Scientist.** The cryptosporidium bacterium that caused a recent outbreak of intestinal illness in Milwaukee (see *Bulletin*, May 1993, p. 6) is fairly common in the environment, according to Dr. Stephen Schaub, senior microbiologist in the Health and Ecological Criteria Division of EPA's Office of Science and Technology. Nevertheless, Schaub said, "In the Milwaukee case, it's very likely that the cryptosporidium oocysts came from dairy herds." Before the outbreak, southeastern Wisconsin had "very considerable rainfall," and runoff from dairy operations "very likely" carried the disease spores into the Milwaukee River and from there to Milwaukee's water intake in Lake Michigan, Schaub suggested.

A public information officer for the Wisconsin Department of Natural Resources (DNR) has said that cryptosporidium bacteria can be found in most surface waters, and that the disease organisms not only are excreted into water by humans and cattle, but also by domestic pets and even birds and reptiles. This makes it virtually impossible to keep the pathogens out of surface waters, the DNR source said.

Schaub, in reply, noted that the cryptosporidium bacteria that infect birds and reptiles are not believed to affect humans. However, virtually all warm-blooded animals can be infected by cryptosporidium and pass it on to humans. Cattle are among the more common animal carriers and probably played a role in the Milwaukee outbreak, although there is no way to be sure, Schaub indicated.

One peculiar aspect of the Milwaukee outbreak was that it occurred when Milwaukee was trying to control unusually high turbidity in its water with a new polyaluminum chloride coagulant that is less acidic than traditional alum coagulants, Schaub said. The aim was to reduce the risk of acidity causing lead from older pipes to leach into drinking water. There is some indication that in seeking to reduce lead contamination, Milwaukee's drinking water utility inadvertently may have exposed customers to a greater risk of cryptosporidium.

EPA, which encourages drinking water utilities to reduce the risks of lead contamination, is now trying to get all water systems serving 10,000 or more individuals to test for cryptosporidium, giardia, enteric viruses and fecal coliform to determine whether current treatment technologies are adequate, Schaub said. EPA currently is engaged in a negotiated rulemaking over its proposed information collection requirements, Schaub indicated.

- **EPA Lacks Budget to Run Stormwater Program Correctly, Environmental Group Charges.** EPA lacks the resources to manage its stormwater program adequately, according to a May 1993 review of EPA's budget by the environmentally oriented Center for Resource Economics (CRE). "The agency is unable to adequately review and process permit applications or issue permits in a timely manner," the report stated, noting EPA's troubles to date in issuing "model" general permits for members of approved group applications.

The CRE report further contended that state nonpoint source runoff controls, established under the Clean Water Act's Section 319, are "ineffectual" and underfunded by Congress. Looking at EPA as a whole, the report suggested that the agency is afflicted with mismanagement, skewed regulatory priorities and responsibility for some programs that "seem unlikely to work no matter how much money is invested in them." Still, CRE concluded, "the fixing that EPA needs first and foremost is an adequate budget ... Without additional resources, carefully invested in priority programs, EPA simply cannot meet its legal mandates."

Copies of CRE's *Annual Review of the U.S. Environmental Protection Agency: Program Evaluation, Budget Analysis, Funding Recommendations* are available for \$30 plus \$4 for shipping and handling from Environmental Budget Priorities Project, Center for Resource Economics, 1718 Connecticut Ave., Suite 300, Washington, D.C. 20009; (202) 667-6982. ■

Group Applications

(Continued from page 4)

gather data from groups that have not completely fulfilled the data requirements of their Part 2 group applications, Swietlick said.

Second, it may be needed to characterize stormwater discharges by industries for which EPA now has too few data points to determine a clear stormwater discharge pattern. Third, it may be needed to determine the effectiveness of industry BMPs. Finally, the data may be necessary to determine the impacts of stormwater discharges on receiving waters.

Other sources have questioned the reliability of stormwater sampling data in general, saying that EPA primarily is requiring sampling so that it will have data to provide to Congress in a few years.

Critics also have criticized EPA's sampling requirements for industry as being too expensive. In reply, Swietlick said on June 15 that for most industries required to do sampling by the multi-sector permit, only grab samples rather than composite samples will be required, considerably reducing the expense.

Swietlick's position has drawn heavy criticism from small business attorney Kevin Bromberg, who said at the meeting that group members are dutiful "sheep" who have demonstrated their good will by cooperating with EPA in the group process. Rather than requiring such facilities to spend more money on monitoring, EPA should take action against "wolves" and "ostriches" in industry who have not cooperated with the stormwater program at all, Bromberg said.

Bromberg more recently has acted as counsel for two trade associations that are petitioning EPA to drop all special monitoring and regulatory requirements for SARA Title III, Section 313 facilities.

Also objecting to more monitoring requirements for group members was attorney Jeff Longworth of Collier, Shannon, Rill and Scott, who has suggested that group members should unite to lobby Congress for significant relief from monitoring (see related story, p. 4).

Swietlick, however, said that the data Bromberg has cited to demonstrate that Section 313 facilities are "clean" may show instead that some of these facilities failed to do group monitoring properly. EPA must examine the data more carefully to determine if more monitoring is required, Swietlick suggested.

Some observers suggested privately after the meeting that by requiring even more data from Section 313 facilities, EPA may seek to punish them for their association with Bromberg's attempts to relax monitoring requirements for small Section 313 dischargers in general. EPA denies this allegation.

In other comments on the group process, Swietlick said EPA is about three weeks behind schedule for publishing a proposed multi-sector model general permit for public notice in the *Federal Register* by "mid-summer."

Swietlick said EPA still hopes to publish a final multi-sector general permit for group members by Oct. 1, the permit deadline it agreed to last December. Some consultants question whether EPA will meet the Oct. 1 deadline, however.

Swietlick said that at any rate, facilities that have cooperated with EPA through the group applications are unlikely targets for enforcement actions even if they have no permits by Oct. 1. EPA is far more likely to seek penalties from stormwater dischargers who have not cooperated with the program at all, Swietlick said. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Clean Air Permits:
Manager's Guide to the 1990 Clean Air Act \$298
- Chemical Process Safety Report \$349
- Stormwater Permit Manual \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$279
- Community Right-To-Know Manual \$324
- Guide to Used Oil Regulations \$249
- Ozone Depleter Compliance Guide \$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 2, Number 12

June 1993

CLEAN WATER ACT REAUTHORIZATION

Stormwater Regulations Badly Need Revision, Say Cities

The U.S. Environmental Protection Agency's (EPA) stormwater regulatory program for cities "is 'broken' and in desperate need of revision," an official of the National League of Cities recently told a House panel hearing testimony on issues facing Congress in the upcoming reauthorization of the Clean Water Act.

Speaking May 12 before the House Public Works Committee's Subcommittee on Water Resources and Environment, Jeffrey Wennberg, mayor of Rutland, Vt., testified that the average cost of preparing stormwater permit applications for municipal separate storm sewer systems (MS4s) serving populations of 100,000 or more has been "closer to \$1 million" than the \$35,000-\$75,000 originally estimated by EPA.

Wennberg contended that total capital costs for installing stormwater control structures under the existing regulations may range from \$147 million to

\$407 billion or even close to \$1 trillion, "if municipalities are required to implement the most sophisticated stormwater management program."

Estimated costs for operation and maintenance of urban stormwater control programs range from \$1.2 billion for relatively simple "best management practices" to \$542 billion for "major structural controls to remove nutrients, microorganisms, floatables and metals," Wennberg added.

Stormwater, NPS Regulation Debated

Speaking for the National League of Cities' Energy, Environment and Natural Resources Committee, Wennberg told the House panel, "The fundamental question Congress must ask is whether stormwater runoff is really that serious a problem that controlling it merits expenditures of this magnitude ... And secondly, Congress must assess whether controlling urban runoff is a priority concern, and if

(Continued on page 2)

Debate Flares Over Rural Nonpoint Source Pollution

Judging from the House subcommittee hearings on Clean Water Act reauthorization, the future of the Clean Water Act Section 319 program for regulating nonpoint source (NPS) runoff is likely to be at the center of an even wider debate in coming months than the future of federal stormwater regulations (see related story, this page).

Environmentalists are adamant about the importance of addressing nonpoint "poison runoff" problems and contend that Section 319's largely voluntary program for encouraging the development of NPS programs by the states simply is not working.

(Continued on page 3)

Inside this issue. . .

- EPA Releases Documents on Model General Permit Process for Groups Page 4
- EPA's Industrial 'Sector' Assignments for Model General Permit Writers Page 5
- Environmentalists Call for Clean Water Act to 'Sunset' Certain Chemicals Page 7
- House Panel Completes Hearings on Water Act Reauthorization Page 8

**Thompson
Publishing
Group**

Clean Water Act

(Continued from page 1)

so, what mandate will be lifted or canceled to assure that the necessary resources are available—at any level of government—to finance a stormwater management program.”

Taken in conjunction with testimony by representatives of other interest groups who have appeared before the House subcommittee, Wennberg's vigorous criticism of the National Pollutant Discharge Elimination System (NPDES) stormwater program indicates that stormwater regulation, as well as the issue of how to regulate agricultural nonpoint source (NPS) pollution (see related story, page 1) could be a significant focus of controversy as Congress goes about rewriting the Clean Water Act in coming months.

Also criticizing the NPDES stormwater program was the Association of State and Interstate Pollution Control Administrators, whose executive director Roberta Haley Savage, submitted testimony on March 31 calling the program's current deadlines “unachievable.”

The Clean Water Act must be written in such a way to assure that “stormwater requirements do not overwhelm or undermine state permit programs under NPDES,” Savage testified. Action must be taken to focus the stormwater program, she warned, or “major cuts in other programs—including toxic controls—must occur.”

Speaking for the National Governors Association on March 31, Wyoming Department of Environmental Quality Director Dennis Hemmer suggested that the Clean Water Act should give states the authority to use “enforceable nonpermit approaches to control stormwater,” adding that the governors believe states also need authority to prioritize stormwater control activities based on risk.

Permit Exemptions for Clean Industries Urged

Speaking on May 12, Jeffrey Silliman of the American Textile Manufacturers Institute called for changes in the Clean Water Act that would allow industrial facilities to “exit the stormwater permit-

ting system” and be managed under MS4 stormwater management plans if they can demonstrate to EPA that they have no potential for stormwater contamination.

“If no potential for contamination exists, then common sense dictates that these facilities and others should be exempt from the permit requirements and should be managed under larger urban stormwater management programs,” Silliman suggested. This would allow EPA to focus more attention on “truly bad actors” whose stormwater discharges pose real contamination problems, he testified.

Urban Stormwater Problems Critical, NRDC Says

Testimony submitted to the House panel by Natural Resources Defense Council (NRDC) environmental engineer Diane Cameron contended, however, that urban stormwater “deserves high-priority attention by citizen activists, water quality officials and other watershed stewards.”

Data on urban runoff compiled by the National Urban Runoff Program study in the 1980s found that stormwater has short-term impacts on receiving waters; long-term effects on the buildup of contaminated sediments in pollution “sinks” such as river mouths, lakes and bays; and physical impacts on the hydrology and geomorphology of urbanized watersheds, Cameron said in April 22 testimony.

Rapidly growing urbanized areas not now covered by existing stormwater regulations for MS4s have a total population exceeding that of regulated municipalities, making additional regulations urgent, Cameron added.

Using pollution prevention, Cameron contended, federal and state regulators could establish controls on urban stormwater pollution that would be far more cost-effective than the reliance on “end-of-pipe retention ponds” that characterizes existing stormwater control programs in regions like suburban Maryland. By the use of “minimum management practices,” she added, estimated total operations and maintenance costs for urban stormwater controls nationwide could be brought within the range of \$1 billion to \$86 billion—far less than



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

the "worst case scenario" of \$542 billion cited by Wennberg and the National League of Cities.

EPA Eyes "Strengthened" 319 Regulations

EPA Administrator Carol Browner in May 5 testimony acknowledged some of the burdens that stormwater regulations and other EPA initiatives have placed on state regulators and localities.

"Without additional funding, state and local water and wastewater programs will not be able to fulfill the mandates of the Clean Water Act or the Safe Drinking Water Act, or meet the expectations of the public," Browner testified.

Browner said the federal government needs to be sure that adequate resources are available for these programs and suggested that some cost savings may be available through the use of economic incentives and market forces. "We must not overlook the economic consequences if we choose to abandon our commitment to the environment," she added.

Saying that stormwater runoff, combined sewer overflows, NPS pollution and habitat losses are

causing "the majority of our remaining water quality problems," Browner cited stormwater regulation as a major area where "EPA and the states together have made some important progress." And she noted that "Phase II" of the stormwater regulation program, addressing discharges not yet covered by the existing EPA stormwater regulations, will be an even larger challenge than the existing "Phase I" program.

"A number of issues must be addressed in connection with the implementation of Phase II, notably whether certain dischargers should be targeted for permitting before others, the possible menu of regulatory and nonregulatory mechanisms that could be used to address high priority sources, and appropriate deadlines," Browner said.

Browner added, "We think potential Phase II sources outside urbanized areas may best be addressed under an expanded and strengthened NPS program," but said EPA is still examining different options for Phase II. ■

NPS Debate

(Continued from page 1)

The American Water Works Association (AWWA), in May 11 testimony on the links between Clean Water Act programs and Safe Drinking Water Act regulation, also has suggested that agricultural runoff containing herbicides and pesticides poses "an ecological and public health threat" because of the alleged potential for such runoff from farms to contaminate public drinking water supplies. Similarly, AWWA targeted overflows from combined sewers and pollutants such as oil, gasoline and synthetic organic chemicals from urban stormwater runoff as important problems to address through Clean Water Act amendments.

Many agricultural trade associations, however, strongly oppose mandatory regulatory controls on farm runoff and maintain that voluntary state programs developed under the existing Section 319 have never been adequately funded and need to be given a chance to work before being modified.

"Section 319 can and will work if sufficient time and resources are available," the National Water Resources Association stated in April 22 testimony.

The American Farm Bureau Federation expressed similar sentiments: "Recognizing the 20-year commitment our country has had to eliminating point-source pollution, success in reducing the more complex and diverse NPS pollution will require similar time and resource commitments." However, the Farm Bureau added, regulators must recognize that NPS pollution involves "the inadvertent discharge of pollutants from a wide variety of society's most essential activities" and that unlike

point-source pollution, it "can be managed, but not feasibly eliminated."

More Research on Runoff Recommended

A statement of principles by a "Clean Water Act Working Group," largely consisting of agricultural trade associations, argued that efficient measures to control NPS pollution will require "accurate and reliable information" regarding the sources, extent and impacts of such pollution conservation measures used to address it.

In reauthorizing the law, the Clean Water Act Working Group argues, Congress must include "a strong financial commitment to further research, monitoring and assessment practices," including "frequent sampling during storm events" and the assessment of "natural and historic loadings" to receiving waters.

EPA Seeks 'Backup' to Voluntary Approach

The Clinton administration plans to increase funding of Section 319 grants to the states by \$180 million between fiscal 1994 and fiscal 1997, U.S. Environmental Protection Agency (EPA) Administrator Carol Browner testified on May 5, but "while Section 319 nonpoint management programs provide a good starting point, stronger measures are needed."

Browner added that "where feasible," pollution prevention rather than treatment should be used to control NPS problems. She stressed that voluntary approaches should remain government's primary means of addressing NPS runoff, but said "backup enforcement requirements at the state and federal levels are needed when voluntary approaches fail." ■

EPA Releases Its Sector Lineup for Group Applications

The U.S. Environmental Protection Agency (EPA) has made public its assignment of industrial sectors to EPA regions and states for the development of model industry-specific general permits for EPA-approved stormwater group applications (see *Bulletin*, May 1993, p. 1).

According to a letter released along with the list, from Cynthia Dougherty, director of the permits division in EPA's Office of Water, to the EPA regional offices, EPA will develop "a single, multi-sector permit to cover all industries participating in the group application process," but with sector-specific provisions tailored to different industrial categories. EPA's list of regional offices and state regulatory agencies that have agreed to produce model general permits is reprinted in the table on page 5.

EPA headquarters apparently will begin the permit-writing process by preparing and distributing a model format containing common permit requirements and common "fact sheet" language as well as a database using "Part 1" and "Part 2" application data submitted by group members, judging from information released with the letter. Eight of the 10 EPA regions and one state (New Jersey) will then evaluate the database, consider other applicable information and write draft permit language and fact sheet language on various sectors.

EPA documents indicate that EPA headquarters itself will prepare permit provisions and fact sheets for 15 of the 31 industrial sectors, and then, using this material and the draft permit language received, will develop a draft multi-sector permit and accompanying documents for all the sectors. This multi-sector permit package will be returned to the regions for public notice in the *Federal Register* and local newspapers, the EPA documents suggest.

The regions also will take charge of the Clean Water Act "Section 401 review" of the package by nondelegated EPA states and will be responsible for making final model general permits available to the regulated communities in such states.

EPA Holding to Midsummer Schedule—So Far

In a May 11 interview, Ephraim King, branch chief of the National Pollutant Discharge Elimination System program, said EPA still is hoping to publish draft model general permits for public comments by midsummer. "We think that's ambitious, but we think there's a chance we can make it," King said.

King added that EPA is trying to respond to requests by regulated groups for meetings with the permit writers as the model general permits are

being written, but he emphasized that EPA cannot meet with every group and still meet the Oct. 1 deadline for issuing final general permits to group members. EPA is carefully considering the views of groups that have provided technical information and proposed their own industry-specific model general permits and model stormwater pollution prevention plans, King added, although "that doesn't mean we'll necessarily agree with everything they say."

Group Attorney Urges Reduced Monitoring

Attorney Jeffrey Longworth of Collier, Shannon, Rill and Scott, which has developed group stormwater applications for some 14 different industries, said in mid-May that "at least for the last couple of weeks, my personal experience has been that EPA has been more open and willing to discuss stormwater issues."

However, Longworth feared that EPA will be too pressed to meet the Oct. 1 deadline to consider carefully the comments that are offered following publication of the draft model general permits. He also argued that EPA will make a "mockery" of the entire group application process if, after considering the sampling and monitoring data developed by group members, it subsequently issues model general permits that are virtually identical to the EPA "baseline" general permit published last Sept. 2.

There is evidence from the sampling data that industrial facilities can enormously affect the levels of pollutants in their stormwater discharges by using the proper best management practices (BMPs), Longworth contended. He argued, therefore, that EPA should essentially drop most further sampling requirements both for group members whose use of BMPs already makes them relatively clean, and for group members in industries that are not yet using BMPs. The latter group should be encouraged to implement appropriate BMPs immediately rather than required to spend their stormwater budgets on unnecessary sampling and monitoring, Longworth said. In any case, EPA should reduce monitoring requirements for group members.

Kevin Bromberg, who has organized a new coalition of group members to monitor and influence the EPA model permit writing process, similarly argued that EPA should drop further monitoring requirements for groups, because "the right thing would be to recognize that probably 90 percent of the facilities in these groups are clean."

King, however, recently told the *Bulletin* that the volume of "part 2" monitoring data submitted by group members is much too large for EPA to determine yet whether most discharges by most group

EPA 'Sector' Assignments for Model Group General Permits

Sector	Responsible Region	Activities Represented
1	Headquarters	Lumber and Wood Products
2	Region 1	Paper and Allied Products
3	Region 2	Chemicals and Allied Products
4	Headquarters	Petroleum Refining and Related Industries
5	Headquarters	Stone, Clay, Glass and Concrete Products
6	Headquarters	Primary Metal Industries
7	Region 8	Metal Mining
8	Region 3	Coal Mining
9	Region 6	Oil and Gas Extraction
10	Headquarters	Mining and Quarrying of Nonmetallic Minerals
11	New Jersey	Hazardous Waste Treatment Storage or Disposal Facilities
12	Headquarters	Industrial Landfills, Land Application Sites and Open Dumps
13	Headquarters	Used Motor Vehicle Parts
14	Headquarters	Scrap and Waste Materials
15	Region 10	Steam Electric Power Generating Facilities
16	Region 6	Railroad Transportation
17	Headquarters	Local and Suburban Transit and Interurban Highway Passenger Transportation; Motor Freight Transportation; United States Postal Service; Petroleum Bulk Stations
18	Region 4	Water Transportation
19	Region 4	Ship Building and Repairing; Boat Building and Repairing
20	Headquarters	Transportation by Air
22	Region 6	Domestic Wastewater Treatment Plants
23	Headquarters	Food and Kindred Products; Tobacco Products
24	Region 4	Textile Mill Products; Apparel and Other Finished Products Made From Fabrics and Similar Materials
25	Region 4	Furniture and Fixtures
26	Region 4	Printing, Publishing and Allied Industries
27	Region 9	Rubber and Misc. Plastic Products
28	Headquarters	Leather and Leather Products
29	Headquarters	Fabricated Metal Products, Except Machinery and Transportation Equipment, Jewelry, Silverware, and Plated Ware
30	Headquarters	Industrial and Commercial Machinery (Except Computer and Office Equipment); Transportation Equipment
31	Region 9	Electronic and Other Electrical Equipment and Components Measuring, Analyzing and Controlling Instruments; Photographic and Optical Goods; Watches and Clocks
33	Headquarters	Industrial Activities Located at/on Military Facilities

members are either polluted or clean. King said in May that he anticipated that EPA will drop monitoring requirements for some industrial sectors; for others, however, sampling requirements are likely to remain.

Alternative Coverage Options Eyed

Carter and Burgess stormwater consultant John Whitescarver, who has organized a June 15 meeting of group members in the Washington, D.C., area to discuss EPA's draft model general permits, said that he believes EPA's model general permits will be "a lot more stringent than anyone has expected."

Whitescarver said he therefore has advised clients in the airport industry to "get a foot in both camps" by seeking coverage under EPA and state-issued general permits while still holding onto their group memberships and waiting to see what EPA will produce in the way of model permits. If permit conditions in the model general permits are disagreeable, group members can then abandon them for the regular general permits, Whitescarver suggested.

Whitescarver said, however, that it was still unclear whether EPA would institute a "freeze"

(Continued on page 6)

Group Model Permit

(Continued from page 5)

locking group members into their applications to prevent last-minute permit switching.

At press time, King told the *Bulletin* that EPA had not yet adopted a freeze. Whether EPA ultimately would adopt a freeze was "not clear yet," King added. He said, however, that EPA did not yet have any option memos or decision memos under development concerning a freeze.

Deadline Crunch Ahead?

Tennessee stormwater regulator Robert Haley recently raised a concern that some states may not be able to meet EPA's current Oct. 1 deadline for issuing final permits for all stormwater dischargers.

Because issuing any state general permit under Tennessee law requires at least six and one half months, Haley said in May, the state almost certainly cannot meet the Oct. 1 deadline for facilities that remain in groups even if EPA publishes draft model general permits immediately. Consequently, Haley suggested, Tennessee probably will ultimately require group members in the state to seek alternative permit coverage.

According to Longworth, however, some states have devised ways to finesse the deadline crunch. Longworth said New Jersey, for example, will require group members to file individual applications or seek a state general permit if final industry-specific general permits are still unavailable by Oct. 1. But then the Department of Environmental Protection and Energy (DEPE) will hold these applications in abeyance until they can be "rolled in" to New Jersey industry-specific general permits based on the model general permits, Longworth said. At press time, DEPE staff member Brian Appezzata essentially confirmed this scenario for handling New Jersey group members.

Although group members will be illegally discharging stormwater without permits if the states and EPA have not adopted industry-specific general permits by Oct. 1, as a practical matter, few judges are likely to uphold penalties against dischargers that have submitted applications, but have not yet received NPDES permits because of the inaction of regulators, Whitescarver said. ■

CORRECTION: In last month's notice of upcoming meetings on the group application issue, Whitescarver's telephone number in Northern Virginia was listed incorrectly (see *Bulletin*, May 1993, p. 3). The correct number is (703) 471-9196.

EPA Eyes Strategic Water Protection Plan

The U.S. Environmental Protection Agency's (EPA) Office of Water has produced a draft version of a strategic plan to guide federal water protection efforts into the next century, according to EPA official Jim Horne. Horne said a task force of about 10-15 senior staffers spent 12-18 months preparing the draft plan, which has been presented to four public meetings for comments by the general public and by various "stakeholders" in the water program.

Rensselaerville Institute consultants have reviewed comments on the draft, but Horne predicted that the Office of Water probably would delay publication of a final strategic plan until the Clinton Administration has named a new assistant administrator for water.

A 36-page draft of the plan published in January 1993 listed stormwater runoff, nonpoint-source pollution of surface water and groundwater, combined sewer overflows and wetlands destruction as "significant unaddressed or under-addressed risks" still remaining to be solved by EPA and other stakeholders in the water program.

The draft plan defined the water office's role as facilitating communication about water issues and acting as an international advocate for clean water, as well as providing "leadership and guidance; science, methods and data; oversight and accountability" on water issues. The draft further called on EPA to use risk-based priority setting and pollution prevention whenever possible, primarily to save money, and it identified several indicators for measuring EPA's progress.

Finally, the document outlined several proposed "strategic principles" for the water office. These include using watershed management "whenever feasible;" seeking an "optimal mix" of command-and-control regulations and alternatives for achieving environmental goals, strengthening "the capacity of our non-federal partners, primarily states and municipalities," to meet shared goals; developing and using "sound, implementable science;" managing money well; building a culturally diverse and highly skilled staff; and integrating environmental goals with other societal goals.

One purpose of the plan is to communicate the water office's priorities to the new assistant administrator, Horne acknowledged. It will then be up to the new assistant administrator to decide whether to publish the plan. EPA also indicates that the draft plan is related to development of overall "Tier 1" goals for the agency, which should be issued for discussion this year. ■

Storm Warnings

Stormwater-related News in Capsule Form

- **New York's General Permits Still Pending.** At press time, the New York Department of Environmental Conservation (DEC) still had not received approval from Region 2 of the U.S. Environmental Protection Agency (EPA) for the state's proposed final general permits for industrial stormwater dischargers and large construction sites. A DEC staffer, however, said that EPA had reviewed the state's industrial general permit and sent it back for a few last-minute corrections. DEC stormwater coordinator Ken Stevens reportedly was working on these corrections at press time and was unavailable for comment.
- **Rhode Island General Permit Deadlines Contain a Paradox.** The Rhode Island Department of Environmental Management (RIDEM) required industrial dischargers seeking coverage under the state's general permit to submit notices of intent for such coverage by April 19. However, notes RIDEM stormwater staffer Pete Duhamel, the state officially requires such dischargers to complete their stormwater pollution prevention plans (SWP3s) by April 1—before they had to apply for coverage. Duhamel explains that Rhode Island was a little late in issuing its general permits and has extended its application deadline to reflect this. The state did not wish to offend EPA by adopting a different SWP3 deadline, however. "I expect we'll be pretty flexible in enforcing the SWP3 provision," Duhamel assures the regulated community.
- **Montana General Permit for Mining, Oil and Gas Facilities Expected Soon.** According to Montana state stormwater official Roxann Lincoln, the state anticipates issuing a general permit for certain mining facilities and oil and gas operators by the beginning of June, after considerable controversy between the state and the regulated community over the idea. Provisions of the proposed permit resemble EPA's baseline provisions for stormwater regulation of mines and oil and gas facilities. Mining facilities would need to seek permit coverage only if they have stormwater contacting significant polluting materials, and oil and gas facilities would need general permit coverage only if they release "reportable quantities" of oil or other hazardous substances. Montana is one of eight states whose stormwater program descriptions are revised in this month's update to the *Stormwater Permit Manual*.
- **EPA's Browner Targets Watershed Protection as Key Clean Water Issue.** The Clinton administration is interested in working with Congress to address watershed protection and pollution prevention, EPA Administrator Carol Browner told the House Public Works Committee's Subcommittee on Water Resources and the Environment May 5. Browner also told the panel, which has held a series of hearings on Clean Water Act reauthorization under the direction of chairman Douglas Applegate (D-Ohio), that "funding issues associated with drinking water and wastewater treatment" and "water quality problems associated with polluted runoff from wet weather flows" are other key Clean Water Act issues needing attention this year (see related story, p. 1). Browner added that in addressing remaining water quality problems, the administration hopes to focus more on protecting the "physical and biological integrity" of watersheds and the links between groundwater and surface water.
- **NRDC to Publish New Book on Environmental Quality Trends Under Clean Water Act.** Surprisingly little analysis has been published on how well aquatic ecosystems have fared since Congress's original passage of the Clean Water Act in 1972, lobbyist Bob Adler of the Natural Resources Defense Council (NRDC) stated in April 22 testimony to the House Subcommittee on Water Resources and the Environment. Adler told the subcommittee that NRDC will "fill this gap" in water quality assessment in a new book scheduled for publication this summer by Island Press. The book will show that "at least a third of our rivers, half of our estuaries and more than half of our lakes are not meeting designated uses," Adler indicated.
- **Clean Water Act Should "Sunset" Use of Some Chemicals, Environmentalists Contend.** In amending the Clean Water Act, Congress should require the "sunset" or phasing out of industrial uses of the most dangerous chemicals, National Wildlife Federation representative Douglas Inkley told the House Subcommittee on Water Resources and Environment on April 22. The Wildlife Federation feels priority should be given to chemicals that bioaccumulate in the food chain, Inkley said. Testimony by the Sierra Club similarly urged Congress to "phase out persistent toxic releases as called for in the original Clean Water Act."

The Chemical Manufacturers Association (CMA) on May 12, however, urged panel members to "resist ... simplistic arguments in support of toxic use reduction," arguing that regulated chemicals are "essential raw materials in the manufacture of most every beneficial product we depend on and enjoy today." CMA also contended that the use of toxic chemicals does not automatically result in releases, that

(Continued on page 8)

an "ill-defined exercise in use reduction" could halt current progress in pollution prevention, and that pressures for use reduction could affect the global competitiveness of U.S. companies and "seriously undermine" intellectual property rights.

- **Stronger Water Act Enforcement Urged.** Congress should strengthen the Clean Water Act's enforcement provisions to "create greater incentives to comply with the law by setting mandatory minimum penalties for serious and chronic violators," lobbyist Carolyn Hartmann of the U.S. Public Interest Research Group testified before the House Subcommittee on Water Resources and Environment on April 22. Quoting from a recent General Accounting Office report, Hartmann suggested that Clean Water Act enforcement is "weak and sporadic," with many violators receiving "informal slaps on the wrist rather than formal actions such as administrative fines and penalties." To correct this, Hartmann recommended that Congress require states to develop mandatory penalty programs resembling New Jersey's Clean Water Enforcement Act.
- **House Panel Concludes Clean Water Act Hearings; Senate Should Start Soon.** The House Subcommittee on Water Resources and Environment has concluded its public hearings on Clean Water Act reauthorization, Rep. Applegate said May 12. In the Senate, an aide to Sen. Bob Graham (D-Fla.), chair of the Senate Environment and Public Works Committee's subcommittee on water, recently said that Graham plans to

hold a series of hearings this summer and begin marking up a Clean Water Act bill in the fall.

- **House Urged to Create 'Clean Water Trust Fund' Financed by Enforcement Penalties.** To balance environmental protection with economic concerns, Congress should pass a "National Clean Water Trust Fund Act," using fines and penalties collected in Clean Water Act enforcement actions to pay for various water cleanup projects, according to Rep. Peter J. Visclosky (D-Ind.). Visclosky recently introduced H.R. 1801, a new trust fund bill similar to his H.R. 2724 trust fund bill proposed in the last Congress.
- **Virginia Issues Four Draft General Permits.** On April 26, Virginia regulators approved four draft state general permits for stormwater dischargers. The four draft permits are for "light" industrial facilities; "heavy" manufacturing facilities; construction sites disturbing five or more acres of land; and stormwater from transportation facilities, landfills, land application sites, open dumps, material recycling facilities and steam electric power plants. The state Department of Environmental Quality (DEQ) will accept written comments on the draft permits until July 19. DEQ also has scheduled public hearings on the drafts: June 21 in James City County, June 23 in Roanoke County and June 30 in Prince William County. Contact S. Michele Hooper of DEQ for more information at (804) 527-5317. Written comments should be sent to Virginia Department of Environmental Quality, Water Division, 4900 Cox Road, Glen Allen, Va. 23060, ATTN: Doneva Dalton. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$349
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$397
- Underground Storage Tank Guide\$279
- Community Right-To-Know Manual\$324
- Guide to Used Oil Regulations\$249
- Ozone Depleter Compliance Guide\$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 2, Number 11

May 1993

Debate Continues Over EPA Plans for Group Applicants

As the U.S. Environmental Protection Agency (EPA) nears publication of its long-awaited "model" general permits for stormwater dischargers in approved group applications, controversy over the agency's plans for the groups is coming to a head.

At press time at least two private sector stormwater professionals say they are organizing coalitions and planning seminars for group applicants who wish to contest EPA's apparent plans for the group model general permits. EPA official Ephraim King, branch chief of the National Pollutant Discharge Elimination System (NPDES) program, meanwhile, suggests that some of the issues being raised by these professionals are based on misunderstandings of EPA's intentions.

There reportedly are agreements between EPA headquarters and some regional offices over who will take responsibility for developing model permits for certain groups, but at press time King indicated that at least a few regions still have not

specified which industrial sector model permits they will write.

In addition, conflict is flaring between the private sector and EPA over how stringent the model general permits should be, and also over rumors that once model general permits are available, some regions may not allow members to leave groups if they are unhappy with their model permits and wish to seek coverage under other EPA or state general permits.

Consultant John Whitescarver, formerly with Ogden Environmental and Energy Services and now with Carter and Burgess Engineering Co., is one vocal critic of EPA's apparent plans.

"We're going to end up having a battle royal between EPA and the group members," Whitescarver predicts, saying that EPA is now talking about locking group members into the model permits once they are developed, although "we've

(Continued on page 2)

Draft Nonpoint-source Bill Unveiled by Rep. Oberstar

A staff-produced, draft version of a proposed "Nonpoint Source Water Pollution Prevention Act of 1993" has been circulated for comment on Capitol Hill by Rep. James Oberstar (D-Minn.). Essentially, the draft legislation appears to provide for states to lose their funding for nonpoint-source pollution control programs under Section 319 of the Clean Water Act unless they designate targeted watersheds for priority efforts to control nonpoint-source pollution by certain dates specified in the draft bill.

(Continued on page 3)

Inside this issue. . .

- New Jersey Enforcement Brings Big Stormwater Penalties Page 4
- Runoff Link Unclear in Milwaukee Cryptosporidium Outbreak Page 6
- Stormwater Threats Seen to Coral Reefs, Gulf of Mexico Page 6
- Proposed Great Lakes Water Quality Guidance Issued Page 7

**Thompson
Publishing
Group**

Group Applications

(Continued from page 1)

always been able to tell people that if the groups don't work out, they could be covered by the general permits."

According to Whitescarver, EPA also is thinking of requiring group members utilizing certain processes to develop stormwater best management practices (BMPs) to cover those processes, regardless of the Standard Industrial Classification (SIC) codes of the companies involved. Given EPA's previous categorizing of dischargers by SIC codes, this could sow regulatory confusion, Whitescarver says.

Whitescarver also objects to EPA's stated intent for model general permit requirements for group members to be at least as stringent as the requirements of the September 1992 baseline industrial general permit. EPA's "baseline" requirements are derived partly from the National Urban Runoff Program (NURP) study in the early 1980s, he argues, but sampling results for many groups indicate that "industrial stormwater dischargers are a lot cleaner than the NURP study suggested."

The monitoring data indicate that in many groups, only the first flush of stormwater released during a storm event is likely to be contaminated, and even then at levels below those anticipated, Whitescarver says. Therefore, monitoring requirements should be reduced or dropped for members of these groups, and perhaps they should only be required to install BMPs to contain or clean up first-flush pollution.

"Our position is that the group model permits should not be any more stringent than the baseline general permit, but should be more tailored," Whitescarver said. On the positive side, Whitescarver said, EPA apparently is contemplating relieving group applicants of the first year or so of compliance monitoring under their stormwater pollution prevention plans (SWP3s) in acknowledgement of the monitoring data they already have generated. He added that Carter and Burgess has scheduled a June 15 meeting in the

Washington, D.C., area for group representatives to meet and discuss strategy concerning EPA's model permit proposals.

Another environmental professional scheduling public meetings for group members to coordinate strategies is attorney Kevin Bromberg, who heads a business coalition for relaxation of toxic release inventory reporting requirements for "de minimis" toxics dischargers under Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986 (*Bulletin*, March 1993, p. 4)

In an April 13 letter to potential members of his new "Industry Stormwater Coalition," Bromberg stated, "Our immediate objective should be to convince the regions and EPA of the value of reasonable BMPs and a reasonable monitoring plan validated by the Phase II monitoring data that show that more than 90 percent of the facilities are 'clean.'" The coalition will meet until July to try to "make EPA do the right thing" and assure that the money invested in group applications results in something, Bromberg said.

NPDES branch chief Ephraim King, in an interview in mid-April, indicated that persons may have misunderstood EPA's current position on whether group members will be locked in to model general permits once they are developed.

"A bunch of people are asking that question. It's one of the issues that we're sorting out right now, but I don't expect a decision on it for some time," King said. He said concern about the possibility is "premature" at this time, but emphasized that all group members currently have the option of dropping out of the groups and seeking general permit coverage. That course of action is one that some EPA officials, particularly in Region 6, have long recommended in hopes of reducing the agency's work load.

King added that EPA has always said that model general permits will be at least as stringent as the "baseline" general permit, if not more so. But he said EPA will base model general permit requirements on data received through the group applications. This could result in sampling requirements for certain parameters for some industries being



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

eliminated, although other industries could conceivably face added monitoring, King said.

If group monitoring indicates that certain BMPs are effective for certain industries, King said, the model permits may specify that group members should implement those BMPs, or at least may recommend their use. EPA's bottom line is that SWP3s and BMPs for group members must be at least as effective as those required under the baseline general permit, King indicated. But, "we do expect that the model general permit requirements will be more tailored."

Some group members have indicated that they do not wish for non-group members in their industries to be eligible for coverage under the model general permits unless they have helped pay to develop those permits, King added. EPA understands the position of such group members, King said, but its chief concern must be ensuring that all dischargers implement SWP3s to protect water quality.

Attorney Jeffrey Longworth of Collier, Shannon, Rill and Scott in Washington, meanwhile, said there may be some semantic confusion over what EPA means when it says model permits will be "just as stringent" as the baseline permit. EPA is thinking about requiring specific BMPs in some model permits, Longworth said. But "although this may mean more requirements in the model permits, it doesn't necessarily mean you have to spend more money or do more work."

King confirmed that EPA will publish proposed model general permits in the *Federal Register* for public comment for those states where it directly administers the NPDES program. In NPDES-delegated states, King said, publication and public comment procedures will be up to state authorities.

For more information on Whitescarver's June 15 group member meeting, call (707) 777-9384. For more information on Bromberg's coalition, call Bromberg or John Oliver of Resource Consultants at (703) 284-7686. ■

Draft Nonpoint-Source Bill

(Continued from page 1)

States subsequently would need to adopt management plans for these watersheds, including "enforceable mechanisms" for requiring landowners to control nonpoint-source runoff.

In addition to losing their Section 319 program funding, states not complying with the provisions of the draft bill could be denied U.S. Environmental Protection Agency (EPA) approval of new wetlands filling and dredging permits under Section 404 of the Clean Water Act. They also could be denied new National Pollutant Discharge Elimination System (NPDES) wastewater discharge and stormwater discharge permits under Section 402 of the Clean Water Act. Reissuance of existing Section 402 and 404 permits in noncomplying states probably would continue, however.

States or local governments would require landowners affected by the proposed law to carry out "site-level" programs for pollution control. In doing so, the states would be required to consider "the economic circumstance of the land owner or operator" and "the likelihood that a site-level program can be implemented using least-cost, most effective management measures with least adverse economic impact," as well as the site's relative importance to the cleanup of the watershed.

Landowners also could be excused from site-level program requirements if they already were

covered by a "qualified program" of conservation and environmental protection such as the Conservation Reserve Program established by the 1985 Food Security Act, the land protection programs established by the Chesapeake Bay Preservation Act, and several other federal farm conservation programs.

According to an aide, Oberstar is "looking to build more of a consensus on the staff draft before we introduce this as a bill. We're willing to meet with anybody to hear their views on the proposal, so we can deal with the issues raised."

Marchant Wentworth, an environmental lobbyist for the Izaak Walton League, said that Oberstar probably will not introduce the draft as a separate bill in the House, but will instead seek to attach it to an overall Clean Water Act reauthorization bill that will likely be developed this year in the House Public Works Committee's Subcommittee on Water Resources chaired by rural Ohio legislator Rep. Douglas Applegate (D-Ohio).

Wentworth also predicted that EPA probably will not endorse the Oberstar approach, preferring instead to improve the Clean Water Act's existing Section 319 program for nonpoint-source pollution control, which is largely voluntary. "The environmental position is that the voluntary control program has been tried and hasn't worked, and so we're going to make it mandatory," Wentworth said. At press time, no hearings had yet been scheduled on the Oberstar proposal. ■

Some New Jersey Dischargers Facing Big Penalties

Susan E. Hoffman is a partner with Cohen, Shapiro, Polisher, Shiekman and Cohen, an environmental law firm with offices in New Jersey and Pennsylvania. Hoffman has an undergraduate degree from Bowling Green State University, a masters degree in aquatic ecology from Northern Michigan University, and a law degree from Duquesne University. Upon graduating from Duquesne in 1983, she worked for two years in the Environmental Enforcement Section of the Ohio Attorney General's Office. In 1985 she left state government to join the Columbus, Ohio, law firm of Squire, Sanders & Dempsey, where she worked in the environmental law section until joining Cohen, Shapiro in New Jersey in 1988. Hoffman's work exposes her to the full gamut of environmental cases, but in recent years has focused increasingly on hazardous waste, solid waste, wetlands, stream encroachment and water discharge regulation, including stormwater regulation. Recently she has been involved with around a dozen enforcement cases in which the New Jersey Department of Environmental Protection and Energy (DEPE) has attempted to impose significant penalties on stormwater dischargers. The following is excerpted from a longer interview with Hoffman by Thompson Publishing Group (TPG) on April 13, 1993.

TPG: What's the context in which DEPE is now bringing stormwater enforcement actions? Are these cases being brought under the 1990 National Pollutant Discharge Elimination System (NPDES) stormwater permitting regulation? Or do they mostly involve stormwater limits in older NPDES permits for process wastewater?

HOFFMAN: They primarily involve stormwater limits in older permits. New Jersey, for a number of years, has been issuing permits for certain industrial dischargers, generally in the context of regulating both stormwater and non-contact cooling water. Many, many industrial facilities discharge non-contact cooling water, and largely because of additives that companies may use to prevent the fouling of their boilers or their lines, DEPE determined that they had to monitor their discharges and meet effluent limitations on what they release into receiving waters. Many of these facilities historically utilized the same outfalls for non-contact cooling water and stormwater discharges, but stormwater was generally incidental to the overall discharge.

Non-contact cooling water generally is very clean. Stormwater, of course, is not necessarily always clean, depending on the facility that's being drained, the topography, the duration and intensity of the storm event, and other factors. But when facilities discharged large volumes of cooling water from their outfalls along with small, relatively minor quantities of stormwater flow, whatever contaminants the stormwater was picking up often were almost impossible to detect. If you had a state permit

with limits for stormwater discharges and non-contact cooling water, you really had no problems complying with the permit.

However, in recent years many facilities have been discontinuing direct discharges of non-contact cooling water, for a number of reasons. When you do that, when you take all the non-contact cooling water out of a permitted discharge, all you're left with in some cases may be your stormwater. And your stormwater is not going to behave the same as the cooling water discharge.

TPG: And because of this change from combined discharges of cooling water and stormwater to stormwater only, facilities are violating their permit conditions?

HOFFMAN: Yes, there are a lot of facilities that have violated these old permits. The permits in question really were intended primarily for non-contact cooling water, and their limits were not derived to apply to stormwater only. In some cases, it is almost impossible for stormwater discharges to meet those limits. In almost every case that I am familiar with, the limits when they were written also did not take into consideration site-specific factors, such as the site topography, the amount of ground cover on site, the type and erosion characteristics of the soil, or the acidity of the rainfall received on site. That's an important factor at some sites, over which there's virtually no control.

"In some cases, it is almost impossible for stormwater to meet the old effluent limitations"

TPG: Can you give an estimate of how many facilities in New Jersey face this problem?

HOFFMAN: I would guess that there are probably a couple of hundred facilities in New Jersey that may have permits of this sort—permits that were initially issued primarily to control discharges of non-contact cooling water, but may or may not have cooling water now. Out of these facilities, a good number that I am familiar with have discontinued their non-contact cooling water discharges and are left with only stormwater discharges. I would say a high percentage of these are not able to achieve their permit limits consistently.

For many years, a lot of people in New Jersey, whether they were in industry or municipalities, kind of sat back and accepted their permits, whatever those permits looked like, because they felt that they understood what the state would or wouldn't

do regarding those permits, and they felt that they could live with it. Often permits were not appealed even if the limits were difficult or impossible to meet, because it was felt that the state would use some reason or discretion in their enforcement. There was also a lot more legal discretion that the state had at that time. That all changed with the state's 1991 Clean Water Enforcement Act, which established mandatory enforcement requirements. So now companies are finding themselves with permits they can't live with, whose limits are impossible to meet regardless of what technology or treatment methods they might apply. And the law mandates enforcement of these permits, no longer giving DEPE the discretion it once had.

TPG: What kinds of penalties is DEPE proposing for these facilities?

HOFFMAN: The department has some limitations on what it can do with respect to penalties. The statute authorizes DEPE to assess penalties of up to \$50,000 a day for each violation, which means each violation of a separate parameter at a separate outfall. Obviously the more outfalls your facility has, the greater your risk is. But in fact, DEPE uses a penalty matrix that has been codified in regulations and that looks at two major factors. One factor has to do with how serious the violation is, the other looks at the conduct of the discharger and is a little more subjective, depending on DEPE's perspective: How much effort is the facility making in trying to address the problem? Was the violation caused by some intentional action on the part of the discharger, or was the discharger negligent in not addressing the problem? They scale those things out and come up with a baseline penalty. It's not unusual to see penalties of \$10,000, \$20,000 or even \$30,000 for each individual excursion. And I've seen penalty assessments in the hundreds of thousands of dollars, simply for stormwater discharges.

TPG: I don't know if you can answer this without violating attorney-client privilege, but how should a company go about defending against a penalty of this kind?

HOFFMAN: I can give you some generic thoughts on this. Obviously, each case is separate, and there are unique factors that need to be identified and addressed in each specific situation. Unlike the DEPE's permits, in fact, we look for site-specific factors when we evaluate these kinds of cases to see what may be influencing the quality of the discharge. The best overall solution, of course, is pollution prevention. But after the fact, once you've had violations and been hit with a penalty assessment, there are certain things a company should probably do. The first, of course, is to be sure to file an appeal in timely fashion. In New Jersey, if you don't appeal a penalty assessment within 20 days, the penalty becomes final and they send you the bill, and you have to pay it. But if you file an appeal, you

can sit down and negotiate with DEPE. More often than not, these cases are resolved through negotiated settlements rather than through a trial or a hearing.

What can companies do in terms of pollution prevention? We advise clients to study whatever system they have and make sure everything is functioning properly. For instance, check the storm drainage system and make sure you haven't accumulated leaves or dirt or debris in the catch basin, which can add to continual violations. Use best management practices: if you have bare ground, vegetate it, and if you have dirt roadways, pave them. Use curbing or some other structural or topographic feature to break the flow of water. Keep roadways clean—that sort of thing. Use salt or other chemicals that you use for snow and ice control prudently.

But there are some things that are almost beyond a facility's control. Acid rain, for example: the permits say your discharge must be between pH 6 and pH 9, but I've seen acid rain in New Jersey with a pH of 4.5. When you have acid rain like that, it can leach additional materials out of the soil or out of galvanized roofing, and this will add to the pollutants you have in your storm flow. That can be

"It's not unusual to see penalties of \$10,000, \$20,000 or even \$30,000... and I've seen assessments in the hundreds of thousands just for stormwater"

important in terms of whether you meet permit limits. If you sample for pH as early during a storm event as possible, and if you find that the rainwater's pH is as low as or lower than the pH of the discharge, you may have an affirmative defense. This is called an upset, and under New Jersey's rules you have to call the state within 24 hours of discovering it to report such an upset. You then follow up the call with a written report within five days, including as much information about the upset as you've been able to assemble. DEPE is supposed to look at these upset defenses when they're raised and make determinations on them, but in fact, they very often do not. That seems to be up to the individual inspector. Another upset condition for some facilities in tidally influenced areas may be high tides that bring salt water onto a permittee's property, causing permit limits to be exceeded.

TPG: You've filed appeals of stormwater enforcement penalties for several clients. How are these appeals usually disposed of?

HOFFMAN: Most of them that I'm familiar with, that have been resolved, have resulted in negotiated settlements. In some cases involving past penalties only, where there's no need to do any construction or design work to eliminate a current problem, the

(Continued on page 8)

Storm Warnings

Stormwater-related News in Capsule Form

- **EPA Proposes to Change Puerto Rico General Permit Requirements.** The U.S. Environmental Protection Agency (EPA) on April 14 published a *Federal Register* notice proposing several changes in the "baseline" general permit requirements for industrial stormwater dischargers in the Commonwealth of Puerto Rico (58 FR 19427). Public comments on the changes were due by May 12. For more information on the proposed changes, contact the EPA Stormwater Hotline at (703) 821-4823 or Jose Rivera or Anne Reynolds at EPA Region 2 in New York City, (212) 264-2911.

- **Runoff Link to Milwaukee Cryptosporidium Outbreak Said To Be Uncertain.** News reporting on the recent outbreak of diarrhea, vomiting and fever cases in Milwaukee suggested that the city's water supply was one source of the *cryptosporidium* protozoans apparently causing the symptoms. News reports also suggested that the source of the microbes may have been runoff from livestock wastes carried by spring snow melt into the Milwaukee River and Lake Michigan.

In an interview with the *Bulletin* at press time, however, the director of the Wisconsin Department of Natural Resources Bureau of Water Supply, Bob Krill, said initial tests at Milwaukee's Howard Avenue water treatment plant showed only one cryptosporidium cyst present per 50 liters of water. Initial tests at the city's Linwood treatment plant showed just one cyst present per 74 liters of water, Krill said. Krill indicated that sources that could have contributed the protozoans to Milwaukee's water supply inlet located in Lake Michigan include a local municipal sewage treatment plant discharging into the lake, urban stormwater runoff from sources upstream along the Milwaukee River and agricultural runoff flowing into the river. Given all the possible sources, Krill predicted, "We may never be able to pinpoint a cause of this event." Krill acknowledged that "There is certainly room for improvement" in Wisconsin's control of runoff, but said that as director of the State Bureau of Water Supply, he has no major complaints about runoff contamination, in large part because Wisconsin communities rely heavily on the relatively clean waters of Lake Michigan as a source of raw drinking water.

- **Wisconsin Conducts State-of-the-Art Study on Stormwater Sampling.** Wisconsin's Department of Natural Resources is conducting innovative stormwater sampling at several industrial facilities that volunteered their sites for the study, state officials report. The corporations

reportedly include Warman International, Johnson Wax, AC Delco, AC Rochester, PPG Industries and another company that has asked not to be named, according to Aicardo Roa-Espinoza, one of the researchers involved. Roa-Espinoza says the study, which is being carried out under an EPA grant, will involve placing "source samplers," basically consisting of polyvinyl chloride bottles dug into the ground, at various places at an industrial site to determine the exact pollutant loadings coming from particular areas, such as roofs, employee parking lots, and loading and unloading areas. One goal is to determine the relative merits of flow-weighted and time-weighted composite samples, Roa-Espinoza said. Richard Dodds, a co-researcher, is writing a manual for stormwater self-monitoring by industrial facilities. According to Dodds, a draft for external peer review was expected in April.

- **Sediment, Stormwater Runoff Implicated in Destruction of Coral Reefs.** Sedimentation caused by various coastal development activities is probably the foremost factor behind destruction of tropical reefs around the world, according to Worldwatch Institute's *State of the World 1993* report. "On a global scale, other impacts seem insignificant by contrast," writes one researcher. Heavy coastal development and growing population densities spark most of the sedimentation, according to the report. These factors also cause the release of "sewage, industrial pollution and urban runoff" that "lower water quality and harm reefs." Although much of the destruction is in the Third World, Florida and Hawaii also are suffering losses. The report cites Clive Wilkinson of the Australian Institute of Marine Science as estimating that humans have killed 5 percent to 10 percent of the world's living coral reefs and will destroy another 60 percent within 20-40 years, at least if current trends continue. This estimate may be too optimistic because it does not consider the likely impacts of global warming and ozone depletion, Worldwatch suggests.
- **Stormwater Runoff Portrayed as Major Threat to Mississippi River, Gulf of Mexico.** The single largest threat to the biological health of the Mississippi River and the Gulf of Mexico is nonpoint-source pollution, according to a recent press release from Mote Marine Laboratory, an environmental research center coordinating the federal government's "Year of the Gulf of Mexico" media campaign. "In fact, some scientists say the largest threat to the Gulf comes from stormwater runoff ... one issue over which homeowners have control," the release adds. Mote says homeowners can substantially reduce pollution of the Mississippi and the Gulf by using

fertilizers and pesticides judiciously, disposing of toxic substances properly, properly maintaining septic tanks and fixing oil leaks from automobiles. On May 12, Mote Marine Laboratory will instruct 1,000 students in 10 Mississippi River watershed states on how to test water for phosphates and nitrates. Cosponsors of the project include EPA, the U.S. Army Corps of Engineers, the Soil Conservation Service and the Clorox Company Foundation.

- **Clinton's Budget Proposal Shrinks EPA Water Program Funds; Focuses on 'Wet Weather' Programs, Infrastructure.** The Clinton Administration's budget proposal for fiscal year (FY) 1994 would shrink EPA spending on water quality programs by \$20.5 million and reduce staffing levels by 119 work years compared to FY 1993 levels, according to a budget summary released in April. That would leave the clean water program with \$464.4 million in funds and 2,207 positions. Support for the Safe Drinking Water program also would fall slightly, by \$1.5 million and 22 work years. The White House proposes to spend a total of \$2.9 billion in FY 1993 and FY 1994 (including \$845 million from its proposed Economic Stimulus Package) to complete federal capitalization of the State Revolving Fund (SRF) program used by states for loans to finance local sewage treatment plant construction. Clinton also will request \$80 million for nonpoint source pollution control grants to the states.

The budget summary proposes to create two new state revolving funds involving water: a Safe Drinking Water Fund and a proposed "Clean Water State Revolving Fund" that states could use not only for wastewater treatment, as the current SRF is used, but also for "a wide array of water quality activities such as nonpoint source control, implementation of national estuary plans, stormwater control and control of sewer overflows that result from wet weather events." Overall, the summary states that the administration's budget will emphasize "solutions to the pervasive problems of wet weather runoff ... through enhanced monitoring, pollution control and enforcement."

The Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) has criticized parts of the budget proposal, saying, among other things, that the proposed speedup in SRF contributions would come at the expense of SRF funding in later years and that the administration is essentially proposing to create a new Safe Drinking Water Fund at the expense of weakening the existing SRF.

- **EPA Publishes Proposed Great Lakes Water Quality Initiative Guidance.** On April 16, EPA published a massive Great Lakes Water Quality Initiative water quality proposal in the *Federal Register*, setting forth mechanisms for coordinating water quality standards set by the eight Great Lakes states for 32 persistent, bioaccumulative chemicals. The proposal also would establish a standard procedure for implementing antidegradation requirements in the Great Lakes watershed; eliminate so-called "mixing zones" for Great Lakes dischargers of the targeted chemicals; establish for the first time stringent criteria to protect wildlife from four classes of chemicals; and outline innovative techniques for setting water quality "values" for persistent bioaccumulative toxics for which there is currently too little data to establish water quality "criteria" for protecting aquatic life.

Chemicals directly affected by the proposal include DDT and metabolites, mercury and methyl mercury, polychlorinated biphenyls, 2,3,7,8-TCDD dioxin, arsenic (III), benzene, cadmium, chromium (III), chromium (VI), copper, free cyanide, chlordane, chlorobenzene, dieldrin, 2,4-dimethylphenol, 2,4-dinitrophenol, endrin, heptachlor, hexachlorobenzene, hexachloroethane, lindane, methylene chloride, mercury (II), nickel, parathion, pentachlorophenol, phenol, toluene, toxaphene, trichloroethylene, total selenium and zinc.

According to EPA, the proposal would primarily affect 316 "major" municipal dischargers, 272 "major" industrial dischargers, and around 3,795 minor dischargers covered by National Pollutant Discharge Elimination System permits in the Great Lakes states. Approximately another 9,000 U.S. factories discharge wastes into the watershed through municipal treatment plants, EPA says. The April 16 proposal does not include new controls on stormwater runoff or nonpoint source runoff by agriculture, which EPA plans to address in future guidance.

EPA has scheduled a 150-day public comment period on the April 16 proposal as well as an Aug. 4-5 public hearing in Chicago. For schedules on other EPA public informational meetings, call (800) 621-8431 for states in EPA Region 5, (215) 597-6911 for Pennsylvania and (716) 285-8842 for New York. Public comments in quadruplicate should be sent to Wendy Schumacher, Water Quality Branch (WQS-16J), U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, Ill. 60604.

New Jersey Penalties

(Continued from page 5)

settlement may only involve the facility paying a monetary penalty. Many settlements, however, require the companies to do something: maybe build or enlarge a sediment basin or do further studies of a facility to help derive site-specific effluent limits. The settlement requirements are itemized in an administrative consent order, or ACO, that sets out the penalty you have to pay, the things you're going to do in the future, and the schedule by which you have to do them.

TPG: Does it make sense to ask you as an attorney if you've been satisfied with the negotiated settlements you've seen for your clients?

HOFFMAN: [Laughing] I don't think it's a very good question. Every case is different. I've seen instances where the penalty assessment is under \$50,000. I've also seen instances where the settlement amounts are more than a couple hundred thousand dollars. The amount all depends on how many violations there were, how long they continued, what efforts the companies may have taken to correct them, and what problems they've had. ■

Stormwater Permit Compliance Package Now Available

Contributing editor Dr. Jerry R. Perrich, P.E. has put together a complete video package that will simplify your sampling and preparation of your stormwater pollution prevention plan, and provide excellent training for your stormwater management team.

With videos and a companion workbook, the *Stormwater Permit Compliance Package* provides you with the information you need to execute your stormwater program with confidence. The two 40-minute videos, "Preparing Your Stormwater Pollution Prevention Plan," and "Monitoring and Sampling Storm Water Discharges," demonstrate exactly what steps you need to take.

Dr. Perrich, a nationally recognized expert in the EPA stormwater permitting program, is featured in the videos. His presentation, coupled with the supporting documents in the package, make the stormwater permitting and monitoring process more understandable and manageable.

The *Stormwater Permit Compliance Package* includes both videos, a workbook, precipitation databook, EPA reference documents, and storage binder, and sells for \$695. To order your package call toll-free at (800) 879-3169, or write to: Thompson Publishing Group, Attn: MHW, 1725 K St., NW, Suite 200, Washington, D.C. 20006. Payment must accompany order. Make checks payable to VBS Productions. VISA, MasterCard and American Express also accepted.

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$349
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$397
- Underground Storage Tank Guide\$279
- Community Right-To-Know Manual\$324
- Guide to Used Oil Regulations\$249
- Ozone Depleter Compliance Guide\$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 2, Number 10

April 1993

GROUP APPLICATIONS:

EPA Seeks Regions' Signoff on List of 32 Industrial 'Sectors'

Industrial stormwater dischargers that have submitted group permit applications approved by the U.S. Environmental Protection Agency (EPA) may soon see greater EPA action in generating "model" general permits for broad industrial sectors covered by the groups. At press time, EPA headquarters confirmed that it had drawn up a list of 32 industrial sectors for which it hopes to generate model permits.

Cynthia Dougherty, director of the Permits Division for EPA's Office of Wastewater Enforcement and Compliance, signed the list March 17 and sent it to all EPA regional offices requesting that each choose the sectors for which regional staffers would like to write model general permits, said Ephraim King, chief of the National Pollutant Discharge Elimination System (NPDES) program branch.

EPA headquarters hopes to have official responses by the end of March, King said.

"Right now, we're hoping to develop model stormwater general permits for these 32 industrial sectors by mid-summer, although that may be overly ambitious," King said. "Along with the model general permits, we hope to have fact sheets to distribute to the states by then so that they can evaluate the model permits. To the extent that they believe the model general permits are appropriate, they can then propose and issue them."

In a move that generated a great deal of controversy, EPA last year indicated that it was facing a serious staffing and funding problem in writing "model" general permits for groups, mostly because far more industrial dischargers had used the group application process than EPA originally anticipated when it issued stormwater permitting regulations in 1990 (*Bulletin*, November 1992, p. 1).

When EPA's "baseline" general permits for states without NPDES delegation were released in September

(Continued on page 2)

STATE SURVEY:

New York General Permit Not Available—Yet

At press time, New York state regulators still had not issued their final state general permits. State stormwater coordinator Ken Stevens earlier expressed hope that the final permits would be published by March 1 (*Bulletin*, March 1993, p. 1). On March 22, though, Stevens said it had taken longer than expected to get all the necessary internal Department of Environmental Conservation (DEC) signatures for general permit proposals for delivery

(Continued on page 4)

Inside this issue. . .

- Workshops on Pollution Prevention Plans Offered Page 4
- Eight 'Phase II' Options Discussed in EPA Workshops Page 5
- Wisconsin Sampling Shows Serious Pollution in Municipal Stormwater Page 6
- House Starts Hearing on Clean Water Act Page 6

**Thompson
Publishing
Group**

Group Applications

(Continued from page 1)

ber 1992, Michael Cook of EPA's Office of Wastewater Enforcement and Compliance urged group applicants to consider the economic advantages and disadvantages of dropping out of groups and seeking coverage under state- or EPA-issued baseline general permits.

Consultants who had developed group permit applications for trade associations, however, insisted that EPA was legally and morally obligated to produce the model general permits. Some further argued that group members should be exempted from further requirements to prepare stormwater pollution prevention plans (SWP3s) until EPA issued their model general permits—regardless of the agency's staffing difficulties. By investing in group applications, some consultants suggested, group members had legitimately purchased a postponement of their need to comply with costly SWP3 requirements.

EPA Region 6 replied that group members who had submitted approved applications before Oct. 1, 1992, but had not received model general permits by that date, would technically be discharging stormwater without a permit, in violation of the Clean Water Act.

Both Cook's suggestions to group members and Region 6's warnings were received with considerable dissatisfaction by certain consultants, notably John Whitescarver of Ogden Environmental and Energy Services and Jeff Longworth of the Washington law firm of Collier, Shannon, Rill and Scott.

In response to the controversy, EPA announced an apparent compromise whereby it would seek help from the regions to expedite the writing of model permits. But early this year, EPA headquarters announced that it faced even more extensive funding difficulties with the group application process than previously expected (*Bulletin*, February 1993, p. 1), suggesting the potential for added delays.

Now it appears that the process of writing model general permits may be speeded along much faster

than anyone anticipated last fall, although at the expense of consolidating hundreds of group applications into just 32 permit sectors. EPA also is insisting that group applicants, by waiting for model permits, will not gain permit requirements that are any less stringent than those in EPA's baseline general permit.

EPA has met with representatives from a number of approved groups and said that if such groups wish to develop proposed best management practices (BMPs) for inclusion in model SWP3s, the agency will be happy to look at them, King said. But he added, "We have emphasized to them that this is not an opportunity to come up with general permit requirements that are inherently less stringent than those we issued in September."

"We think the September general permits represent baseline requirements that are appropriate," King added. "What we have emphasized is that we see development of the model general permits as an opportunity to tailor the general permits so that they are more specific in covering particular industries. We have no interest in asking particular industrial sectors to pursue BMPs that have no environmental benefits. In this sense, industries do have a chance through developing proposed BMPs for their model general permits to promote the use of some BMPs over others."

EPA's quicker-than-expected schedule for writing model permits is shaped partly by the new Oct. 1, 1993, deadline the agency recently adopted for issuing permits for most industrial stormwater dischargers in response to a lawsuit by environmentalists (*Bulletin*, February 1993, pp. 1, 3), King said. EPA will strive to issue model general permits in time for states to adopt them and issue them by Oct. 1, he explained. "It is a deadline we take seriously."

Washington, D.C., sources indicated a few weeks ago that EPA headquarters had chosen seven particular industrial sectors for which it would take the responsibility of producing model general permits (*Bulletin*, March 1993, p. 1). However, King said headquarters does not want to specify at this time which sectors it will handle. "This really will be a joint headquarters/regional office effort," King



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

said. "If one of the regions says it really has to write the general permit for a certain sector, whatever it is, we're likely to agree."

The 32 industrial sectors outlined in the list sent to the regions are listed below. Originally the list contained an additional category, covering industrial activities located on military facilities, but these have been broken up into constituent groups and redistributed among the remaining categories. The 32 industrial sectors are:

- lumber and wood products (Standard Industrial Classification (SIC) code 24);
- paper and allied products (SIC code 26);
- chemicals and allied products (SIC code 28);
- petroleum refining and related industries (SIC code 29);
- stone, clay, glass and concrete products (SIC code 32);
- primary metal industries (SIC code 33);
- metal mining (SIC code 10);
- coal mining (SIC code 12);
- oil and gas extraction (SIC code 13);
- mining and quarrying of nonmetallic minerals (SIC code 14);
- hazardous waste treatment, storage and disposal facilities;
- industrial landfills, land application sites and open dumps;
- used motor vehicle parts (SIC code 5015);
- scrap and waste materials (SIC code 5093);
- steam electric power generating facilities;
- railroad transportation (SIC code 40);
- local and suburban transit and interurban highway passenger transportation (SIC code 41), motor freight transportation (SIC code 42), and U. S. Postal Service (SIC code 43);
- water transportation (SIC code 44);
- shipbuilding and repairing (SIC code 3731) and boat building and repairing (SIC code 3732);
- transportation by air facilities (SIC code 45);
- petroleum bulk stations and terminals (SIC code 5171);
- domestic wastewater treatment plants;
- food and kindred products (SIC code 20) and tobacco products (SIC code 21);
- textile mill products (SIC code 22) and apparel and other finished products made from fabrics

- and similar materials (SIC code 23);
- furniture and fixtures (SIC code 25);
- printing, publishing and allied industries (SIC code 27);
- rubber and miscellaneous plastic products (SIC code 30);
- leather and leather products (SIC code 31);
- fabricated metal products, except for machinery and transportation equipment (SIC code 34), and jewelry, silverware and plated ware (SIC code 29);
- industrial and commercial machinery (SIC code 35) except for computer and office equipment (SIC code 357), and transportation equipment (SIC code 37);
- electronic equipment and other electrical equipment and components (SIC code 36), computer and office equipment and components (SIC code 357), and measuring, analyzing, and controlling instruments, photographic and optical goods, and watches and clocks (SIC code 38); and
- miscellaneous manufacturing industries (SIC code 39, except for SIC code 391). ■

Late News

Group Public Comment Opportunity Predicted

Just at press time, consultant John Whitescarver reported that at a meeting with the American Trucking Associations (ATA) on March 17, a lower-level EPA staffer predicted that EPA will publish one model stormwater general permit covering all group members, but with separate monitoring requirements for various industrial sectors.

The staffer indicated that the package will be published in the *Federal Register* in mid-June with a 30-day comment period, Whitescarver said. Whitescarver praised EPA's apparent plan to offer a comment period, but said 30 days is not enough time.

ATA environmental affairs director Allen Schaeffer confirms the gist of Whitescarver's report. Schaeffer added that ATA questions EPA's apparent plan to require continued monitoring by trucking firms who have already developed sampling data for their Part 2 group application. At press, it is unclear just how these monitoring requirements will affect other industrial group applicants. EPA staff could not be reached in time to comment on this story. ■

State Survey

(Continued from page 1)

to Region 2 of the U.S. Environmental Protection Agency (EPA).

The state's proposed industrial general permit, with all the necessary signatures, was delivered to Region 2 in early March, but had not yet received EPA approval, Stevens said. New York's proposed general permit for construction site stormwater dischargers, under development by DEC's Bureau of Water Quality Management, was nearly ready for release to Region 2, but had not yet received all needed DEC signatures, a staffer said on March 22.

Wisconsin, another state that has issued proposed general permits, also had not published permits in final form by mid-March. According to Kimberly Knudsen, a stormwater staffer with the Wisconsin Department of Natural Resources (DNR), the draft form of the state's industrial general permit would require monitoring by at least some discharges but would not require that monitoring be done until 30 months after the general permit's issuance.

Wisconsin probably will not require development of stormwater pollution prevention plans (SWP3s) until 12 months after the industrial general

permit is issued, Knudsen added. Implementation of industrial SWP3s probably will be required 24 months after permit issuance.

According to DNR staffer Shelly Schueller, Wisconsin's general stormwater permit for construction activities probably will require submission of a notice of intent form 14 days before construction begins, rather than the two days that EPA is requiring under its "baseline" general permit for construction sites in states without delegation for the National Pollutant Discharge Elimination System. A proposal allowing DNR to levy fees for stormwater general permit coverage was before the state legislature in early March, Schueller said.

Updates on stormwater programs in the following states are included in this month's update to your *Stormwater Permit Manual*:

¶890.2. Alaska	¶890.15. Indiana
¶890.4. Arkansas	¶890.17. Kansas
¶890.6. Colorado	¶890.28. Nebraska
¶890.7. Connecticut	¶890.42. South Dakota
¶890.13. Idaho	¶890.48. Washington
¶890.14. Illinois	¶890.55. Puerto Rico ■

Conferences and Seminars

By the U.S. Environmental Protection Agency and Science Applications International Corp. (SAIC). Contact Kelly Zinzer, SAIC, at (703) 734-2547 or the Stormwater Hotline at (703) 821-4823. Normally, the first day of a two-day workshop is for the public and the regulated community; the second day is for state regulators. Check ahead; dates are subject to change.

- "Introduction to Industrial and Construction Site Stormwater Pollution Prevention Plan Development," April 20-21, Kansas City, Mo.; April 26-27, Toledo, Ohio; May 4, San Juan, Puerto Rico.; May 6, Mayaguez, Puerto Rico; May 18-19, Seattle; May 20-21, Boise, Idaho; May 24-25, Minneapolis; May 26-27, Chicago; May 27-28, Dallas.

By Southern California Chapter of Water Resources Committee, American Public Works Association (APWA). Contact Barrie Broadway (APWA), c/o City of Sacramento, 5770 Freeport Blvd., Suite 200, Sacramento, Calif. 95822; (916) 433-6276. Fees: \$75 for one workshop, \$140 for two workshops,

\$195 for three workshops. Make checks payable to APWA.

- "Best Management Practices for Stormwater Permit Compliance," based on Municipal BMP Handbook developed by California's State Stormwater Quality Task Force. April 29, 8:30 a.m. to noon, Radisson Hotel, Sacramento, Calif.; April 30, 1 p.m. to 4:30 p.m., same location.
- "Best Management Practices for Stormwater Permit Compliance," based on Construction BMP Handbook developed by California's State Stormwater Quality Task Force. Workshop April 29, 1 p.m. to 4:30 p.m., same location as above.
- "Best Management Practices for Stormwater Permit Compliance," based on Industrial/Commercial BMP Handbook developed by California's State Stormwater Quality Task Force. April 30, 8:30 a.m. to noon, same location as above. ■

EPA Seeking Comments on Eight 'Phase II' Options

The U.S. Environmental Protection Agency (EPA) still is sorting out its options for determining how to address currently unregulated stormwater discharges in the "Phase II" permitting regulations that the agency is supposed to publish in final form by Oct. 1, 1993 (see *Bulletin*, March 1993).

Participants at a "Phase II Options Identification Group Meeting" on Jan. 11 offered 14 alternatives for targeting and controlling additional stormwater sources, according to EPA. The agency then condensed these 14 options into seven (later amended to include an eighth), for presentation to three "Phase II" discussion meetings conducted by EPA and the Rensselaerville Institute in late February and early March. Here are the eight Phase II options discussed by participants in the EPA-Rensselaerville Institute discussion groups:

1. Eliminate Phase II; Expand Phase I Designation Authority.

Phase II of the storm water program would be eliminated under this option. The government would expand EPA's statutory designation authority such that added classes of facilities or geographic areas may be designated under existing "Phase I" authority. National Pollutant Discharge Elimination System (NPDES) permit authorities, that is, the states and EPA regions, would target and control added sources of concern using expanded Phase I authority.

2. Federal Target Selection—NPDES Control.

Under this option, high-risk sources would be selected on a national basis. Potential targets include selected categories of facilities or activities, and urbanized and associated developing areas of municipalities and counties. All newly designated sources would be controlled through NPDES permits.

3. Tiered Federal and State Target Selection—Tiered NPDES and Non-NPDES Control.

EPA would select the first tier of high-risk sources on a national basis. Potential targets include selected categories and activities, and urbanized and associated developing portions of municipalities and counties. Individual states would select additional sources. NPDES permits implemented by EPA and the states would be used to control the first-tier sources. States would control the second-tier sources through a range of control measures.

4. State Target Selection Consistent with Federal Criteria—State NPDES or Non-NPDES Control.

EPA would develop selection criteria that the states would use to identify high-risk activities.

Potential targets are the same as identified in options 2 and 3, but with the addition of stormwater sources in selected watersheds. States would use either point-source or nonpoint-source control measures. Federal oversight would be exercised; sub-options to this option provide for various oversight schemes.

5. Federal Target Selection—Non-NPDES Control.

High risk sources would be selected on a national basis. Potential targets are the same as in options 2 and 3. Individual states would select their own control mechanisms for all federally selected sources. There is no provision for federal oversight of state control mechanisms.

6. State Target Selection—Non-NPDES Control.

States would select the Phase II sources. Source identification would involve factoring in of information from Clean Water Act section 305(b) reports or available data on total maximum daily loads (TMDLs) in designated water bodies. Individual states would select their own control mechanisms. There would be no provision for federal oversight of state controls.

7. NPDES Permits for Federally Selected Municipalities Requiring Stormwater Management Programs for Commercial/Industrial/Residential Sources Within Their Jurisdictions.

EPA would target urbanized areas and emerging growth areas of municipalities and counties. NPDES permits would be issued to selected municipalities, which would be required to implement stormwater management programs to control targeted stormwater discharges.

8. State Targeted Sources With Watershed Focus/NPDES and Non-NPDES Controls.

States would use lists developed from Clean Water Act section 303(d) and 304(l) lists and other data to identify watersheds in which stormwater pollution is a significant pollution factor. EPA would have indirect power to review selected watersheds because it would approve of 303(d) lists.

Control would be through NPDES permits, best management practices, and other controls by state, local and "other" agencies. The result would be a series of comprehensive watershed control plans incorporating NPDES permits as well as other controls, for example, construction runoff ordinances, controls on new construction, detention basins, zoning controls, etc. Watershed plans, when implemented, would lead to attainment of water quality standards. ■

Storm Warnings

Stormwater Related News in Capsule Form

- **EPA, States Eye Program Monitoring, Assessment Strategies.** The next major task facing stormwater regulators is monitoring the seriousness of stormwater runoff problems to justify state and federal permit programs, some speakers suggested at a stormwater task force workshop hosted by the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) at ASIWPCA's Feb. 17-19 midwinter meeting. Monitoring data will likewise be important in establishing a potential basis for setting water-quality-based numeric effluent limits, speakers also suggested. According to task force member Ed Anthony, of California's State Water Resources Control Board, state regulators probably will be "under pressure" to write numeric limits into the next round of stormwater permits issued five years from now. But without good stormwater monitoring data, said Mary Jo Kopecki of Wisconsin's Department of Natural Resources (DNR), effluent limits will be nearly impossible to justify. The U.S. Environmental Protection Agency (EPA) has held informal discussions with the U.S. Geological Survey on possible joint action to develop a baseline monitoring strategy, Ephraim King of the National Pollutant Discharge Elimination System (NPDES) program branch told the gathering.
- **Municipal Stormwater Runoff Shows Serious Pollution, Wisconsin Finds.** A Wisconsin toxicity study of municipal stormwater runoff has found it is "really toxic," state DNR official Mary Jo Kopecki told the ASIWPCA stormwater task force on Feb. 17. Kopecki told the *Bulletin* that a state monitoring effort funded by EPA grants has discovered high concentrations of heavy metals, biochemical oxygen demand, organic pesticides and bacteria in the municipal stormwater being discharged into one Wisconsin watershed. "We're finding these parameters at levels where, if they were coming from point sources, we'd want to regulate," Kopecki said.
- **Hearings Begin for Clean Water Act Reauthorization.** The year's first House subcommittee hearings on Clean Water Act reauthorization began Feb. 23-24 under the oversight of Rep. Doug Applegate (D-Ohio), new chair of the House Public Works Committee's Subcommittee on Water Resources and Environment. Applegate, from a largely rural district, focused the hearings on the special financial needs of small cities facing costly environmental cleanup requirements. A number of witnesses emphasized the need for regulators to provide more "flexibility" for such cities in meeting statutory requirements. In other comments on the Clean Water Act, Senate Environment and Public Works Committee chair Sen. Max Baucus (D-Mont.) told ASIWPCA members Feb. 17 that Congress will begin reauthorization this year with a series of hearings, "not a flurry of legislation." Baucus stressed the need for clean water legislation to foster a "virtuous circle" in which investments in environmental technology will enable good jobs and environmental protection to reinforce one another, not come in conflict. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$298
- Clean Air Permits:
Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$349
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$397
- Underground Storage Tank Guide\$279
- Community Right-To-Know Manual\$324
- Guide to Used Oil Regulations\$249
- Ozone Depleter Compliance Guide\$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group

1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 2, Number 9

March 1993

EXTENDING STORMWATER REGULATIONS:

EPA Indicates That Phase II Deadline May Be Missed

The stormwater provisions of the 1987 Water Quality Act amendments to the Clean Water Act required the U.S. Environmental Protection Agency (EPA) to develop a permitting scheme for non-industrial dischargers of stormwater by Oct. 1, 1992. Congress last year extended that deadline until Oct. 1, 1993, giving the agency a little extra time to develop final regulations for what could turn out to be hundreds of thousands—or millions—of retail, commercial and other facilities discharging stormwater that are not regulated by EPA's current "phase I" permitting regulations issued in November 1990.

Many observers, however, are very skeptical of EPA's ability to issue final Phase II regulations by Oct. 1 of this year, and the agency itself is suggesting that it may miss the deadline. According to one EPA source, who prefers not to be named, the agency "hopes" to have proposed regulations published by next October, but "You can speculate for yourself how likely it is that we'll have final regulations published by then."

It is possible that Congress will use the occasion of Clean Water Act reauthorization to extend the final deadline again, this source said in a recent interview with the *Bulletin*. In the meantime, the National Pollutant Discharge Elimination System program is reportedly working hard to develop a "full range of regulatory options" on Phase II to present to the new EPA assistant administrator for water when one is named by the Clinton administration.

Jeffrey L. Leiter, an environmental attorney with the Washington law firm of Collier, Shannon, Rill and Scott who is active on stormwater and other regulatory issues, said in February that the regulated community has little interest in precipitous EPA action on Phase II.

If EPA is pressured to meet the Oct. 1 deadline, Leiter said, "The path of least resistance would be just to duplicate the existing regulatory program

(Continued on page 3)

EPA Chooses 'Sectors' For Writing Group Model General Permits

The U.S. Environmental Protection Agency (EPA) has chosen to consolidate the remaining group applications for stormwater permits submitted by regulated dischargers into roughly 50 to 55 industrial "sectors," and to ask the EPA regions to develop model general permits for these sectors, a usually reliable source indicated in mid-February. According to the source, EPA headquarters staff plan to develop model general permits for only

(Continued on page 3)

Inside this issue. . .

- State Survey: New York to Issue General Permits Soon Page 2
- Stormwater Interview: TRI Burdens Should be Reduced Page 4
- EPA to Reevaluate NPS Strategy Page 6
- Region 6 Issues Permit for Feedlot Runoff Page 8

STATE SURVEY:

New York Hopes to Issue General Permits by March 1

Only "formalities" stand in the way of New York's issuing two stormwater general permits, and the state Department of Environmental Conservation (DEC) expects to publish them by March 1, DEC stormwater staffer Ken Stevens told the *Bulletin* in early February. The state's final industrial general permit should be simpler in language than the draft permit published last fall, weighing in at about 22 pages rather than 30 pages. The deadline for completing stormwater pollution prevention plans in New York will probably be in June or July, but it could be as late as September, Stevens predicted.

New York's general permit requirements will resemble those of EPA's baseline general permits for regulated industrial facilities and construction sites, but with a few changes, Stevens said. One difference in the construction general permit is that New York requires the owner of the site to submit a single notice of intent (NOI) for the project, rather than requiring the submission of multiple NOIs by the owner and the construction contractor or contractors, as EPA requires. Another unique state provision is that stormwater dischargers who require other permits from DEC cannot obtain state general permit coverage for stormwater, at least not initially. Such dischargers will have to undergo a state environmental quality review process and receive notices of completion of the process. "Once that occurs, our aim is to herd as many individual permits as possible into the stormwater general permit process," Stevens said.

California

The State Stormwater Quality Task Force, representing California regulators as well as members of the regulated community, has developed a state best management practices (BMP) handbook for regulated construction sites, industrial stormwater dischargers and municipal separate storm sewer systems (MS4s). The Southern California Chapter of the Water Resources Committee of the American Public Works Association (APWA), along with various co-sponsors, has scheduled a series of seven workshops on the BMP

handbook and compliance with state stormwater requirements. The southern California workshops were scheduled for Ontario, Calif. on March 8 and 9.

Four April workshops for facilities in northern California are scheduled for Sacramento:

- Municipal BMP Handbook Workshop, April 29, 8:30 a.m. to noon;
- Municipal BMP Handbook Workshop, April 30, 1 p.m. to 4:30;
- Construction BMP Handbook Workshop, April 29, 1 p.m. to 4:30 p.m.; and
- Industrial/Commercial BMP Handbook Workshop, April 30, 8:30 to noon.

Registration fees are \$75 for one workshop, \$140 for two workshops, and \$195 for all three. To register, contact Barrie Broadway (APWA), c/o City of Sacramento, 5770 Freeport Blvd., Suite 200, Sacramento 95822; (916) 433-6276.

Wyoming

Although Wyoming originally expected to go along with EPA's group application process, the state now requires EPA-approved group applicants to obtain either individual permits or coverage under a state general permit, said state water program administrator John Wagner. Wyoming may decide to adopt EPA-developed "model" general permits if and when they are developed, but for now regulators take the position that all state stormwater dischargers required permits as of Oct. 1, 1992, Wagner said.

States Pages Updated in This Month's Manual

This month's update for your *Stormwater Permit Manual* includes revised state pages for the following states:

- | | |
|-------------------------|--------------------------|
| ¶890.6. Colorado. | ¶890.31. New Jersey. |
| ¶890.8. Delaware. | ¶890.32. New Mexico. |
| ¶890.10. Florida. | ¶890.36. Ohio. |
| ¶890.20 Maine. | ¶890.41. South Carolina. |
| ¶890.23. Michigan. | ¶890.51. Wyoming. ■ |
| ¶890.30. New Hampshire. | |



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Senior Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal—not commercial—use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

Phase II Deadline

(Continued from page 1)

and extend it to additional categories of dischargers. And I'm not sure it works well for those people."

Before EPA issues new regulations, Leiter said, it should first determine whether those stormwater dischargers covered have any need for regulation, which his firm questions in the case of its clients in the retail filling station business—a business that several commenters have singled out as an "environmental bad actor" in need of stormwater controls.

Public comments submitted to EPA in response to its request for comments on Phase II last fall indicate that there is no consensus on this or on other significant Phase II issues, Leiter said, and "the deadline extension is always a fallback position" for Congress in the face of such uncertainty.

If it is determined that particular businesses and facilities do require Phase II permitting, Leiter added, "a second issue is how to do this to achieve appropriate environmental protection at the best price. And a third issue is what is the appropriate time period we should be looking at for doing this."

If there is an appropriate way to address these questions that takes "just a little longer," Leiter said, "I think it may be an appropriate tradeoff to take it."

Whether this argument will persuade Congress and environmental groups to accept further delays in Phase II implementation is unclear. William Funderburk Jr., an environmental attorney with Radcliff, Rose and Frandsen in Los Angeles, recently predicted that "What you may see on Phase II is something similar to what happened with Phase I. The deadline may pass, and the Natural Resources Defense Council or some other group may sue, if this is at the top of the environmentalists' agenda. Right now, though, I think there are a lot of other issues coming up that the environmentalists consider more important."

"The regulated community has little interest in precipitous EPA action on Phase II."

EPA has scheduled several public meetings to give affected parties an additional chance to comment on the Phase II regulatory options, EPA said in early February. A public meeting on Phase II issues affecting states and municipalities was scheduled for Feb. 25 in Arlington, Va., a second Arlington meeting on industrial and commercial dischargers was scheduled for Feb. 26, and a third meeting for the public on Phase II issues in general was scheduled for March 5 in Dallas. ■

EPA's Group 'Sectors'

(Continued from page 1)

about seven "sectors" comprising some 55,000 regulated facilities in potentially problematic industries.

At press time, there were reports that the sectors to be addressed by EPA headquarters will cover at least the following industries:

- lumber and wood products industries;
- stone, glass, clay and concrete industries;
- mining and non-metallic minerals industries;
- landfills and land application sites;
- used motor vehicle parts facilities;
- local suburban transportation facilities, including vehicle service facilities for buses, tank trucks and post office vehicles, and warehouses and other ground transportation facilities; and
- food and tobacco-related industries.

EPA headquarters reportedly may take on the development of other model general permits as well, however. The distribution of the model general permits for the remaining industrial sectors to EPA regions was not known at press time, but some Washington stormwater sources expected this to be announced by March 1.

Group applicants may engage in 'regulatory shopping' among regional offices likely to treat them leniently

Consultant John Whitescarver of Ogden Environmental and Energy Services said EPA Region 4 in Atlanta has agreed to develop a model general permit for the textiles industry.

Whitescarver also predicted that Region 4 and the Region 9 office in San Francisco might compete for the opportunity to develop a model general permit for marinas and shipyards.

Another Washington source, who preferred not to be named, predicted that some industries that have submitted group applications will likely engage in "regulatory shopping," attempting to have their model general permits developed by EPA regional offices that are likely to treat them leniently.

EPA was not responding to questions on this issue at press time. However, there were indications that EPA headquarters was having difficulty getting all of the regional offices to agree to accept its distribution of responsibility for writing model general permits. ■

Burdens on Most TRI Reporters Should be Lifted, Small Business Advocate Bromberg Advises EPA

Kevin Bromberg, a Washington, D.C., environmental attorney, is counsel for the Small Business Coalition for a Responsible Toxic Release Inventory Policy. Since 1987, when he was assistant chief counsel for energy and environment at the Office of Advocacy at the U.S. Small Business Administration (SBA), Bromberg has worked to reduce the regulatory burdens facing small dischargers of toxic chemicals who are subject to the Toxic Release Inventory (TRI) reporting requirements of Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). The majority of toxic releases reported under TRI have little environmental significance, Bromberg argues, but reporters face a host of unnecessarily costly "piggyback" regulatory requirements, including some stormwater discharge permitting requirements, that are triggered by their TRI status. While at SBA, Bromberg argued against strict stormwater monitoring requirements for small TRI reporters and is credited by some observers with helping to influence the Office of Management and Budget to delay approval of the U.S. Environmental Protection Agency's (EPA's) stormwater general permits until these requirements were somewhat relaxed. Currently Bromberg represents the Small Business Coalition in an effort to persuade EPA to exempt completely most dischargers of small amounts of toxic chemicals from TRI reporting. Bromberg has science degrees from Cornell University and the University of Maryland and a law degree from Georgetown University. He worked for EPA and the Consumer Product Safety Commission before joining SBA in 1979. The following article is excerpted from a longer Thompson Publishing Group (TPG) interview with Bromberg on Feb. 11, 1993.

TPG: You've said that ending TRI reporting requirements for facilities releasing small amounts of toxic chemicals would actually help EPA and the environment. It would be good for everybody. Why?

Bromberg: An exemption for small, *de minimis* dischargers will be good for EPA because it will focus them on the sources that are important. If you eliminate the sources that are irrelevant, that have no environmental significance and no potential for significance, then you end up with data that are potentially relevant. The great majority of TRI small sources are very small sources. Under any reasonable view of the figures, an estimated 50 percent to 70 percent of TRI reports are for environmentally insignificant releases. These reports do not contribute to the right to know; they contribute to clutter.

It's costing EPA upwards of \$20 million a year to run TRI. Eliminating reporting for *de minimis* dischargers would save several million dollars on mailings, discussions, outreach, EPA's program for voluntary toxics use reduction, enforcement—everywhere. And it would leave room in the database for what's important. This is also EPA's insurance policy for controlling costs if they expand TRI to cover new chemicals and new facilities, which I believe may be a Clinton administration priority.

TPG: You advocate ending TRI reporting for most releases of regulated chemicals of under 5,000 pounds per year per environmental medium, I believe.

Bromberg: Right. There would be some chemicals that would not get the 5,000 pounds per year treatment, as I'll explain. But for most chemicals, 5,000 pounds is a very conservative number. It saves EPA money, directs them to the correct places, and also is a pollution prevention incentive. This is important. Suppose my factory is releasing 7,000 pounds of a toxic chemical. If I get below 5,000 pounds, I'm out of a tremendous TRI headache. And out of a TRI stormwater headache, a toxics use reduction headache, a whole series of regulatory requirements we call the TRI piggyback headache.

TPG: Piggyback meaning—

Bromberg: Piggyback meaning all the TRI-related requirements that have been added by EPA and the states. Stormwater regulations, toxic use reduction, pollution prevention ... There are a lot of counter-intuitive things that occur when you put many TRI facilities—small sources, recycling facilities, a lot of these expansion industries—under TRI piggyback requirements. For instance, suppose you're a hazardous waste recycler. You're supposed to do pollution prevention? It doesn't make a lot of sense. You want people to send the stuff over there so it gets recycled instead of getting dumped in the environment.

TPG: What does TRI reporting cost small sources now?

Bromberg: They're probably around 60 percent of the total reporters. I'd say it's \$100 million, \$150 million, somewhere in that neighborhood, per year. We're talking \$8,000 to \$12,000 per plant. Those are EPA ballpark figures.

TPG: You've proposed a 5,000-pound-per-year reporting cutoff for some TRI chemicals, but not all. Why?

Bromberg: We've proposed a two-tier system for defining small sources which should be exempt from TRI, while large sources remain subject to the current reporting scheme. Our first tier of exempt reporters would be sources that release chemicals of fairly low toxicity that are often released in high volumes. Sources would have to report releases of these "tier 1" chemicals only if they released more than 5,000 pounds of a particular chemical to a single environmental medium—air, land or water. They would not submit reports at all. They would be out of TRI, out of TRI piggyback regulations.

The second tier in our system would cover two different kinds of chemicals. These are the highly toxic chemicals and what we call the "low volume" chemicals, which confuses a lot of people. Let me talk about the highly toxic chemicals first. To ensure that releases of potential environmental significance are still included in TRI, we classify a chemical as highly toxic if the release of 5,000 pounds or less a year could still cause an environmental effect at a facility's fence line, which is normally defined as 100 meters from the source. Releases of these chemicals of less than 5,000 pounds a year to any medium would be reported.

I think the major concern that environmentalists have with TRI exemptions is that not all chemicals should be exempt at 5,000 pounds. Our view on this is, "Yes, we agree." Having said that, what do you do with them? You could assign a separate reporting threshold for these chemicals, or you could have them fill out a "short form," a one or two-page report saying you have the chemical, and a release estimate, and maybe some pollution prevention information. And that's the end of your report, and you're exempt from all TRI piggyback requirements. This is not considered a TRI report; it's a short form that replaces the longer eight-page report, and that solves the major problem for our folks, which is the TRI piggyback. It also solves the major problem for EPA, which is ensuring that these releases remain in some kind of database, whether you call it TRI or not.

What we call "low volume" chemicals also would be reported on the short form. These chemicals are ordinarily released in quantities of less than 5,000 pounds per year for a single facility. SARA Title III requires reporting thresholds that will capture the "substantial majority" of the releases of a given chemical subject to the law. In order to comply with this, we have to have a system that will report the "substantial majority" of these low-volume chemi-

icals. Under our proposal, releases of them at less than 5,000 pounds a year would still be reported on the short form.

TPG: You've said this would help some TRI facilities that actually have zero discharges. Can you explain?

Bromberg: Under the present system, you have to report if you're a facility with ten or more employees, you're a manufacturer, and you "MPU"—you either manufacture, process or use—a threshold amount of a TRI chemical. They evidently thought that if you manufacture, process or use, one of these chemicals, you must be *releasing* something! That assumption is wrong. Lots of people who "MPU" chemicals have releases. But around 10 percent don't. The toxic chemical may go into the product: for example, the phosphoric acid at a soft-drink bottling plant goes into the soft drink.

In our proposal, we would let all these "small" sources, including zero releases, exit the reporting system. After you reported on the short form that you "MPU," we'd ask, "Are you a small source? Answer 'Yes' or 'No.'" If you said yes, if you release less than 5,000 pounds to air, water or land, you'd be out.

TPG: Why don't you talk about your coalition?

Bromberg: The genesis of this was, I started an SBA environmental roundtable in January of 1991, when I was still at SBA. They still meet every six weeks or so to talk about issues. I had heard all this about TRI, and how unfair it was to have all these piggyback requirements, and I finally said, "I've had enough of this. Why don't we get these people out of there?" So I proposed that EPA exempt small sources, and I wrote a petition to EPA in the summer of 1991. About 30 trade associations signed on. The next March, the Bush administration issued its executive order saying, "Agencies, you need to be more cost effective in your rules and regulations." And I decided it was a good time to organize private sector groups to move the issue. We started with two trade associations, and now we're at 20.

Last year EPA decided they wanted to put this on their regulatory agenda, which they did. They had the *Federal Register* notice seeking comments on Oct. 27, 1992, and responses were due by Jan. 8. Now, they've identified this as a priority item for regulatory development. Indeed, it now looks as if it will be published simultaneously, as we have recommended, with an EPA proposal to expand the TRI system. Publication will probably be in a couple of months. ■

Storm Warnings

Stormwater-Related News in Capsule Form

- **EPA Begins NPS Strategy Reevaluation.** The U.S. Environmental Protection Agency (EPA) has begun consulting with interested constituencies about revising its nonpoint-source (NPS) pollution control strategy, according to recent articles in the trade press. Reportedly, EPA is focusing on updating its 1989 NPS manual, *Agenda for the Future*, and is consulting with states, environmental groups, and agricultural trade associations about possible manual changes. The revision reportedly is scheduled for completion by early 1994. EPA sources apparently see NPS strategy revision occurring within the current framework established by section 319 of the Clean Water Act (CWA). Environmentalists, though, are pushing EPA to use the process to recommend changes in section 319 when Congress reauthorizes the law.
- **Safety Precautions Urged for Stormwater Samplers:** Stormwater dischargers who need to submit sampling data to state or federal regulators should recognize that sampling is a hazardous activity, Dr. Jerry Perrich of Environmental Science & Engineering told attendees of Executive Enterprise's Feb. 1-2 stormwater pollution prevention planning (SWP3) course in Washington. Statistically speaking, storm events are more likely to occur at night when the earth is cool, Perrich advised course attendees. Potential sampling risks include walking in the dark on rain-slickened surfaces, the possibility of encountering snakes and other animals, and the act of standing in or near water during potential electrical storms, Perrich said. "For safety's sake, you want to send out crews of two employees to do your sampling," Perrich advised. "In case one employee is injured, the other can go for help." It's also advisable to provide samplers with cellular telephones, Perrich said. He added that there is a pragmatic quality-control benefit from sending out pairs of samplers, because two employees can watch each other and may be less inclined to fudge sampling data to get out of the rain quickly.
- **Cheaper is Better in BMPs, Perrich Notes:** Stormwater permittees preparing SWP3s should try to change their plant operations in small ways that do not cost much when considering best management practices (BMPs), rather than turning automatically to structural controls, Perrich further advised attendees at the Feb. 1-2 SWP3 preparation course. Non-structural BMPs can include painting inlets to storm drains and wastewater drains different colors and then unloading polluting materials near a facility's wastewater drains instead of its storm drains; cleaning up trash left outside at a facility's "bone yard"; sorting and separating barrels of materials stored outside; and sweeping up unloading areas quickly to keep spilled materials from the rain, Perrich noted. The two-day seminar on SWP3 preparation was one of several that Perrich is conducting for Executive Enterprises at locations around the country.
- **'NonPoint Source Federation' Forming:** A new "National NonPoint Source Federation" is being organized to establish a "central, comprehensive, accurate information base" on NPS pollution issues, according to a brochure soliciting members. Boasting of a membership "as diverse as nonpoint source pollution is diffuse," the federation is headed by Kansas City environmental entrepreneur Richard Hall and has reportedly been advised by individuals from the Terrene Institute, EPA, the Soil Conservation Service, the Washington Council of Governments, Midwest Research Institute, the National Cattlemen's Association, and the National Association of Wheat Growers. Also involved are representatives from Ceiba-Geigy; the Fertilizer Institute; the Soil and Water Conservation Institute of Ankeny, Iowa; South Dakota's Department of Water and Natural Resources and state universities and agricultural extension services in North Carolina and Louisiana. Proposed membership benefits include a monthly newsletter, a research journal, an interactive electronic bulletin board and local, regional and national conferences. For more information contact National NonPoint Source Federation, P.O. Box 30101, Kansas City, Mo. 64112; (800) 795-3634.
- **Watershed Protection Moves Announced by EPA Regions 6 and 10:** EPA Region 10 in Seattle has reorganized its water program to provide more focus on watershed protection, according to a recent issue of EPA's newsletter *Watershed Events*. Region 10 has created a senior-level "watershed manager" position, established a watershed management team, and identified regional watershed coordinators, who will work with states, Indian tribes and other federal agencies to create "partnerships to integrate priority watershed activities." EPA's Region 6 also is reportedly involved in a cooperative watershed protection effort. This effort, which involves cooperation with environmental groups and the Louisiana Farm Bureau, focuses on the Tensas River Basin in northeast Louisiana, where wetlands support large migratory bird populations and the Louisiana black bear. For more information, contact Janet Pawlukiewicz at

(202) 260-9194 or Anne Robertson at (202) 260-9112, Office of Wetlands, Oceans and Watersheds, U.S. EPA (WH-556F), 401 M St. S.W., Washington, D.C. 20460.

- **New Jersey Proposes to Revamp Water Program Around Watershed Focus:** On Feb. 1, the New Jersey Department of Environmental Protection and Energy (DEPE) published a proposal for a major reorganization of the New Jersey Pollutant Discharge Elimination System (NJPDES). The proposal would put state water permitting on a watershed protection basis and aims at achieving water-quality based regulation employing effluent standards, says Susan Hoffman, an attorney working on stormwater for the Princeton-based law firm of Cohen, Shapiro, Polisher, Shiekman and Cohen. The proposal is partly a response to longstanding problems with NJPDES, which has a substantial permit reissuance backlog, Hoffman says. It is unclear whether reorganization would immediately affect stormwater permittees. However, Hoffman says its implementation would eventually require costly monitoring of stormwater pollution to enable DEPE to allocate waste loads between point and nonpoint-sources in five designated watersheds covering all of New Jersey. DEPE's written comment period ended March 3, but there will be a public meeting on the proposal March 19 in Trenton. For more information contact Barbara Padgett at DEPE at (609) 292-4543.
- **National Research Council Report Targets Coastal Stormwater, Wastewater Management.** The National Research Council's Water Science and Technology Board is scheduled to publish a new report early in 1993 on current systems for managing urban stormwater runoff and wastewater discharges in coastal areas. The title will be *Wastewater Management for Coastal Urban Areas*. To be placed on a contact list for the report, contact the National Academy of Science's Office of News and Public Information by telephone at (202)-334-2138 or by fax at (202) 334-2158.
- **Tropical Grass Touted as Erosion Control for Southern U.S., Third World.** The National Research Council has concluded that a tropical grass native to India called "vetiver" can help fight soil erosion in a wide range of warm locations. Nobel laureate Norman Borlaug says "vetiver could indeed play a very useful role in many places" in controlling erosion, even in areas subject to powerful tropical downpours. Many vetiver varieties are sterile and thus stay in place without spreading, unlike such disastrously prolific vegetative controls as kudzu. The plant's roots are so

strong that bands of it planted on hillsides can create "botanical dams" that retard rushing stormwater. Although it is primarily seen as a boon for the Third World, vetiver also grows in warmer parts of the United States. Soil conservationists in Louisiana reportedly find "it controls erosion far better than anything previously tried." Copies of *Vetiver: A Thin Green Line Against Erosion* are available for \$12 plus shipping from National Academy Press, 2101 Constitution Ave., N.W., Washington, D.C. 20418; (202) 334-2138.

- **Clinton Abolishes Competitiveness Council, CEQ:** Recently, President Bill Clinton abolished the White House Council on Competitiveness and vowed to abolish the White House Council on Environmental Quality (CEQ). In the place of CEQ, Clinton in February proposed to establish a new "White House Office on Environmental Policy" headed by Vice President Gore's former Senate staffer Katie McGinty and physically located in the White House. Unlike former CEQ chiefs, McGinty would sit on the National Security Council, National Economic Council and Domestic Policy Council. The White House says the changes would help integrate environmental and economic policy, close the "back door ... polluters used to use to get out from under our laws," increase the nation's ability to tackle global environmental concerns and help reconcile the environment and economic growth.

Most national environmental groups lavishly praised Clinton's action, agreeing that it will integrate environmental concerns into all phases of government policy. However, some individual staffers with environmental groups question the abolition of CEQ, which is statutorily established by the National Environmental Policy Act (NEPA) and charged with coordinating how federal agencies implement NEPA. Whether the policy office, which will likely have half CEQ's staff, can fulfill CEQ's old duties while tackling new ones is doubted by some sources, who also note that Congress must first agree before CEQ can be eliminated. Some environmentalists fear that if Clinton abolishes the statutorily created CEQ to create a new office that exists only by presidential whim, a future president might kill the new office, too.

CEQ has little regulatory role, so its disappearance would not much affect regulated industry, according to environmental attorneys Russell Randle and Jeffrey Leiter. Randle, however, says freedom from regulatory responsibility has given CEQ a long-term perspective on environmental policy that EPA sometimes lacks. He is not sure whether this would be preserved under Clinton's proposed reorganization, details of which have not been released. ■

Feedlot Runoff General Permit Issued by EPA Region 6

A "public notice of a final permitting decision" on a four-state general permit for stormwater runoff and other water pollution discharges from animal feedlots was published Feb. 8 in the *Federal Register* by EPA Region 6 (58 FR 7610).

According to EPA Regional Administrator Buck Wynne, the feedlot general permit "is, in effect, a 'no discharge' permit, because no discharges are allowed except during catastrophic rainfalls."

Essentially, the general permit requires structural controls to assure the retention and disposal of wastewater and contaminated stormwater from large cattle feeding operations, dairies, and other "concentrated animal feeding operations." It applies to facilities in Louisiana, Texas, Oklahoma and New Mexico, including those facilities on Indian lands in New Mexico and Oklahoma. It contains some 40 revisions to a draft general permit proposed July 22, 1992 (57 FR 32475), although EPA describes the revisions as "minor."

The final general permit is likely to be controversial, EPA's *Federal Register* preamble indicates. "Many of the comments received express concern that the only reason that Region 6 is issuing the permit is in response to special interest groups opposed to the dairy industry in Texas," the preamble notes.

Other commenters opposed the permit on the grounds that it blames feedlot owners for "naturally occurring circumstances" and questioned whether EPA Region 6 suffers from water quality problems stemming from animal wastes.

According to Region 6, many of the technological regulatory requirements for feedlots date back to 1974. Moreover, "those facilities which remain unpermitted and without the retention capacity to retain [a] 25-year, 24-hour storm event have been in violation of federal law since 1976 or for the life of their businesses, whichever came later."

Essentially, the general permit requires regulated feedlot operators to file notices of intent to be covered by the permit and to develop pollution prevention plans for controlling stormwater and wastewater dischargers from their facilities. Facilities must be designed and operated to contain all process generated waste waters plus runoff from a 25-year, 24-hour rainfall event. Permittees face technological requirements to meet new source performance standards or apply the "best available technology economically achievable" to meet permit conditions.

The permit requires permittees to use best management practices for controlling feedlot discharges, to meet the stormwater management requirements of any municipal separate storm sewer system into which they discharge, to inspect structural controls at least four times annually, and to use controls on sedimentation and soil erosion at some sites.

For more information on the general permit, or to obtain Region 6's response to comments, contact Ellen Caldwell, Permits Branch of the Water Division (6W-PS), U.S. Environmental Protection Agency, Region 6, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202; (214) 655-7190. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$349
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$397
- Underground Storage Tank Guide\$279
- Community Right-To-Know Manual\$324
- Guide to Used Oil Regulations\$298
- Ozone Depleter Compliance Guide\$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 2, Number 8

February 1993

Citing Money Crunch, EPA Seeks Assistance on Groups

The stormwater program at the U.S. Environmental Protection Agency (EPA) does not have enough money at this time to complete work on the group applications it has received from industry, stormwater chief Ephraim King has announced. EPA's Office of Water is suffering from a cutback in funds for hiring outside contractors because Congress last year gave EPA several new tasks to perform without providing new money for them, King said. Recently the EPA administrator's office also has identified several additional high-priority tasks for the agency to perform as well.

Meanwhile, King told the *Bulletin* in mid-January, EPA still faces the task of preparing "model" stormwater general permits for approximately 45,000 facilities covered by approximately 750 group permit applications.

"At this time, we simply don't have the resources to complete all the model general permits," King said. "Even with almost unlimited resources, it

would be nearly impossible for us to write model general permits for 750 groups, and we have less money than we had hoped to have to complete work on the group application process."

As anticipated last fall (see *Bulletin*, November 1992, p. 1), EPA is asking the regional EPA offices to help with the task by agreeing to take on the responsibility for producing certain model general permits for particular industrial categories. EPA also is hoping to cover all 750 group applications with a fairly small number of model general permits.

According to some state regulators who attended an EPA stormwater meeting last December in Atlanta, EPA was proposing to cover all group applicants with just 33 model general permits. In interviews in January, neither King nor Cynthia Dougherty, director of the Permits Division for EPA's Office of Wastewater Enforcement and Compliance, would confirm that number. However, Dougherty agreed that the number of model general

(Continued on page 2)

NRDC Petitions Settled; EPA Adopts Deadlines On Permit Issuance

The Natural Resources Defense Council (NRDC) and the U.S. Environmental Protection Agency (EPA) have agreed on a settlement of several petitions that NRDC filed last year seeking legal review of EPA's extension of various stormwater regulation deadlines.

The settlement agreement was announced Dec. 22 by the U.S. Court of Appeals for the Ninth Circuit in San Francisco, in a court order dismissing the

(Continued on page 3)

Inside this issue. . .

- Interview: ASIWPCA Chief Discusses How States Want 'Wet Weather' Problems Handled in Clean Water Reauthorization Page 4
- EPA, NOAA Release Coastal NPS Guidance Page 7
- Selected Enforcement Actions Target Stormwater Discharges Page 7

**Thompson
Publishing
Group**

EPA Seeks Aid on Groups

(Continued from page 1)

permits EPA is contemplating is significantly less than the number of groups whose applications have been approved.

At the Atlanta meeting King also asked state regulators who have already issued general permits for relevant industries to make their work available to EPA for review. The idea is to enable EPA to avoid unnecessary duplication in writing its own model general permits for these industries, King and Dougherty indicate. According to King, "The response of the states at the meeting was basically that they'd be happy to work with us."

Some state regulators, however, perceived King's requests at the Atlanta meeting as asking states to devote some of their own resources to group application processing when many states are hurting for money to implement the stormwater program themselves. That was the impression of some state regulators in New York and North Carolina, for example, although North Carolina stormwater chief Colleen Sullins said she did not attend the December meeting in Atlanta and thus received her information second-hand.

In EPA Region 5, covering much of the Midwest, regional stormwater staff have sent a letter to the administrators of state agencies with National Pollutant Discharge Elimination System (NPDES) delegation asking them whether they wish to participate in a regional effort to develop several model general permits.

There are indications that EPA's request for help from the regions may be resisted by some regions, including the Region 6 office in Dallas. Given the large number of states without NPDES delegation in Region 6 (see *Bulletin*, November 1992, p. 1), the Dallas regional office faces a potentially larger stormwater permitting burden than most other regional offices.

Last year, regional water administrator Myron Knudsen urged EPA headquarters simply to

eliminate the group application process, but without success. In a more recent interview, Region 6 stormwater official Brent Larsen said the region is still negotiating with headquarters over its share of the work in writing model general permits. The number of model general permits that EPA should develop is under negotiation, too, Larsen said.

Asked about this issue, King said in January that "some regions are very hesitant to help because they lack the resources. But other regions are eager to work with us because they put a very high priority on the success of the group application process. So far, I have not heard back from all the regions in terms of what they will do. I have also not heard back from the states in terms of what they'll do."

King added, "Depending on the help we receive, we'll either be able to complete more or less of the task. But I can promise that at EPA headquarters, we will do everything that we possible can to get the group model general permits out. Of course, EPA headquarters also faces a number of important stormwater responsibilities, including working on phase II regulations, operating the stormwater notice of intent center in Virginia and responding to requests for information channeled through the Stormwater Hotline."

Both King and Dougherty emphasize that EPA faces a two-fold challenge concerning group applications: first, finding a way to deal with all 750 group applications, regardless of funding constraints; and second, finding ways to handle the workload given the additional cuts in EPA's contracting budget, which Dougherty says have been "substantial."

Jeffrey Longworth with the law firm of Collier, Shannon, Rill and Scott, which has done extensive work on the group application process for more than a dozen clients, most of them trade associations, expressed concern in early January about the possibility of EPA's lessening its commitment to the group application process. According to King, EPA stormwater officials planned to meet with Collier, Shannon representatives in late January to discuss group applications. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Senior Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K St., N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal, not commercial, use provided that the base fee of U.S. \$1.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

NRDC Petitions Settled

(Continued from page 1)

petitions. The settlement essentially ends NRDC's challenge to EPA's deadline extensions in return for a commitment by EPA to meet new deadlines for issuing stormwater permits to several categories of dischargers.

According to EPA, "most" industrial dischargers, including those belonging to groups that filed their part II group applications on time, will receive permits by Oct. 1, 1993. So will industrial facilities whose membership in group applications has been rejected. "Large" municipal separate storm sewer systems (MS4s), those serving populations of 250,000 or greater, are scheduled to receive permits by Nov. 18, 1993.

"Medium" MS4s serving populations of 100,000 to 250,000 and industrial facilities operated by municipalities with populations of less than 250,000, which also are members of group applications, will receive permits by May 17, 1994. New industrial facilities and construction activities will be permitted within one year of the receipt of their complete permit applications.

These deadlines commitments are included in a new EPA final rule on stormwater regulation signed Dec. 11 and published in the Dec. 18, 1992, *Federal Register* (57 FR 60444).

The settlement agreement, however, specifically does not preclude NRDC from further legal challenges to EPA's handling of "light" industrial facilities and construction sites disturbing more than one acre but less than five acres of land. On June 4, 1992, the Ninth Circuit ruled (*NRDC v. EPA*, 966 F.2d 1292 (9th Cir. 1992)) that not only had EPA extended stormwater deadlines illegally, but it also failed to justify its exclusion of certain light indus-

trial sites and smaller construction sites from its Nov. 16, 1990, final stormwater permitting rule (*Bulletin*, July 1992, p. 1).

In the Dec. 11 final rule, EPA found no need for immediate action to address the regulation of smaller construction sites or "light" industrial sites where significant polluting materials are not exposed to stormwater. Requirements for these facilities are "reserved pending ... further rulemaking," the final rule states.

In the settlement agreement, NRDC specifically reserves the right to file a separate petition for review of the final rule for these two categories of dischargers.

The settlement agreement does not mention EPA's reduction of minimum stormwater monitoring and sampling requirements in its April 2, 1992, final rule, but this issue may be key to understanding what was at stake for the agency in settlement negotiations with NRDC. In agreeing to settle, NRDC essentially agreed to drop its challenge to the reduction of minimum monitoring requirements, according to EPA sources.

"We are satisfied with the settlement because we got what we wanted from it, which was an end to the litigation over both deadlines and monitoring," one knowledgeable EPA source told the *Bulletin*.

Judging from the history of the stormwater program to date, settlement of the monitoring requirement issue may be more important to EPA than settlement of the deadline issue and should be fairly useful to EPA, state regulators and many regulated industrial facilities, all of which would face heavy administrative burdens in meeting EPA's monitoring and sampling requirements as they were originally proposed.

NRDC attorneys were not available to comment on the settlement agreement at press time. ■

EPA's Stormwater Pollution Prevention Guidance Available from Thompson Publishing Group

Newly revised Tab 600 of your *Stormwater Permit Manual* incorporates, and includes excerpts from EPA's recently developed guidance document: *Stormwater Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices*. As a service to our subscribers who wish to acquire the entire 400-page guidance document, which includes detailed technical specifications, we are offering copies at a minimal cost of \$25. To order a copy of this document, use the order form contained in this month's update or send a check payable to Thompson Publishing Group, 1725 K St., NW, Suite 200, Washington, D.C. 20006. Please include your name, mailing address and telephone number with your order.

What States Want From a New Clean Water Bill

Roberta Haley Savage is executive director and secretary-treasurer of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), representing state water regulators nationwide. She also is the founder and president of America's Clean Water Foundation, a nonprofit voluntary organization working to educate decision-makers and the public about clean water issues. During the Clean Water Act reauthorization debate of 1986, Savage and a few state program administrators drafted the initial stormwater regulation provisions that were modified by Congress and eventually included in the 1987 Water Quality Act. Now, Savage says, she is not completely pleased with the results of that effort. For stormwater regulation to be effective at the state level, she believes, Congress needs to reevaluate the program and make certain changes. Savage did undergraduate work at the University of Utah and attended Harvard University. Before joining ASIWPCA in 1979, she worked for EPA's Office of Solid and Hazardous Waste, the EPA Office of Water, and the League of Women Voters Education Fund, where she was involved with League efforts on nonpoint-source pollution and the Clean Water Act's old Section 208 "Area-wide Waste Treatment Management" planning process. Savage also served a brief stint at the National Association of Manufacturers. The following article is excerpted from an interview conducted by Thompson Publishing Group (TPG) in late 1992.

TPG: As executive director of ASIWPCA, what do you want Congress to do on Clean Water Act legislation?

Savage: First and foremost, I would like to see the president and the Congress focus on the use of the State Revolving Loan Fund as the principal funding mechanism for clean water programs. It is one of the most, if not the most successful component of the 1987 amendments to the Clean Water Act. It is working; all 50 states have state revolving funds in place; it is a program that provides for funding in perpetuity for clean water projects, sewer construction grants and so on. And I'd like to see that expanded and appropriately funded as the primary mechanism for funding the act.

I would not like to see, nor does ASIWPCA favor, a large construction grants program being reinstated. Getting money out of such a program in the past was a very cumbersome process, a very politically motivated process. If you look at the history of federal construction grants, you will note that those members of Congress who served on the "right" committees had more projects, and sometimes more expensive projects, funded. This method of waste-

water treatment construction funding at the federal level should be a vehicle of the past. And since we have a newer vehicle that's working now, going backward to a pork barrel type process is counterproductive and can hinder municipal compliance. That does not mean that some kind of funding assistance should not be made available for hardship cases and/or very small communities. This need has been very well documented. I'd like to see the Congress address that need, but within the context of a state revolving loan fund.

I'd like to see Congress fully fund, and enhance allocations for, the nonpoint source program, thereby recognizing that nonpoint source pollution is a major pollution problem for the future, but one not easily addressed through traditional methods. The management requirements under a nonpoint source program are designed to alter human behavior in a way that is not consistent with the way that the American people have heretofore done business.

We tend to think that environmental protection is something that the government does, that the government imposes on industry, that someone else is responsible for. Through recycling some people are starting to take a personal interest in, and more responsibility for, environmental protection. But when you're looking at nonpoint sources, you're attempting to change the way that people live, e.g., how they put fertilizers on their lawns, manage their gardens, raise their livestock, etc. You are also addressing the kinds of chemicals that people use to

"With nonpoint source programs, we have to start encouraging people to do the right thing, not just tell them, 'You can't do that anymore.'"

wash their cars and how they take care of household responsibilities. The problem is addressing the personal behavioral changes that have to take place. You can say to an industry, "Stop putting that junk in our water—and if you don't, we're going to sue you." But it's very difficult to go to the homeowner and say, "You're contributing by putting that tile, furniture or toilet cleaner down your toilets or sinks." The overview of how the process works is just very hard for them to grasp. Also, they don't want to change how they live. So we have to start looking at ways to encourage people to do the right thing, instead of just telling them, "You can't do that anymore."

There are criticisms of the way government has handled the nonpoint source problem, and there are those who feel that a very heavy-handed, regulatory program is necessary, that the volunteer approach is not working. You can make that case. There are certainly state nonpoint source programs that are not as effective as they could be. Some, though, are

outstanding. You have to remember that Congress did not provide the implementation funds authorized by law, so designing these programs has been slow; and in some instances the programs have been put on the back burner.

TPG: What should happen with the nonpoint source program funding?

Savage: I'd like to see a real focus on enhancing the existing nonpoint source program, on funding it at the authorized level of \$400 million a year or so instead of the \$40 million to \$50 million that Congress has actually been appropriating for the program. We also need to develop quality methodologies under best management practices. And then, if the state nonpoint source programs are still not able to perform in a way that's consistent with good environmental protection, then regulatory programs should be imposed.

TPG: What are some other priorities for Clean Water Act reauthorization?

Savage: The State Revolving Fund, nonpoint-source pollution, stormwater, sediments, toxics, wetlands and watershed protection top the list. Interestingly enough, we all talk about watershed protection as if it's this new thing: you know, "Watershed management—wowie"? Well, there were basic watershed planning provisions in section 303(e) of the 1972 act. There is already legislative authority to do most of this, but if nothing else, some legislative history, or some colloquy by the members to reinforce the idea that watershed protection is useful, would be good during debate on clean water issues in this Congress. Authorizing more money to do comprehensive planning on a watershed basis would be helpful as well.

TPG: What should happen in terms of stormwater?

Savage: Well, the stormwater amendment that Rep. Robert Roe (D-N.J.) and Rep. John Paul Hammerschmidt (R-Ark.) introduced to the Water Resources Act last year, extending the deadlines for EPA to develop and issue Phase II stormwater regulations, helped. By extending the deadlines, it provided EPA and the states with something of a reprieve. And it will also be useful to a lot of local governments, but it's not going to solve the problem. We have to go back in a very strategic way and look at the implementation of the stormwater program. We also have to evaluate whether the general permit structure is working as we had hoped. Initially the feds thought, "Once the states get general permit authority, that's going to solve the problem," but the feedback we're getting is that states that have general permit authority still have anywhere from three to 10 times the workload that they did for process wastewater permits alone under the National Pollutant Discharge Elimination System

(NPDES) program. And they're trying to do it with no money. So we're going to have to do some real reevaluation.

It probably sounds as if I'm a money-grubber, but there are simply no funds for the states to fine-tune the implementation of stormwater protection. See, what we all do is, we keep saying, "Oh, fund it through the Clean Water Act Section 106 program," the program established in 1972 specifically to provide grants to states and interstate agencies to assist them in administering pollution control programs. And then we think the states will really get new programs funded this way.

The problem is that the Office of Management and Budget hasn't supported the Section 106 state management grants for nearly 15 years. They apparently don't think Congress or the administration should be giving states money to manage their programs, even though the mandates come from the federal government.

"Do we have real stormwater programs, or paper tigers? The states don't want to be set up for a fall."

So when Congress says, "Oh, we'll just put more money into 106," that sounds great during the authorizing debate, but when it gets right down to it, no money ever shows up in the 106 program. So there you are, trying to implement stormwater protection programs, sludge programs, pretreatment programs, toxic hotspot programs and on and on with no new staff to do it, and the states are saying, "Excuse me? We have to do what?" So many states are still behind the eight ball in the implementation of stormwater controls.

TPG: You say we have to do some "strategic reevaluation" concerning stormwater. Do you have something more specific in mind?

Savage: When the stormwater program was created, cities of 250,000 population and above had to go forward to immediately develop stormwater management plans. Requirements for cities of 100,000 were to come several years later, unless a water quality violation existed. Communities of less than 100,000 were not required to address stormwater unless violations of water quality standards existed.

Well, in the development of the urban language, it was not fully recognized how many communities would be involved in the requirements for communities of 250,000 and above, or if you were to fully implement the entire scope of the program, the number of actual facilities and sites that would have to be permitted. So now EPA, the states and the cities have done some evaluation and are pretty much aware of how many sites and facilities are

(Continued on page 6)

going to need permits. Now we have to decide if we can afford to put the money on the table to do the full scope of the program and what the environmental benefits of the expenditures would be. If we do proceed, we must determine how best to address this "mega" issue. Then how are we going to do that?

I'll use Vermont as the indicator here. Vermont regulators, when they evaluated the scope of work they expected to do for their stormwater program, said that the stormwater permit program would constitute approximately 10 times their existing NPDES program.

Another state director told me recently, "I have a program, but there's no money to do this; there's no staff on board to do it. So let's say you issue a general permit for all industrial sites of a similar type in your state. You issue a permit, you put it in your file. I (the state) don't have any people to evaluate it. I don't have any people to monitor. I don't have anybody to enforce it, even if we find a violation. So, is that a program? Or have we simply built expectations within the community that stormwater protection is being managed, when in fact there is no real program? I don't want to manage a paper tiger."

From the states' perspective, we don't want to have something like that happen, because it breaks down the credibility of government and particularly that of state governments. We don't want to be set up for a fall. And in a way, that's where we are. Because the statute on the book says we have to do something, and quite honestly some states are in a position to do more than others.

"Across the board, we need more resources in the monitoring program, and we particularly need more resources for stormwater monitoring."

So now that we have an idea of the program scope; we know what kinds of numbers are out there—were the cutoff numbers that we chose correct? Was imposing municipal separate storm sewer systems regulations on cities with populations of 250,000 or more choosing to go with the right number? How much money is it going to take for states, not just to issue paper general permits, but also to do a comprehensive program—to find out where the violations are? What has the impact at the local level really been? And if you find violators, how much money will it take bring enforcement actions against them?

So the question facing Congress is, what should a realistic, implementable stormwater program look like? And if it's not the one that we have right now, what should it be?

TPG: Do you have any ideas about that?

Savage: We definitely have to look at the deadlines and funding. Without money, the deadlines are in essence meaningless.

TPG: What do you favor in terms of phase II regulations—postponing them until we've had time to deal with phase I?

Savage: No, there are water quality problems out there to be addressed, and we should be dealing with them, by requiring larger cities and facilities with real water quality problems to be included under the higher priority categories of phase I. But we've got a lot to do in this program, a lot more homework to do. A solid stormwater assessment which included feds, states and localities, in the very

"We definitely have to look at the deadlines and funding. Without money, the deadlines are in essence meaningless."

early stages of this administration, could be very helpful in the long term. We need to get a handle on where we are, where we want to be, how best to get there and how we're going to pay for it.

TPG: But states are going to need money to do that assessment.

Savage: That's right.

TPG: Can they use the data they're getting from the stormwater program, or would they have to do different kinds of monitoring?

Savage: Well, since specific stormwater monitoring requirements are not written into most state regulations at this point, we're going to need some additional resources. We need additional resources in the monitoring program across the board. Interestingly enough, when funds go down, in any environmental program, one of the first things to be cut is the monitoring and assessment program. This is not a productive approach to environmental protection. We need to chart our programs, document successes and failures and design new programs based on current scientific information. It's important to know if the money we are spending for prevention and cleanup means something in terms of getting environmental results—e.g. clean water. So across the board, we need more resources in the monitoring program, and we particularly need more resources for stormwater monitoring.

Clearly, we've got a long way to go and a short time to get there. Remember, stormwater is just one of hundreds of programs being managed by the states and under-funded by Congress. Perhaps Clean Water Act reauthorization will focus attention on these growing concerns. ■

Storm Warnings

Stormwater Related News in Capsule Form

- **Coastal Nonpoint-Source Pollution Guidance Issued.** The U.S. Environmental Protection Agency (EPA) on Jan. 14 announced the release of two guidance documents on the management of coastal nonpoint-source pollution under section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA). The two documents, which EPA issued jointly with the National Oceanographic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce, were scheduled for *Federal Register* publication on Jan. 19. One document, *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance*, explains requirements for state nonpoint-source management programs that CZARA requires states with approved coastal zone management programs to submit to EPA and NOAA by July 1995. The second document, *Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters*, outlines "economically achievable management measures that reflect the best available technology" for reducing nonpoint pollution from a variety of sources. These sources include coastal zone agriculture; forest operations (including forest road construction); wetlands conversion; urban runoff from industrial, transportation and construction activities; marina operations; channel modification activities and shoreline erosion. Copies of the guidance documents may be obtained from Ann Beier, Assessment and Watershed Protection Division (WH-553), U.S. EPA, 401 M St. S.W., Washington, D.C. 20460.

- **House, Senate Committee Chairs Could Influence Clean Water Debate.** After some uncertainty over who would succeed the late Sen. Quentin Burdick (D-S.D.) as chair of the Senate Environment and Public Works Committee, the post has gone to Sen. Max Baucus (D-Mont.), sponsor in the last Congress of a controversial Clean Water Act reauthorization bill (S. 1081) much opposed by regulated industry. The accession of Baucus to the key committee post could significantly help environmental groups during forthcoming efforts to write a Clean Water Act reauthorization bill for this Congress.

In the House, Rep. Norman Mineta (D-Calif.) has been named chair of the Public Works and Transportation Committee. Former chair of the House panel's subcommittee on surface transportation, Mineta replaces retiring committee chair Rep. Robert Roe (D-N.J.), who had

a long history of close involvement with water resource issues. At press time, Rep. Douglas Applegate (D-Ohio) appears to be the replacement for former House water resources subcommittee chair Rep. Henry Nowak (D-N.Y.), who retired last year after holding numerous hearings on the Clean Water Act. House progress on writing a new clean water bill could be somewhat slowed this session by the need for Rep. Mineta to familiarize himself with water issues, some Washington observers predict. Recent articles in the trade press, citing added delays likely to arise from congressional fixation with the troubled economy, suggest that full passage of a reauthorization bill may not occur until late 1994.

- **EPA Cites Stormwater Permitting Impacts in Comment on EIS for Superconducting Magnetic Energy Storage Proposal.** In inter-agency comments on a draft environmental impact statement (ERP No. D-DNA-GO9800-00), EPA has expressed concern about the stormwater permitting implications of a proposed engineering test of superconducting magnetic energy storage technologies. The proposed test program would affect portions of Otero and Lincoln counties, N.M.; Ward Co., Texas.; Sauk Co., Wis. and Burton and Franklin counties, Wash. (57 FR 56340). For copies of EPA's comments, contact EPA's Office of Federal Activities at (202) 260-5076.
- **Stormwater Enforcement Actions Brought by States, Feds.** Although EPA's National Pollutant Discharge Elimination System stormwater regulations are still too new for state or federal regulators to be bringing many enforcement actions under them, regulators are already enforcing other regulations to impose penalties on selected facilities accused of discharging pollutants into stormwater without legal permits. In December, for example, EPA issued an administrative order to the city of Worcester, Mass., alleging that pollution passed from the city's sanitary sewers through so-called "combined manholes" into the Worcester storm sewer system, from which the pollution allegedly was discharged into Fitzgerald Brook. The administrative order directs Worcester to install control measures called "invert plates" in 142 combined manholes to stop cross-contamination between the two sewer systems, according to an EPA press release.

Last year, the Environmental Crimes Section of the Pennsylvania Attorney General's Office

(Continued on page 8)

Storm Warnings

(Continued from page 7)

charged an Erie, Pa., building materials company with allegedly collecting spilled fuel oil in a storm sewer, then allowing it to flow through a company discharge pipe into Presque Isle Bay. According to the Environmental Crimes Section, a local court fined the company \$17,750 after company officials reportedly pleaded no contest to the charges.

In another stormwater-related action, the Mississippi Commission on Environmental Quality imposed a fine of \$5,000 last fall on a Jackson, Miss., company for allegedly violating state law by discharging drilling mud into local storm sewers.

- **Proposed CSO Strategy Signed by EPA.** EPA on Dec. 22 signed and approved the publication of a Draft Combined Sewer Overflow (CSO) Control Policy that could provide guidance to states and cities as they attempt to control pollution problems from combined sewer overflows under the Clean Water Act. The draft strategy, which is being issued as "agency guidance only," represents a compromise among environmentalists, state regulators and certain municipalities on the CSO issue. It would require municipalities with CSO problems to implement nine minimum control measures and to develop and implement long-term CSO control plans. Among the activities recommended to meet the minimum control measures would be municipal pretreatment

program reviews to identify industrial discharges to CSOs and efforts to enact or revise local ordinances to "control industrial discharges during wet weather as appropriate." *Federal Register* publication of the CSO strategy, a priority for departing EPA Deputy Assistant Administrator for Water Lujana Wilcher, was expected in January.

- **More Deficits Predicted in California; Regulatory Relief Urged for Business.** California's economy will remain "stagnant" through 1994, according to a quarterly forecast issued last fall by the Commission on State Finance, and the state's general fund "will again face budget imbalances as the economy continues to flounder and temporary revenue increases of the 1991 budget agreement come to an end." Suggesting that the cumulative deficit could total \$4.1 billion by the end of the 1993-94 fiscal year, the commission recommends several measures for restoring the vitality of the state's economic base, including "streamlining regulatory and permitting processes to reduce unneeded delays and costs" and "fostering (a) more supportive attitude by government toward business and economic development." The Council on California Competitiveness and the Assembly Democratic Economic Prosperity Team have proposed ways to achieve these and other related goals, the commission notes, but implementing the proposals may require "a high degree of collaboration between government, business and citizens that has not been common in recent years." ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$349
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$397
- Underground Storage Tank Guide\$279
- Community Right-To-Know Manual\$324
- Guide to Used Oil Regulations\$298
- Ozone Depleter Compliance Guide\$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 2, Number 7

January 1993

Most Commenters Urge EPA to Go Slow on Phase II

The U.S. Environmental Protection Agency (EPA) should study thoroughly the results of existing stormwater regulations before writing new ones to cover the so-called "Phase II" universe of still-unpermitted dischargers, according to numerous commenters on EPA's Sept. 9, 1992, *Federal Register* notice concerning Phase II regulations (see *Bulletin*, November 1992, p. 6).

By the end of November, EPA had received 118 comments on the notice, including more than 45 comments from units of local government.

Other notable commenters included several state regulatory agencies; the Water Environment Federation; several natural gas pipeline, waste disposal, and forest product companies; and trade associations representing home builders, shopping centers, the grain and feed industry, auto equipment dealers, electric utilities, the trucking industry, large and small petroleum companies and small business in general.

Several commenters, and an overwhelming majority of the small municipalities, called for

Congress to eliminate existing regulatory deadlines so that Phase II pollution problems can be handled without new National Pollutant Discharge Elimination System (NPDES) permit requirements.

Several commenters favored EPA or the states addressing Phase II through the Nonpoint Source Pollution program of section 319 of the Clean Water Act, which essentially encourages voluntary controls of rural runoff problems. Others suggested eliminating Phase II regulation entirely and having EPA and the states address remaining runoff problems by designating particular sources for regulation under existing "Phase I" rules.

A few small municipalities questioned whether nationwide stormwater regulations are needed at all. An official of Floydada, W. Va., for example, stated, "A large question in the minds of many U.S. citizens ... is whether any part of the regulations are necessary in certain areas ... While protecting the environment is extremely important, it must be done in a way that does not bankrupt the local government and/or taxpayers."

(Continued on page 2)

GUEST EDITORIAL

Preparing a Cost-Effective MS4 Management Plan

By Steve Veal, P.E.

Now that the deadline has passed for industrial stormwater permit applications, the U.S. Environmental Protection Agency (EPA) is shifting its focus to permits for municipal separate storm sewer systems (MS4s) in large and medium cities. EPA requires such cities to submit two-part permit applications containing proposed stormwater quality management plans, which theoretically must be implemented during the initial five-year permit terms.

(Continued on page 3)

Inside this issue. . .

- Stormwater Pollution Prevention: Is Your Plan Adequate? Page 4
- California Hires New Staff, Possibly for Enforcement Page 6
- First 'Model' Group General Permits May be Near Page 6
- Reauthorization Debate Begins For Clean Water Act Page 6

**Thompson
Publishing
Group**

Phase II

(Continued from page 1)

One common opinion expressed by industry on Phase II permitting was reflected in a letter submitted by the Washington law firm of Collier, Shannon, Rill and Scott, representing two associations of small retail gasoline marketers.

Saying that recent data on stormwater pollution by Phase I sources is inconsistent with EPA's initial expectations, the letter argued that "before moving forward with the Phase II program, it is imperative that Phase I data be thoroughly analyzed and critiqued. The agency should move very cautiously before forcing new industries to undertake the same effort without first developing a complete understanding of Phase I."

The letter also took exception to recent documents issued by the Rensselaerville Institute (RI) indicating that the public finds certain "known problem sources" of stormwater, including "gas/auto service industries, transportation [and] highway systems," to be environmental "bad actors" in special need of stormwater controls.

The primary lesson emerging from Phase I is that "the traditional folklore that there are 'bad actors' is a complete and utter myth," the Collier, Shannon letter contended. It added that the myth is unfair to the petroleum marketing/convenience store industry, which is "laden with environmental regulation which has already contributed toward making substantial reductions to the amount of pollutants in stormwater."

Minority Urges Continuity With Phase I

A few commenters broke with the prevailing consensus, however, and suggested EPA should move with due speed to impose significant stormwater regulations on at least some Phase II dischargers.

The director of water pollution control for Independence, Mo., for example, while saying he did not wish economic hardship on small neighboring cities, observed that without Phase II regulations, "it will appear that the smaller cities will

benefit economically [by] not having to implement and maintain stormwater programs."

Suggesting that this could lower the cost of doing business in the suburbs to the detriment of central cities, this official concluded: "Cities less than 100,000 in population must be treated the same as those above 100,000 ... In other words, give them two years to get NPDES permits and implement their stormwater management programs."

At least some stormwater analysts involved in a focus group discussion on Phase II conducted for EPA last year by the Rensselaerville Institute have voiced similar concerns about watering down regulations for Phase II sources.

"The idea of environmental 'bad actors' is a myth."

—Industry Commenter

Veteran stormwater researcher Gail Boyd of Woodward-Clyde Consultants, for example, says he argued in the focus group discussions that "EPA should make all the people who aren't regulated under Phase I do very similar things as currently regulated sources when we get to Phase II. Don't make Phase II sharply different from Phase I, because you don't want everyone to have to reinvent the wheel."

Boyd acknowledges that Phase I permit applications have been very costly for some sources, especially larger municipal separate storm sewer systems. He argues, though, that costs were high largely because of inadequate EPA guidance and the antiquated maps many big cities had of their sewer systems. Given good guidance, Boyd says, smaller cities where the locations of stormwater outfalls are already known need not spend nearly so much—especially if stormwater officials who have just dealt with larger municipal systems are around to help them.

"If EPA fools around with this for much more than two years, though, all the people who worked on stormwater for large cities will be fired and won't be available to help the small cities," Boyd said in a recent interview. "I think delay will make regulation harder for the smaller cities, not easier." ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Executive Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal use provided that the base fee of U.S. \$5.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

MS4 Plans

(Continued from page 1)

Management plans must address the control of stormwater pollutants from a wide variety of sources to the "maximum extent practicable"—the so-called MEP standard. The "maximum extent" aspect of MEP suggests that regulated cities must develop and implement stringent control programs. However, the word "practicable" indicates that municipal plans can also be designed to be cost-effective. Here are tips for developing a cost-effective plan:

- **Set Realistic Expectations.** Rome wasn't built in a day, and a municipal stormwater quality management plan cannot be expected to be implemented fully in a single five-year permit term. Proposed plans should set realistic goals and scheduling expectations. The widespread implementation of a city's structural best management practices (BMP) program may need to be phased in over several permit terms, especially if the city is currently without a structural control program.

EPA guidance documents often cite model programs underway in certain localities, such as Puget Sound or the Austin, Texas area, as examples that other MS4s may use in developing their own plans. However, city officials should remember that the model programs are 10 to 20 years old. It is probably unrealistic to expect to implement similar programs in just five years.

MS4 applications also should incorporate realistic expectations regarding citizen support for program funding. One Texas city recently attempted to implement a very modest stormwater utility to finance compliance with anticipated federal regulations. The resulting citizen uproar over the proposed rate structure caused the subsequent electoral defeat of the mayor and most of the city council.

- **Use Step-Wise Implementation.** Many cities have a very limited understanding of stormwater issues. They need to develop a good knowledge base before they can begin effective management and control activities. For most cities, therefore, a step-wise approach to developing knowledge, management systems and control measures will probably yield the best long-term results. During the first permit term, management plans should focus on building citizen and staff knowledge of stormwater quality issues, with only limited provisions for management and control activities (such as elimination of illicit discharges).

- **Emphasize Non-Structural BMPs.** Non-structural BMPs, such as used oil collection programs or the stenciling of stormwater drains to discourage illicit dischargers, tend to have a higher public profile than structural control programs.

These programs to involve the public in stormwater management tie in effectively with the idea of first building a knowledge base. Nonstructural BMPs also are relatively inexpensive and easily modified, whereas structural control programs are usually costly and difficult to alter if they prove ineffective.

- **Build Upon EPA's Industrial Permit Program.** EPA already has established a stormwater permitting program for larger construction sites and most industries. Municipal plans should be designed to ensure compliance with EPA's requirements. In Dallas, for example, officials estimate that only about 4 percent of the 1,000 industrial facilities requiring stormwater permits have filed notices of intent with the city to be covered under EPA's general permit.

To ensure that the balance of these facilities meet EPA requirements, the Dallas MS4 management plan calls for a modest inspection staff, whose primary goal will be assisting industries in meeting their requirements. The proposed plan also requires regulated facilities to certify annually that they have valid stormwater pollution prevention plans.

- **Use Existing Resources Where Possible.** Most cities already have some employees dealing with water quality issues. Often they can be cross-trained to deal with stormwater. The municipal program staff for industrial pretreatment programs, for example, can be easily educated to spot stormwater problems in industry. Police and fire department staff on constant patrol can learn to assist in enforcement against illicit discharges. In addition, stormwater programs can become catalysts for larger organizational changes aimed at optimizing the use of municipal resources.

- **Require Periodic Checks on New Programs.** The effectiveness of both structural and non-structural stormwater controls still is largely undocumented, and the relatively few documented results vary. Municipalities should thus plan for semiannual or annual checking to see if new programs are obtaining desired results. MS4s also should use smaller pilot programs to test all proposed control programs requiring significant investments.

- **Obtain Solid Commitments from Co-Permittees.** Officials in EPA Region 4 warn that cities can be held legally responsible for the actions—or inactions—of their co-permittees under an MS4 permit. Cities should require written commitments from entities requesting co-permittee status on an MS4 permit application. Co-permittees also should be required to "pay to play." Commitments may take the form of cash, work or in-kind contributions to the implementation of the MS4 plan.

- **Consider Other City Plans.** Each city with an MS4 permit requirement should closely evaluate

(Continued on page 8)

Pollution Prevention Plans: How Much Is Enough?

Late in 1992, Thompson Publishing Group (TPG) interviewed three leading environmental engineering consultants on how regulated facilities should go about preparing stormwater pollution prevention plans (SWP3s) that are required by April 1 under the U. S. Environmental Protection Agency's (EPA) "core" general permit for industrial dischargers. The following—the second part of a two-part article—is based on three separate interviews with: John Whitescarver, a former EPA stormwater official and currently manager of environmental engineering and compliance contracts for Ogden Environmental and Energy Services Inc.; Paul Traina, a former enforcement director and director of water programs for EPA Region 4 and now regulatory liaison for Camp Dresser McKee; and Jerry Perrich, a veteran industrial and environmental engineer for private industry and currently national stormwater director for Environmental Science and Engineering.

TPG: How do you know if your pollution prevention plan is adequate? And since you don't have to submit your plan to anyone, but just have it on site by April 1, how does EPA know if you've done anything at all?

Perrich: Recognize that there aren't going to be any EPA police knocking at your door right away, checking to see if you've got this plan. These things, by and large, are kept at your site to be available if an inspector should ask. But they are also public information documents, so that certain parties—particularly environmentalist organizations—could ask to see your SWP3. In that case, you better have one that you can present.

EPA also is on a trend of going to multi-media inspections now, training their people so that an OSHA inspector, say, will have enough background and knowledge so that he or she can ask to see some of the environmental documents you should have, and an EPA inspector can ask to see some of your OSHA and other documents. They're getting to be broader and broader in their approach.

So if you have a likelihood of being inspected, and someone is coming on the site, they may ask to see some of these documents—for example, spill prevention control and countermeasure plans, contingency plans, stormwater pollution prevention plans, anything you should have on hand.

But are there any special enforcement efforts planned? Not to my knowledge.

Whitescarver: There will be an effort in California, by at least one regional Water Quality Control Board, to have staff people drive down the street and drop by to see if facilities have SWP3s on site. They don't so much care what's in the plan, but just that you have one.

Traina: With the stormwater general permit, the responsibility is almost all on industry to develop the control technology. In one way this is easy for industry because EPA isn't inspecting the plans right away. But the requirement is not a piece of cake because it leaves industry with a lot of responsibility. It's a dual-edged sword, and I think industry has to consider this in deciding how proactive they want to be in preparing and implementing their plans.

Also, remember that anybody can come and look at your SWP3 once it's developed. Under the Clean Water Act, this is part of a permit and therefore a public document. The local citizen environmental group can demand to see it. If your stormwater is going into a municipal separate storm sewer system (MS4), the city also has a right to look at your plan.

TPG: How useful is EPA's new guidance document on industrial SWP3s?

Traina: It's a good reference document. Everyone who is developing a SWP3 should have a copy of the guide to look at, but it's not a plan. Don't expect to just pick it up and fill in the blanks for your facility and say, "That's my plan."

Several states are developing their own best management practices (BMP) manuals. California, for example, is developing a statewide BMP manual for facilities regulated by the California general permits. I happen to know about that because we at Camp, Dresser and McKee have been developing it. I imagine the final document will be available by the end of 1992 at the latest.

Whitescarver: In preparing a pollution prevention plan, you don't have to reinvent the wheel. You can use the document that EPA has produced to help you with this. The Washington, D.C. Council of Governments also has a great document on BMPs, and the state of Washington has a guidance manual for stormwater management in Puget Sound that's broken down by industries. There's also a guidance manual that Resource Planning Associates has produced for Seattle on BMPs for commercial and industrial businesses. All of these can be helpful to you as you prepare your plan.

Perrich: Recognize that the EPA manual is over 350 pages long. And it has an awful lot of detailed information in it. I found it difficult to follow; there's a lot of jargon, there's a lot of contradictory uses of some words—for example, "control measure" and "management practices." I think this makes it difficult for people to understand what it is exactly that EPA wants. I think somebody coming into this cold, picking up a manual and trying to put together a plan, has got themselves a pretty

tough job. There's another problem: The manual is based on the EPA general permit. But number one, there's not a good match between some of the items in the permit and the description of those items, or the lack of those items, in the guidance manual. Number two, your state permit may differ from EPA's general permit, so you have to look closely at your state permit to see what changes there are.

TPG: Are there any techniques you recommend for making effective use of the document?

Perrich: I find that the EPA manual is not all that helpful, and that people are going to have to seek some other form of assistance. That could be calling up your regulatory agency and asking for guidance to clarify questions. Although given the history of what this program has meant for regulatory agencies, that could be a little difficult. You can also go to seminars, get individual or institutional training, talk to industry trade associations. It would be an excellent strategy for a trade association to prepare or have prepared on their behalf, a generic SWP3 that their members then may customize. In California, which is about six to nine months ahead of the game on stormwater, we at ESE are already working with some trade associations on this. It's a very cost-effective way to go.

Whitescarver: I've developed model SWP3s for four industries. Actually, what we've written are not plans, but workbooks for writing plans. They have to be tailored for particular industries. I do think that there are industry-wide plans out there. But what we're doing for trade associations is list all the pollution planning options for a particular industry. You can't pick the options that are appropriate for a particular facility, though, until you actually go on site.

TPG: What can a facility do to bring the costs of pollution prevention planning down?

Perrich: I think you want to do this in a cost-effective manner. Something low-cost that doesn't get the job done still exposes you to liability. If you have a fish kill or a spill or something, you're still responsible, even if you have a plan that's on your shelf that supposedly was going to take care of this. So you want to make it cost-effective, to consider what you spend versus what you get. The whole thrust of this program is pollution prevention, and that is the general thrust of EPA now. I think it's a good opportunity to look around your operation.

Based on a lot of industrial facilities that I have seen, there are a lot of opportunities outside for relatively simple things to do: good housekeeping, routine maintenance, visual inspection—things that are going to give you the best bang for your buck. They are not high-tech; they are simply practical good management. And maybe that's the key: be as practical and pragmatic as possible when you're approaching these things. From my experience with industry, I think you don't want to throw dollars at

this problem. A lot of it is simply how you operate your plant. The stormwater program and pollution prevention are harbingers of the future. You're going to be expected to keep your operations cleaner and cleaner from a pollution standpoint, and stormwater is probably the place to start.

Traina: The biggest bang for the buck is source control: pollution prevention at the source. For the stuff you can't control at the source, that's where BMPs come in. For BMPs, you can do something very simple like developing a grassy swale to catch stormwater and have it infiltrate into the ground, or you can go to a very elaborate treatment system. Obviously there are BMPs that have lower capital costs and maintenance costs, but they may or may not work for your facility. You have to look at that facility by facility.

TPG: Anything else readers should think about in preparing SWP3s?

Perrich: I'd take the program seriously; I wouldn't do it as a pro forma exercise: I think that just opens you to future liabilities. I'd look at this proactively and do the best job with the resources that I have, and recognize that this is the wave of the future—the way EPA is going is pollution prevention. Be serious about this; it's not hard to do. It really does center around good management practices that you probably want to be doing anyway. This permit requirement makes you formalize them. EPA probably goes a bit too far in insisting that things be formalized. EPA tends to forget that you do have an industrial operation that you have to keep going. But I think that industry should be able to tailor these plans to not intrude on their operations, yet still meet the environmental requirements for pollution prevention. That is the challenge.

Traina: One thing to remember is that there may be a temptation to transfer a pollution problem from stormwater to something else: to take a stormwater pollution problem and make it into a wastewater pollution or solid waste or air pollution problem. Remember that you can't deal with stormwater in a vacuum. You have to look at your pollution picture in toto, not just in terms of stormwater. I encourage people to think of this in terms of an environmental audit. You're really looking at all the materials and equipment you use at your facility, and you want to make sure that a problem you solve in one area doesn't crop up somewhere else. For this reason, it may be advantageous for you to do a mass balance of materials at your plant, especially if you make use of a lot of toxic materials. ■

Note: This month's Manual update contains new material specifically addressing stormwater pollution prevention plans. See the new Tab 600 of your Manual for details.

Storm Warnings

Stormwater Related News in Capsule Form

- **Delaware, New York General Permit Authority Noted.** The Nov. 13 *Federal Register* noted that Delaware has received EPA authority to issue general permits under the National Pollutant Discharge Elimination System (NPDES) (57 FR 53899). The notice also said New York received such permit authority on Oct. 15.

- **EPA Guidance on Stormwater Sampling Available.** The U.S. Environmental Protection Agency (EPA) has produced an *NPDES Stormwater Sampling Guidance Document* (EPA document number EPA 833 B 92 001). For a free copy, contact the Stormwater Hotline at (703) 821-4823 and make use of the automated document ordering system.

- **California Hires New Stormwater Staff—For Enforcement?** Using fees from stormwater notices of intent (NOIs), the California State Water Resources Board has hired some 46 staffers to work on stormwater regulation issues at the state and regional levels. According to California attorney William Funderburk Jr., some regional water quality boards may use the new staff as inspectors to go door-to-door seeing if industrial facilities have complied with NOI requirements.

Tom Mumley, stormwater permit program coordinator for the Regional Water Quality Board in the San Francisco region, says the six new staffers his region has hired have other critical duties, too. But he acknowledges that "enhanced outreach, and I guess hitting the turf to make sure everybody is on board," will be one of their early priorities. Mumley indicated that at first, the regional board will "request politely that people get on board" and give them a grace period to meet NOI requirements. However, Mumley warned that "the door could slam" on late filers if they don't get NOIs in before the main part of the rainy season.

- **Group Application Numbers in Flux; Talks On Airport 'Draft Model' Permit Expected Soon.** The 1250 group permit applications EPA earlier approved covering 60,000 industrial stormwater dischargers (see *Bulletin*, November 1992, p. 1) have dwindled to some 750 applications covering about 46,000 facilities, EPA stormwater chief Ephraim King said in late November. More recent interviews indicate EPA could issue 'model' general permits soon for about 10 groups.

Ogden Environmental and Energy Services has finished a "draft model" general permit for the American Association of Airport Executives

(AAAE), Ogden's John Whitescarver said in December. He added that EPA has targeted AAAE's group application for fast-track processing and predicted EPA and AAAE will discuss the draft sometime in January.

- **Is Clean Water Act 'Consensus' Near on Farm Runoff, Industry Pollution Prevention?** There is an "emerging consensus" among all parties involved that legislation reauthorizing the Clean Water Act must include pollution prevention plan requirements for "all" industrial facilities and individual, farm-level planning requirements ensuring that farmers address agricultural runoff, according to environmentalist Jessica Landman of the Natural Resources Defense Council (NRDC). Speaking at *Inside EPA's* Dec. 8-9 conference on "Clean Water Act Reauthorization: Building a New Law," Landman identified "polluted runoff control on a watershed basis" as one of more than a dozen priority goals that environmentalists expect to pursue in the upcoming reauthorization debates.

- **Environmentalists, Oberstar Begin Talks on Nonpoint-Source/Polluted Runoff Bill.** Environmentalists met in December with the staff of Rep. James Oberstar (D-Minn.), a high-ranking member of the House Public Works and Transportation Committee, to begin discussing a new "polluted runoff" bill, according to one source in the Washington environmental lobby. Staffers for Oberstar, who wrote Section 319 of the current Clean Water Act, confirm that talks have occurred on "nonpoint-source pollution." The environmentalist source predicts that Oberstar may introduce a House bill on runoff by mid-February. Oberstar's staff say they hope to have a bill "as soon as possible" but decline to set an exact date. At press time, Oberstar and environmentalists reportedly disagree over whether the bill should address return flows from irrigated agriculture.

- **Clinton Infrastructure Proposal May Address Clean Water Concerns.** President-elect Bill Clinton's plan to stimulate job creation through a \$20-billion jump in federal infrastructure spending could have a clean-water component, James N. Smith of the Council of Infrastructure Financing Authorities said at the December *Inside EPA* conference on Clean Water Act reauthorization. Smith, who has reportedly been working with the Clinton transition team, said he recommends that infrastructure dollars be used to increase federal funding for the State Revolving Loan Fund (SRLF) under the Clean Water Act, which helps municipi-

palities finance sewage treatment plant construction. Some observers also hope that increased SRLF funding could help older cities to control stormwater pollution flows from combined sewer outfalls. According to the trade press, some environmentalists likewise hope the infrastructure proposal can generate more money for protection of "natural infrastructure" items such as wild and scenic rivers. Smith said on Dec. 8 that it was too soon to tell just what will be in the Clinton proposal, though. Some observers fear long-term investments in water infrastructure cannot provide the quick economic stimulus that Clinton seeks through the infrastructure scheme.

• **Watershed Planning Pushed by 'Water Quality 2000' Report, AMSA, Others.** In a late 1992 report outlining "a national water agenda for the 21st century," the Water Quality 2000 coalition has identified watershed-based planning and management as one of three primary strategies for reforming the nation's water policies in coming years.

Water Quality 2000, a coalition of about 80 organizations coordinated by the Water Environment Federation, recommends that Congress create a national watershed planning and management program to further this strategy. The report also targets urban and industrial stormwater runoff as significant problems. It makes the use of "pollution prevention" a second major strategy for water policy reform.

The Association of Metropolitan Sewerage Agencies (AMSA), meanwhile, has recently published a proposed "Comprehensive Watershed Management Act of 1993" for consideration by the new Congress. AMSA's proposal would add a new Section 321 to the Clean Water Act to establish a national watershed management planning process. Governors would identify priority watersheds for initial planning efforts. Appointed watershed management commissions of up to 25 members each, representing affected interests, would then draw up plans for state or EPA adoption.

• **California Stormwater Panel Urges Change In MS4 Permitting.** The California Stormwater Quality Task Force (CSQTF) on Dec. 9 issued a "final concept draft" of a bill to change federal stormwater regulations for municipal separate storm sewer systems (MS4s). The proposal would revise Section 402(p) of the Clean Water Act to cover industrial stormwater discharges only, and would add a new Section 402(q) to the law addressing both small and large municipalities.

Among other things, the new Section 402(q) would defer stormwater regulation of MS4s

serving populations of less than 100,000 until Oct. 1, 1995; give some MS4s until their second five-year permit terms to implement certain management controls and specify that MS4s must control stormwater problems "to the maximum extent practicable" rather than having to meet numeric water quality standards. The proposal would somewhat relax the federal ban on non-stormwater dischargers into MS4s. The draft legislation is based on an earlier proposal by the National Association of Flood and Stormwater Management Agencies.

• **Publication of Draft CSO Compromise Expected.** A compromise plan for addressing combined sewer outfall (CSO) problems was worked out in late 1992 by selected municipalities, environmental groups and regulatory officials. It may be published soon in the *Federal Register* at the behest of Lujana Wilcher, the U.S. Environmental Protection Agency's departing Assistant Administrator for Water, according to Washington sources. Endorsing organizations are likely to include the Association of State and Interstate Water Pollution Control Administrators, NRDC, the Environmental Defense Fund and AMSA.

Some cities strongly opposed to shouldering CSO correction costs during hard times could oppose the compromise as too expensive, however. One well-placed source expects Wilcher will try to publish a proposed CSO compromise before her scheduled departure on Jan. 3, 1993.

• **Wildlifers Sue for Release of Draft Great Lakes Guidance.** The National Wildlife Federation (NWF) on Dec. 4 asked the U.S. District Court for the District of Columbia for summary judgment requiring the federal government to issue a massive draft EPA guidance document setting uniform water quality standards for eight Great Lakes states under the Great Lakes Water Quality Initiative (GLWQI).

According to the trade press, Judge Charles R. Richey appears sympathetic to the wildlife federation's argument that publication of GLWQI is overdue. EPA's Great Lakes National Program Office director Christopher Grundler hopes that the draft guidance may be released soon.

The document, due by June 1991 under the Great Lakes Critical Programs Act of 1990, was produced through a consensus process involving environmentalists, industry, and state, federal and local officials. The Office of Management and Budget has been holding up its release, however. EPA's Science Advisory Board also has issued a report critical of some elements in the draft, which could set uniform standards for some 139 toxic substances. ■

MS4 Plans

(Continued from page 3)

proposed programs by comparable cities. EPA and state regulators may partly judge the adequacy of plans based on financial commitments. For example, if city "A" proposes to spend \$20 per capita on a five-year stormwater management plan, city "B" may have trouble selling EPA on a plan to spend just \$5 per capita. The proposed five-year stormwater management budget for the city of Dallas (new costs: about \$12 per capita) was established only after close examination of start-up costs for comparable cities.

Conclusion: Using common sense, most cities can prepare cost-effective stormwater management plans. Cities should cooperate closely with permitting authorities in developing such plans. However, they should make the first move by proposing program elements based on the above principles, rather than letting regulators dictate conditions that the city cannot afford.

Steve Veal is an engineer with Carter & Burgess, a firm of consulting engineers, planners and surveyors that is assisting the city of Dallas in developing its MS4 permit application. Carter & Burgess primarily does environmental consulting in Texas, but also has handled compliance questions for some nationally active clients, including Wal Mart Stores. ■

EPA's Stormwater Pollution Prevention Guidance Available from Thompson Publishing Group

Newly revised Tab 600 of your *Stormwater Permit Manual* incorporates, and includes excerpts from, EPA's recently developed guidance document: *Stormwater Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices*. As a service to our subscribers who wish to acquire the entire, 350-page guidance document, which includes detailed technical specifications, we are offering copies at a minimal cost of \$25. To order a copy of this document, use the order form contained in this month's update or send a check payable to Thompson Publishing Group, 1725 K St., NW, Suite 200, Washington, D.C. 20006. Please include your name, mailing address and telephone number with your order. We will send you the document upon receipt of your check.

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$349
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$397
- Underground Storage Tank Guide\$279
- Community Right-To-Know Manual\$324
- Guide to Used Oil Regulations\$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169



Stormwater Permit Manual

Bulletin

Volume 2, Number 6

December 1992

POLLUTION PREVENTION PLANS

Final EPA Guidance Manual Discusses BMP Options

Now that the Oct. 1 deadline has passed for regulated facilities to apply for National Pollutant Discharge Elimination System (NPDES) stormwater permits, the next major requirement facing many stormwater dischargers is preparing pollution prevention plans. For facilities covered by the U.S. Environmental Protection Agency's (EPA) "core" general permit for industrial dischargers, such plans must be prepared by April 1, 1993. A new final guidance document issued by EPA seeks to help industrial stormwater dischargers meet this requirement.

Titled *Stormwater Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices* (EPA document number 843-R92-006), the EPA guidance manual offers a step-by-step guide to putting together a stormwater pollution prevention plan and a sample workbook featuring a plan drawn up for a hypothetical corporation.

Additional chapters of the manual list "activity-specific" best management practices (BMPs) for controlling stormwater contamination at the source at nine types of industrial operations, as well as brief descriptions of approximately 50 "site-specific" BMPs for controlling stormwater pollution and sedimentation and erosion problems.

Stormwater 'Phase II' Regulatory Delay Signed Into Law

Congress has given the U.S. Environmental Protection Agency (EPA) extra time to develop regulations covering so-called "Phase II" stormwater dischargers, which the 1987 Water Quality Act (WQA) temporarily exempted from regulation while mandating EPA permitting of industrial stormwater discharges and separate storm sewer systems of "large" and "medium" municipalities.

Under the WQA amendments to the Clean Water Act, "Phase II" stormwater dischargers—which could

Also included in the appendices of the manual are lists of "reportable quantities" of various hazardous substances subject to certain provisions of EPA's final general permit for industry; a list of "water priority chemicals" under the Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III, Section 313; and a chart showing how the pollution prevention planning requirements of the stormwater regulations relate to the requirements of several other federal regulatory programs.

Additional appendices include charts on the monitoring requirements of EPA's "core" general permit and a list of contacts on BMP requirements at the state level.

According to the introduction, the manual's primary purpose is to provide pollution planning guidance for industrial facilities subject to EPA's "core" general permit. However, EPA expects that the manual's general concepts will apply to most stormwater general permits issued by NPDES states.

Copies of the manual are available for \$35 from the National Technical Information Service (NTIS) in Port Royal, Va.; (703) 487-4650 (NTIS document number: PB 92235969). A similar EPA manual on construction site BMPs should be available soon. ■

include small dry cleaning establishments, supermarkets, gas stations, parking lots at public buildings and even some residential developments—were exempted from regulation until Oct. 1, 1992. EPA was supposed to develop a report to Congress on the

(Continued on page 4)

**Thompson
Publishing
Group**

Inside this issue. . .

- Leading Stormwater Consultants Discuss Pollution Prevention Plans

Page 2

How to Get Started on Pollution Prevention Plans

For this issue of the Bulletin, we interviewed three leading environmental engineering consultants on how regulated facilities should go about preparing stormwater pollution prevention plans, which are required by April 1, 1993, under the provisions of the U. S. Environmental Protection Agency's (EPA) "core" general permit for industrial dischargers. The following is based on three separate interviews by Thompson Publishing Group (TPG) with: John Whitescarver, a former EPA stormwater official and currently manager of environmental engineering and compliance contracts for Ogden Environmental and Energy Services, Inc.; Paul Traina, a former enforcement director and director of water programs for EPA Region 4 and now regulatory liaison for Camp Dresser McKee; and Jerry Perrich, a veteran industrial and environmental engineer for private industry and currently national stormwater director for Environmental Science and Engineering. This is Part 1 of two related articles on pollution prevention planning. Part 2 of the composite interview should appear in next month's Bulletin.

TPG: How burdensome is the pollution prevention planning requirement going to be for regulated industry? Is this something you can do for yourself, or will you need to hire outside consultants to work on it?

Whitescarver: As I've said before, you don't have to be a rocket scientist to do this. But you do need to know the facility involved. If you're an outside consultant, you need to really know the facility you're working on; or if you don't, you need to work alongside someone from the plant who does. My recommendation to clients is that you can't just buy a stormwater pollution prevention plan; you have to earn it. Beware of the consultant who just offers to send you a plan in the mail.

The chemical industry is an interesting special case in terms of pollution prevention planning. For facilities subject to the reporting requirements of the Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III, Section 313, a professional engineer has to sign the pollution prevention plan. EPA's experience with using professional engineers

on spill prevention plans has convinced them that this kind of certification requirement works, and that's why they've required this for stormwater pollution prevention plans (SWPPPs) at SARA Title III, Section 313 facilities. One of the big advantages to industry of hiring an outside professional engineer to do this, though, is that it can give you a somewhat independent point of view about what your problems are.

Traina: I wouldn't say preparing a plan is burdensome, but it is going to be tedious. A company managing a facility has to start with people who are knowledgeable about the facility and have them check sub-facility by sub-facility to determine where everything is and what materials are getting into the stormwater. I would agree that this isn't rocket science, but by the time you're finished you will have to know how your plant operates pretty thoroughly. Either a plant employee or an outsider—perhaps an outsider would be more objective—just has to go through the plant and find out where the various materials are, what their potential is for getting into the stormwater, and what you as a corporation may be able to do about it. I think of this as a very intensive walk-through of your operation.

Whether you need a consultant will be a facility-by-facility decision. It will depend in part on the size and complexity of the facility and the environmental sophistication of the personnel involved. If you have a small, simple facility—no problem. But if you've got a complicated petrochemical facility, you may require some engineering or analytical work that's over and above the work of walking through the facility and seeing where your problems are. SARA Title III, Section 313 facilities are required by EPA to have their plans certified, and that's the one provision of EPA's general permit that may require—*may* require—some outside engineering services.

You may also require some engineering services in determining what you're going to do about the problems you find. For instance, if there are hazardous or toxic materials outside, you may just want to



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Senior Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal use provided that the base fee of U.S. \$5.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

cover them or bring them inside—or you may want to change the materials you use, which could require industrial process changes. Or you may decide to treat them or contain them downstream. That's where the engineering services are going to come in.

I agree, though, that it's important to have your facility personnel involved from the beginning, so they can make sure the facility complies with any plan that's developed. After the outside consultant goes home, it's the plant personnel who will have to make sure that whatever plan you've come up with is implemented. Your process people also have to understand whatever it is that they're doing that has an impact on stormwater.

Perrich: If it is true that 250,000 facilities in the United States are going to have to do this, I'd bet that over half of them will do it themselves. It's something that a whole lot of relatively small facilities, that aren't used to hiring consultants, will go and get guidebooks on, and do reading and go to seminars and get a little training on, and do the best they can. And that'll be it. You have to decide, given your limited resources, do you have the time, or do you have the people, to do this work? At a small facility, many times everything falls on one or two people, and they do the best they can. At a larger facility, you might have staff that you can assign to this job. But if you don't, if they're busy doing other things, then you might want to bring in somebody who's focused on doing your plan—this is all they have to work on. This consultant will be further up the learning curve on pollution planning than your staff may be. He or she can then zero in on the plan and get it done very expeditiously. I would think that the more complicated a facility is, the more they may need to have a consultant involved.

There are two primary reasons why people hire consultants in general. Number one, for outside expertise, or number two, because they lack the staff resources to get the job done. They could do it if they wanted to, but they don't have the time or the people. In addressing this particular problem, a consultant should bring to the table a wide range of facilities that they've seen, a lot of background and knowledge, a good understanding of the regulations. That may be of some benefit to the permittee.

TPG: If you're in a small facility and you decide to do it yourself, who should do it in your facility?

Perrich: EPA suggests forming a team, and they go on and define all the different functions within a company. But in a small company, many times the safety person is the environmental person and is also the maintenance supervisor and the operations supervisor. The key is, the person should be familiar with the physical facility and the operations that are going on. That might be one person, two people, three people as appropriate, so long as the team is thoroughly knowledgeable physically and operationally about what's going on.

Traina: The way I imagine this working practically is that if I'm the compliance manager at a plant, I will get together three or four people and tell them we have this general permit; each of you take responsibility for looking at some part of the facility and report back in a month or two on what you find. Incidentally, some of the problems they then discover can be dealt with as they're doing the survey. In the short term, they may correct spills or leaks in the plant as they discover them. Other longer-term corrections, such as installing a new pipe or some kind of containment measure, are what the plant must complete by Oct. 1, 1993, which is EPA's deadline for plan implementation.

TPG: Obviously SWPPPs are going to vary. But if there is such a thing as a typical small facility, what should its plan cost in terms of dollars, or maybe more usefully, in terms of staff time?

Whitescarver: Time requirements vary widely, but you can't do one in a day. For a so-called "light" industrial facility, you might be able to do one in several days. For other facilities, it may take weeks. Putting together a plan does require a great deal of site-specific information. You look at the problem, look at the list of possible best management practices (BMPs) to handle it, and you ask yourself, "What are all my choices in handling this?" You then check the list, look at the cost and the ease of operation of each BMP and its likely impact, and array all your options. Then go through and select the best one for your facility. It's a balancing act of determining the cost, ease of operations and so forth.

Perrich: "Should" and "will" are two different things. There also may be differences between what it would cost if a facility has its own people doing it, versus the cost of bringing in someone else to do it. But I would say the cost for a typical small facility, without adding a lot of whistles and bells but just doing a good workmanlike job, is probably in the low to mid four-figure range: \$2000 to \$5000.

In terms of time, I think if you hire consultants and they can be focused on it and dedicated to it, they should have it turned around in a couple of weeks. If you're doing it yourself, it depends on how much time you can dedicate to it. If you can take a week off and zero in on it, you can probably get it done. It should work out to maybe 20 hours or so. But if you're going to be working on it, putting it aside and then getting yourself back into it with a cost in lost startup time, it could take you longer. It also depends on how much information you have to collect. If you have pretty good records right now, you probably can pull all of this out of your records and it will go very quickly. If you have to generate the records, find this here and find that there, and make up a new map because you don't have an old map, it's obviously going to take longer.

Traina: As I said, this involves a very intensive walk-through of your facility. It might take a single

Interview

(Continued from page 3)

person ten days. If you have a number of people working on different areas of the operation, different sub-facilities, it might take each of them one and a half days. I don't think that in general, preparing the plan will be particularly time-consuming. Implementation of the plan may be another story.

TPG: How soon should you start on this task? You're supposed to have a pollution prevention plan in place, under the EPA general permit, by April 1, 1993. California, of course, is a special case—their deadline for preparing an SWPPP has passed. But if you're covered by the EPA core general permit, how soon should you start thinking seriously about doing this?

Perrich: I think realistically speaking people are going to wait until after the first of the year, because they've got this whole issue behind them of meeting the deadline for submitting the NOI or whatever. And now, about the first of the year, they're going to say, "Okay, what is it that we have to do this spring?" That's probably when it's going to get done.

When should it get done? You've got to do it in time to meet the deadline. So if you've got a big complicated facility, and you think there's a lot to be done, you want to get started in January. If you think your plan is going to be relatively simple and straightforward, you can postpone it a little bit. But the key is, don't get yourself up against a wall and have to just throw something together.

Whitescarver: Group applicants that have submitted part 1 and part 2 applications approved by EPA are not required to do pollution prevention

plans until they're issued permits requiring it (*Bulletin*, November 1992, p. 1). That's 60,000 facilities that don't have to do anything yet.

For facilities that are not in groups, plans really don't have to be written until you get close to spring. However, if people don't have their topographic maps for their sites, maybe they really want to get started earlier—say, by the first of the year.

In some cases, too, people may want to regrade their properties so that their topographic maps show only one outfall on a property instead of five. Again, starting by Jan. 1 is probably adequate. But it may make sense for you to start thinking, before Jan. 1, about who at your facility will be in charge of the SWPPP and whether you want to hire a consultant or not. You may want to start negotiating a contract with a consultant soon if you want one. ■

Phase II Delay

(Continued from page 1)

Phase II regulatory universe and proposed regulations by that time, but EPA has been unable to meet the Oct. 1 deadline (*Bulletin*, November 1992, p. 6).

Section 364 of the Water Resources Development Act of 1992, enacted by Congress on Oct. 5 and signed by President Bush on Oct. 31, pushes back EPA's deadline for issuing Phase II regulations to Oct. 1, 1993. The regulatory exemption from permitting for Phase II dischargers is extended at least until Oct. 1, 1994. The deadline extension, besides giving EPA extra time, should benefit cities of less than 100,000 population who might otherwise have faced costly new permitting requirements. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$349
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$397
- Underground Storage Tank Guide\$279
- Community Right-To-Know Manual\$324
- Guide to Used Oil Regulations\$298

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 2, Number 5

November 1992

Debate Flares Over Group Applications

For the last year or so, many stormwater consultants and industrial dischargers have favored the use of the group application process as the least expensive way to buy regulatory certainty under the stormwater program. When the U.S. Environmental Protection Agency's two core general permits became available in September, though, EPA headquarters suggested that most group members should reconsider the economic advantages and disadvantages of remaining in groups—triggering outrage by some of those active in managing group permit applications.

In response to protests from consultants, EPA may now be taking a more positive position on groups. EPA Region 6, though, is suggesting that group members could face certain legal problems if "model" general permits based on their applications are not issued soon. Several consultants, in reply, say this legal interpretation is wrong. They insist that even in the absence of model general permits, group members are in compliance with the regulations, even though they may enjoy a respite from

compliance requirements until model permits are issued.

Before EPA issued its long-awaited "core" general permits for industrial dischargers and construction sites (see related story, *Bulletin*, October 1992, p. 1), leading consultants touted group applications as a cheap form of "regulatory insurance" that could save participants the burden of submitting individual permit applications requiring costly stormwater sampling data.

In response to the consultants, and with some encouragement from EPA itself, some 60,000 industrial facilities filed approximately 1,250 "part 1" group applications that subsequently have received EPA approval.

Now, however, Michael Cook, director of EPA's Office of Wastewater Enforcement and Compliance, is urging most group members to consider whether it makes economic sense for them to remain in groups rather than to seek general permit coverage.

(Continued on page 2)

State-Specific Conditions Published for General Permits

State-specific stormwater terms and conditions have been published in the *Federal Register* for states, territories, Indian nations and federal facilities directly regulated by the U.S. Environmental Protection Agency (EPA) rather than by states.

On Sept. 9, EPA published a "core" industrial general permit covering (in some cases with added conditions) the states of Alaska, Arizona, Florida, Idaho, Louisiana, Maine, New Hampshire, New Mexico, Oklahoma, South Dakota and Texas

(Continued on page 6)

Inside this issue. . .

- California Lawyer Eyes Golden State's Enforcement Picture Page 4
- EPA Seeks Comments on 'Phase II' Options Page 6
- What Would a Clinton Victory Mean for Stormwater? Page 7
- NOAA Precipitation Data for Sale Page 7

**Thompson
Publishing
Group**

Group Applications

(Continued from page 1)

EPA Region 6 director Myron Knudsen in Dallas goes further, recommending that "no one, under any circumstances, file as a group" and contending that group members may be legally liable for discharging stormwater without permits if EPA—as expected—takes a long time in writing group "model" general permits based on the "part 2" group applications.

In early September, at an EPA press conference announcing the new general permits, the perception that Cook had changed position on the group process sparked a protest from some consultants. In a subsequent meeting attended by EPA stormwater officials and representatives from consulting groups and law firms, several consultants reportedly argued strongly against EPA's encouraging facilities to leave groups, saying it would hurt the stormwater program and the agency's credibility in general.

EPA Headquarters Responds

In response, EPA headquarters now appears to be taking a more positive, or at least neutral, position on groups. In a recent interview, Cook reluctantly stated that continuing membership may hold potential advantages for some group members. Nevertheless, Cook strongly questioned the economic advantages of groups for industries that are not required to do sampling under EPA's core general permits. He also warned that it is possible that some groups that submit part 2 applications may receive model permits that are more stringent than the core general permits.

Pressed on the point by the *Bulletin*, however, Cook said there is still some chance of group applicants receiving model general permits that are better tailored to their industries and, hence, less burdensome. For administrative reasons, EPA plans to fold the 1,250 approved group applications into a "significantly smaller" number of model general permits, Cook said. He told the *Bulletin* that this might be in the range of 100-200 model permits. Cook added that to facilitate a quicker turnaround

on the model general permits, EPA headquarters is negotiating to farm them out to different EPA regions for processing.

Groups Still Useful, Consultants Argue

According to John Whitescarver, a consultant with Ogden Environmental and Energy Services, EPA has tried to encourage facilities to leave groups largely because it does not have the staff to handle the unexpectedly huge number of group applications received. Despite its administrative problems, Whitescarver said, EPA cannot abandon groups without losing credibility with regulated industry.

Whitescarver and several other consultants, including Steffen Plehn of CH2M Hill, further argued that far from being subject to potential liabilities for unpermitted discharges, as Region 6 contends, group members who have submitted applications that EPA cannot process immediately should gain added time before being subject to pollution prevention planning requirements.

That is also the position of stormwater attorney William Funderburk Jr. In October 1991, Funderburk notes, he and Collier, Shannon and Scott attorney Jeffrey L. Leiter co-authored a *Bulletin* guest editorial promoting group applications on precisely this basis, arguing that "industrial dischargers seeking coverage under a general permit will spend compliance dollars sooner than those submitting individual or group applications."

Also arguing for continued membership in EPA-approved groups is Collier, Shannon attorney Jeff Longworth. Many group members will also save money by developing common pollution prevention plans.

Region 6's Regulatory Burden

Knudsen discounts such arguments. "In all frankness, all kinds of consultants and lawyers out there are giving us hell because they've been making a lot of money selling people on groups," he said. It is in the interest of such parties to keep promoting groups even though the general permit will be cheaper to comply with, Knudsen claimed. Particularly now that the general permit's monitor-



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Senior Editor, Jill S. Talbot, Esq.; Editor, Andy Feeny; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal use provided that the base fee of U.S. \$5.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

ing requirements have been relaxed, he said, "I can't imagine anyone in their right minds wanting to remain in a group application."

However, Knudsen acknowledged that Region 6 itself has a strong interest in discouraging group memberships, because it has regulatory authority for more non-NPDES-delegated states (including the oil-producing states of Texas, Louisiana and Oklahoma) than any other EPA region. In developing and implementing "model" general permits based on group applications, Region 6 faces the greatest administrative burden.

Knudsen told the *Bulletin* that he earlier favored the group application process, but turned against it when the enormity of EPA's permit-writing task associated with groups became apparent. Last spring, Knudsen said, he urged Cook simply to eliminate the group application process.

What Does the Oct. 1 Deadline Mean?

At press time, Knudsen and Cook agree with various consultants interviewed that EPA cannot compel facilities to leave groups, and that EPA will not bring enforcement actions against group members whose model permits are late.

Cook, however, expressed concern about the fairness of allowing group members added time—in some cases, possibly two or three years—before their permits are processed and their compliance requirements begin. This delay should have real environmental consequences, Cook said. Knudsen said that although Region 6 will not prosecute such group members, some environmental groups in the region may bring third-party lawsuits against such facilities under the Clean Water Act. Knudsen added that under the law, "As of Oct. 1, if you're not permitted, you're in violation."

Plehn and most other supporters of group applications disagree with Knudsen on the law, arguing that the 1987 Water Quality Act and EPA's implementing stormwater regulations merely require facilities to apply for permits by Oct. 1—not receive them.

Longworth also suggests that EPA's fears of regulatory delays associated with groups may be exaggerated. Some of the 14 groups that Collier, Shannon is coordinating may have proposed "model" general permits prepared for EPA by Dec. 31, Longworth said.

How Regions, States Are Responding

Regional EPA officials outside Region 6 generally prefer general permits to group applications, but are somewhat divided on the question of when group members must actually receive permits to be in compliance with the law. Officials from regions 10 and 4 said that Knudsen is technically correct about group members needing permits by Oct. 1, but questioned whether courts will rule against

companies that have gone to the expense of submitting "part 2" group applications.

Anne Reynolds, an environmental scientist with EPA Region 2, said she believes that "the regulation requires you to file an application, not to have a permit by Oct. 1 ... The ball is now in EPA's court." A source in Region 5 said this is mostly an issue for states, but that from the region's perspective, group applications remain a valid option. Regions 1 and 3 had not commented at press time, and Ralph Summers of Region 7 said he had no preference on group applications one way or another. According to Eugene Bromley, Region 9 stormwater coordinator, "We would encourage facilities to get out of the groups. But the group application is still valid if they choose that route."

At press time, officials in Oregon, Washington state, California and Minnesota are insisting that all industrial dischargers come under state general permits rather than waiting for EPA model general permits based on group applications. New Jersey is reportedly giving group members an extra year, but only that, to be covered by model permits before they must obtain alternative permits.

In Missouri, where state law technically prohibits group permits, regulator Karl Fett plans on developing as many as 50 industry-specific permits that dischargers will be required to obtain on a site-by-site basis. However, Fett says he is willing to look at draft model general permits that groups have developed for ideas on how to write the state permits. If a group draws up its own proposed model permit, Fett says, "they're doing part of my job. I'd gladly look at it."

Mixed Response of Group Members

Several regulatory officials and some consultants report that certain groups are starting to break up, not for fear of liability but because they see general permit coverage as being cheaper and easier.

However, Douglas Bell, general counsel for the Rubber Manufacturers Association, says that "the group application is still the way to go" for his industry. The rubber industry group will help members escape costly monitoring and certification requirements that they would face under EPA's core industrial general permit, Bell contends, and data the group has gathered shows rubber manufacturers do not need to be as stringently regulated as the core general permit indicates. Most members in the rubber industry group have paid their dues already and want to see their application completed, Bell adds.

Along with Longworth, Bell says that the group application is "still a viable option." Bell also predicts group members will comply with EPA's requirements sooner than most facilities covered by the general permit. ■

California Lawyer Eyes State Enforcement Picture

William Funderburk Jr. is an environmental attorney with Radcliff, Rose and Frandsen, a full-service law firm with offices in Los Angeles, San Francisco, Hawaii and Washington, D.C. He is involved with California stormwater regulations and most other aspects of Radcliff, Rose's diverse environmental practice. Funderburk has a degree in engineering from Yale and a degree in law from the Georgetown University Law Center. His professional experience includes a 1984 stint as a press advisor to the Walter Mondale presidential campaign and service as a regional investment banker with Johnston, Lemon and Co. from 1985 through 1989. In 1990 he came to work for the Washington law firm of Collier, Shannon and Scott (now Collier, Shannon, Rill and Scott), where he was involved in stormwater group application issues and other environmental work. Funderburk joined Radcliff, Rose and Frandsen in June 1992. The following is excerpted from a longer interview by Thompson Publishing Group (TPG) on Sept. 23, 1992. For additional suggestions from Funderburk on pollution prevention planning in California, see the "Insight" to Tab 600 in this month's update of your Stormwater Permit Manual.

TPG: What do you think about the new final stormwater permit requirements approved by the California State Water Resources Control Board (SWRCB) on Sept. 17?

Funderburk: In this case, I think we were somewhat successful in arguing that some of the state's stormwater monitoring requirements should be relaxed to provide industries, especially small businesses, with an incentive for participating in the program. The compromise that the state board has now struck has a sampling exemption that's similar to the federal sampling exemption: a scaled-back, less stringent monitoring protocol, with grab versus composite samples, and the authority for the regional water quality boards to make things more stringent. I think that at this stage, California, like the U.S. Environmental Protection Agency (EPA), wants to get as many people as possible into the program. And they've realized that given the current state of the economy, with unemployment predicted to go to 11 percent next year, any new regulation has to have a little spin on it, so that industry will feel that it's being accommodated in some way.

TPG: What kinds of requirements does the compromise impose on California industry?

Funderburk: Well, there are still basic requirements in the California regulations. The stormwater pollution prevention plan still has to be implemented, and that includes certifying that there are no non-stormwater discharges in the stormwater discharge. That has to be completed, implemented

and certified by Oct. 1, 1992. The storm water pollution prevention plans do not have to be submitted to regulators, but dischargers should complete them and have them in their files in case of inspections.

The next step is implementation of an individual stormwater monitoring program. There must be a visual monitoring program undertaken during the dry season over the next four years, monitoring stormwater for certain characteristics visually—odor, discoloration and so forth.

Another provision requires that facilities make two observations to ensure that there are no non-stormwater dischargers from any regulated facility. It requires observing your outfalls and certifying that the only discharges leaving your site are stormwater. If you determine that non-stormwater discharges exist at your facility, they must either be eliminated or permitted under a conventional National Pollutant Discharge Elimination System (NPDES) permit.

Then there's the quantitative monitoring requirement which requires sampling during a storm event—but this doesn't have to be a "representative" storm event, since they've eliminated that requirement from the EPA protocol. You just have to collect a grab sample or a composite sample during a significant storm discharge. That has to be done once after Jan. 1 during the 1992-1993 wet season, which is now defined as October through April. So you have to sample once by April 30th. In the subsequent seasons, you have to sample twice. And there is no longer a requirement that the first storm event of the season be sampled.

TPG: How can industries in California be exempted from the sampling requirements?

Funderburk: Facilities may seek exemptions from the sampling requirements by submitting a "sampling exemption certification" to the appropriate regional water quality board by Dec. 1 for the coming wet season, and by Aug. 1 of each subsequent year. Dischargers who file such exemption certifications are exempt from quantitative analysis—unless notified otherwise by the regional board. Standards for granting exemptions, moreover, may vary depending on location. Generally, I'd recommend that California facilities not rely on being able to use the sampling exemptions unless they've checked first with their regional boards.

If a facility does pursue an exemption, it may do so in three alternative ways: through self certification that it has no illicit discharges or significant materials exposed to stormwater, through certification by a local water agency that the facility has implemented a stormwater pollution prevention

plan and should not be required to do quantitative sampling, or through a regional water board's certification of this.

For those facilities that are not exempt from sampling, sampling may be conducted on an individual or group basis. Individual sampling plans must be in place by Jan. 1, 1993. Group monitoring plans must be submitted by Dec. 1, 1992, and implemented by Jan. 1. That means the groups must be ready to sample when it rains. Then there are yearly reporting requirements that everybody must meet by July 1 of each year—of visual monitoring results and sampling results where applicable.

TPG: How well do you think California industry is complying with the stormwater regulations so far?

Funderburk: The state board was expecting 40,000 California NOI filers, and so far it has received only 8,000-9,000. Of those, I would almost guarantee you that fewer than 50 percent have their pollution prevention plans in place. Now, part of the reason may be confusion over the board's recent action in modifying the general permit. Many people, when they heard that monitoring requirements were gone, thought that all the other requirements were gone. But they're not! You must have a stormwater pollution prevention plan in place by Oct. 1, 1992—and the state board on Sept. 17 refused to extend the deadline for stormwater pollution prevention plans.

TPG: What happens to people who haven't put their plans in place, or who haven't even filed NOIs yet?

Funderburk: Technically they're out of compliance with the Clean Water Act, subject to fines of \$25,000 per day, and can be jailed for six months.

TPG: That's the bad news. What's the good news?

Funderburk: The good news is that SWRCB and the regional boards have all gone on record stating that they don't intend to enforce against late filers. But they do retain the enforcement authority. As a lawyer I wouldn't tell anybody that they're "in compliance" if they submit an NOI late or if they complete, implement and certify a pollution prevention plan late. But I do recommend that if you decide to file an NOI or get a pollution prevention plan in late, you should document everything that you do in internal memos placed in your file, showing that you have made good-faith efforts, or that you just found out about the regulation. Make some demonstration that you haven't just neglected to do anything up to the point at which you did do something. There ought to be a good reason for your being late. The standard for Clean Water Act violations, remember, is negligence. You don't have to violate the law willfully, wantonly or knowingly. Just plain negligence puts you out of compliance.

TPG: It sounds as if some California dischargers are potentially in a lot of trouble.

Funderburk: The state board and the regional boards have budgeted for 40,000 NOI filers. If the only way they can encourage participation in this program is through enforcement, they're going to come down hard on the bad actors.

TPG: How soon do you see enforcement coming?

Funderburk: Up until six months ago we were saying not until 1993 or 1994. I think it may happen earlier, as early as early 1993, because the state has to provide incentives to participate in the program. And participation means not only submitting your NOI, but also preparing a pollution prevention plan at minimum.

TPG: How big a deal are the pollution prevention plan's requirements?

Funderburk: Generally it's good to have your engineering and legal team work on this document, to make sure it meets the legal requirements and the technical requirements of the regulation. But it can almost be as big a deal as you want, because the regulation is somewhat open-ended. Stormwater pollution prevention plans, at first blush, are essentially audits—audits of a facility's exposure and management practices that are used to mitigate exposure to stormwater. With a kicker: you need a certification that there are no non-stormwater discharges to stormwater made by the facility.

*To get participation rates up,
the state may come down hard
on 'bad actors.'*

There's a provision of the pollution prevention plan requirements that can allow some facilities to obtain extensions on eliminating their non-stormwater dischargers. However, getting an extension is somewhat complicated (see "Insight" in this month's update to Tab 600).

TPG: How hard will it be to eliminate non-stormwater discharges from a facility's runoff?

Funderburk: This certification procedure could lead to some very expensive requirements. One problem, for instance, is that the air quality management districts require some companies to spray water on their facilities to control very heavy dust generation. Technically, if that water rolls off a facility and enters the sewer system, that's a non-stormwater discharge.

This is why many lawyers hold their hands up and say, "I'm not going to get involved with this program." You can take one legal interpretation and advise a company to stop suppressing dust, which violates their air quality permit; or you can advise them to continue the dust suppression, and thereby violate their stormwater permit. I encourage companies to contact the staff members of their regional

(Continued on Page 6)

EPA Seeks Comments on 'Phase II' Options

The U.S. Environmental Protection Agency (EPA) seeks public comments on how to handle currently unregulated stormwater discharges under the next phase of the stormwater program. In the Sept. 9 *Federal Register* (57 FR 41344), EPA offers several options for handling so-called "Phase II" dischargers, which the 1987 amendments to the Clean Water Act temporarily exempted from regulation.

Comments on EPA's options, as well as alternative proposals for tackling "Phase II" dischargers, are due at EPA headquarters Nov. 9.

In explaining the options, EPA suggests several ways that Phase II stormwater regulations might achieve environmental goals. Generally speaking, they include:

- ▶ relying on targeted municipalities to control currently unregulated stormwater dischargers within their jurisdictions, with either the MS4s themselves or EPA identifying "priority" dischargers; or, alternatively, regulating dischargers without reference to municipalities;
- ▶ amending the Clean Water Act to eliminate the Phase II requirements of section 402(p)(6), while expanding the Phase I universe of already regulated entities to include additional dischargers believed to be contributing to water quality violations on a "category, watershed, stream reach, [pollutant] loadings or other basis";
- ▶ designating more MS4s for permitting, whether by lowering the minimum population requirements for permit coverage, designating individual MS4s by name, choosing new MS4s on the basis of population density, or focusing on municipalities with fastest population growth;
- ▶ directly identifying added stormwater dischargers needing regulation, based on their "comparative loadings" of pollutants discharged into U.S. waters;
- ▶ regulating targeted Phase II dischargers on a watershed or regional basis;

Funderburk Interview

(Continued from page 5)

board and work with regulators to get problems like this cleared up. If you're concerned about information being disclosed in this way that you don't want disclosed, talk to your lawyer first so the material you discuss is covered by the attorney-client privilege, then have your lawyer call the regional board. Or if not, make the call yourself. And get the conversation memorialized in a memorandum to your files. Generally, it's on these finer points of the regulations that you need a legal advocate. ■

- ▶ using rainfall zones to designate permittees on a regional basis; and
- ▶ using section 402(p)(6) of the Clean Water Act to establish requirements for states, through state stormwater programs, to select new classes of regulated dischargers.

EPA also proposes alternative control strategies for handling priority Phase II dischargers and three different options for Phase II regulatory deadlines.

Send comments in triplicate to Michael Plehn, Office of Wastewater Enforcement and Compliance (EN-336), U.S. Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460. ■

State-Specific Permit Terms

(Continued from page 1)

(57 FR 41236-342; see *Bulletin* October 1992, p. 1). The Sept. 9 announcement also covered the territories of Johnston Atoll, Midway and Wake Island and federal facilities in Colorado and Washington state. It also covered Indian lands in Alaska, California, Colorado, Florida, Louisiana, Maine, Massachusetts, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Utah, Texas, Washington state and Wyoming.

On Sept. 25, EPA published a "core" industrial general permit and related state-specific conditions for American Samoa, the District of Columbia, Guam, Massachusetts, Puerto Rico, and Indian lands in New York and federal facilities in Delaware (57 FR 44438).

For stormwater discharges from construction activities, EPA published a core general permit and state-specific conditions on Sept. 9 covering Alaska, Arizona, Idaho, Johnston Atoll, Louisiana, Maine, New Hampshire, New Mexico, Midway, Oklahoma, Puerto Rico, South Dakota, Texas, and Wake Island; federal facilities in Colorado and Washington state; and Indian lands in Alaska, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Utah, Texas, Washington state and Wyoming (57 FR 41176-233).

On Sept. 25, EPA published a core construction activity general permit and associated state-specific conditions for American Samoa, the District of Columbia, Florida, Guam and Massachusetts, as well as federal facilities in Delaware and Indian lands in New York (57 FR 44412). State program pages for the affected states and territories will be included in future updates. In the meantime, subscribers are urged to consult the *Federal Register* for specific information. ■

Storm Warnings

Stormwater-Related News in Capsule Form

- **Stormwater in the Campaign: Clinton Vows Push on Nonpoint Source Runoff; Bush Boasts of Enforcement Record.** At press time, there are some indications that a presidential victory by current front-runner Bill Clinton might result in greater White House attention to stormwater runoff and nonpoint-source pollution. Position statements distributed by a Clinton campaign organization list as one of the candidate's goals the passage of a new Clean Water Act with standards for "nonpoint-source pollution," as well as with "incentives for our firms, farmers and families to develop ways to reduce and prevent polluted runoff at its source." The Clinton campaign further proposes a national educational effort to encourage "all citizens" to reduce nonpoint-source pollution from "household chemicals, lawn products and pesticides."

A Bush campaign fact sheet, on the other hand, boasts of the president's "vigorous enforcement initiatives" against Clean Water Act violators; issuance of a 1991 regulation to reduce lead, copper and other harmful substances in drinking water; development of a 1991 strategy to use "environmentally friendly agricultural practices" to develop groundwater protection programs; and development of a "major new water quality assessment program" addressing pollution from pesticides, excess nutrients and sedimentation. The administration also boasts of setting water quality standards under the Clean Water Act "for 105 toxic pollutants in 22 states that have failed to adopt adequate standards on their own."
- **Fact Sheet Issued on Ninth Circuit Ruling.** EPA intends to conduct further rulemaking proceedings on stormwater regulations for construction activities disturbing less than five acres of land and "light" industrial activities where no significant materials are exposed to stormwater, according to a Sept. 3 EPA fact sheet on last summer's Ninth Circuit Court of Appeals rulings in *American Mining Congress v. EPA* (965 F.2d 759 (9th Cir. 1992)) and *Natural Resources Defense Council (NRDC) v. EPA* (966 F.2d 1292 (9th Cir. 1992)). The NRDC ruling rejected EPA's Nov. 16, 1990, permitting exemption for small construction sites and "light" industrial activities without exposure. Until further rulemaking is completed, the fact sheet states, EPA will not require stormwater permit applications from these two classes of dischargers. The fact sheet formally confirms an EPA position announced earlier (see *Bulletin*, September 1992, p. 7).
- **South Carolina, Iowa Receive General Permitting Authority.** According to the Sept. 22 *Federal Register* (57 FR 43733), South Carolina has received authority from the U.S. Environmental Protection Agency (EPA) to issue general permits. A formal announcement that Iowa has received general permit authority (see *Bulletin*, September 1992, p. 2) was published Aug. 18 (57 FR 37162).
- **Proposed Draft General Stormwater Permit Published for Indian Lands in Oregon.** On Aug. 11, EPA announced a proposal by EPA Region 10 to issue a general NPDES permit for discharges of stormwater associated with industrial activity from Indian lands in Oregon (57 FR 35774). Written comments on the proposal were due by Sept. 10. The purpose of the notice was to clarify that EPA intends to extend general permit coverage to Indian lands in Oregon, although provisions for this had been inadvertently omitted from EPA's proposed Aug. 16, 1991, general permit (59 FR 40948). For more information, contact Jeanette Carriveau, EPA Region 10, at (206) 553-1214.
- **Stormwater Pollution of Blackstone River to Be Studied.** On Aug. 24, EPA awarded a \$325,000 grant to the University of Rhode Island to research the sources and extent of pollution flowing into the Blackstone River in Massachusetts and Rhode Island. The grant will fund a two-year project to monitor and model stormwater contamination of the Blackstone, a major source of metals and toxic organic chemicals flowing into Narragansett Bay. EPA says it expects recommendations for action to come from the project by 1994.
- **NOAA Precipitation Data for Sale.** Officials at the National Climatic Data Center (NCDC) of the National Oceanic and Atmospheric Administration (NOAA) have hourly precipitation data available for 280 U.S. cities that may be of potential use to stormwater permittees and consultants. NCDC holds all U.S. weather records and has data available in hard copy and microform and on magnetic tape. It also publishes data reports, reference manuals, atlases and catalogs of its holdings, and provides services on a cost basis to clients from government and the commercial and scientific communities. For more information contact John Hughes, Project Coordinator, NCDC, Federal Building., Asheville, N.C. 28801-2696; (704) 259-0475. ■

Courses and Seminars

By The Terrene Institute, U.S. Environmental Protection Agency and nine other federal agencies. Contact The Terrene Institute, 1000 Connecticut Ave. N.W., Suite 802, Washington, D.C. 20036; Tel: (202) 833-8317; Fax: (202) 466-8554.

- **"Watershed '93: A National Conference on Watershed Management,"** Alexandria, Va., March 21-24. Registration \$150 before March 1, \$200 afterwards. Proposals for presentations welcome, especially case studies of multi-objective watershed management.

By Continuing Education Services, American Society of Civil Engineers (ASCE), 345 E. 47th St., New York, N.Y. 10017; Tel: (800) 548-2723 or (212) 705-7668; Fax: (212) 421-1826.

- **"How to Develop an Effective Plan for Erosion and Sediment Control,"** Irvine, Calif., Dec. 9. Fee: \$345 for ASCE members; \$395 for non-members.

By Government Institutes Inc., 4 Research Place, Suite 200, Rockville, Md. 20850; Tel: (301) 921-2300; Fax: (301) 921-0373.

- **"Stormwater Discharge Regulations Course,"** Arlington, Va., March 15. Fee: \$499.
- **"Clean Water Act Compliance Course,"** Arlington, Va., March 16-17. Fee: \$899.

- **"Safe Drinking Water Act Course,"** Arlington, Va., March 18-19. Fee: \$899.

By Executive Enterprises, 22 West 21st St., New York, N.Y. 10010-6990; Tel: (800) 831-8333 or (212) 645-7880; Fax: (212) 645-8689.

- **"Stormwater Compliance Requirements,"** New Orleans, Dec. 15-16, Session 2CTOX93-E2754; Washington, Feb. 1-2, Session 32TOX15-E2754; San Francisco, March 4-5, Session 33TOX74-E2754. Fee: \$995 plus \$95 registration fee. Some volume discounts available.

By Carter & Burgess Inc., Engineers, Planners, Surveyors, 7950 Elmbrook Drive, Suite 250, Dallas, Texas 75247-4951. Contact Sharon Flanagan in Ft. Worth office at (817) 335-2611.

- **"Preparing Your Stormwater Pollution Prevention Plan,"** Midland, Texas, Nov. 17; Houston, Dec. 3; Dallas, Jan. 14. Fee: \$95.

By Environmental Resource Center, Seminar Registrations Dept., 101 Center Pointe Drive, Cary, N.C. 27513-5706; Tel: (800) 537-2372 ; Fax: (919) 469-4137.

- **"EPA's New Stormwater Permits: The Requirements & How to Comply,"** Richmond, Va., Nov. 10; Tampa, Fla., Jan. 5; Lexington, Ky., Jan. 22; Arlington, Va. Jan. 28; Orlando, Fla., Feb. 5. Fee: \$565, discounted to \$535 for registrations received 15 days before the seminar date. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$349
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$349
- Underground Storage Tank Guide\$279
- Community Right-To-Know Manual.....\$324
- Guide to Used Oil Regulations\$398

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 2, Number 4

October 1992

OMB APPROVAL GRANTED

EPA Issues Final 'Core' General Permits

The U.S. Environmental Protection Agency (EPA) and the Office of Management and Budget (OMB) have agreed on compromise stormwater general permits for industrial dischargers and construction sites of five acres or more. By the end of September, EPA plans to publish both "core" general permits in the *Federal Register*.

Copies of EPA's core general permits appear in this month's update of your *Stormwater Permit Manual*. The update also includes EPA's notice of intent (NOI) form for dischargers seeking general permit coverage.

According to Ephraim King, EPA branch chief in charge of the NPDES program, approximately 70 individual general permits based on the core permits, but with state-specific terms and conditions, will appear in the *Federal Register* during September. One batch of permits should appear during the second week of the month, the second batch in the following week, if all goes according to EPA's plan.

By law, stormwater dischargers must submit NOIs to obtain coverage under these general permits (or under general permits issued by the NPDES-delegated states) by Oct. 1, or alternatively, must submit individual permit applications or "part 2" group applications. According to Mike Cook, director of EPA's Office of Wastewater Enforcement and Compliance, EPA has specifically deleted certain provisions published in its earlier draft general permits granting some dischargers more time to submit NOIs. A ruling by the Ninth Circuit Court of Appeals this summer, upholding the position of the Natural Resources Defense Council (NRDC) that EPA has already illegally extended certain stormwater deadlines, motivated EPA to make the change, Cook says.

However, Cook reminds members of the regulated community that EPA's first priority is to make the general permits work and to help industrial and construction site dischargers obtain coverage under the new system. EPA enforcement actions against

(Continued on page 7)

COMMENTS AND REACTIONS

Compromises on Sampling Were Key to OMB Approval

The long deadlock between the Office of Management and Budget (OMB) and the U.S. Environmental Protection Agency (EPA) over general permit approval (see *Bulletin*, September 1992, p. 1) was largely resolved through compromises adopted in August covering two separate sampling issues, several observers agree. The first issue involved mandatory stormwater sampling for 14 key industrial categories; the second, EPA's proposed requirements for acute whole effluent (WET) testing for some industries.

(Continued on page 2)

Inside this issue. . .

- "Major" Differences Between Proposed and Final General Permits **Page 3**
- Non-NPDES States Add Varying Conditions to EPA's Core General Permits **Page 4**
- California Proposes to Keep Some Sampling **Page 6**
- General Permit News for NPDES States **Page 8**

Thompson
Publishing
Group

Compromises

(Continued from page 1)

Regulated industrial dischargers, including some subject to the toxic release inventory (TRI) requirements of Title III, Section 313 of the 1986 Superfund Amendments and Reauthorization Act (SARA)—also known as the Emergency Planning and Community Right-to-Know Act (EPCRA)—strongly objected to draft permit provisions requiring them to sample their discharges for particular chemicals.

Representatives of some Section 313 dischargers, for example, argued that most facilities in their industries had no significant materials exposed to stormwater and thus should not have to sample. EPA, however, took the position that these facilities were among those most likely to be discharging contaminants.

The compromise adopted in the final industrial general permit states that Section 313 facilities and facilities in certain other designated industries must sample their discharges to receive general permit coverage, but exempts facilities from this requirement if they can legally certify that they have no significant materials exposed to stormwater.

In a similar compromise on WET testing, the final industrial general permit allows facilities that would otherwise have to do WET testing to test instead for individual Section 313 "water priority" chemicals that reasonably may be expected to be present on site.

Industry representatives, including John DiFazio, senior regulatory counsel for the Chemical Specialties Manufacturing Association; Jeff Longworth, attorney for Collier, Shannon, Rill and Scott in Washington; William Funderburk Jr., attorney for Radcliff, Rose and Frandsen in Los Angeles; and Kevin Bromberg, counsel for the Small Business Coalition for a Responsible TRI Policy, generally agree that the two compromises on sampling are reasonable.

DiFazio cautioned that his association believes there should be no special stormwater requirements

whatsoever for Section 313 facilities, although EPA clearly disagrees. "But if special requirements are to be imposed," DiFazio added, "these are much more reasonable than those in EPA's original proposals."

Bromberg of the Small Business Coalition similarly stated that WET tests should not be required for stormwater discharges, which are sporadic, and argued that WET tests were originally developed for, and are much more suited to measure, the water quality impacts of continuous pollutant discharges.

Nevertheless, Bromberg said members of his coalition earlier advocated both the compromise adopted on WET testing and the sampling exemption compromise. The latter compromise, Bromberg said, is "a very moderate and useful change" in the industrial general permit.

Speaking for EPA, Ephraim King of the National Pollutant Discharge Elimination System said he could not think of anything significant that EPA had lost in negotiations with OMB that produced the final general permits. According to King, the truly essential feature of the general permits is their requirement for stormwater dischargers to draw up and implement site-specific pollution prevention plans, and this requirement remains in both final documents.

Environmental engineer Diane Cameron, however, speaking for the Natural Resources Defense Council (NRDC), expressed reservations about the outlines of the final agreement. NRDC believes environmental regulations need strong provisions for public participation, Cameron said, and effective participation means citizens need access to good environmental data. EPA's compromises on stormwater monitoring may weaken that access, Cameron suggested. However, she applauded a feature of the two final general permits allowing private citizens to petition EPA to rescind general permit coverage for particular dischargers for cause, and to require individual permits instead.

For other major changes that EPA and OMB agreed to make in EPA's earlier proposed general permits published last year, see related chart, page 3. ■



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Senior Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal use provided that the base fee of U.S. \$5.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

Major Changes to NPDES General Permits for Stormwater

Based on EPA Aug. 27, 1992, Memorandum

	8/16/91 Draft Permit	Final Permit
NOI Deadlines	Existing discharges: NOIs due 180 days after permit issuance New discharges: NOIs due 30 days before discharge commences.	Existing discharges: NOIs due Oct. 1, 1992. New discharges: NOIs due 2 days before discharge commences.
Notice of Termination		Notice of Termination (NOT) procedures added to final permit.
Non-Stormwater Discharges	Non-stormwater discharges prohibited.	Most non-stormwater discharges prohibited. Permit authorizes specific classes of non-stormwater discharges provided they are identified in plan and pollution prevention measures identified.
Releases of RQs	Releases of hazardous substances in excess of reporting quantities (RQ) prohibited.	Only releases of RQs in stormwater authorized if: 1) Permittee notifies National Response Center (NRC) of RQ releases; 2) Plan reviewed and modified to address RQ releases; and 3) Permittee notifies EPA of release and plan review/modifications. Releases of RQ of hazardous substances associated with spill of non-stormwater prohibited.
Baseline Plan Requirements		Plan requirements reorganized, clarified and simplified. Guidance on plan preparation and pollution prevention measures issued.
Monitoring	All permittees required to monitor.	Only targeted classes of industries monitor. Facilities in targeted class do not have to monitor if they certify no exposure of materials. Four classes of industries are given the option to analyze samples for either acute whole effluent toxicity (WET) or priority pollutants used at the site. All facilities required to conduct annual comprehensive site compliance evaluations. Permittee reviews plans and assesses effectiveness of measures. Permittee certifies compliance with plan and permit.
Special Requirements for EPCRA (SARA III) Facilities	WET Limit. Containment for liquid storage/truck or rail areas.	WET limitation dropped. Additional flexibility for liquid storage/truck or rail areas.
Construction	Sediment basin for 10-year storm for 10-acre or more drainage areas where attainable. Permittees required to vegetate disturbed areas within 7 days after operations cease.	Sediment basin for 3,600 cubic feet per acre for 10-acre or more drainage area where attainable. Clarifies that stabilization includes non-vegetative measures (e.g., mulch, geotextiles) as well as vegetation. Permittees required to stabilize disturbed areas within 14 days after operations temporarily or permanently cease. Stabilization not required if activities will resume within 21 days after they temporarily cease. Stabilization not required during dry seasons in arid or semi-arid regions.

STATE SURVEY

State Add-Ons to EPA Permits Vary Widely

The two "core" final general permits just adopted by the U.S. Environmental Protection Agency (EPA) do not automatically apply to stormwater dischargers in states without delegation for the National Pollutant Discharge Elimination System (NPDES) program.

Instead, such states (and Indian nations and various states where EPA regulates federal facilities) must certify under section 401 of the Clean Water Act that EPA's permits meet state water quality standards. Where the permits do not assure compliance, the states can modify them.

Most affected states and Indian tribes have modified either the core industrial general permit, the core construction general permit or both, EPA says. The modifications and added permit conditions should be published in the *Federal Register* by the third week of September.

Meanwhile, here are some state conditions provided in draft form to the *Bulletin*:

Alaska

Industrial and Construction General Permits

Notices of Intent (NOIs) for industrial facilities must be sent to the appropriate regional office of the Alaska Department of Environmental Conservation (ADEC).

Reports of pollutant releases in excess of reportable quantities must be sent to ADEC and EPA Region 10 within two weeks, and permittees must report to the state on their exposed materials inventories and history of spills and leaks. Discharge monitoring reports sent to EPA also must be sent to ADEC.

Construction site permittees must send NOIs to the appropriate ADEC regional office. NOIs for both construction sites and industrial sites must describe activities on site, the area disturbed to the nearest acre, primary pollutants expected to be generated and the type of treatment to be provided.

Construction site permittees in arid or semi-arid areas must inspect active construction sites monthly for runoff and within a day of significant storm events. Active construction sites elsewhere must be inspected weekly and within a day of significant storm events. Stabilized sites must be inspected monthly until notices of termination (NOTs) are submitted.

Arizona

Industrial and Construction General Permits

Industrial dischargers must provide NOIs and NOTs to the state Department of Environmental

Quality, as well as to EPA. "Appropriate" measures must be used to minimize discharges of Section 313 water priority chemicals from liquid storage areas where stormwater comes in contact with tanks, containers, vessels or equipment used to handle such chemicals.

These measures may include secondary containment structures holding at least the volume of the largest single tank present plus enough freeboard to handle a 25-year, one-day flood event; strong spill contingency and integrity testing plans; "and/or equivalent measures."

Construction site permittees must send NOIs and NOTs to the state Department of Environmental Quality as well as to EPA.

Colorado

Indian Lands and Federal Facilities

Federal industrial facilities may discharge certain specified non-stormwater discharges. Federal facilities discharging toxic pollutants in excess of reportable quantities must notify both EPA Region 8 and the state Health Department within two weeks.

Colorado's reopener clause says the federal facility industry general permit may be changed if federal or state statutes change or if discharges are shown to have "potential or realized impacts on water quality."

The state terms and conditions noted for the federal facility industrial general permit also apply to the state's construction general permit for federal facilities.

Colorado has no special conditions for Indian lands.

Idaho

Industrial and Construction General Permits

Discharges must meet Idaho's state water quality standards for groundwater. Otherwise, EPA's core general permit conditions apply.

Louisiana

Industrial General Permit

The state terms and conditions add numeric limits for certain stormwater contaminants. All industrial dischargers must meet stated limits on total organic carbon and oil and grease by October 1995. Oil and gas facilities also face numeric limits for chemical oxygen demand and chlorides and must comply as of Oct. 1, 1992.

Generally speaking, Louisiana requires mandatory sampling for the same industrial categories that EPA singles out for sampling. However, the state adds additional sampling parameters, such as total organic carbon and five-day biochemical oxygen demand, for certain industrial categories.

Louisiana also requires WET testing by certain industrial dischargers and specifies that WET tests must compare grab samples of undiluted stormwater discharges with control samples consisting of synthetic dilution water.

Maine Industrial General Permit

Maine's terms and conditions specify that for acute whole effluent toxicity (WET) testing, *Ceriodaphnia dubia* and brook trout (not fathead minnows) must be the test species used.

New Mexico Industrial General Permit

Facilities discharging into waters the state designates for use as "domestic water supplies" must sample for two radium isotopes, total mercury, and dissolved arsenic, barium, cadmium, chromium, lead, nitrate, selenium, silver, cyanide and uranium. Dischargers must notify the state if samples for these parameters exceed state action levels.

WET tests in New Mexico must be done within 180 days of the general permit's issuance and must contrast undiluted grab samples and controls of synthetic dilution water. Certain notifications to EPA also must be sent to the New Mexico Environment Department.

Oklahoma Industrial General Permit

New point source discharges of stormwater to waters designated by the state as "Outstanding Resource Waters" and "Scenic Rivers," as well as certain other designations, are prohibited.

Oklahoma's WET test requirements resemble those of Louisiana and New Mexico. The state added a reopener clause stating that the general permit may be changed if state stormwater quality requirements change.

Puerto Rico Construction General Permit

All plans and engineering reports concerning the construction of stormwater treatment systems require approval by the state Environmental Quality Board. For construction projects underway by Oct. 1, information on such plans and reports is due by Nov. 15; for projects starting later, the information is due 45 days after submission of a project NOI. Oil sheen in construction project runoff is prohibited.

Puerto Rico added language to the EPA core permit for construction sites concerning operation and maintenance of treatment and control systems and procedures for updating and amending pollution prevention plans, stating among other things that "adequate laboratory controls and appropriate quality assurance procedures" as well as "qualified operator staffing" are required.

Construction projects already underway by Oct. 1 must certify by Nov. 1 that they have developed and implemented pollution prevention plans. Those starting work later must develop and comply with such plans when construction begins.

Texas Industrial General Permit

Numeric limits on stormwater pollutants are adopted for both inland and tidal waters. Numeric-limited contaminants include arsenic, barium, cadmium, chromium, copper, lead, manganese, mercury, nickel, selenium, silver and zinc.

WET testing is required for all wood treatment facilities. WET tests in Texas must use freshwater test species; test for greater than 50 percent survival of the test species over 24 hours in undiluted effluent; include a minimum of four replicates with at least five organisms per replicate for *Daphnia pulex*; and include at least four replicates of at least 10 organisms per replicate for the fathead minnow, *Pimephales promelas*. WET tests also must cover five different dilution levels.

Washington State General Permits for Federal Facilities

Permittees must comply with state ground water, surface water and sediment management standards and specifically may not discharge stormwater into the ground if this causes a violation "or the potential for violation" of ground water standards. Permittees discharging into the ground also are subject to state underground injection program regulations.

Washington is currently developing pollution prevention plan requirements to assess the potential of stormwater discharges to violate state standards, and the state plans to require sampling by dischargers with a high potential for such violations.

Washington's reopener clause states that EPA may reopen the general permits once the state pollution prevention plan is issued. However, some EPA sources are unsure if this last provision is valid.

Other Non-NPDES States

General permits in Maine, New Hampshire, South Dakota, Johnson Atoll, Wake Island and Midway will follow EPA's core general permits without much change, EPA indicates at press time. So will state general permits covering Indian lands in Utah, Wyoming, North Dakota, Colorado, Montana and New Mexico.

States in EPA Region 8, including South Dakota, must meet regional WET test requirements that differ slightly from those that EPA specifies in the core industrial general permit for other states. Region 8's WET test requirements include a 48-hour replacement test using a *Ceriodaphnia* species and an acute 96-hour static replacement test using fathead minnows.

By late September, EPA indicates, a *Federal Register* notice should announce separate conditions adapting the core general permits to state standards in Florida, Massachusetts, Guam and American Samoa. State-specific conditions should also appear for federal facilities in Delaware. ■

More Flexible Stormwater Regulations Proposed

Guest Analysis by Vivian Rigdon-Bloomberg and William W. Funderburk, Jr. *

The California State Water Resources Control Board staff circulated a proposal that would reinstate many stormwater sampling requirements under the California General Industrial Permit. (Water Quality Order No. 91-13-DWQ; Nov. 19, 1991, General Permit).

The new staff proposal was circulated just weeks after the state board conducted hearings on July 13, 1992, regarding a proposal to eliminate monitoring requirements under the general permit, which requires twice-yearly stormwater sampling and analysis over a five-year term.

Although the staff proposal calls for retention of monitoring, it includes several measures, advocated by the California-based law firm Radcliff, Rose & Frandsen, that should ease the compliance burden, particularly for monitoring groups, and it provides for greater flexibility.

New Provisions

The staff proposal contains two significant provisions. First, the staff proposal would eliminate requirements that monitoring groups sample for pollutants in addition to those sampled for facilities with individual monitoring programs. This requirement was one of the few disincentives to forming a monitoring group.

Second, the staff proposal allows groups to request that sampling be conducted by fewer than 20 percent of dischargers. This may reduce compliance costs, depending upon the willingness of the regulator to approve such reductions in sampling group size.

The staff proposal contains several additional changes beneficial to industry. It would exempt certain facilities from monitoring.

Exemption Criteria

The facilities entitled to exemptions would be those:

(1) that can demonstrate and certify that they have no exposure of significant materials and pollutants (including machinery and waste materials) to

stormwater and that they have no illicit connections to stormwater drainage systems; or

(2) for which a local water agency can certify that the facility has implemented stormwater pollution prevention plans and should not need to collect and analyze stormwater samples for pollutants.

The staff proposal includes several measures that should ease the compliance burden...and it provides greater flexibility

Dischargers must submit exemption certificates to the respective regional boards by Dec. 1, 1992, for the 1992-1993 wet season and by Aug. 1 for subsequent years. Sampling exemptions do not apply to facilities subject to federal stormwater categorical effluent limitations in 40 CFR subchapter N.

Reduced Burden for Groups

The staff proposal eliminated general permit requirements that groups sample for five additional pollutants:

- (1) five-day biochemical oxygen demand;
- (2) chemical oxygen demand;
- (3) total phosphorus;
- (4) total nitrogen; and
- (5) nitrate plus nitrogen.

The staff proposal retains requirements in the general permit that individual and group sampling facilities would monitor for: pH, total suspended solids, specific conductance, and total organic carbon; and toxic chemicals or other pollutants that are likely to be present in stormwater discharges in significant quantities.

For a discussion of the key differences between the current general permit and the staff proposal, see chart next page. ■

* Vivian Rigdon-Bloomberg and William W. Funderburk Jr. are attorneys with Radcliff, Rose and Frandsen, a full-service law firm with offices in Los Angeles, San Francisco, Washington, D.C. and Hawaii. This story is based on an Aug. 20, 1992, draft proposal and does not constitute legal advice. Story and chart are reprinted courtesy of Radcliff, Rose and Frandsen.

Key Changes in New California Proposal

General Permit	Staff Proposal
Deadlines	
Group monitoring plans due Aug. 1, 1992; individual monitoring program plans due Oct. 1, 1992; individual and group monitoring reports submitted by July 1 in subsequent years; group plans with monitoring changes due Aug. 1 in subsequent years.	All monitoring program plans in place by Jan. 1, 1993; group plans submitted Dec. 1, 1992, and Aug. 1 in subsequent years. Individual and group monitoring reports submitted July 1 in subsequent years.
First Storm of Each Season	
Facilities required to sample first storm of wet season (Oct. 1 to April 1) and one other storm.	No requirement to sample first storm of the season
Grab vs. Composite Sampling	
Grab and composite sampling required	Composite sample can be collected in lieu of grab samples at the discretion of the discharger and the Regional Board.
Site Inspection	
No site inspection required.	Annual inspection required.
Group Sampling	
For additional pollutants required for groups, see article.	Eliminates some sampling requirements
Sampling Subgroups	
Sampling subgroup required to be at a minimum of four group members, or at least 20% of the number of members in the group.	Allows group monitoring entity to "request that fewer member dischargers be allowed to collect and analyze stormwater, but reasons for these exceptions must be stated in the group monitoring plan."
Sampling Frequency	
Twice per year during the 1992/1993 storm season.	One storm during the 1992/1993 storm season and two samples thereafter.
Special Requirements for §313 Facilities	
§313 of Superfund Amendments and Reauthorization Act facilities that discharge toxic pollutants to stormwater subject to added monitoring requirements.	No additional requirements for §313 facilities.
Exemption Provisions	
No sample exemption provision.	See Exemption Criteria in article. Allows for adverse weather; only requires sampling on a schedule of plus or minus two hours during regular business hours.

Reprinted courtesy of Radcliff, Rose and Frandsen.

Reminder to Individual Permit Applicants

Stormwater dischargers who still plan to submit individual stormwater permit applications should be reminded of possible errors on EPA's permit application forms. As we reported previously (*Bulletin*, January 1992, p. 6), EPA's old Form 2F contains several significant typographical mistakes. On page 3 of the old form, for example, Box IX asks applicants if analyses "reported in Item V" have been performed. Instead, it should ask about analyses reported in "Item VII."

In addition, the old Table 2F-2 of Form 2F gives a misleading impression of EPA's sampling requirements. The heading indicates that dischargers must sample for more than a dozen conventional and nonconventional pollutants "if they are expected to be present" in stormwater. EPA's regulations, however, actually require only "existing monitoring data" for such pollutants—not new sampling. The old Table 2F-2 also incorrectly lists "magnesium" twice as a sampling parameter. One listing should be for "manganese." And "phosphorous, total" and "radioactivity" are listed together, but are two separate sampling parameters. They should be listed separately.

The Revised Form 2-F, dated January 1992 also contains two errors. Section VII, Part A on page VII-1 incorrectly lists "total nitrogen" in the pollutant column. The table should list "total Kjeldahl nitrogen" and "nitrate plus nitrite nitrogen" in two separate rows. Also the form reads "grab samples taken during first 20 minutes," but should read "30 minutes."

Check with your state or regional permitting authorities or the EPA stormwater hotline at (703) 821-4823 if you have additional questions.

Final General Permit

(Continued from page 1)

facilities that are a little late in submitting NOIs are therefore very unlikely, Cook says.

The bulk of this *Bulletin* is dedicated to summarizing the key features of the new "core" general permits and some of the conditions added to them by various states. For additional stormwater news, and for brief updates on what some NPDES-delegated states are doing with their general permits, please turn to "Storm Warnings" on p. 8. For a look at the latest general permit developments in California, see our guest article and chart on pages 6 and 7. ■

Storm Warnings

Stormwater Related News in Capsule Form

• **Ohio Gets General Permitting Authority.**

Ohio has been granted authority to issue general stormwater permits, according to Bob Phelps of the Ohio Environmental Protection Agency. Phelps hopes to issue two state general permits by mid-September.

• **But South Carolina Doesn't, Yet.** At press time, South Carolina stormwater official A.R. Ovalles said his state had not obtained general permit authority from the U.S. Environmental Protection Agency (EPA). The state hopes to get such authority by mid-September, however.

• **Utah Proposes Two General Permits.** Utah stormwater officials issued two state general permit proposals for 30-day public comment in August and hope to publish final permits in September. The proposed permits are based on EPA drafts available this summer, however, and thus may not reflect all provisions of EPA's new final "core" general permits, which Utah's stormwater regulations must mirror under state law. Whether this will cause added delay is unclear at press time.

• **Minnesota Bans Federal Group Applications, Publishes General Permit Proposal.** The Minnesota Pollution Control Agency published a general permit proposal on Aug. 10 and announced that it hopes to publish a final general permit by "around Oct. 1." The state will require an \$85 application fee and two consecu-

tive yearly fees of \$270 for general permit coverage, but dischargers obtaining individual permits will pay more. Yearly fees for individual stormwater permits are \$1,200. Minnesota will not accept group applications approved by EPA, state officials say.

• **Washington Hopes for General Permit in September.** The Washington Department of Ecology (DOE) plans to publish a state "baseline" industrial general permit in September, stormwater official Stan Ciuba indicates. DOE will not require monitoring during the permit's first three-year cycle but may change this policy in the next cycle. The agency states that it will begin charging stormwater general permit fees beginning July 1, 1993.

• **NRDC Sues Over Deadlines Again.** On July 30, the Natural Resources Defense Council (NRDC) filed yet another of several petitions with the Ninth Circuit Court of Appeals challenging EPA's extension of stormwater permitting deadlines. The new filing protested EPA's April 2 final rule extending the group application "part 2" deadline to Oct. 1. Although the Ninth Circuit ruled favorably this summer on one previous NRDC deadline complaint, it has stayed its consideration of several others. NRDC attorney Bob Adler has suggested adding the latest filing to the list, to avoid wasting the court's time. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$349
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$349
- Underground Storage Tank Guide\$350
- Community Right-To-Know Manual\$324

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 2, Number 3

September 1992

WAITING FOR OMB

EPA Still Hoping to Issue Final General Permits Soon

As usual, the prospects for the U.S. Environmental Protection Agency (EPA) to issue its final general stormwater permits are extremely clouded at press time.

EPA officials confessed to attendees at the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) annual meeting in late July (see related stories, this issue, pp. 6-7) that EPA was "stalemated" in its efforts to obtain Office of Management and Budget (OMB) approval of its "draft final" general stormwater permits (see *Bulletin*, August 1992, p. 1).

A few days later, though, sources in industry and the legal profession said EPA was hoping to issue final general permits by mid-August. In an interview on July 31, Office of Wastewater Enforcement and Compliance director Mike Cook said "Aug. 15 is the earliest we can do it" and predicted that Aug. 31 was a more likely date for general permit publication.

Cook added, however, that although EPA had "narrowed the issues remaining between us and OMB very, very substantially," EPA still did not have OMB clearance for the final documents. Predicting an exact issuance date for the general permits was impossible, he said, because "we have no way of knowing what will happen with OMB."

The long deadlock over the general permits means many states with delegation for the National Pollutant Discharge Elimination System (NPDES) will not have EPA models to work from in issuing state general permits before the Oct. 1 stormwater permitting deadline, some consultants predict. "This is really screwing up the states," says one consultant who wishes to remain anonymous.

Some states are required by law to issue regulations identical to EPA's and others could put their industries at a competitive disadvantage by deviating from federal requirements adopted by

(Continued on page 2)

STATE SURVEY

General Permitting Efforts Move Forward

Progress on issuing general permits is moving forward in several states polled in this month's state survey. Despite the U.S. Environmental Protection Agency's (EPA's) inability to publish final federal general stormwater permits (see related story, this page), New Jersey, Iowa and North Carolina have published their final general permits; and general permits are pending in Tennessee, Maryland, Missouri and South Carolina.

(Continued on page 2)

Inside this issue. . .

- AMC's Raissa Kirk Critiques Stormwater Rules for Mining **Page 4**
- Water Program Budget Woes Growing, Say States **Page 6**
- EPA: Small Construction, "Light" Industry Should Wait to Seek Coverage **Page 7**
- Phase II Regs: No Rush to Judgement by EPA **Page 8**

Waiting for OMB

(Continued from page 1)

their neighbors, this source said. Accordingly, many states probably will not get general permits out in time, and many industrial facilities will either have to submit costly individual applications or run the legal risks of not meeting the deadline.

"For most facilities, filing an individual application really doesn't make sense. Talk to your state, see if they want you to wait, and look to your corporate philosophy and public relations picture. You may want to 'gut it out' until your state does issue its general permit," the consultant added.

Attorney Jeff Longworth of Collier, Shannon, Rill and Scott in Washington, D.C., predicted that if the federal general permits are not issued in time, "people are going to be scrambling to file individual applications." He agreed, though, that the best option for dischargers is to stay in contact with state regulators, urge them to be reasonable, and keep up with the general permit's progress in the trade press.

EPA is not planning to bring enforcement actions against dischargers who are a little late getting covered because they are waiting for general permits, Cook indicated in the July 31 interview. "If the general permits aren't out exactly in time for people to submit notices of intent to be covered, our emphasis is going to be on education and outreach to help people comply with them quickly once they do appear," he said. "I imagine most of the states will be the same."

Third-party citizen suits are the only significant danger that dischargers could face for the next year because of failure to file individual stormwater permit applications, Cook added, "and I think the chances of most dischargers facing a citizen suit are very small." He explained that EPA and the states are not prepared to process the huge volume of individual applications that would be needed to cover facilities now waiting for general permits. It would be "a waste of time for most individual applicants to fill out such applications, only to have them sit in a box in some permit writer's office," Cook said. ■

State Survey

(Continued from page 1)

California, meanwhile, has held a public hearing on a State Water Resources Control Board (SWRCB) staff proposal to drop all stormwater sampling requirements for industry covered by the state general permit (see *Bulletin*, August 1992, p. 1). At press time, the Water Board was planning to announce a final decision on the proposal at a meeting scheduled for Sept. 17.

Here are other highlights of this month's state survey:

Iowa

Iowa received authority to issue state general permits in early August. The Department of Natural Resources (DNR) has issued a state general permit for construction sites and a second general permit for industrial dischargers. According to DNR official Wayne Farrand, "Our intent is that everyone be covered by a general permit."

However, Farrand says some industrial facilities prefer individual permits and will be allowed to obtain them. The state general permit for industrial dischargers includes some sampling requirements, with special requirements for certain industries.

Maryland

Draft general permits for industrial dischargers and construction sites were published in the July 24 *Maryland Register*. State officials hope to issue final permits by mid-September. The state also has developed a draft fee schedule for construction sites seeking general permit coverage and plans to adopt a final schedule in September.

Maryland has told four "medium" municipal separate storm sewer systems (MS4s)—serving Washington, Frederick, Charles and Carroll counties respectively—that they will be expected to comply with federal MS4 permitting requirements on a delayed basis. Harford and Howard counties, however, are still expected to meet EPA's MS4 permit deadlines.



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Senior Editor, Jill S. Talbot, Esq.; Editor, Andy Feeny; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal use provided that the base fee of U.S. \$5.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

Missouri

Missouri, which previously issued several general permits covering industrial stormwater dischargers, has added new general permits covering construction activities, according to Karl Fett of the Department of Natural Resources. Missouri also plans to issue new general permits for airports, U.S. Postal Service facilities, lumber and wood products facilities, wood treatment facilities, waste tire disposal sites, auto salvage yards and motor freight transportation and warehousing facilities.

Nevada

Nevada on July 27 received authority from EPA to issue state general permits. The approval is noted in the Aug. 10 *Federal Register* (57 FR 35586).

New Jersey

New Jersey has held public hearings on two draft general permits, one for construction sites and one for industrial facilities that can revise their operations within 18 months of promulgation to keep stormwater from contacting significant materials on site.

Specifically excluded from the proposed industrial general permit are sanitary landfills and hazardous waste landfills that have not been closed and certified in accordance with state law, says Ed Frankel of the Department of Environmental Protection and Energy (DEPE). Also excluded are stormwater discharges that contact petroleum-based materials at large petroleum refineries and tank farms, Frankel indicates. New Jersey hopes to publish its final general permits, which probably will not require sampling, by early September.

North Carolina

On July 31, the state Department of Environmental Health and Natural Resources (DEHNR) issued 13 final general stormwater permits covering various industrial activities. The state is in the process of changing its fee requirements and is developing notice of intent requirements for the various industrial categories. However, not all North Carolina industrial dischargers are eligible for general permit coverage, according to DEHNR stormwater staffer Bill Mills. DEHNR has developed a memorandum explaining which industries are covered and plans to send it to individuals on its stormwater mailing list.

Oklahoma

Oklahoma is seeking state delegation for the National Pollutant Discharge Elimination System (NPDES) program and plans to consolidate and update its water pollution control regulations to meet NPDES requirements. This will mean developing a baseline general permit for industrial stormwater dischargers and implementing a stormwater permitting program, state officials

indicate. They hope to obtain NPDES delegation for a new Oklahoma Department of Environmental Quality to be created effective Jan. 1, 1993.

Pennsylvania

A final state general permit for construction site runoff is now expected to be issued in December, according to Alexander Slinsky of EPA Region 3. Region 3 hopes for the rest of Pennsylvania's stormwater permitting strategy to be in place by October, Slinsky indicates.

South Carolina

South Carolina was scheduled to hold public hearings Aug. 25 and Aug. 26 on a proposed industrial general permit and a proposed construction general permit, respectively. However, in early August the state still had not received authority from EPA to issue general permits. State stormwater officials hope to receive such authority in time to issue final general permits before Oct. 1, the stormwater permit application deadline.

Tennessee

The State Water Quality Control Board on July 22 adopted rules for two state general permits, one covering construction sites and the other covering all regulated industrial stormwater dischargers. However, to be effective by Oct. 1, the two general permit rules must be reviewed by the state attorney general and accepted by the secretary of state by Aug. 17. Regulated construction sites and industrial dischargers in Tennessee should check to see if the board made the Aug. 17 deadline.

The draft general permit for industrial dischargers requires each regulated facility to sample selected outfalls at least once annually for five stormwater parameters. It also requires sampling for additional parameters by wood treatment operations, battery reclaimers, various solid waste and hazardous waste disposal facilities, primary metal industries and facilities subject to the toxic release inventory (TRI) reporting requirements under the Superfund Amendments and Reauthorization Act of 1986.

Virginia

Virginia's Division of Soil and Water Conservation has several new state documents available for the public. They include a model stormwater management ordinance; *The Virginia Erosion and Sediment Control Handbook*, Third Edition, 1992; and two documents on Virginia Stormwater Management Regulations and Erosion and Sediment Control Regulations. For more information, contact the Virginia Department of Conservation and Recreation, Virginia Division of Soil and Water Conservation, 203 Governor St., Suite 206, Richmond, Va. 23219. ■

AMC's Raissa Kirk Critiques Stormwater Rules for Mining

Raissa Kirk is environmental affairs counsel for the American Mining Congress (AMC), a trade association representing approximately 400 mining companies and manufacturing, engineering and financial service institutions serving the mining industry. A 1983 political science graduate from the University of Maryland, Kirk earned her law degree from Georgetown in 1986 and subsequently worked for the Washington law firm of Mott, Williams and Lee in hazardous waste litigation. She joined AMC in 1990. The following is excerpted from a longer interview with Kirk by Thompson Publishing Group (TPG) on August 3, 1992.

TPG: In the mining industry, are you primarily planning to handle stormwater through group permit applications?

KIRK: There has been a high level of interest among our member companies in pursuing group applications. More than 1,200 facilities nationwide have participated in AMC group applications. When the U.S. Environmental Protection Agency (EPA) stormwater regulations first came out in November 1990, it appeared to us that the scope of coverage would be very broad. Although there are several exemptions in the regulations regarding mining operations, they're very narrow, and their applicability is very limited. It became apparent to us that this rule would require a lot of effort in terms of compliance. But what the rule did provide was a new streamlined permitting option that hasn't been available in any other NPDES permitting program before: the group application.

We thought the industry could achieve economies of scale by having a number of member companies participate in the group application in lieu of seeking individual permits. The availability of the general permit for our members seemed pretty tenuous, at best, at that point in time. We were also involved in litigation over inactive mining sites, so we weren't sure whether or not they would ultimately need permit coverage. So we thought the best option, in terms of administrative burden and industry resources, was to take advantage of the group application.

TPG: Do you have just one group application?

KIRK: We have five. The largest group, the coal mining group, was a joint submittal with the National Coal Association. We have a hard rock mining group, which we also call the ore mining and dressing group; and a separate mineral mining and processing group, which is comprised of quarrying operations and clay mining, primarily. We also have a non-ferrous metals manufacturing facilities group,

which is comprised mostly of copper smelters. And then we have a permanently inactive mines group application, which we have decided to withdraw.

TPG: Why are you withdrawing the inactive mine sites group application?

KIRK: We initially filed that group application in March 1991. The agency subsequently sent us a request for more information before they would approve it. The request would have required exhaustive resources to complete, and it was not worth the time and effort, basically.

A major problem with meeting EPA's information request is that many inactive mine sites are in remote locations and are unstaffed, making the gathering of the detailed data the agency requested impracticable. Moreover, little if anything in an inactive mine site is already permitted, as opposed to an active mining site where there's already a National Pollutant Discharge Elimination System (NPDES) permit. So the questions that EPA asked us about these sites ended up being much tougher to answer, and in some cases they could not be answered in the time provided.

Another problem was the enormous number of outfalls, as EPA defined them, at inactive mines. These sites range in size from "dog holes" to sites covering thousands of acres. To complicate matters, EPA's definition of "point source discharge" at both active and inactive sites is so broad that it includes rills and rivulets of any size, which are basically just naturally carved out channels on the sides of hills. At some inactive mine sites there are thousands of these so-called "outfalls." And there are probably hundreds of thousands of inactive mines nationwide.

Subsequent to AMC's submission, EPA released a proposed general permit, which would make general permit coverage available for inactive mines. The notice of intent (NOI) information burdens and monitoring requirements were less onerous than the part 1 group application requirements, so the group members decided to withdraw the group application.

TPG: Are your other group applications going forward?

KIRK: Three have been approved: the mineral mining and processing group, the coal group and the smelter group. We're currently gathering the data for part 2 group applications for them.

The group posing some problems for us right

now is hard rock mining, the ore mining and dressing group. When the stormwater rule was promulgated in 1990, we were led to believe that its scope of coverage was very broad. The rule provides that any stormwater runoff that contacts disturbed earth or disturbed mining materials is required to be covered by a stormwater permit.

However, about a year after we filed our group application, EPA basically took the position that stormwater runoff that contacts disturbed materials at hard rock mining sites constitutes "process wastewater." According to EPA, it is subject to traditional NPDES process wastewater permits, not stormwater permits. EPA rejected parts of several corporate group applications by our members on this basis and indicated they would apply the same logic to the AMC hard rock mining group. Recently, EPA also has taken this position for inactive mine sites, potentially making stormwater permits applicable only to the remnants of haul and access roads at these sites.

The mining industry and EPA are still debating stormwater permits for hard rock mining.

We sought coverage in our group application for hard rock mining for runoff from haul roads, access roads, rail spurs, waste rock, spent ore stockpiles, low mineralized overburden, berms—that kind of thing. And EPA is now considering excluding runoff from spent ore stockpiles, waste rock, overburden, etc. from the stormwater program—by stating that runoff discharges from these areas are subject to 40 CFR Part 440, the effluent limitation guidelines promulgated in 1982.

EPA has indicated to us that the guidelines applied to stormwater runoff from these areas since 1982 and that the sites should have obtained traditional NPDES permits then. However, many of our companies have been told by their NPDES permitting authorities through the years that they did not need traditional NPDES coverage for stormwater runoff that contacts berms, waste rock, spent ore or overburden.

TPG: Have you talked with EPA about the hard rock mining situation?

KIRK: Yes, we have had several meetings with the agency. We have discussed with them the concerns I just mentioned. If EPA maintains its current position on hard rock mining permitting, we will have obvious enforcement concerns. However, we are optimistic that our negotiations will result in stormwater permit coverage for all the outfalls at the hard rock mining sites that we originally hoped to permit.

TPG: Do you have any stormwater permitting tips for individual mining companies? I guess most already belong to one of your groups.

KIRK: I would recommend that if a facility is not in a group application and is in an NPDES primacy state, a state with authority to administer the NPDES program, officials should be involved in the general permit notice-and-comment process, where there is still an opportunity to get involved. Also be cognizant of the notice of intent deadlines in the states where general permits have not been issued by Oct. 1, 1992. If you're in such a state, you might consider filing a letter with the relevant state authority, notifying them that you intend to seek general permit coverage once it is available.

At active mining sites, there are certain limitations to general permit coverage. EPA's proposed general permit restricted coverage of active mining sites to areas not subject to effluent limitation guidelines. The whole question we're debating now in hard rock mining is: which parts of sites are subject to the guidelines? That's not resolved yet. But for other mining commodity groups, for areas subject to effluent guidelines, obtaining an individual permit is the only option.

For inactive mine sites, general permits will apparently be available, and we encourage their use. But the first priority, I would say, is to contact your state or EPA regional permitting authority to see what's going on.

TPG: Any advice for anyone else?

KIRK: I would urge people to stay in group applications, despite the fact that states are developing general permits, because there are a lot of advantages beside economies of scale to being in a group application. You have more flexibility to develop terms and conditions suited to your specific industry, not just the general permit available in the state or EPA region. And many states have not finalized their general permits yet, so it may be risky to abandon the group application without knowing what your final state general permit will look like. Basically, why foreclose your options?

That's what I'm telling our group members. You have two options available, so why not hold out until the end and make sure that you can get the best site-specific permit coverage that you can? Don't rely completely on the assurances of a state where the general permit isn't final yet. A number of states have vacillated on a number of things, including, for example, whether they're going to accept group applications. They may do the same with general permit coverage. If you're in a group application, stay in it until you can assess all your options in final form. ■

Water Program Budget Woes Growing, Say States

The budget problems of many state water regulatory agencies are serious and growing more so, several state water program directors said at the July 19-22 annual meeting of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA). This is likely to mean problems for stormwater dischargers, some directors indicated, as many states raise fees to cover program costs or find themselves cramped for staff and travel money to implement environmental regulations efficiently.

"From where I sit, funding is getting to be a critical issue and is almost a universal problem," said retiring ASIWPCA president Allan Stokes, administrator of the Environmental Protection Division at the Iowa Department of Natural Resources.

Stokes added, "We're not seeing any substantial increase in federal funds for state programs, and yet the U.S. Environmental Protection Agency (EPA) is expecting more and more out of state programs. You keep stretching that rubber band, and one day it's going to break. It may be that we're already at that place in some states."

Stokes said that along with the costly stormwater program, EPA's new Safe Drinking Water Act requirements and "a whole variety of new technical requirements" under the Clean Water Act have combined to produce serious financial management woes for states that simultaneously confront a host of social and economic problems ranging from the recession to drug abuse to homelessness.

He concluded, "What I think we're facing is an environmental crisis. Are we going to continue making improvements in water quality, or are we going to stagnate, or are we going to go backward?"

An ASIWPCA survey of state stormwater programs last spring found that 16 of 42 states responding complained of stormwater funding difficulties, it was announced at the meeting. Exactly twice as many states, however, told ASIWPCA that EPA could or should provide them with more financial assistance for stormwater.

Lydia Taylor, water quality administrator for the Oregon Department of Environmental Quality, said that over the next two years, her agency could lose 10 percent to 25 percent of its funding from the state general fund, which is supported by taxes, thanks to passage of a recent ballot initiative limiting state real estate taxes.

Grant money that Oregon receives from EPA under Section 106 of the Clean Water Act hasn't

increased for several years, Taylor added, "and they keep asking us to do more with it."

Washington State faces a projected \$1.2 billion shortfall in its state general fund over the next year, said Mike Llewellyn of the Washington Department of Ecology (DOE). DOE's water quality program was anticipating general fund cuts of 6 percent to 10 percent even before the latest budget projections, Llewellyn said, but the new figures could mean cuts of 26 percent to 28 percent. General fund money provides about 30 percent of the water program's revenue, said Llewellyn, and expected cuts may cause the loss of six of 150 professional staff by next year.

State stormwater regulations could provide DOE with budget relief by expanding the universe of industrial sites paying permitting fees, but growing hostility to all regulatory programs in the state legislature may prevent this, Llewellyn predicted.

Somewhat similar comments were voiced at the meeting by regulators from Maryland, New Jersey, Wyoming, Kansas, Ohio and Nevada, among other states. Regulators reported differing state responses to the situation, however.

Bob Rothwell, chief of the Division of Water Pollution Control in Ohio's Environmental Protection Agency, for example, said his agency now hopes to reduce spending by asking EPA for greater flexibility in choosing which federal water programs to implement. The idea, he said, is to economize on "mandates that cost a lot to implement without resulting in noticeable water quality improvements." Rothwell said EPA Region 5 has shown interest in such flexible state implementation, at least on a one-year basis.

Another state program official, however, warned that such selective implementation can lead to increased competition among a state's regulatory programs, to the disadvantage of most.

A New Jersey official said that because of massive state staffing reductions, even the state's fee-supported stormwater program is feeling the impact. Although New Jersey has money to hire added stormwater staff, he suggested, they are not being hired because of a state hiring freeze. New Jersey stormwater officials have drawn up plans to hire 20-40 additional staff to implement their state stormwater program once it is fully underway. According to New Jersey official Ed Frankel, however, the state Department of Environmental Protection and Energy currently has just four staffers working to get the program launched. ■

Storm Warnings

Stormwater Related News in Capsule Form

- **Small Construction Sites, 'Light' Industry Dischargers Should Wait, Says EPA.** Responding to the recent decision of the Ninth Circuit Court of Appeals overturning stormwater permitting exemptions for construction sites of less than five acres and so-called "light" industries whose runoff does not contact significant materials, the U.S. Environmental Protection Agency (EPA) is urging previously exempted facilities to wait for further rulemaking action before attempting to seek stormwater permits (see *Bulletin*, August 1992, p. 10).

EPA's position was provided to the *Bulletin* in June by National Pollutant Discharge Elimination System (NPDES) chief Ephraim King. However, a formal announcement was made by Mike Cook, director of EPA's Office of Wastewater Enforcement and Compliance, to a stormwater gathering in Washington in late July. The announcement comes as a relief to trade associations and industry representatives who have been wondering about the status of the previously exempted dischargers. At press time there were reports of an official memorandum by the EPA Office of General Counsel justifying the policy. However, King says that as yet, there is no such memo outlining EPA's position.

- **Storm Drains Blamed for Santa Monica Bay Problems.** The California environmental group Heal the Bay has found evidence that improper disposal of trash, motor oil, household chemicals and other pollutants into Los Angeles area storm drains is contributing to environmental degradation and beach closures in Santa Monica Bay. Both Los Angeles and Santa Monica are now diverting some dry weather storm drain flows to a local sewage treatment plant to control the problem, the *Los Angeles Times* reported. Public authorities and Heal the Bay reportedly have launched a public education effort to discourage the public from putting garbage into storm drains.
- **EPA, OMB Deadlocked on Water Anti-Degradation Rule.** The Office of Management and Budget (OMB) has suspended its regulatory review of EPA's proposed "anti-backsliding" regulation for state water quality programs, EPA sources announced at the July 19-22 annual meeting of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA). According to agency officials, EPA does not plan to negotiate further with OMB on the rule's release at this time.
- **Wildflowers Used to Address NPS Stormwater Pollution.** The Mercer County, N.J., Soil Conserva-

tion District has completed a study of how wildflowers can be planted as cover plants in stormwater detention basins to facilitate the absorption of agricultural chemicals in runoff that are usually controlled by more expensive plantings of turf grass. For a copy of the study, send \$10 to Bill Brash, Mercer County Soil Conservation District, Attention: Wildflower Study, 508 Hughes Drive, Hamilton Square, N.J. 08690. FAX: (609) 586-1117.

- **'Toxic Hot Spots' Rule, Proposed Rule Published.** EPA has published a final rule on the so-called "toxic hot spot" provisions of Section 304(l) and certain other provisions of the Clean Water Act (57 FR 33040). The agency also published a proposed rule soliciting public comments before Sept. 8 on three options for implementing a 1990 court decision concerning pollutants discharged to toxic hot spots or areas of impaired water quality (57 FR 33051).

The new **final rule** requires that states identify additional point sources and the toxic pollutants discharged to areas identified as having impaired surface water quality. It also clarifies an earlier provision that states must report "from time to time" on their lists of toxic hot spots and the total maximum daily loads they allow discharged to such waters. "From time to time" now means once every two years, EPA decided. For information, contact Bruce Newton, Chief, Watershed Branch, U.S. EPA; (202) 382-7076.

The **proposed rule** requests comments on whether individual control strategies should be submitted by all newly identified point sources of toxic discharges to impaired water quality areas. Possible alternatives to this requirement are (a) the submission of control strategies only by previously identified dischargers to toxic hot spots and (b) requiring control strategies from those sources that state regulators specify on a case-by-case basis. To submit comments, contact Robert Wood, Water Quality and Industrial Permits Branch, Office of Wastewater Enforcement and Compliance (EN-336), U.S. EPA, 401 M St. S.W., Washington, D.C. 20460; (202) 260-1955.

- **Stormwater Controls Win 'Environmental Excellence' Award.** EPA Region 6 has presented an environmental excellence award to Central Freight Lines of Austin for "projects highlighting what industries and municipalities can accomplish by applying innovative and cost-effective practices to control stormwater dischargers." For information, contact Barbara Pruet, U.S. EPA—Region 6, External Affairs (6X), 1445 Ross Ave., Dallas, Texas 75202; (214) 655-2200. ■

'Phase II' Regulations: No Rush to Judgment by EPA

If the U.S. Environmental Protection Agency (EPA) has had problems regulating stormwater over the past few years, those problems may be dwarfed by the stormwater challenges yet to come.

Under the 1987 Water Quality Act amendments to the Clean Water Act, most of the nation's stormwater dischargers are not covered by EPA's current regulations. Instead, a so-called "phase II" universe of non-industrial stormwater dischargers and small municipalities of less than 100,000 population is exempt from regulation until after Oct. 1, 1992.

Oct. 1 is quickly approaching, and observers outside the agency have wondered what EPA plans to do about the enormous phase II universe of potentially regulated facilities. Conceivably, the 1987 law could be interpreted as requiring development of stormwater regulations soon after Oct. 1 for every small municipal storm sewer and virtually every small commercial and retail business in the country.

The latest indications, however, are that EPA will go slowly in developing phase II regulations, which may fall short of covering all potential phase II facilities with identical requirements.

Under the Water Quality Act, EPA must produce two reports to Congress by Oct. 1. The first must identify which phase II stormwater point sources—out of millions of small commercial and retail facilities, parking lots, streets and driveways releasing runoff into U.S. waters—pose potentially significant water quality problems. The second report must propose control measures for such sources.

Congress may conceivably get the first report on time, but the second probably will not be available until 1993, says one EPA source.

This source adds that there is considerable interest among regulators, the regulated community and environmentalists in postponing action on phase II sources by as much as five years. Surprisingly, Diane Cameron of the Natural Resources Defense Counsel (NRDC) says she personally favors stretching out the regulation of phase II sources over ten years.

Assisted by the Rensselaerville Institute of Rensselaerville, N.Y., EPA conducted three public meetings this summer on how phase II should be approached. At a final meeting in September experts are scheduled to discuss this again. EPA further plans to publish a *Federal Register* notice by mid-August seeking comment on phase II options.

One option will involve permitting phase II sources under the National Pollutant Discharge Elimination System (NPDES), says the EPA source. However, EPA is "frankly scared to death" of the huge number of permits this may require. Another option would cover most sources under the nonpoint source pollution control program mandated by section 319 of the Clean Water Act, which so far lacks enforcement provisions. A third alternative would require permits for some sources while addressing the rest through other means, the source indicates.

Auto repair facilities and federal highways might receive such priority regulatory attention, says the source. Cameron of NRDC adds that priority might equally be given to gas stations and dry cleaners.

Cameron says NRDC's preliminary position, however, is that first priority under phase II should be imposing "enforceable permit measures" on new development associated with the expansion of small- to medium-sized municipalities in the nation's rapidly growing "urban fringe" areas. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act \$298
- Chemical Process Safety Report \$349
- Stormwater Permit Manual \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$350
- Community Right-To-Know Manual \$324

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group

1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 2, Number 2

August 1992

California May Cancel All Sampling Requirements

After earlier issuing a state industrial general permit with requirements for more frequent stormwater sampling than those proposed in the U.S. Environmental Protection Agency's (EPA) draft general permit, California is contemplating a complete turnaround.

On July 13, the State Water Resources Control Board (SWRCB) held a public hearing on a proposal to cancel twice-a-year sampling requirements for nearly all regulated industrial stormwater dischargers. Instead of twice-a-year sampling, SWRCB has proposed that most dischargers simply conduct annual inspections to certify that they are following their stormwater pollution prevention plans.

The proposal discussed at the July 13 meeting also would require certification of inactive mining sites by registered professional engineers only once every three years. As an alternative to annual inspections, the proposal would require facilities already subject to effluent limitations under the Clean Water Act

(40 CFR Subchapter N) to report annually the mass of each regulated pollutant in their stormwater and the volume of the effluent discharged from each regulated outfall.

SWRCB also considered on July 13 a proposal to modify the reopener clause of the California industrial general permit to make it more flexible. According to SWRCB staffer Archie Matthews, the board is likely to vote on the proposed changes at either its regularly scheduled Aug. 20 meeting or—more likely—at its regular meeting Sept. 17.

Reactions to Proposal

The proposed changes are widely supported by California industry, judging from several interviews with business officials and lobbyists in the state who prefer to remain anonymous. Several such sources indicate that primary factors in SWRCB's decision to consider the changes include California's sorry economic picture and the state's \$6 billion-\$11 billion

(Continued on page 9)

STATE SURVEY

States Face Budget Crises, General Permit Uncertainty

State budget problems are again in the national news, echoing the budget crises that weakened the stormwater programs in several states last year (see *Bulletin*, November 1991, p. 6). Although a preliminary survey of three prominent state permitting programs by the *Bulletin* indicates potentially grave budget problems for the California State Water Resources Control Board, stormwater programs in Maryland and New Jersey seem to be weathering the summer's budget storms reasonably well—so far.

(Continued on page 2)

Inside this issue. . .

- Chart on State General Permit Status Page 4
- EPA's Ephraim King Discusses Stormwater Outlook Page 6
- EPA's Response to NRDC Ruling Page 10
- General Permits Still Hanging Fire Page 11



Publishers of environmental and safety compliance information

States Face Budget Crises

(Continued from page 1)

Meanwhile, the continued inability of the U.S. Environmental Protection Agency (EPA) to issue federal general permits (see related story, this issue, p. 11) is frustrating numerous state programs that hope to base their own general permits on EPA's example, says stormwater consultant Jerry Perrich of Environmental Science and Engineering Inc. (see chart, this issue, pp. 4-5).

State stormwater programs are legally obligated to implement stormwater regulations that are at least as stringent as EPA's, Perrich notes. However, state regulators risk putting industries under their jurisdiction at a competitive disadvantage if they issue general permits that are significantly more stringent than federal rules require. The example of California, which is now considering a major revision in its state general permit to make it more consistent with the minimum monitoring requirements announced by EPA on April 2 (see related story, this issue, p. 1), suggests there may be significant costs involved in running too far ahead of the pack.

Despite this dilemma, two other states in this month's survey—Florida and New Jersey—are attempting to proceed with ambitious general permitting efforts.

Here are some survey highlights:

California

The California stormwater program is fee-supported and receives no general fund money, reports State Water Resources Control Board (SWRCB) press officer Fran Vituli. However, SWRCB itself receives \$35 million, or about a third of its budget, from the state general fund, which essentially is supported by the taxpayers.

The budget proposed by Republican Gov. Pete Wilson in early July would leave SWRCB money intact, but some Republicans in the legislature originally proposed a 24.8 percent cut in all state environmental program funding. Now some Democrats also are sniping at Wilson's budget. In

early July one legislative conference committee on the budget proposed a \$21.5 million cut in SWRCB funds and a partial replacement of the funds with \$14 million in new regulatory fees. The environmental panel of a second committee proposed to eliminate all \$35 million in state funding for the board and replace the general fund money with new fees.

According to SWRCB stormwater chief Archie Matthews, "The budget outlook is getting to where it looks pretty bleak."

Matthews credits budget pressures, the state's faltering economy and fears that California environmental regulations will reduce the competitiveness of state industry—as well as other factors—for SWRCB's current proposal to eliminate stormwater monitoring requirements for most industrial dischargers (See related story, this issue, p. 1).

New Jersey

New Jersey's stormwater program also is fee-supported, says Barry Chalofsky, assistant administrator of the Office of Regulatory Policy in the Department of Environmental Protection and Energy (DEPE). Although DEPE as a whole will probably lay off about 150 of its 4,000 employees because of state budget cuts, Chalofsky predicts, "It's our anticipation that we'll be able to staff the stormwater program to meet the Oct. 1 permit application deadline. Of course, it's certainly not the best time to start a new program."

In June, DEPE published two draft general permits and scheduled July 28 and July 30 public hearings to discuss them, as well as a public comment period extending to Aug. 5. According to the agency, the two permits are "designed to maximize compliance through the use of economic incentives, as well as an innovative permit structure" that relies primarily on pollution prevention plans.

Other distinctive features of New Jersey's plan:

- the two permits would not contain numerical effluent limitations, but instead would rely on the development of site-specific best management practices or pollution prevention plans;



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Ted P. Metzler; Production Assistant, Marlene Maeger. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal use provided that the base fee of U.S. \$5.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple copy discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

- the plans would require certification by professional engineers, in line with a DEPE drive to privatize state regulatory processes;
- DEPE proposes to give dischargers 180 days from the effective dates of the permits to file requests for authorization (RFAs) for general permit coverage; and
- facilities that do not qualify for general permits would have until April 1, 1993, to file individual permit applications.

By March 1, 1993, DEPE plans to decide on the feasibility of establishing a statewide stormwater monitoring program. The program would gather sampling data that individual dischargers will not have to provide if the two general permits are approved.

Maryland

In Maryland, Ed Gertler of the Hazardous and Solid Waste Management Administration says budget constraints are causing some delays in the implementation of the state's industrial stormwater program. Brian Clevenger of the Sediment and Stormwater Management Administration, on the other hand, says of the stormwater program for construction sites: "So far, our specific office has remained intact. Things like travel and buying new equipment have been curtailed, but so far the staff positions are okay. Whether it will remain that way, nobody knows."

Maryland government already faces red ink at the very beginning of the fiscal year, Gertler and Clevenger indicate, and it is conceivable there will be budget cuts later on. Maryland plans to charge stormwater permitting fees, Clevenger reports, but Department of the Environment officials have not yet decided on a fee schedule. In the meantime, the state is hoping to publish a draft general permit for construction sites and industrial facilities in the near future. Clevenger hopes to publish a "Permit Application Guidance for Operators of Municipal Separate Storm Sewer Systems, Part II" by August.

Florida

As a state without National Pollutant Discharge Elimination System (NPDES) delegation, Florida has been cooperating with EPA Region 4 to fashion a federal general permit for the state that will coincide with Florida's own stormwater regulations. According to Eric Livingston of the Department of Environmental Regulation (DER), that cooperation could conceivably come to naught this year because of EPA's negotiations with OMB over federal general permits.

By April, Livingston says, EPA and Region 4 had completed a draft general permit for Florida that was essentially identical to state stormwater regulations. DER officials had scheduled workshops and

public meetings to assure issuance of a final permit before the Oct. 1 deadline. However, EPA then put the brakes on the process by noting that only the federal general permits developed by EPA headquarters had undergone review by OMB.

According to Livingston, EPA suggested that there would not be enough time for the Florida/Region 4 draft to receive OMB approval before the deadline. Another source close to the process told the *Bulletin* privately, "It was believed that if the general permit that Florida and Region 4 had developed were sent to OMB for approval, it would be shredded."

Region 4 stormwater official Roosevelt Childress indicates that a non-NPDES state such as Florida can modify the federal general permit, at least to some extent, during the state certification process required by section 401 of the Clean Water Act. Florida received EPA's "draft final" general permits on July 2 and has 60 days to certify them, Childress said. State modifications during certification cannot be arbitrary and must be based on state law.

Livingston indicates that Florida may employ such certification with conditions to modify EPA's final general permits to fit state requirements. However, state officials had not decided at press time whether to pursue this or another, more confrontational strategy.

At any rate, Livingston said, Florida's construction sites and industrial dischargers *will* be required to follow the state's strict stormwater regulations. The only question, Livingston said, is whether dischargers will need to comply with two duplicative regulatory programs, at considerable cost in wasted time and money.

South Carolina

In early July, there was a rumor among some industrial sources that South Carolina in June had received EPA approval to issue general permits. State stormwater officials, however, said that although the South Carolina legislature had approved of general permitting and although this had been announced in the state register, EPA Region 4 had not yet officially concurred. Drafts of a state construction general permit and a second permit for industrial dischargers were sent to EPA in July.

Other States

Six revised state stormwater program descriptions are included in this month's update of Tab 800 of your *Stormwater Permit Manual*:

- ¶890.3 Arizona
- ¶890.7 Connecticut
- ¶890.10 Florida
- ¶890.11 Georgia
- ¶890.14 Illinois
- ¶890.23 Michigan. ■

State-by-State Listing of Permitting Status

(This chart is based on a copyrighted chart developed by Environmental Science & Engineering (ESE) revised on June 23, 1992, and is printed with ESE's permission.)

STATE NAME	GENERAL PERMIT STATUS			COMMENTS
	NOW	LIKELY by 10/92	After 10/92	
Alabama		X		Anticipating 10-12 GPs 8/1/92. Monitoring will focus on management practices and oil and grease limitations.
Alaska*		X		
Arizona*		X		
Arkansas		X		
California	X			I/GP only; NOI's still being accepted; considering reopening GP for monitoring requirement changes—waiting for the final federal GP before making any decisions.
Colorado		X		
Connecticut			X	Received GPA 3/92; GP not expected until mid-'93; I/G using form 2F, no monitoring reqts.
Delaware**		X		Hoping to receive GPA by 8/92. Currently drafting four general permits. GP not expected until 9/92.
District of Columbia**		X		
Florida*		X		
Georgia		X		Still accepting "pre-notice."
Hawaii		X		
Idaho*		X		
Illinois			X	I/G only currently; GP will require forms 1 & 2F.
Indiana		X		Anticipating two GPs—industry and construction. Final GP adopted 6/10/92. Now waiting for state sign-offs. Permit allows existing dischargers to comply within 90 days after the effective date of the rule. Approval expected by 10/1/92. NOI required.
Iowa**		X		Revised draft of GP available 7/92—eight in total. Expect public notice in July/August, 1991. Awaiting final federal GP.
Kansas**			X	Expect to receive GPA within a year: Accepting I/G only with completed forms 1 & 2F.
Kentucky		X		Revised draft of the GP available 7/92—eight in total. Expect public notice in July/August, 1991. Awaiting final federal GP.
Louisiana*		X		
Maine*		X		
Maryland		X		GP expected by 7/1; Industrial and construction GPs.
Massachusetts*		X		
Michigan**			X	I/G-only currently; GPA in process at state level.
Minnesota		X		GP in process and currently under review at state level. GP applications available. Public comment period in July. Federal group permits are not recognized.
Mississippi		X		Comments from public notice under review. Expected to be available in final form 7/14/92—eight in total.
Missouri		X		Two types of permits—general and site specific. Accepting petitions and individual applications to be co-permitted under a general permit. Site specific permits require federal forms 1 & 2F. Federal group permits are not recognized.
Montana		X		

STATE NAME	GENERAL PERMIT STATUS			COMMENTS
	NOW	Likely by 10/92	After 10/92	
Nebraska		X		
Nevada**		X		Expect GPA by 7/1/92. Will draft three GPs—mining, construction and industrial. Public comment period by 8/92 and final drafts by 10/92.
New Hampshire*		X		
New Jersey		X		Draft general permit available for review—focus on SWP3s and BMP.
New Mexico*		X		
New York**		X		I/G only; GP drafted, but not approved—expect several permits by 10/92.
North Carolina		X		13 final GPs expected to be available by 8/92. Permits will stress pollution prevention for types of pollutants and toxicity.
North Dakota		X		Draft general permit expected out for public notice. Three GPs will be available—mining, industrial and construction.
Ohio*		X		I/G only currently; expect GPA by 9/92. Draft GP public notice expected 7/92. GP expected to be released by 10/92.
Oklahoma		X		
Oregon	X			14 GPs available. May drop monitoring requirements after one or two years. Federal group permits are not recognized.
Pennsylvania		X		GP being drafted. Uncertain of date for public comment period. Expect two permits—industrial and construction. Waiting to see final federal GP.
Rhode Island		X		Hoping to have draft GP available by 8/92. Two GPs—industrial and construction. Waiting to see final federal GP.
South Carolina**		X		I/G—until 7/92. Expect to receive GPA 7/92. State plans to adopt federal GP for state GP.
South Dakota*		X		
Tennessee		X		
Texas*		X		
Utah		X		
Vermont**		X		
Virginia			X	Waiting for federal GP; draft available mid '93.
Washington		X		GP being drafted. Public workshop 7/15. Public hearings 8/24. Baseline permit expected 9/92. NOI must be submitted by 10/92. Federal group permits are not recognized.
West Virginia		X		
Wisconsin		X		Internal review of GP; anticipating 60-day public comment period. Two GPs—industrial and construction. Still need to submit individual application form.
Wyoming		X		
Puerto Rico*		X		
Total	2	44	5	

* Non-NPDES state

** NPDES state w/o general permitting authority

GPA = General permit authority

NOI = Notice of intent

I/G = Individual or group application process

GP = General Permit

EPA's Ephraim King Discusses Stormwater Outlook

Ephraim King earned his undergraduate degree from Harvard and his juris doctor degree from the University of Maine. Previously, King worked for First National Bank of Boston as well as the Natural Resources Council of Maine before joining the U.S. Environmental Protection Agency (EPA) in 1979, where he initially worked on Clean Air Act issues for EPA's Office of Legislation. Subsequently, King worked on the reauthorization of Title 2 of Clean Water Act, later moving to EPA's Office of General Counsel, where he covered a variety of clean water, effluent guideline, hazardous waste and Superfund issues. He joined the Office of Water in 1987 as a program manager with responsibility for multi-media pollution issues. In December 1990, a month after publication of EPA's final rule on stormwater permitting, King became chief of the National Pollutant Discharge Elimination System (NPDES) branch within the Office of Water Enforcement and Compliance with major responsibilities for implementing the stormwater program.

The following is excerpted from a longer interview with King by Thompson Publishing Group (TPG) on May 19, 1992.

TPG: You've been with stormwater now since EPA began implementing the November 1990 final rule. How well is the program working?

King: My first answer is to say I think EPA, the EPA regions and the states have accomplished a phenomenal amount of program implementation working with the regulated community in less than two years since publication of the November 1990 rule. If you look back to November 1990 and ask, "Where was the agency? Where were the states?" and then you look at a number of areas where we have since committed effort, time and outreach, I conclude that we have collectively come a very long way.

One key to implementing a stormwater program is putting states in a position to implement probably one of the most effective control strategies—use of the general permit. When we began implementation in November 1990, only 17 states had authority to issue general permits. Now we have 29, which means we have added 12 states since November 1990. That shows a fairly extraordinary level of commitment on the part of the states and regions to step up to the challenge. We also expect to get approval of Nevada and Ohio's general permitting rules very shortly; and we have a number of states that we are currently interacting with right now, to get them to commit to general permit authority.

Now, once you've got general permit authority, it seems to me that a very fair question to ask is, "Where are those states of actually issuing general permits?" Based on an informal survey that

we've done, our numbers indicate that some 24 states—and it's very hard to quantify this, because you're trying to quantify a whole range of efforts, from conceptual development to proposed general permits to final issuance—at least 24 of those NPDES states are actively developing stormwater general permits as we speak. Of those states, you probably know that California, Oregon have already issued stormwater general permits in final form. We think this shows an impressive amount of progress.

In addition to doing the general permits, we're also setting up, in the Washington area, a notice of intent processing center. One provision of the general permit is that a permittee must submit a very simple, one-page notice of intent to be covered. For the EPA states, those notices of intent will be sent to the Washington, D.C., processing center. We will then provide to the regions a summary of who is under the program and who is not.

On the other hand, if you ask me what we could we have done better, I regret we were unable to get the proposed EPA general permit out sooner. It was proposed in August 1991. EPA had strongly hoped to get it out much sooner than that, but outside events interposed. We are now placing the highest priority on getting the general permits for the EPA non-delegated states out.

There are clearly other areas where we also wish that we had been able to do a better job. For example, one of the areas where I wish we had been able to do a better job was on outreach. There is a tremendous need for information on this program, and although EPA and the states have worked hard at this, more remains to be done. It's a major continuing challenge, and we're focusing on it. In fact, the stormwater section was given a couple of new positions to deal with outreach in the past month or two, and we've scheduled 26 workshops this summer to explain the program.

TPG: What's the latest story on group applications?

King: The general permit approach is only one of the application options that was outlined in the November 1990 rule; another option outlined was the notion of group applications. This is something that was proposed by industry to EPA. Starting in November 1990, there were no groups. As of today we have over 1,200 applications from industry covering more than 60,000

facilities. From my perspective, that represents a pretty impressive level of commitment and engagement by the regulated community.

TPG: 1,200 approved groups, or 1,200 applications?

King: Those are 1,200 applications. Right now we have an approval category, which includes groups whose letters either have been sent out or are now ready for office signature, of 725 applications. I have roughly 180 other groups that have either withdrawn their applications or had EPA determine that they're not covered.

One of the things we are emphasizing in reviewing these applications is to be sure that if people are not covered, we write and tell them that, rather than putting them through the whole process.

So far, we have denied 30 group applications. The rest are in the process of final review—either to receive approvals, denials, or in a few cases, notices of incomplete information. We also have a fair number of facilities asking to be group add-ons through Feb. 18. Our approach for dealing with this is to get all the original applications acted on as a first priority; then we'll deal with the add-ons.

TPG: How is your staffing situation? At the beginning, it wasn't good.

King: We now have eight people in the stormwater section at headquarters, not including me. Additional headquarters staff are working on stormwater issues, including, for example, state general permit authorization, state general permit issuance and stormwater guidance documents.

We also rely on contractor support, and we rely heavily on the 10 EPA regional stormwater coordinators and more than 50 state stormwater coordinators—at least one for each state; some states have many more than that. Take California, for example: I believe they've got someone for each of their nine regional boards. In Region 6, also, there are four regional stormwater staff rather than just one. When I add up the numbers, I get a range of at least 80 to 100 stormwater staff working on this program at the federal, regional and state levels. This does not include state and regional staff working on stormwater issues for municipal separate storm sewer systems.

TPG: What's happening with municipal permit applications?

King: Seventy-four large municipalities were supposed to submit part 1 applications by Nov. 18, 1991. The vast majority of them came in on time, and right now they all have been submitted. One of the things we're seeing on the municipal side is a very, very impressive commitment of resources, of

staffing, of expertise, to developing effective and aggressive stormwater control plans. We're very pleased with the progress these municipalities are making.

TPG: Do you think all the state general permits for industry will be available before the Oct. 1 application deadline?

King: I think a large number will. I think inevitably there will be a few states that have difficulty getting their general permits out as quickly as they'd like. EPA and the regions will work as hard as we can to support states in getting those general permits out.

TPG: You say a large number. How many won't make it?

King: Well, since the goal is that they're all going to make the target, it's tough for me to suggest that any won't. I think you've got to be realistic and accept that there are probably going to be two or three states that don't.

TPG: The stormwater program obviously departs somewhat from the traditional NPDES permitting program. In your new emphasis on pollution prevention, general permits and a risk-based approach, you seem to be experimenting with some relatively untried regulatory methods. Do you want to talk about this?

King: The existing NPDES water permitting universe is roughly 65,000 permittees. Of that number, roughly 7,000-8,000 are major permittees. And those are permits which rely heavily on numeric, end-of-pipe limits.

I think the major change that the stormwater program reflects is that when you're dealing with a universe that is two to four times the size of the existing universe, EPA and the states have to take a very hard look at whether there isn't another way that can be equally effective for this particular challenge. I think the development of the stormwater program reflects an overwhelming emphasis on pollution prevention plans to handle this.

I think this pollution prevention plan emphasis—in terms of its scope, the number of facilities it applies to, the emphasis that we're giving it, the kind of guidance that we're providing to implement it—is new. It represents EPA's attempting to reach out and say to the regulated community, "If you'll work with us, we will work with you for alternative approaches to controlling pollution."

What EPA is saying this time around is that the individual facilities are in the best position to know their specific sites, the kinds of pollutant sources they have on site, the kinds of exposed

(Continued on page 8)

Ephraim King

(Continued from page 7)

materials they have, and what kinds of best management practices will work for them to minimize or eliminate pollution in stormwater. The alternative to this approach, which under the NPDES program is the individual NPDES permit, involves major administrative burdens for EPA and the states. It also represents a major regulatory burden on industry and municipalities.

What EPA hopes is that the regulated community will work with us to make a success of the pollution prevention approach. If we are unable collectively to make a success of this, it's going to be awfully difficult to go back to Congress and make the case for general permits and pollution prevention. It will be difficult under those circumstances to argue that EPA should continue to implement programs having this kind of site-specific flexibility, which we think makes a lot of sense.

TPG: The general permits are also fairly new, aren't they?

King: EPA has used general permits before, but never on this scale. Another thing you mentioned is the risk-based approach to stormwater control. One of the things EPA's doing to deal with this large universe is to implement our four-tiered permit strategy to regulating stormwater discharges. Under the first tier, we'll place very heavy reliance on general permits. Then as we gather more information and learn more about particular industrial categories, watersheds and geographic areas, we intend to go back and issue—where this is warranted because of risk—permits that cover particular watersheds, or particular industrial categories, and/or particular facilities which are causing environmental impacts.

TPG: What implications will stormwater's success or failure have for other programs?

King: In a variety of ways, we think implementation of stormwater regulation is going to have implications and consequences in terms of how you go about regulating water discharges. We hope that by demonstrating industry's willingness to take responsibility for site-specific reductions in water pollution through development and implementation of pollution prevention plans, we can encourage generally—across the board—greater investment in that area, thus reducing the cost of treatment.

Again, if we can demonstrate that general permits work—that there is accountability, that there is performance, that there are environmental results—then I think you can expect to see more use of them

in the future. If, frankly, people conclude that general permits are only a paper exercise, it'll become a much tougher proposition to persuade states and permitting authorities to rely on them.

TPG: What are your stormwater enforcement plans for now?

King: Well, the bottom line of the questions that people often ask me about this program is, "What is EPA's agenda in implementing the stormwater program?" Our agenda is twofold: it's to implement the requirements of the Clean Water Act, but to implement them in a reasonable, cost-effective, environmentally protective way.

What does that mean in real life? It means EPA's emphasis right now is on working with states, municipalities and industry on coming into the program. Any time that you start a program—any program—you're going to have learning curves; you're going to have a lot of frustration; you're going to have resource problems. And our agenda right now is to work with as many people as possible to address issues and problems in a partnership context which emphasizes risk-based approaches and pollution prevention.

I think the next phase of the program will move beyond that, and we'll begin to look at issues of enforcement and tracking. But our emphasis at the moment is: let's get as many people in, let's make a success of this, let's reduce the need for enforcement; and let's demonstrate that pollution prevention, general permits and a risk-based approach can be a significant success. ■

Notice to Subscribers:

You recently received, or will soon receive, a second binder for your *Stormwater Permit Manual* to accommodate the ever-increasing amount of material you receive as part of your subscription. Instructions for dividing the materials between the two volumes is included in this month's Add/Delete instructions. If you have any questions, call (800) 879-3169. ■

California May Nix Sampling Requirements

(Continued from page 1)

state budget gap, which could increase the board's difficulties in reviewing stormwater sampling data (see related story, this issue, p. 1).

According to Matthews, SWRCB has been under considerable pressure to limit the regulatory burdens on industry during California's latest recession, and the state's economic climate is a "primary factor" behind the proposed change. A recent report by the California Competitiveness Council, headed by former baseball commissioner Peter Ueberroth, added fuel to the fire by indicating that over-regulation is making California industry less competitive nationally.

Stormwater sampling is "fundamental," environmentalists contend.

In addition, Matthews and other SWRCB staffers have become increasingly skeptical about the usefulness of the sampling data they would receive from regulated industry. The proposed change may better order the state's priorities, Matthews predicts, by allowing regulated industry to concentrate on writing and implementing stormwater pollution plans and removing the "distraction" of sampling.

Environmentalists with the Natural Resources Defense Council, the American Oceans Campaign and the Santa Monica area group Heal the Bay have submitted comments strongly protesting any relaxation in monitoring requirements. According to these comments, urban runoff is now the largest source of pollution to coastal waters adjoining the state's industrial and urban areas, and a stormwater self-monitoring program is "fundamental to the stormwater programs because it is the only way to identify major sources of runoff pollution and to gauge the relative effectiveness of best management practices."

If California "guts" the program's self-monitoring requirements, the environmental groups contend, the entire industrial stormwater permitting program will amount to "nothing more than an ineffective and cynical exercise in formal regulatory compliance for its own sake." The environmentalists also contend that California lacks the authority under the general permit's existing reopener clause to change the permit approved last November merely because EPA has since reduced its minimum stormwater monitoring requirements.

The staff for two of the state's nine regional water quality control boards, in San Francisco and Los Angeles, have reportedly threatened to enact varying regional sampling requirements if SWRCB eliminates the state sampling rules.

William Funderburk, stormwater attorney for the Los Angeles law firm of Radcliff, Rose and Frandsen, indicates that regulated industries are somewhat concerned with this threat. Although members of his firm believe their clients should be exempt from all stormwater sampling, Funderburk said recently, they seek regulatory consistency above all else.

Matthews, however, dismisses the significance of the regional staffs' position, saying that regulatory consistency is desirable, but not essential. The actual regional boards, as opposed to their paid staff, are subject to the same political and economic pressures as SWRCB, Matthews says, indicating that the regions may ultimately take the same position on sampling.

Matthews says SWRCB and several regional water quality boards also intend to conduct stormwater sampling, at least in selected watersheds, to obtain the stormwater information the environmentalists are talking about.

Notices of Intent

Commenting on a different but related regulatory issue, Matthews notes that although SWRCB had hoped to receive upwards of 30,000 notices of intent (NOIs) for general permit coverage by March 30, the agency to date has received only about 7,200. Some California trade association officials have said only 50 percent of their members or fewer have submitted NOIs, Matthews added.

Will California industries face penalties for not submitting NOI's?

The state recognizes that some industrial facilities still have not heard of the stormwater permitting requirements, Matthews says. However, facilities that have improperly failed to submit NOIs to date should do so soon. SWRCB is comparing databases with regulated municipalities and other local units of government, Matthews indicates, and eventually it will "go after" holdout industrial facilities and request NOIs.

Those who refuse this request could face prosecution, Matthews warns. Efforts to contact non-complying facilities with information on the stormwater program will likely occur during September or October of this year, Matthews suggests. ■

GUEST ANALYSIS

EPA Response Tentative In NRDC Ruling

by Harriet Pearson, Esq.*

The U.S. Environmental Protection Agency (EPA) and other key stormwater players have yet to repond meaningfully to the recent ruling by a federal court of appeals that struck down exemptions for "light" industry and small construction. (*NRDC v. EPA*, No. 91-70200 (9th Cir. June 4, 1992)).

As the *Bulletin* reported last month (see *Bulletin*, July 1992, p. 1), the court for the most part upheld EPA's stormwater regulations and permitting strategy. However, the court dealt two major blows to the agency's rules that undoubtedly will impose significant new burdens on certain industries and construction activities. EPA and other regulators face new headaches as well.

"Light" Industry

EPA's November 1990 stormwater regulations had exempted from the permitting requirements those "light" industries that keep certain work areas and materials covered and away from contact with stormwater. EPA justified the exemption on the ground that light industrial activity takes place indoors, with a minimum of environmental disruption.

According to the court, the record submitted by EPA did not sufficiently support the agency's justification. Holding EPA's distinction between light and all industrial activities to be arbitrary and capricious, the court vacated the portion of the regulations containing the exemption and remanded the rules to EPA for further proceedings.

Small Construction Sites

The November 1990 regulations also exempted from the permitting requirements construction activities that disturb less than five acres of land. EPA admitted that administrative concerns had prompted it, in part, to select the five acre cutoff. The agency further justified the exemption by saying that construction on larger tracts of land involved activity that was more "industrial" in nature.

The court held that the exemption is not justified, indicating that EPA had failed to show why activities at small construction sites are not industrial in

* Harriet Pearson is an associate attorney in the Washington, D.C., office of the Texas-based law firm of Bracewell and Patterson, representing clients on environmental law issues including the stormwater permitting regulations.

nature. The court, therefore, invalidated the exemption and remanded it for further proceedings.

EPA's Response

At press time, EPA headquarters had not yet issued a formal response to the court's decision. According to Kevin Weiss of EPA's Office of Water, the agency is still analyzing the effects the court's rulings. An important internal agency meeting on the decision—involving the Office of Water, the Department of General Counsel and the Department of Justice—was held on July 10.

According to EPA's Ephraim King, EPA is taking the position that dischargers previously falling within those exemptions do not have to apply for permit coverage under the November 1990 permitting regulations. "The bottom line in EPA's reading is that [such dischargers] are not covered at the moment and that the agency must conduct further rulemaking to address whether and to what extent they are covered under the [stormwater] program."

EPA probably will embark soon on a new round of rulemaking to address the court's concerns, Weiss said. At that time, EPA will seek data on construction activities to justify an acreage cutoff and will revisit the issue of whether certain light industrial activities are subject to the stormwater regulations, Weiss added.

State Regulators' Response

The court's decision in *NRDC v. EPA* has left other regulators resigned to a delay in the permitting process. Burton Tuxford of the Virginia Water Control Board advises light industries subject to the exemption to wait for EPA's reaction before filing permit applications with the state.

Virginia is developing its own general permit for construction activities, Tuxford said, so EPA's actions would not affect construction operators' need to file notices of intent to be covered by the permit. However, because Virginia is modeling its industrial general permit after EPA's baseline general permit, there likely will be some delay in that process as EPA sorts out its options, Tuxford concluded.

Staff in EPA's regional offices are still uncertain about the decision's effects. The regions need to wait for EPA headquarters to formulate its game plan, said Brent Larson of Region 6, which will issue permits for Texas and Louisiana.

Industry Response

According to Dennis Whittlesey, an attorney with Collier, Shannon, Rill and Scott who represented some of the industrial groups that intervened in

(Continued on page 12)

General Permits Still Hanging Fire

At press time, the U.S. Environmental Protection Agency (EPA) and the Office of Management and Budget (OMB) still had not reached agreement on the exact wording of EPA final general permits for industrial dischargers and construction sites (see *Bulletin*, July 1992, p. 1).

EPA's Stormwater Hotline is suggesting that final permits could be issued by the end of July or beginning of August. However, skeptics note that EPA has frequently predicted the imminent publication of the general permits before, but to no avail.

In June Mike Cook, director of EPA's Office of Wastewater Enforcement and Compliance, told the *Bulletin*, "The permit is over at OMB, and we have been talking to them regularly. We have agreed on most of the structure for the permit, including most monitoring requirements and most substantive compliance requirements. What remains are narrow issues on which we have not reached agreement."

In a subsequent interview, though, Cynthia Dougherty, director of the Permits Division under Cook, said, "We think we have issues worked out with OMB, and then they have new issues. I don't know at this moment where the negotiations are."

Responding to rumors in mid-summer that EPA and OMB had reached agreement on the permits and sent them to the EPA regions for "red border" review, Dougherty said no agreement had yet been reached. However, she added that EPA, with OMB's permission, had sent its "draft final" general permits to the regions so that they could be submitted to non-delegated National Pollutant Discharge Elimination System (NPDES) states for certification that the permits do not violate state water quality standards.

The idea is to get some time-consuming certification paperwork out of the way by the time EPA and OMB do reach agreement, Dougherty said. This may mean that the state certifications will need to be modified once final permits are issued.

Certain sources in the EPA regions and the private sector indicate that the primary disagreements remaining concern EPA's proposed twice-a-year monitoring requirements for facilities covered by the "right-to-know" reporting provisions of Title III, Section 313 of the 1986 Superfund Amendments and Reauthorization Act (SARA).

In addition, disagreement is reported to be especially sharp over EPA's plan to require whole effluent toxicity (WET) testing by SARA Title III, Section 313 facilities and certain other industrial categories. EPA probably wishes to employ WET testing not only for stormwater permits but also for other NPDES permits in the long run, opines stormwater consultant Jerry Perrich of Environmental Science and Engineering. Industry representatives, however, feel WET tests are overly costly and not consistently reproducible and, therefore, oppose the draft requirements.

What regulated industries who seek general permit coverage should do pending an OMB-EPA agreement is unclear. Perrich stresses the importance of "staying the course," regardless of whether a facility is seeking group, individual or general permit coverage. He adds that if general permits do not appear before the Oct. 1 permitting deadline, dischargers may want to submit the individual application form (Form 2F) or consult closely with state regulators to determine what is the best way to comply with regulatory requirements. Most state stormwater officials want to issue general permits and will respond favorably if dischargers show good faith in seeking some kind of coverage, Perrich suggests. ■

Courses and Seminars

By Government Institutes Inc., 4 Research Place, Suite 200, Rockville, Md. 20850. Tel: (301) 921-2345, Fax: (301) 921-0373.

- "Stormwater Discharge Regulations," Arlington, Va. Sept. 16. Fee: \$495.
- "Environmental Laws & Regulations: Compliance Course," Hilton Head, S.C., Aug. 10-12; Minneapolis, Sept. 14-15; Washington, Oct. 20-21. Fee: \$895.
- "Advanced Environmental Laws & Regulations: Compliance Course," Hilton Head, S.C., Aug. 13-14. Fee: \$895.

By American Society of Civil Engineers (ASCE), 345 E. 47th St., New York, N.Y. 10017. Tel:

(800) 548-2723, Fax: (212) 421-1826.

- "How to Design Cost-Effective Stormwater Detention Facilities," Minneapolis, Sept. 14-15. Members \$645, Non-Members \$745.

By Executive Enterprises, Inc., 22 W. 21st St., New York, N.Y. 10010-6990. Tel: (800) 832-8333 within U.S., (212) 645-7880 outside U.S.; Fax: (212) 645-8689.

- "Water Quality Standards for Toxic Pollutants," a course including a session on whole effluent toxicity (WET) testing. Washington, Sept. 17-18, Session #29TOXW5/E2019; Chicago, Oct. 22-23, Session #2ATOX32/E2019. Tuition: \$995. Tuition discounts available for groups of three or more.

Storm Warnings:

Stormwater Related News in Capsule Form

- **Comment Period Extended on Coastal NPS Guidance.** In June, the U.S. Environmental Protection Agency (EPA) extended until July 16 the comment period on a June 14, 1991, proposed guidance on management measures for nonpoint source pollution in coastal waters (57 FR 26845, June 16, 1992). The agency also announced the availability of several new reports on the economic achievability of the proposed management measures. For more information contact Ann Beier, Assessment and Watershed Protection Division, (202) 260-7085.
- **'Point/Point Source' Pollution Trading Project Launched.** In response to President Bush's request last January for federal agencies to accelerate their efforts to cut red tape and spur economic growth, EPA has launched a "Point/Point Source Pollutant Trading Project" to encourage market-based pollutant trading by facilities subject to the National Pollution Discharge Elimination System (NPDES). EPA seeks candidates for "point/point source" pollutant trading demonstration projects, but does not encourage the trading of toxic pollutants under the program because this might inadvertently create toxic hot spots (57 FR 21244, May 19, 1992). A report on the initiative should be available soon. For more information, contact Lina Stallard, EPA Engineering and Analysis Division, (202) 260-7120.
- **Pretreatment Regs Violated by 54 Percent of Industrial Users, Report Suggests.** An estimated 35 percent of the "significant industrial users" (SIUs) of the national pretreatment program surveyed in 1990 would have been in significant

noncompliance if they had to meet EPA's recently promulgated discharge standards for industrial pretreaters, according to EPA's June 1992 report, "Statistical Assessment of National Significant Industrial User Noncompliance." About 36 percent of the industrial pretreaters studied would not have been in compliance with new self-monitoring and reporting requirements. A total of 54 percent would have violated the discharge standards, the monitoring and reporting standards, or both. For an earlier story on this topic, see *Bulletin*, June 1992, p. 6. ■

NRDC vs. EPA

(Continued from page 10)

NRDC v. EPA, the ruling will make the stormwater permit regulations applicable to many more businesses. EPA will probably undertake another round of rulemaking in order to flesh out its assumptions on the nature of light industry and small construction activity, Whittlesey predicts. However, those dischargers that initially qualified for the exemptions may be justified in waiting for the results of EPA's review, he added.

Options for Affect Industries

For those businesses that previously were eligible for the now-invalid exemptions, what are the available options? Wait-and-see seems to be the name of the game at press time. Contact your state or regional permitting authority to find out what they recommend. Continue to monitor EPA headquarters' reaction to the decision. Finally, consult with counsel on the most prudent permitting strategy. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act \$298
- Chemical Process Safety Report \$289
- Stormwater Permit Manual \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$350
- Community Right-To-Know Manual \$324

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-879-3169

Stormwater Permit Manual

Bulletin

Volume 2, Number 1

July 1992

General Permits Near; Should Require Some Sampling

At press time, the U.S. Environmental Protection Agency (EPA) is rumored to be close to issuing two final "baseline" general permits for industrial stormwater dischargers and construction sites disturbing at least five acres of land, respectively.

EPA sources, however, say agreement with the Office of Management and Budget (OMB) on the proposed permits, which seemed very close late in May, again is foundering as the two agencies argue over the exact wording of the final document.

Meanwhile, drafts of the proposed permits have been leaked to certain trade associations, law firms and the press. According to a late draft of the permits obtained by the *Bulletin*, EPA will not relieve all industrial dischargers from previously proposed stormwater sampling and testing requirements. Instead, the agency plans to require semiannual or annual sampling by a number of industries and specific kinds of facilities within certain industries.

EPA's draft stormwater sampling requirements would apply in whole or in part to

- primary metal industries within Standard Industrial Classification (SIC) Code 33;
- facilities subject to "right to know" reporting requirements for water priority chemicals under Title III, Section 313 of the Superfund Amendment and Reauthorization Act of 1976 (SARA Title III, Section 313);
- landfills, incinerators and burner industrial facilities handling hazardous waste emitted by facilities from industries in SIC codes 20-39;
- wood treatment facilities;
- coal piles;
- lead-acid battery reclamation facilities;
- airports;
- coal-fired power plants;

(Continued on page 2)

FOR CONSTRUCTION, 'LIGHT' INDUSTRY

Two Key Permit Exemptions Struck Down by Court

Two of the U.S. Environmental Protection Agency's (EPA) key exemptions from stormwater permitting regulations—for so-called "light" industry and small construction sites—have been ruled "arbitrary and capricious" by the U.S. Court of Appeals for the Ninth Circuit.

In a June 4, 1992, ruling on a 1991 petition by the Natural Resources Defense Council (NRDC) challenging EPA's stormwater regulations, the court also ordered EPA to specify deadlines for regulated industries to comply with the terms of their permits.

(Continued on page 7)

Inside this issue. . .

- Sampling and Reporting Requirements Chart **Page 4**
- Court Rejects Mining Industry Stormwater Challenge **Page 6**

**Thompson
Publishing
Group**

Publishers of environmental and safety compliance information

General Permits Near

(Continued from page 1)

- animal handling and meat packing facilities;
- rubber manufacturing facilities;
- chemical and allied products facilities;
- large automobile junkyards;
- lime storage piles;
- cement kilns and cement manufacturing facilities;
- ready-mixed concrete facilities; and
- shipyards.

Such dischargers could obtain waivers from the sampling requirements due to dangerous or otherwise adverse weather conditions (such as prolonged drought), but only once every two years. For more information on sampling requirements of the draft final permit, see the Sampling and Reporting Chart on pages 4-5 of this issue.

Notice of Intent Requirements

Under the draft final permit for industrial dischargers, existing industrial facilities seeking general permit coverage would have to submit one-page notices of intent (NOIs) by Oct. 1, 1992, which is also the deadline for industrial dischargers filing individual permit applications. Operators of industrial sites who plan to begin discharging stormwater after Oct. 1 would have to mail NOIs to regulators seeking general permit coverage just 48 hours before their stormwater discharges begin.

Operators of oil and gas facilities that do not have to submit permit applications by Oct. 1, but that later discharge reportable quantities of oil or other hazardous substances, would have to submit NOIs within 14 calendar days of discovering the releases. Municipally owned facilities rejected for group permit applications would have until Oct. 1 or the 180th day following the date of their rejection, whichever is later.

Facilities filing NOIs would use an NOI form supplied by EPA. Generally, NOIs would include four-digit SIC codes representing each facility's products or activities; the operator's name, address, telephone number and status as federal, state, private or other entity; the name of the receiving waters or municipal storm sewer receiving the discharge; an indication whether the applicant previously participated in any group application; and an indication whether the operator has existing quantitative data about stormwater pollutants in his/her discharge. The data itself, however, would not be required.

For discharges of industrial stormwater beginning after Oct. 1, 1992, the NOI would be required to include a certification that a stormwater pollution plan had been developed for the facility. A copy of the plan would be submitted with the NOI.

Pollution Prevention Requirements

The draft final permit significantly reduces pollution prevention and stormwater control requirements for industry compared to last August's proposed general permit—particularly for SARA Title III, Section 313 facilities that would have faced secondary containment requirements under the proposed permit.

All industrial facilities covered by the draft final permit, however, would be required to incorporate into their pollution prevention plans such controls as good housekeeping practices, preventive maintenance, "reasonable and appropriate" traditional stormwater management practices, record-keeping and internal reporting procedures, employee training programs, and at least annual comprehensive site compliance evaluations. At a minimum, all permitted industrial facilities would be required to inspect their stormwater management practices annually to determine their effectiveness.

In addition, the draft final permit would impose special control requirements on certain facilities:

- "Appropriate" containment, drainage control and/or diversionary structures would



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Senior Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Linda Johnson; Production Assistant, Marlene Maeger. For subscription questions, call (800) 424-2959. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal use provided that the base fee of U.S. \$5.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple subscription discounts, call (800) 424-2959 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

be required for SARA Title III, Section 313 facilities handling water priority chemicals. Operators would be required to "minimize" discharges of these chemicals from storage and handling areas and truck and rail loading and unloading areas using secondary containment structures or "equivalent measures." However, there is some indication that OMB and EPA may currently disagree over whether these and other discharges must be "minimized" or merely "reduced."

- Oil and gas facilities not needing permit coverage before Oct. 1, 1992, but releasing a "reportable quantity" of oil or other hazardous substances afterwards, would generally have to prepare and implement pollution prevention plans for preventing such discharges within 60 calendar days of discovering the discharges.
- Municipally owned facilities rejected from part 1 group applications would have until 365 days after their rejection, or until April 1, 1993, whichever is later, to prepare a stormwater management plan. Compliance would be required by Oct. 1, 1993, or within 545 days of the rejection, whichever is later.
- Salt storage piles discharging stormwater to U.S. waters would have to be enclosed or covered within three years of receiving permit coverage.
- For coal piles, stormwater runoff would be required to meet numeric water quality standards for total suspended solids and pH.

The deadline for preparing pollution prevention plans would be April 1, 1993, for industrial facilities submitting NOIs on Oct. 1, 1992. The deadline for compliance would be Oct. 1, 1993.

Proposed Construction Industry General Permit

Under EPA's draft final baseline general permit for construction activities disturbing five or more acres of land, contractors and developers of sites seeking general permit coverage after Oct. 1, 1992, would be required to postmark their NOIs to regulators just 48 hours before starting construction at a site.

Stormwater pollution prevention plans would have to be prepared in accordance with good engineering practices. Compliance with the plans would begin with the start of construction activities or, in the case of NOIs submitted for construction already underway by Oct. 1, 1992, would begin on Oct. 1, 1992. Copies of NOIs would have to be posted on site.

Among other requirements, construction site pollution prevention plans would include site maps, descriptions of the nature and intended sequence of the permitted construction activities, and descriptions of structural practices that operators would undertake to divert storm flows from exposed soils or otherwise limit runoff.

Despite the expressed wishes of some construction companies, construction contractors and subcontractors would be considered "co-permittees" with developers and site owners in submitting certain certifications along with the NOIs.

Uncertainties Raised by Recent Court Decision

The Ninth Circuit Court of Appeals, in its dramatic June 4 ruling on the Natural Resources Defense Council challenge to EPA's stormwater regulations (see related story, this issue, p. 1), has raised some questions about the status of these draft "final" general permits, quite apart from their uncertain reception by OMB.

According to William Funderburk, water resources attorney at Radcliff, Rose and Frandsen in Los Angeles, EPA may be impelled to reopen its draft general permits because of the court's vacating the Nov. 16, 1990, final stormwater permitting rule's exemptions for small construction sites and so-called "light" or "Category 11" industrial sites where stormwater runoff does not contact significant materials.

On the other hand, Funderburk says, EPA may choose to address light industrial facilities and small construction sites in a separate rulemaking, leaving the present general permit process more or less on track.

At press time, EPA officials were unavailable for comment on the draft general permits or the just-published court ruling. ■

Notice to Subscribers:

Recognizing that the binder for your *Stormwater Permit Manual* is becoming fuller with each subsequent update, we will forward to you within the next month an additional binder. The binder—included as part of your subscription to the *Manual*—will be accompanied by instructions for dividing the material between volumes. If you have any questions, call (800) 879-3169. ■

SAMPLING AND REPORTING REQUIREMENTS
EPA Draft "Final" General Permit

Industry	Sampling Parameters	WET Test*	Sampling Frequency	Reporting?
SARA III, §313 Facilities: sampling needed for discharges of stormwater that has contacted tanks, containers, equipment, vessels used for storing 'water priority' chemicals, or loading/unloading areas where water priority chemicals are handled	oil & grease, BOD 5,** COD, TSS, total kjeldahl nitrogen, total phosphorus, pH, any §313 'water priority' chemicals for which facility is subject to TRI reporting regs, and any other parameters applicable to the particular industry	Yes	Semiannual	Yes
Primary Metal Industries (SIC 33)	oil & grease, BOD 5,** COD, TSS, pH, total lead, total cadmium, total copper, total arsenic, total chromium, any pollutant limited in effluent guideline to which facility is subject	Yes	Semiannual	Yes
Land Disposal Units/Incinerators/Burner Industrial Facilities (BIFs) receiving wastes from SIC codes 20-39 or burning hazardous wastes, operating under interim status or permit under RCRA Subtitle C	ammonia, COD, pH, magnesium (total), magnesium (dissolved), nitrate plus nitrite nitrogen, total organic carbon, total dissolved solids, oil & grease, total arsenic, total barium, total cadmium, total chromium, total cyanide, total lead, total mercury, total selenium, total silver	Yes	Semiannual	Yes
Wood Treatment Facilities using chlorophenolic formulations	oil & grease, pH, BOD 5,** COD, TSS, pentachlorophenol	Yes	Semiannual	Yes
Wood Treatment Facilities using creosote formulations	oil & grease, pH, BOD 5,** COD, TSS	Yes	Semiannual	Yes
Wood Treatment Facilities using chromium-arsenic formulations	oil & grease, BOD 5,** pH, COD, TSS, total arsenic, total chromium, total copper	No	Semiannual	Yes
Coal Pile Runoff	oil & grease, pH, TSS, copper, zinc, nickel	No	Semiannual	Yes
Battery Reclaimers: stormwater discharges from areas used for storage and/or reclamation of lead-acid batteries	oil & grease, pH, COD, TSS, lead, copper	No	Semiannual	Yes
Airports with more than 50,000 flight operations/year: sample only areas used for aircraft and/or airport deicing	oil & grease, pH, BOD 5,** COD, TSS, primary deicing materials used at site (e.g., urea, ethylene glycol)	No	Annual	No

SAMPLING AND REPORTING REQUIREMENTS
EPA Draft "Final" General Permit

Industry	Sampling Parameters	WET Test*	Sampling Frequency	Reporting?
Coal-Fired Steam Electric Facilities: sample only discharges not subject to stormwater effluent guidelines at 40 CFR 423	oil & grease, pH, TSS, copper, nickel, zinc	No	Annual	No
Animal Handling, Meat Packing Facilities	BOD 5,** COD, pH, TSS, total kjeldahl nitrogen, total phosphorus, fecal coliform	No	Annual	No
Rubber & Misc. Plastic Products (SIC 30): only discharges coming in contact with storage piles of solid chemicals used as raw materials	oil & grease, COD, TSS, pH, any pollutants limited in effluent guidelines to which facility is subject	No	Annual	No
Chemicals & Allied Products (SIC 30): only discharges coming in contact with storage piles of solid chemicals used as raw materials	same as above	No	Annual	No
Automobile Junkyards: large facilities only; specifications for coverage noted in general permit	same as above	No	Annual	No
Lime Storage Piles	same as above	No	Annual	No
Oil Fired Steam Electric Power Plants: oil handling sites	same as above	No	Annual	No
Cement Kilns, Cement Mfg. Facilities: discharges not subject to stormwater effluent guidelines at 40 CFR 411	same as above	No	Annual	No
Ready-Mixed Concrete Facilities	same as above	No	Annual	No
Ship Building, Repair Facilities	same as above	No	Annual	No

* WET Test = Acute whole effluent toxicity test

** BOD 5 = 5-Day biological oxygen demand

Note: All facilities subject to sampling requirements must record the date and duration of the storm event, a rainfall estimate or measurement, the time between sampling event and previous measurable storm event, and an estimate of total discharge volume.

Court Rejects Mining Industry Stormwater Challenge

The U.S. Court of Appeals for the Ninth Circuit has rejected a 1991 mining industry challenge to the U.S. Environmental Protection Agency's (EPA) stormwater permitting requirements for inactive mining sites (*American Mining Congress v. U.S. E.P.A.*, No. 90-70176 (9th Cir. May 27, 1992)).

In an opinion written by Judge Warren J. Ferguson, a three-judge panel found that EPA's requirements for inactive mining sites do not contravene Congress' intent in enacting the 1987 Water Quality Act, are not improperly retroactive, do not violate certain procedural rules, and are not arbitrary and capricious.

At press time, it appeared that the American Mining Congress (AMC) or other industry petitioners would not apply for a rehearing of their petition by the full Ninth Circuit.

In arguments before the court on Oct. 9, 1991, several petitioners, including AMC, the National Coal Association, the National Council of Coal Lessors, the National Aggregates Association, and the American Iron and Steel Institute, contended that the Water Quality Act's provisions on stormwater, by specifying that EPA should regulate stormwater discharges "associated with industrial activity," authorized only the regulation of those discharges associated with a present "activity." This precludes EPA from regulating inactive mining sites, the petitioners argued.

The Ninth Circuit, however, reasoned that "associated with" is the key portion of the larger phrase "associated with industrial activity," and that polluted stormwater can be associated with past as well as current industrial activity.

Because section 402(p)(2)(B) of the Clean Water Act is silent regarding the industrial nature of discharges from inactive mining sites, and EPA has exempted mining sites from stormwater permitting where stormwater runoff is kept isolated from certain waste materials and raw materials, EPA's interpretation of the law is reasonable, the court stated.

The court also upheld EPA's regulation of certain inactive mining sites that are covered by the Abandoned Mine Land (AML) program of the Surface Mining Conservation and Reclamation Act of 1976 (SMCRA). Rejecting the petitioners' argument that EPA improperly ignored SMCRA in promulgating stormwater regulations for inactive mining sites, the court noted that SMCRA specifically states that it does not supersede the Clean Water Act.

According to the court, there is reason to believe that "numerous mines ostensibly subject to

SMCRA's reclamation requirements have nevertheless been abandoned," and that the AML program does not control the discharge of pollutants from abandoned mine lands prior to their reclamation. For these and other reasons, the court found, "EPA's stormwater regulation does not offend any congressional intent to regulate mines exclusively through the AML program."

Ruling on other issues, the court found EPA's classification of discharges from inactive mines as "discharges associated with industrial activity" consistent with earlier regulation of inactive mines under the National Pollutant Discharge Elimination System (NPDES). It also said that the regulations do not impose retroactive liability, but instead establish liability only for future discharges from inactive mining sites.

The court further upheld as reasonable EPA's decision to exempt from stormwater regulations only those non-coal mining sites reclaimed under various state programs after 1990.

In upholding the regulation of inactive mining sites, the court said that EPA was "not required to consider economic and administrative impacts in formulating this rule," rendering such factors irrelevant to the case.

EPA and Industry Reactions to Decision

According to EPA attorney Randall Hill, the Ninth Circuit ruling is "a strong reaffirmation of the [legal] principle ... that an agency can interpret a regulatory statute in any manner that is reasonable." However, Hill said, "This is a fairly narrow opinion on a fairly narrow subject. Basically, it confirms our view that it was reasonable for EPA to regulate inactive mining sites under the stormwater permitting rule."

Raissa Kirk, AMC's Washington representative, said AMC's view is that "the court's analysis of our arguments was fairly superficial. They misconstrued our arguments on the AML program, in particular."

The court relied on an 11-year-old *Federal Register* notice in finding that there is considerable runoff pollution from inactive mining sites, and the decision appears to ignore recent progress in reclaiming inactive mines under SMCRA and other statutes, Kirk added.

Moreover, Kirk said, EPA has recently taken the position that discharges from inactive mining sites that contact spent ore, waste rock or overburden constitute "process wastewater" subject to regular NPDES permitting rather than the stormwater regulations. However, Kirk predicted that this may

now change as EPA transfers such discharges back into the stormwater program, potentially creating a huge administrative burden for regulators and industry alike as hundreds of thousands of inactive mining sites require permitting.

Richard Morris of the National Aggregates Association said his industry is particularly displeased with the court's upholding EPA's exemption for only those non-coal inactive mining sites reclaimed after December 17, 1990.

"In the aggregate and sand and gravel industry, our members have been regulated under some very comprehensive state and sub-state reclamation requirements since, in some cases, the 1970s," Morris said. It is therefore a poor use of regulatory resources, Morris suggested, for EPA to dismiss as environmentally insignificant the reclamation of inactive aggregate mining sites before 1990.

It is also questionable for EPA to treat all mines including aggregate mines as if they have almost the same pollutant discharge problems, Morris indicated. However, he suggested that the ruling is more likely to be challenged when Congress reauthorizes the Clean Water Act than through an industry petition for rehearing by the Ninth Circuit. ■

Permit Exemptions

(Continued from page 1)

It likewise found unlawful EPA's failure to set deadlines for itself to either approve or deny stormwater permit applications. In addition, the court granted "declaratory" relief by finding unlawful EPA's failure to meet the 1987 Water Quality Act's deadlines for issuing stormwater permitting regulations, but declined NRDC's request for an injunction to prevent further extensions of the deadlines.

In other issues raised by the lawsuit, the three-judge panel rejected several arguments NRDC had made against EPA's stormwater requirements for municipal separate storm sewer systems and upheld the agency's regulatory exemptions for oil and gas exploration sites where stormwater does not come in contact with significant materials.

Category 11 or 'Light' Industry Rule

In a two-judge opinion by Judge Warren Ferguson, with a dissent filed by Judge Diarmuid F. O'Scannlain, the Ninth Circuit panel vacated and remanded for further hearing a portion of EPA's Nov. 16, 1990, final stormwater permitting rule requiring "light" industrial facilities to obtain permits only if they discharge stormwater that comes in contact with significant pollutant sources.

The court record does not support EPA's contention that most light industrial activity will occur indoors and hence generate relatively little stormwater pollution, the majority opinion stated. According to the court, by exempting certain light industrial facilities, while requiring all so-called "heavy" industrial facilities to obtain permits, EPA impermissibly altered the statutory scheme of the 1987 Water Quality Act, which requires permitting of all stormwater "associated" with industrial activity.

Moreover, EPA's qualified exemption for light industrial facilities will work only if such facilities self-report, or if EPA "searches out the sources and shows that exposure is occurring," the majority opinion stated. "We do not know the likelihood of either self-reporting or EPA inspection ... and the regulations appear to contemplate neither for these industries."

"Small" Construction Site Exemption

In the same ruling, the majority also invalidated and remanded for further proceedings EPA's decision to exempt from permitting small construction activities disturbing less than five acres of land.

EPA has not submitted data proving that such small construction sites lack an "industrial" character or that regulating them will have only a minimal impact on reducing sedimentation and soil erosion, the majority indicated. Furthermore, EPA itself has acknowledged that "even small construction sites can have a significant impact on local water quality," making its choice of a five-acre limit for regulating construction site stormwater runoff arbitrary and capricious, the court concluded.

Deadlines

In another reversal for EPA, the court granted NRDC's request that it declare, as a matter of law, that EPA's failure to meet the regulatory deadlines in the Water Quality Act was illegal. Whatever mitigating factors may account for EPA's long delays in getting regulations published, "they do not grant an executive agency the authority to bypass explicit congressional deadlines," the majority stated.

The majority also agreed with NRDC's argument that EPA acted unlawfully both by failing to specify deadlines for its own approval or denial of permit applications and by failing to state compliance deadlines for industrial and municipal permittees, as required by the Water Quality Act. However, the court rejected NRDC's request for an injunction to prevent EPA from further extending application deadlines.

Group Application Process Upheld

In a victory for EPA and those stormwater dischargers who joined group applications, the court rejected NRDC's argument that EPA approvals of

(Continued on page 8)

Permit Exemptions

(Continued from page 7)

part 1 group applications constitute policy decisions subject to public comment requirements.

The court reasoned that because the approval process for part 1 applications is essentially a factual determination, EPA is not required to provide for public notice and comment.

Reactions to Court's Ruling

By vacating EPA's decision to exempt from stormwater permitting small construction sites and many light industrial sites, the Ninth Circuit ruling casts considerable doubt on a permitting plan that NRDC has long disliked, but that many regulatory officials and private consultants say may be essential to make stormwater regulation administratively workable.

In a public statement, NRDC attorney Bob Adler contended that by rejecting "loopholes" for light industry and small construction sites, the ruling is "an important step in the nation's efforts to live up to the goals of the Clean Water Act ... This ruling will ensure controls of urban and industrial pollution sources."

NRDC noted that industries potentially affected by the opinion include pharmaceuticals, paints, varnishes, lacquers, enamels, plastic and rubber products, metal products, machinery, computers, electrical and transportation equipment, glass, jewelry and silver, fabrics, furniture, paper board products, tobacco products and food processors.

William Funderburk, water resources attorney with Radcliff, Rose and Frandsen in Los Angeles,

agreed that the ruling might expand the universe of facilities subject to stormwater permitting by 50 percent or more.

Funderburk added, though, that in addition to subjecting the construction industry and light industry to enormous new regulatory burdens, the ruling could further delay both EPA's efforts to publish a general permit (see related story, this issue, p. 1) and the general permit development efforts of many states. Because of the added uncertainty for industry and regulators alike, he predicted, "The actual effect of this ruling may be less pollution prevention."

"This creates a real dilemma for Category 11 industries," he added. "Unless they scramble to get permitted by Oct. 1, they will be in technical violation of the Clean Water Act. That creates a real question for those industries. Should they wait to see what EPA does next, or should they rush to apply for permits? This creates a new twist in the ever-twisting stormwater program."

Jeff Longworth of Collier, Shannon, Rill and Scott in Washington said, "Now that the regulated community has finally determined from EPA, over a period of two years, what this program really entails, this ruling has thrown a monkey wrench into the program. This sends everybody a couple of steps backwards."

Some light industries already have submitted group applications to EPA, Longworth said, but he predicted that if EPA now folds all light industries into the mandatory permit program, there could be a "mad scramble" as facilities seek to obtain individual or general permit coverage before Oct. 1. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging \$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act \$298
- Chemical Process Safety Report \$289
- Stormwater Permit Manual \$398
- Aboveground Storage Tank Guide \$397
- Underground Storage Tank Guide \$350
- Community Right-To-Know Manual \$324

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News \$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group

1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-424-2959

Stormwater Permit Manual

Bulletin

Volume 1, Number 12

June 1992

EPA Issues Draft Guidance On Pollution Prevention Plans

Regulated stormwater dischargers who face the requirement to draw up pollution prevention plans for industrial facilities or construction sites will soon have access to detailed guidance on this task from the U.S. Environmental Protection Agency (EPA), according to Ephraim King of EPA's National Pollutant Discharge Elimination System (NPDES) office.

Two draft EPA guidance documents on stormwater pollution prevention planning—one for the construction industry and one for all other industrial dischargers—have been circulated to selected companies, state and regional stormwater regulators and environmental organizations, King says. EPA is asking for a quick response to the drafts and hopes to publish final guidance documents sometime in June, along with its long-awaited final "baseline" general permits.

"Stormwater dischargers should also be aware that these guidance documents are as user friendly as possible, with charts, worksheets, schematics and checkoff lists of things to do so that you can walk

through the task step by step," King adds. The intent, he says, is to allow most stormwater dischargers to draw up their own pollution prevention plans without having to hire expensive consultants for the job.

The introduction to one of the draft documents, "Storm Water Pollution Prevention for Industrial Activities," states that "most owners and operators of industrial facilities will find that putting their plan together is straightforward and can be accomplished by facility managers and employees."

The draft also states that small businesses may not necessarily have to establish employee committees to handle stormwater management. For small facilities, it advises dischargers to "designate a specific individual who will develop and implement your Stormwater Pollution Prevention Plan." Larger and more complex facilities, however, are advised to designate "teams" to develop, implement, maintain and revise the plans.

(Continued on page 3)

New EPA Stormwater Workshops Scheduled

In a replay of last year's outreach effort launching the federal stormwater permitting program, the U.S. Environmental Protection Agency (EPA) is holding 26 workshops this spring and early summer in 18 locations across the country to explain recent stormwater developments to state and federal regulators, environmental consultants and regulated industries and municipalities.

According to Ephraim King, chief of EPA's National Pollutant Discharge Elimination System (NPDES), the workshops will not only introduce

(Continued on page 8)

Inside this issue. . .

- Some Industries Seek Added Stormwater Changes Through Regulatory Review **Page 2**
- Ex-EPA Official Warns of Clean Water Bill's Trade Impacts **Page 4**
- Storm Warnings: EPA Proposes Changes in General Permit for Oklahoma; New Report Eyes Pre-treatment Problems; Watershed Programs Beginning **Page 6**

**Thompson
Publishing
Group**

Publishers of environmental and safety compliance information

Some Seeking Added Changes in Stormwater Rules

Has the U.S. Environmental Protection Agency's (EPA) April 2, 1992, final rule relaxed the stormwater permit requirements enough to meet the objectives of President Bush's regulatory review? Or are more changes in the stormwater program needed?

In recent interviews, EPA stormwater chief Ephraim King has suggested that most of the Bush Administration's goals for paring back regulations to foster economic growth can be met in the stormwater area through the April 2 final rule (see *Bulletin*, May 1992, p. 1, 6). Comments submitted to EPA's docket on regulatory review, however, show that some regulated industries feel otherwise.

According to some companies and trade associations that commented on the president's moratorium, EPA should not merely eliminate unnecessary sampling requirements for the stormwater program, as it did in the April 2 rule. It should go further, by scuttling requirements that dischargers draw up pollution prevention plans and further delaying implementation of the program.

Several dischargers also called for risk-based watershed approaches to regulating stormwater that might exempt from the rules industries in locations where stormwater causes no measurable water quality problems. At least one industry commenter criticized EPA's proposed requirement that dischargers establish employee committees to oversee stormwater management at regulated facilities, suggesting that such committees will be unnecessarily costly and produce few environmental benefits. The National Association of Manufacturers also urged a general exemption from stormwater permitting for small businesses.

Another comment submitted by American Airlines, invoking economic hard times, suggested: "EPA should postpone the implementation date for this program. This would allow the airline industry to better utilize its resources during a period of unprecedented economic losses." The company also

urged EPA to develop an industry-specific general permit for airlines allowing the implementation of a program similar to local industrial pretreatment programs.

The American Iron and Steel Institute (AISI), stating that "if American industry is to be internationally competitive, there simply must be an improved scientific basis for government regulation," submitted comments primarily focusing on Clean Air Act and Resource Conservation and Recovery Act (RCRA) regulations.

Nevertheless, AISI also urged further postponing stormwater regulations to "defer costly and burdensome requirements." According to AISI, such requirements include proposed provisions in EPA's draft baseline general permit requiring biological toxicity testing of some discharges and requiring most permittees to draw up pollution prevention plans. "These requirements should be dropped," the Institute wrote.

In today's world market, the chemical company BASF commented, "[I]t is critical that U.S.-based companies, such as BASF, not be disadvantaged in attracting additional capital for expansion or in their ability to produce quality goods at competitive prices because of the burden of unstable or unwieldy regulatory requirements."

Accordingly, BASF called for EPA to "eliminate" separate stormwater requirements for industrial facilities coming under the "right-to-know" reporting requirements of Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986. In addition, BASF warned EPA against requiring multiple test species for stormwater dischargers who must perform biological monitoring. The company also stated that because many dischargers will be compelled to seek general permit coverage even if they prefer individual permits, "general permit conditions such as sampling parameters and limits should be negotiable."



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Senior Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Linda Johnson; Production Assistant, Marlene Maeger. For subscription questions, call (800) 879-3169. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal use provided that the base fee of U.S. \$5.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple subscription discounts, call (800) 879-3169 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

Several coal industry commenters argued against stormwater permitting for inactive coal mining sites, which already are regulated by the Office of Surface Mining.

In separate comments on mineral mining, the American Mining Congress (AMC) wrote that permitting thousands of inactive mining sites would impose an "incalculable" cost burden on both industry and regulators. Moreover, AMC argued, many old mining sites are revegetated and don't need stormwater controls.

American Airlines: "EPA should postpone implementation of this program."

Several gas industry commenters argued against regulating runoff from construction sites involving natural gas pipelines, contending that pipeline builders already control sediment adequately and saying that long, linear pipelines are ill-addressed by a regulation requiring permits for all construction projects disturbing five or more acres of land. A pipeline repair project disturbing five acres may stretch over several watersheds and create only minimal runoff problems in any of them, one comment suggested.

The draft general permit's proposed sampling requirements for closed municipal solid waste landfills were found objectionable by the City of Phoenix, the Local Government Solid Waste Action Coalition and the Solid Waste Association of North America (SWANA). SWANA also wrote that EPA's proposed best management practices for closed landfills are inconsistent with RCRA Subtitle D.

At least two commenters from the forest products industry argued against requiring stormwater permits for remote log yards, saying that this is inappropriate because such log yards are not really "industrial" in nature. Commenters from the construction industry stated that the owner or developer at a construction site, not the contractors doing the actual work, should be responsible for submitting a notice of intent seeking general permit coverage at the site.

Numerous additional comments on stormwater were submitted by companies, municipal agencies and trade associations. EPA says its April 2 final rule already meets the objectives of some commenters, particularly those who sought later permit application filing deadlines for municipalities or greater flexibility in monitoring requirements for industry. Whether the government will alter its regulations in response to some of the other comments is unclear. ■

EPA Draft Guidance

(Continued from page 1)

Subsequent chapters of the draft guidance cover

- general requirements for pollution prevention plans,
- special requirements for dischargers to municipal separate storm sewers,
- activity-specific best management practices (BMPs) for industrial facilities ranging from salt storage piles and unloading docks to vehicle maintenance yards and above-ground storage tanks,
- site-specific BMPs, and
- sediment and erosion prevention practices.

Some of the management activities listed are optional, giving facilities added flexibility in devising their pollution prevention plans.

A second draft guidance document, "Storm Water Pollution Prevention for Construction Activities," advises construction industry dischargers on preparing site maps, selecting erosion and sediment controls, submitting necessary certifications and notices of intent to regulators, implementing sedimentation controls during construction and stabilizing sites after building activity has ended. Like the draft industrial guidance document, the draft construction industry guide provides readers with a menu of alternative control practices to select from in devising pollution prevention plans.

Both draft documents are quite lengthy, running to more than 200 pages each. King says EPA intends to publish similar final guidance documents for use by regulators, environmental consultants and large corporations that need finely detailed guides to pollution prevention. In addition, though, the agency hopes to produce 10-15 page summaries of both documents for use by smaller facilities that may not want or be able to use the more detailed versions. ■

NOTE

This month's *Manual* update incorporates numerous changes that EPA's April 2, 1992, final rule makes in the federal stormwater regulations (see also Appendix 1(c)(4) and *Bulletin*, May 1992, p. 1). Probably the most dramatic of these concern changes in minimum monitoring requirements. These new monitoring requirements apply to all regulated stormwater dischargers—not just those seeking general permit coverage. At EPA's discretion, however, some facilities may face additional monitoring requirements as well.

Ex-EPA Official Warns Of Clean Water Bill's Trade Impact

Environmental attorney Leonard A. Miller began working for the National Air Pollution Control Administration in 1968, before the U.S. Environmental Protection Agency (EPA) was established. Between 1970 and 1976 he served as regional air pollution control director and later as director of enforcement for EPA Region 10 in Seattle. Returning to Washington in 1976, Miller served four years as director of the permits division in EPA's Office of Water and eventually became associate deputy assistant administrator for water enforcement. Leaving EPA for private practice in 1980, he subsequently helped to found the Washington law firm of Swidler and Berlin in 1982. Miller currently advises a number of large industrial clients concerning National Pollutant Discharge Elimination System (NPDES) wastewater discharge permits and also has lobbied Congress on proposals to reauthorize the Clean Water Act. At a recent Government Institutes course on stormwater permitting, Miller suggested that S. 1081, the Clean Water Act reauthorization bill proposed last year by Sen. Max Baucus, D-Mont., could "revolutionize" water pollution regulation in the United States to the detriment of industry. The following article is excerpted from a longer interview with Miller by Andy Feeney of Thompson Publishing Group (TPG) on April 22, 1992.

TPG: You've said that the Baucus bill, S. 1081, would do some very dramatic things in terms of clean water regulation. Some of them you oppose. Could you talk about that?

Miller: Sure. Part of it has to do with the fact that I was involved with the operation of the permit program at EPA and subsequent to that have been representing companies that have to deal with permits, so I've looked at the permit program from several different perspectives.

At least from my own personal viewpoint, I think the permit program has been successful, if you define success as reducing pollution in a manner which seems to have, for the most part, worked, and without serious effects on either the regulated community or Congress. And I think that one of the reasons it's worked is that there has been a degree of both flexibility and assurance for the regulated community. There's flexibility because, to a large extent, a company that is adversely affected by a regulatory permit has the opportunity to make their concerns known to the permit writer; and the permit writer has some ability, oftentimes, to accommodate their concerns. When this doesn't occur the company has the ability to challenge the permit in court. The program has provided industry with assurance because, for the most part, when you receive a permit, you have some period of time—perhaps five years or even longer—in which to establish your

controls and put them in place before there's any change in the requirements you face. And I think that's beneficial, because I believe the best way to develop pollution control is in a carefully staged manner, one that can be accommodated by industry without requiring that industry shut down.

TPG: Do you think the Baucus bill as originally written departs from those principles?

Miller: Yes. I think that one of the things that the Baucus bill tries to do is make the permit program more stringent by eliminating some of the ability that industry has to question some permit provisions and by imposing upon EPA an ability, and in fact a requirement, to get inside the facilities and look at the productive facilities and how processes are done, with a view to changing them. The bill goes beyond allowing EPA to just set standards and talks about the agency establishing just what kind of production processes an industry should use.

TPG: Could you mention some examples?

Miller: There's one provision that says that if a company has two or more facilities that are not in compliance with the Clean Water Act, they can't get a permit for a new facility. Now, if you're a large company, obviously you have more chances of having two or more facilities not in compliance. And I don't understand why EPA would then want such a company not to build a new facility. That may be exactly what we should want them to do: build a new facility that will be cleaner.

There's also a provision in there that says, understandably, that we want to reduce pollution and want to reduce the generation of pollution, but that then directs EPA to go in and look at the production processes and examine what production processes are acceptable within a company. This is bad for industry because industry shouldn't be told that they can, for example, only paint a piece of metal one way because that's the way that's least likely to produce water pollution. There may be quality control problems with that, and maybe if they do it that way, the metal will rust easier. Or wear out easier. This provision is also bad for EPA because EPA, I believe, should not have the burden of having to make judgements about what type of processes one can use to make a product. And I think this provision is bad for the country, because it would stifle innovation.

TPG: Without some requirement like this, though, how can we trust industry to take pollution prevention seriously?

Miller: To answer that, let me just focus on where we are and where we're going, because that really is what we need to look at. And the first issue is, have we been successful in reducing pollution that comes out of large companies? I would argue that we had been successful and the system that we have right now, that has water pollution control permits, with requirements that cover each and every one of those outfalls—I would argue that this program is working, that for the most part there's compliance, that there's a clearly specified amount of pollution that can come out of those particular pipes. The pollution is also covered by an ascertainable piece of paper, so that if you're concerned, you can go someplace and find out what's coming out of where, and whether it's appropriate. And I think an attempt to take that program and change it, by requiring that the government go inside and look at the production processes and judge them, saying, "We don't like this way of painting a piece of metal," isn't something that in the long run will help us.

TPG: Are there many provisions in S. 1081 where EPA could judge industrial processes that way?

Miller: There are several provisions tightening up water regulations and reducing the flexibility that industries have to negotiate permits. For instance, the bill requires permit applicants to demonstrate the maximum possible use of pollution prevention measures. It would allow EPA to impose emissions reductions on dischargers based on the maximum reduction achieved by any source in a particular source category. The bill also would prohibit release of pollutants to other media. And there are a number of other provisions that deal with banning the discharge of certain pollutants and requiring periodic environmental audits, if you hold NPDES permits, and prohibiting removal credits, which means you remove the credits for discharges that go to the sewage system. Then there are new mandates on effluent guidelines, there's a proposed tightening of the pretreatment program, there are new permit fees mandated by the bill, and there's a provision giving EPA the ability to reopen permits during the terms of those permits.

TPG: Are you concerned about what this could do to the future creation of industrial jobs in the United States?

Miller: I wonder what effect this would have—not necessarily on facilities that are already located here, but on the development of new facilities and the choices that people make about investing in them.

TPG: You've suggested that if such new rules are enacted, there is a possibility of industries expanding in foreign rather than domestic locations, particularly under the proposed North America Free Trade Agreement (NAFTA) and under pro-

posed changes in the General Agreement on Tariffs and Trade (GATT).

Miller: We've come a long way with environmental protection in this country. We haven't come the whole way, but we've come a long way. And if we are not careful, and don't integrate our environmental policy with our industrial policy, we're creating an incentive for people not to modernize, not to create new industries in the United States. If you're in industry and looking to build a new facility, in large part your facility will likely have effective pollution controls no matter where you put it—because in a large part, pollution is often waste. By eliminating pollution, you get more product and you reduce your waste. That's what you want. But to the extent that regulators provide barriers to a rational judgment by environmental standards that are absolute, that there'll be none of this or that substance discharged—none, not one molecule—if those standards aren't consistent with what the best technology can do, then you're faced with making a judgment as to whether or not you can afford to build a new facility under that kind of regime, or whether you should build a new facility somewhere else where you can put in good equipment that will be acceptable.

TPG: And this might be outside the United States?

Miller: It might well be.

TPG: Most observers don't expect any major Clean Water Act bill, including the Baucus bill, to be enacted this year. So is S. 1081 basically an idea that's been laid to rest? Or will industry face something like it again next year?

Miller: I don't know. An idea, once it's been raised, often has a life of its own. I would hope that as we come back to this issue in the future, the people dealing with the issue will look at it from a broader perspective, from the perspective of integrating environmental issues with a national industrial policy. ■

Notice to Subscribers:

Recognizing that the binder for your *Stormwater Permit Manual* is becoming fuller with each subsequent update, we will forward to you within the next month an additional binder. The binder—included as part of your subscription to the *Manual*—will be accompanied by instructions for dividing the material between volumes. If you have any questions, please call (800) 879-3169.

STORM WARNINGS

Recent Stormwater-Related News in Capsule Form

- **EPA Proposes to Amend Draft Baseline General Permit for Oklahoma.** The U.S. Environmental Protection Agency (EPA) is proposing to amend its draft baseline general permit for industrial stormwater dischargers to place added limitations on various Oklahoma waters designated as environmentally sensitive under state law (57 FR 17909, April 28, 1992). The limitations were inadvertently omitted from EPA's draft general permit of Aug. 16, 1991 (56 FR 40948). For more information contact the EPA Region VI stormwater hotline at (214) 655-7185.
- **Report Outlines "Significant Noncompliance" With Industrial Pretreatment Program.** An upcoming EPA report could result in a tougher enforcement climate for stormwater dischargers who also release pretreated wastewater to publicly owned treatment works (POTWs), judging from a recent interview with Mark Charles, chief of the pretreatment enforcement section in the Office of Wastewater Enforcement and Compliance (OWEC). According to Charles, the report, entitled "Statistical Assessment of the National Significant Industrial User Non-Compliance Rates," is EPA's first independent assessment of the pretreatment program in recent memory.

Its findings of "significant noncompliance" with pretreatment regulations are "surprisingly high—higher than we had believed to be the case" based on earlier self-reporting by POTWs and industrial pretreaters, Charles says. He predicts that OWEC may respond to the report with a greater educational outreach to regulated industry as well as stepped-up enforcement. Specific numeric findings were unavailable at press time, but EPA was tentatively planning on publishing them by early June.

Charles said the unexpectedly high noncompliance rates may stem from EPA's adopting a new definition of "significant noncompliance" in 1990 that includes failure to report. In any case, he warns, "Those facilities that have so far failed to install necessary technologies had better make an effort to install them soon, and those that have thus far failed to file necessary reports should file those reports."

- **ASTM to Evaluate Best Management Practices.** Subcommittee D19.07 of the American Society of Testing Materials (ASTM) intends to begin development of standard methods, practices, and guides for the evaluation of best management

practices (BMPs) for controlling nonpoint source water pollution, including stormwater runoff. The new initiative is described in the April 1992 edition of *ASTM Standardization News*. According to ASTM, "The general effectiveness of many BMPs is widely accepted, but the level of performance is unknown for many situations ... The potential for standard BMP documents to address important environmental issues in the 1990s is a major new focus of the work sponsored by D19.07."

- **EPA Creates New Environmental Appeals Board.** Until recently, the EPA administrator had authority to hear appeals of permit decisions made by EPA's regional administrators and administrative law judges. In practice, the administrator often informally delegated such decisions to subordinates. Now, saying that a rising work load caused by increased enforcement efforts makes the old system impractical, EPA has issued a final rule formally delegating authority to hear appeals to a new three-member Environmental Appeals Board designated by the administrator (57 FR 5320, Feb. 13, 1992).

A majority vote of the board will be sufficient to decide an appeals case. If one judge is recused or absent, the administrator will break any ties. According to EPA, this will have "the same practical effect as the previous approach," but lines of authority will be clearer and three individuals rather than one will decide most appeals. Contact: James Black, Administrator's Office (A-101), U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460; (202) 260-4076.

- **Rule Lets Indian Tribes Qualify as "States" in Setting Water Quality Standards.** EPA has published a final rule establishing procedures for Indian tribes to qualify as "states" in setting water quality standards under Sections 303 and 401 of the Clean Water Act (56 FR 64876, Dec. 12, 1991). The rule modifies a Sept. 22, 1989, draft rule by creating a new procedure for EPA regional administrators to use in appointing arbitrators to hear disputes between tribes and adjacent states. The rule also amends a draft provision that EPA "promptly" notify parties in a dispute of upcoming actions to require such notification "within 30 days." Contact: David K. Sabock, EPA Standards and Applied Science Division (WH-585), 401 M Street S.W., Washington, D.C. 20460; (202) 260-1318.

More Storm Warnings

- **House Public Works Chair to Retire, Scuttling Chances for 1992 Clean Water Act Rewrite.** The upcoming election, the press of other issues and an unresolved controversy over wetlands have all made reauthorization of the Clean Water Act unlikely this year, and now Congress has yet another reason to delay. Rep. Robert Roe, D-N.J., the powerful chair of the House Public Works Committee and a key player in the reauthorization effort, has announced he's retiring. Rep. Norm Mineta, D-Calif., is expected to succeed Roe as committee chair. Several well-informed congressional observers say Roe's leaving puts the final quietus to the 1992 reauthorization effort.
- **Pesticide Disposal a Problem for Storm Sewers.** Of approximately 2,000 households in 29 states polled in a 1990 National Home and Garden Pesticide Use Survey, 17 percent of those who reported disposing of pesticides said that they gave away their leftover pesticide concentrate or poured it "down the sink or toilet, in the gutter or sewer [or] on the ground," according to an EPA press release. Of the householders who confessed to disposing of "leftover diluted pesticides mixed from concentrates," about 35 percent said they burned the pesticide, gave it away, sprayed it elsewhere, or poured it "on the ground, in the gutter or in the sewer." For executive summaries of the 400-page survey, contact the Communications Branch of EPA's Pesticide Programs at (703) 305-5017.
- **States, EPA Take Steps on Nonpoint Source Pollution Control.** The states and EPA have taken "significant steps toward implementing the national nonpoint source (NPS) program" mandated by the 1987 Water Quality Act, according to EPA's recent report "Managing Nonpoint Source Pollution." Based on 1989 data, it says all 50 states now have EPA-approved assessments of NPS problems, and that EPA has fully approved NPS management programs for 44 states. Among other major findings: (1) wildlife and recreation uses of lakes, rivers and streams are the uses most affected by NPS pollution; (2) fishing and shellfish resources also are affected in the Great Lakes and coastal areas; (3) siltation and nutrients are the pollutants causing the most damage; and (4) agriculture is primarily to blame, but other sources including urban runoff also have an impact. The report lists mines, construction sites, silvicultural operations and land disposal operations, as well as hydrological and habitat modification caused by irrigation, as other significant contributors to NPS dam-

age. Contact: Ann Beier, Office of Water (WH-553), U.S. EPA, 401 M Street S.W., Washington, D.C. 20460.

- **EPA Watershed Protection Efforts Launched.** With encouragement from EPA headquarters, the EPA regions and various states have some 50 watershed protection initiatives underway, according to Louise Wise, director of policy and communications for EPA's Office of Wetlands, Oceans and Watersheds (OWOW). These local and regional efforts are part of an EPA Watershed Protection Initiative that mandates the development of comprehensive watershed protection plans by the EPA regions by this October. According to an EPA "Framework Document" published last year, the regions should begin implementing their comprehensive plans in high-priority watersheds in 1993.

So far, EPA seems vague about just what the watershed protection approach entails. An agency "Overview Document," for instance, says this "is not a new centralized government program that competes with or replaces existing programs," but rather a "flexible framework for focusing and integrating current efforts and for exploring innovative methods to achieve maximum efficiency and effect." In plainer English, the overview explains that the watershed protection approach is primarily targeted at "difficult and controversial" problems—particularly those caused by local land-use decisions.

The three main principles underlying the watershed approach consist of (1) targeting watersheds most at risk, (2) ensuring that "all parties with a stake in the specific local situation" get to analyze problems and help formulate solutions, usually by consensus, and (3) drawing on the "full range of methods and tools available" through a "coordinated, multi-organizational attack."

Watershed protection projects reportedly already cover parts of the Merrimack River in New England, the Stillaguamish Watershed in Washington, the Colorado River across its multistate basin and the Savannah River in Georgia and South Carolina. EPA also cites North Carolina's "Basinwide Water Quality Management Initiative" as an example of the new approach. Contact: Policy and Communications Staff, OWOW, U.S. EPA, 401 M Street S.W., Washington, D.C. 20460; (202) 260-7166. ■

Stormwater Workshops

(Continued from page 1)

the program to stormwater dischargers just beginning the permitting process, but also will provide information about pollution prevention plans, best management practices, the latest monitoring requirements and EPA's baseline general permit development to other dischargers who are more familiar with the regulations.

"We expect most of the emphasis at the public meetings will be on seeking coverage under general permits, on pollution prevention plans and on best management practices for controlling stormwater," King told the *Bulletin*. "However, we'll also talk about putting together individual permit applications where there's sufficient interest in this. And we're providing scheduled opportunities for questions and answers from the regulated community."

The meetings are intended to cover all 10 EPA regions. Some are designed only for state and federal regulators; others, for municipalities only; still others, for regulated industry and consultants. Attendees will receive EPA workbooks on stormwater including information from all slides used. Attendance is free. However, attendees should register beforehand by calling the Stormwater Hotline at (703) 821-4823.

As of early May, EPA had established the following workshop schedule:

Region I: July 21, Boston, Sheraton Boston Hotel and Towers.

Region II: June 10, San Juan, Puerto Rico (for industries and consultants), College of Engineers and Land Surveyors of Puerto Rico; **June 12**,

Quebradillas, Puerto Rico (industries and consultants), Parador Vistamar.

Region III: May 21, Alexandria, Va. (municipalities), Best Western Old Colony Inn.

Region IV: July 6, Atlanta (EPA regions, state regulators), EPA Region IV Office; **July 8**, Birmingham (municipalities, industries), The Wynfrey Hotel at Riverchase Galleria; **July 10**, Nashville (industries, municipalities, state and EPA regional staff), Nashville State Technical Institute.

Region V: June 30, Chicago (state and EPA regional staff), **July 1**, Chicago (municipalities and industry), The Midland Hotel.

Region VI: week of July 27 or Aug. 3 (tentative), (state and EPA regional staff; municipalities and industries), Hyatt Regency at Reunion Blvd.; New Orleans, (state and EPA regional staff; municipalities and industries), Sheraton New Orleans Hotel.

Region VII: June 16, Kansas City, Kans. (state and EPA regional staff), EPA Region VII office; **June 17**, Kansas City, Kans. (industries), Holiday Inn/Holidome, Lawrence, Kans.; **June 19**, Des Moines, Iowa (industries), Holiday Inn/University Park.

Region VIII: July 13, Denver (state and EPA regional staff), Region VIII office; **July 14**, Denver (industries and perhaps municipalities), Executive Tower Inn; **July 16**, Helena, Mont. (industries), Jorgenson's.

Region IX: June 24, Phoenix (industries, municipalities), Omni Adams Hotel; **June 25**, Tucson, Ariz. (industries, municipalities), Doubletree Hotel.

Region X: July 13/14, Seattle-Tacoma, Wash. (municipalities, industries); **July 16**, Boise, Idaho (industries), locations to be announced. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$289
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$397
- Underground Storage Tank Guide\$350
- Community Right-To-Know Manual\$324

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-424-2959

Stormwater Permit Manual

Bulletin

Volume 1, Number 11

May 1992

New EPA Final Rule Alters Sampling, Other Regs

On April 2, the U.S. Environmental Protection Agency (EPA) published a new final stormwater permitting rule (57 FR 11394-11413) changing the framework in which the agency will view general permits and several other aspects of the stormwater program. The new rule does not include EPA's long-awaited "baseline" general permits themselves. EPA hopes to issue a second rule by the end of May that will include the general permits and their provisions for stormwater pollution planning. However, the most significant aspect of the April 2 rule is probably its relaxation of minimum monitoring requirements for facilities seeking general permit coverage.

The new rule also

- alters sampling requirements for group applications by groups of 20 or fewer members;
- incorporates into the Code of Federal Regulations provisions in last year's transportation

bill that temporarily exempt small municipalities from the need to obtain permits for many "industrial" stormwater discharges;

- extends until Oct. 1, 1992, the deadline for submitting part 2 of group permit applications, as EPA had proposed last fall;
- establishes minimum notification requirements for dischargers seeking general permit coverage, including the information that must be included in Notices of Intent (NOIs);
- gives EPA the flexibility to relax NOI requirements for some industries, most likely including the construction industry;
- clarifies EPA's long-term strategy for stormwater permitting; and
- for state regulators, specifies what EPA hopes to see in state stormwater permitting plans required by the final stormwater rule

(Continued on page 2)

EPA Regions Hail Rule; Consultants Not So Sure

The long-term significance of the U.S. Environmental Protection Agency's (EPA's) new final rule for stormwater (see related story, above) is hard to gauge. However, preliminary interviews with consultants, attorneys, state regulators and EPA regional stormwater coordinators suggest that the new rule's general effect may be to improve significantly the effectiveness of the stormwater program by sharply reducing its scope.

Unfortunately, environmentalists who have mounted legal challenges to EPA's past stormwater

(Continued on page 3)

Inside this issue. . .

- Interview: Former EPA Stormwater Chief Reflects on the New Rule **Page 4**
- What the President's Regulatory Review May Mean for Stormwater **Page 6**
- New Action on General Permits in Connecticut, New Jersey, North Carolina **Page 7**

**Thompson
Publishing
Group**

Publishers of environmental and safety compliance information

New EPA Final Rule

(Continued from page 1)

of Nov. 16, 1990, and gives the states three years rather than one to produce such plans.

New Sampling Requirements

Under EPA's Nov. 16, 1990, stormwater rule, all industrial stormwater dischargers were required to sample annually for certain common contaminants and to conduct additional tests for other contaminants likely to be present in their stormwater. Permitted facilities were required to report annually the results of the sampling. Somewhat differing sampling and reporting requirements during the permit application process were established for individual applicants, group applicants and dischargers seeking general permit coverage.

However, in the draft "baseline" general permit published last August (see *Stormwater Permit Manual*, Appendix 1, p. 401, and *Bulletin*, September 1991, p. 1), EPA asked for comments on various options to modify the sampling and reporting requirements. In its April 2 final rule, EPA greatly relaxes those requirements for many facilities covered by general permits.

Monitoring and reporting will be required "on a case by case basis," according to the rule. At a minimum, industrial dischargers covered by EPA or state general permits must annually inspect the stormwater pollution plans and/or best management practices (BMPs) that they have installed to comply with their permits. However, the rule does not specifically require such industries to sample their discharges for stormwater contaminants and report the results to regulators.

Stormwater dischargers should note, however, that although the rule does not establish minimum sampling requirements, it also does not preclude EPA from establishing such requirements when it issues its final baseline general permits this spring. In fact, EPA's August 1991 draft baseline general

permit proposed to go beyond minimum sampling requirements and require semi-annual monitoring, as well as additional sampling parameters, for six categories of industrial facilities:

- facilities subject to the "right-to-know" reporting requirements of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III),
- primary metal facilities,
- industrial land disposal units (including landfills, land application sites and open dumps),
- wood treatment facilities using chlorophenolic/creosote formulations,
- wood treatment facilities using arsenic/chromium preservatives, and
- coal piles.

The April 2 final rule does not appear to preclude EPA from issuing a baseline general permit that would require sampling by these or other industries. The rule also does not change the way the National Pollutant Discharge Elimination System regulations address stormwater discharges subject to effluent limitation guidelines.

The new rule also states that although sampling is not necessarily required of all dischargers, its minimum monitoring requirements (i.e., annual inspections of BMPs and pollution prevention plans required of all dischargers, combined with "case by case" monitoring for certain dischargers required to do more) are compatible with the development of "risk based" watershed-specific stormwater regulation by state regulators.

Great interest in watershed-specific permitting has been expressed by several states, the Association of State and Interstate Water Pollution Control Administrators, and the Association of Metropolitan Sewerage Agencies (see *Bulletin*, December 1991, pp. 1, 7). Conceivably, EPA's April 2 rule will give these entities the regulatory tools to pursue the watershed-specific approach that they prefer.



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Sr. Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Linda Johnson; Production Assistant, Marlene Maeger; Customer Service Representative, Suzanne O'Brien. For subscription questions, call (800) 424-2959. For editorial questions, call (202) 872-4000. Application to mail at the second-class postage rate is pending at Washington, D.C.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal use provided that the base fee of U.S. \$5.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. For information on multiple copy discounts, call (800) 424-2959 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

Group Applications by Small Groups

EPA's Nov. 16, 1990, final rule states that for groups of four to 10 members, at least 50 percent of the members must submit sampling data with the "part 2" group applications. For groups of 11-99 members, at least 10 members must submit sampling data, and for groups of 100-1,000 members, at least 10 percent must submit data.

The April 2 rule relaxes these requirements for groups of four to 20 members, stating that as few as half the members of such groups must submit sampling data. For such groups, though, a minimum of one facility from each precipitation zone in which members are located, and at least two dischargers from any precipitation zone with 10 or more group members, must submit sampling data (see 57 FR 11408, April 2, 1992).

EPA's Long-Term Strategy

In explaining EPA's long-term permitting strategy and its recommendations for the state stormwater permitting plans required by the Nov. 16, 1990, final rule, the new rule takes a somewhat contradictory position.

On one hand, the new rule discusses EPA's long-term, four-tier national permitting strategy in detail and makes specific recommendations on several "essential" components that state plans should include. On the other hand, the preamble to the new rule reserves EPA's right to depart from its own permitting strategy, adding that the strategy is "only a general conceptual framework" and "not ... a set of regulatory requirements binding on EPA, states, or industrial dischargers."

Similarly, the preamble comments that guidelines on state stormwater plans are merely "non-binding recommendations" that provide "needed flexibility" to states, given the current condition of stormwater permitting efforts nationwide. However, EPA retains its authority under section 402(p)(6) of the Clean Water Act to require states to prepare stormwater permitting plans, should this be needed. ■

For more information on the new rule, turn to the copy included in this month's Manual update, Appendix 1.

Reactions to New Rule

(Continued from page 1)

efforts were not returning phone calls at press time, making it uncertain whether the rule will be contested in the courts. Several engineering consultants contacted also were unfamiliar with the new rule's provisions.

Most observers familiar with the regulation, though, expect that state regulators will take advantage of its relaxation of minimum monitoring requirements to allow many, if not most, stormwater dischargers to avoid sampling. Some expect that, in those states with a genuine interest in stormwater management, this may free up resources to allow for tougher regulation of key industries and watersheds where stormwater pollution is a serious problem.

Said Harold Geren, acting deputy water division director for EPA Region 10, "This is an approach that we have advocated from day one. It will give EPA and the state agencies the flexibility we need to focus on those areas where real pollutants are being discharged." Echoing a sentiment voiced by others, Geren said flexible monitoring will help keep the stormwater program from degenerating into a "huge paper-shuffling exercise" and allow watershed-specific permitting in particular areas of Region 10 (such as Puget Sound) where runoff problems are greatest.

According to Earl Shaver, a state regulator in Delaware, "aggressive states" will use their new flexibility to crack down on those industries and watersheds with serious problems—but not every state will be "aggressive" Shaver predicted. Some may use the new rule as an opportunity to back away from a federal program they have always resented.

What the rule means for law firms and engineering consultants who have specialized in helping clients with sampling, either through group applications or through the training of facility personnel, is unclear.

One consultant speaking anonymously suggested that EPA, with its dramatic relaxation of sampling requirements, has "pulled the rug from under a lot of companies." An attorney with a Washington, D.C. law firm handling several group permit applications, though, said group members still have an interest in finishing their "part 2" group applications, partly because of the opportunity this gives them to negotiate permit conditions. The new minimum requirements also do not prevent EPA from using the general permits it expects to issue in May to impose more extensive sampling on particular industries, the lawyer added. And, he predicted, California's extensive sampling requirements alone will keep the sampling business going for some time.

Another call for group members to stay with group applications, partly as an "insurance policy" against further regulatory surprises, was voiced by former EPA stormwater official John Whitescarver, now a private consultant (see Newsmaker Interview, this issue, pp. 4-5).

(Continued on page 6)

For Ex-Stormwater Chief, EPA Rule Is 'Deja Vu Again'

John Whitescarver, manager of environmental engineering and compliance contracts for Ogden Environmental and Energy Services Co., was a "charter" employee of the U.S. Environmental Protection Agency (EPA) in the early 1970s. In 1973, he helped develop EPA's first stormwater regulations, which were later overturned. While at EPA, Whitescarver also directed the Municipal Permits Branch of the National Pollutant Discharge Elimination System (NPDES), helped develop the current EPA pretreatment program and received an EPA bronze medal for special achievements in developing effluent guidelines for industrial wastewater dischargers.

Since beginning private consulting in 1979, he has prepared EPA guidance documents on combined sewer overflows and stormwater runoff from airports. In 1988, he handled public comments on draft stormwater permit regulations that became the basis for EPA's Nov. 16, 1990, final stormwater rule. Currently he provides stormwater consulting for several clients, including trade associations, municipalities and airports. The following is excerpted from an interview with Whitescarver by Thompson Publishing Group (TPG) on April 3, 1992.

TPG: From your perspective, has EPA's stormwater approach changed much since 1973?

Whitescarver: I believe that when we looked at stormwater and published a final rule, we believed what they believe today: that not all stormwater is contaminated and has to be regulated. The problem is what the 1972 Clean Water Act says: that all point sources have to have permits. Back in the 1970s, when we wrote regulations, we were trying to regulate those sources that had significant pollutant problems. I think EPA is still trying to do that today—but they have to comply with the law. Using the general permit is one way to find a bureaucratic solution: Just write a stormwater management plan, put it in your file. I think EPA's feeling is that they can regulate the significant pollutant sources this way, while not imposing an unreasonable burden on insignificant sources. So I believe that EPA's philosophy has not changed at all. They are simply struggling to meet the requirements of the law and still maintain a reasonable regulation. It isn't an easy job. I have nothing but the kindest words for those people who are trying to implement this regulation with reasonableness.

TPG: Some dischargers complain that it's very hard to get access to EPA. Of course, the stormwater staff is overworked and has too little funding. But are there other reasons why they sometimes seem inaccessible?

Whitescarver: I think they are accessible, and more so than you would expect. Everywhere I go, I run into these guys as speakers. I was at the Water Pollution Control Federation annual meeting in Toronto, and I saw Mike Cook, the director of EPA's Office of Wastewater Enforcement and Compliance, just wandering around talking with people, and I had a chance to talk with him for half an hour. I think he's always on the road. The same with Ephraim King. And I have to tell a story about Kevin Weiss of EPA's Office of Permits: when we catalogued comments on the 1988 draft regulation, he sat in my office and used those comments to write the final regulations. Later on, he told me that he had met with some lawyers, and they complained that he didn't understand the intent of the regulations. He pointed out that he *wrote* them.

'I believe EPA's stormwater philosophy has not changed at all . . . The problem is with the law.'

I think there's some frustration on EPA's part, that they have provided information; they have provided access as much as possible within their budget; and they have done one other thing. They provided a stormwater hotline, but instead of using that, many people try to contact EPA with minor questions. Certainly there are times to meet with EPA, but not when your question could be answered by the hotline. So I think it is unfair to say EPA is not accessible when they've done everything they can.

TPG: Do we now have regulations that will last?

Whitescarver: I think we're going to settle in on this overall approach and make the best of it. I think the deadlines will soon be to be behind us; other issues will be behind us; and the program will be settled in place over the next year or so. I don't believe the court decisions that we're going to see will change the program.

TPG: Are there any approaches that Ogden Environmental brings to stormwater that may be different from everybody else's?

Whitescarver: I believe that if there's one thing we may be bringing to the party, it's our belief in negotiating permit conditions with regulatory authorities. We believe that the best way to do that is through individual applications and group applications. You can't do that with the general permit.

TPG: But some states say they won't accept individual applications.

Whitescarver: They can't exactly deny an individual application. The problem is that these applications are very expensive. But in terms of controlling your destiny, that is the best way. It's between you, the permit writer and the interested public. There are opportunities for public hearings; there's opportunity to negotiate; there's opportunity to appeal permit conditions, not only to the state but to EPA; there's opportunity to go to court. So you can control your destiny 100 percent with the individual permit. With a group application, you also have control, but only through the group that's filed the application, and depending on their willingness to negotiate permit conditions. The least control you have is with the general permit. But of course that may not be a problem, because it now appears that these general permits are not going to require much monitoring and they're only going to require a stormwater management plan that doesn't have to be sent to regulatory authorities for review.

TPG: What do you think of EPA's April 2, 1992, final rule?

Whitescarver: I believe it's what was expected, based upon my conversations not only with EPA, but also state people who were talking with EPA. Requiring minimum and sometimes no monitoring—I think this will have a major impact. Many of those who filed group applications are going to second guess that decision and wonder if they should continue with part 2. Let me speak to that.

The people who are doing group applications began doing this as insurance, not knowing what the general permit may look like, and because belonging to a group requiring only 10 percent sampling was cheaper than an individual application. I suggest that we still don't know what the general permit will look like. We won't really know when it comes out in May, because it still has to go to all the states and be put in their regulations. And I believe most people in group applications, after thoughtful consideration, will stay with the group applications, because it gives them something different. It gives them regulation by application rather than by rule.

TPG: Under this rule, will there in fact be minimum monitoring for everyone?

Whitescarver: Certainly there is going to be more monitoring for certain categories and certain regions. For example, there are going to be political decisions made by certain states that monitoring is important—an example is California, where extensive monitoring is required. Where other states may

have less interest—certainly Arizona may have less interest in monitoring. And I think this is what the rule speaks to: the different prevalence of stormwater runoff in different states. But I think it also opens the door for political decisions by states who have less interest in this regulation and by states with more interest. So, there'll be unequal monitoring on a state-by-state basis.

TPG: What else do you want to say about what the rule means for industry?

Whitescarver: Two things, primarily. One is quite frankly a surprise. They changed the group application program, where if you have between four and 20 participants in a group, you're no longer required to sample at 10 sites. You only need to sample 50 percent of the sites, but you need to include one site in each rainfall zone. That's a change, but it's a change back to the original plan they had in the proposed rule, because the existing rule was inequitable. This change was made without any fanfare, and I'm sure many people will miss it. Still, it's not too late for groups that have 20 or fewer members to change their sampling plans.

'We still don't know what general permits will look like. Stay with your groups.'

The other thing, of course, is the annual inspections that are required of each facility's pollution prevention program or best management practices. The purpose of the inspections is to evaluate the stormwater management program at each facility and to certify that it's in compliance with the plan. Certifying that inspections have been done correctly is serious business. By the time this requirement is implemented in every state, several issues will arise. One is, who signs off on the inspections? Although the EPA doesn't require a professional engineer to do this, some states may elect that.

TPG: Are professional engineers needed?

Whitescarver: I believe this program is not at the same level of technical difficulty as other engineering programs. I see no real reason why plant personnel cannot be trained to perform the annual inspections to determine compliance with stormwater management plans, and then sign off on inspections. The question is whether the people signing the certifications are comfortable that their people are trained to do the job. Here, a lot depends on how technically difficult your management plan might be. But the answer is no: I do not believe that it's necessary to have professional engineers do this task. However, I predict they will be asked to because of their specialized expertise. ■

New Rule

(Continued from page 3)

Many EPA regional officials interviewed were cautiously optimistic about the new rule. It will be particularly helpful to regulators in western states where hundreds of small inactive mining sites with minimal runoff problems may be located on a single mountain, and where sampling them all under the

old rules would be a daunting, time-wasting task, said EPA Region 8 stormwater coordinator Vern Barry.

Barry said another important aspect of the April 2 rule is its codification of provisions in last year's transportation act exempting from stormwater permitting many "industrial" facilities operated by small municipalities. This could reduce by two-thirds the number of cities in Region 8 needing stormwater permits, Barry suggested. ■

What Does Regulatory Review Mean for Stormwater?

In January, President Bush issued a 90-day moratorium on federal regulations and called for all executive branch agencies to review existing regulations to "weed out" those that impede economic growth and impose needless costs on consumers. The U.S. Environmental Protection Agency (EPA) at first indicated that stormwater rules would not be affected by the regulatory review, but recent stories in the trade press and interviews with EPA officials indicate that the stormwater program, as well as EPA's Safe Drinking Water Act program, have been targeted for special attention.

In a recent interview with the *Bulletin*, Tom Kelly, chief of EPA's Steering Committee on Regulations, said, "EPA is very uncomfortable with the cost, and the scope, and the broad diffusion of responsibility involved with the stormwater program." EPA "welcomes the opportunity" provided by the the President's moratorium to scrutinize the workings of the stormwater program in some detail, Kelly added.

Just how much the review will affect the program, however, is debatable. Judging from several interviews with EPA stormwater officials and other staffers in EPA's Office of Water, the regulatory review may affect existing stormwater rules only minimally and primarily produce recommendations on how EPA should handle those small cities and non-industrial business dischargers of stormwater that the Water Quality Act of 1987 exempts from regulation until after Oct. 1, 1992.

The 1987 law directed EPA to produce two reports by Oct. 1, 1992, on whether and how these temporarily exempt, "phase 2" stormwater dischargers should be regulated, notes Cynthia Dougherty, director of the permits division of EPA's Office of Wastewater Enforcement and Compliance.

Accordingly, EPA is currently working with contractors at the Rennselaerville Institute (RI) in Rennselaerville, N.Y., to determine the extent to which "phase 2" sources contribute to water quality problems and will require regulation in the future.

Speaking in late March, Dougherty predicted that EPA would publish *Federal Register* notices in the near future announcing public meetings at which "phase 2" regulations would be discussed.

According to Jim Horne, who is coordinating the RI study for EPA, recommendations to Congress on how to handle the "phase 2" universe of stormwater dischargers may be developed from the outcome of the meetings. However, it is unclear whether this will occur before the Oct. 1 deadline.

In an effort that actually began before the President issued his call for regulatory review, EPA also is working with RI to evaluate its regulation of "phase 1" stormwater sources that come under the existing stormwater regulations. Ephraim King, head of the National Pollutant Discharge Elimination System (NPDES) program and coordinator of EPA's regulatory review activities regarding stormwater, emphasizes the limited scope of the re-evaluation process for the phase 1 discharges.

Says King, "Nobody at EPA has asked me or anybody I work for to do anything with stormwater other than meeting the regulatory requirements. Of course, it makes sense to meet those requirements in the most flexible and cost-effective manner possible, and in a way that's most likely to ensure compliance with the regulations. And we're looking at this."

EPA's new final rule temporarily exempting some small municipalities from some industrial stormwater regulation and also relaxing minimum monitoring requirements for stormwater dischargers covered by general permits meets the general goals of the President's directive, King adds (see related stories, p. 1).

In addition, EPA and RI have conducted a series of focus-group workshops on ways to make the stormwater program more effective, flexible and efficient. Such workshops occurred in February and March in Atlanta, Hartford, Chicago, Phoenix, Seattle and Washington, D.C. A report containing

focus group recommendations on regulation of "phase 1" dischargers may be published by the end of April; a second report on the exempted "phase 2" dischargers is expected sometime in June.

Judging from Horne's and King's comments, as well as recent stories in the trade press, recommendations for major changes in existing stormwater rules are unlikely to emerge from the focus groups. For example, focus group participants reportedly have strongly endorsed EPA's general permit strategy for regulating stormwater and have urged EPA to accelerate its efforts to issue general permits.

Adds Horne, "The overwhelming consensus coming from the focus groups is that EPA needs to put more effort into communicating this program more effectively to the regulated community."

Possible changes in communication strategy likely to come out of the RI review may involve greater use of "technology transfer" among states,

EPA regional offices and trade associations to promote the use of cost-effective stormwater management methods, Horne says.

Some participants in focus groups have also called for a new EPA document to clear up confusion over which Standard Industrial Classification (SIC) codes are covered by the existing regulations, Horne says. Suggestions also have been made that EPA should establish new exemption procedures for some SIC codes to waive stormwater regulation for small "mom and pop" operations. However, it is not clear how this could be done without creating a "regulatory nightmare" for EPA and the states as countless small entities seek such waivers. Additional recommendations on stormwater may emerge from industry comments on a March EPA request for public comment on the regulatory review. Reports from EPA and other agencies on the results of the review were scheduled to go to the White House on April 28. ■

STATE SURVEY:

General Permits Progress in Jersey, Connecticut, N. Carolina

Even as the U.S. Environmental Protection Agency (EPA) relaxes minimum monitoring requirements for industrial stormwater dischargers covered by general permits, several states are moving forward to make general permits available.

Connecticut, for example, has received EPA approval to issue general permits under the National Pollutant Discharge Elimination System (NPDES). The approval was announced in March and brings to 29 the number of NPDES-delegated states with general permitting authority (57 FR 9724, March 20, 1992).

North Carolina, meanwhile, has published public notices of its intent to issue several general permits to cover stormwater discharges from various industries. The state's proposed general permits include the following permits:

- No. NCG010000, for stormwater associated with construction activities;
- NCG020000, for stormwater associated with minerals mining facilities covered by Standard Industrial Classification (SIC) code 14;
- NCG030000, for stormwater runoff associated with the manufacture of fabricated metal products (SIC 34), industrial and commercial machinery (SIC 35), measuring and analyzing instruments (SIC 38) and various metal recycling activities;

- NCG040000, for stormwater runoff from the timber products industry (SIC 24);
- NCG050000, for stormwater runoff associated with the manufacturing of apparel and similar finished products (SIC 23), printing, publishing and allied industries (SIC 27), converted paper and paperboard products (SIC 267), paperboard containers and boxes (SIC 265), miscellaneous manufacturing (SIC 39), leather and leather products (SIC 31), and rubber products (SIC 30);
- NCG060000, for food and kindred products (SIC 20), tobacco products (SIC 21), soaps, detergents and cleansers, perfumes, cosmetics and toilet preparations (SIC 284), drugs (SIC 283), and public warehouses and storage (SIC 4221-4225);
- NCG070000, for stone, clay, glass and concrete products (SIC 32);
- NCG090000, for manufacturers of paints, varnishes, lacquers, enamels and allied products (SIC 285);
- NCG100000 for stormwater associated with used motor vehicle parts (SIC 5015) and automobile wrecking for scrap (part of SIC 5093);
- NCG110000 for point source stormwater runoff associated with treatment works and other facilities treating domestic sewage, within certain limits;

(Continued on page 8)

States

(Continued from page 7)

- and NCG120000, for landfills with permits issued by the North Carolina Division of Solid Waste Management under chapter 130A-294 of the General Statutes of North Carolina.

Some of the proposed permits do not cover certain subcategories within the listed SIC codes—for example, permit no. NCG040000 for timber products does not cover wood preservers, logging or the manufacturing of wood kitchen cabinets. Some covered industries need general permit coverage only if stormwater contacts significant materials; others need permits regardless. For copies of the draft permits and associated fact sheets, contact Coleen Sullins, Supervisor, Stormwater Group, Water Quality Planning, N.C. Division of Environmental Management, P.O. Box 29535, Raleigh, N.C. 27626-0535; (919) 733-5083.

New Jersey also has issued several "rough draft documents" on general permitting, including a draft general permit for industrial stormwater dischargers excluding the construction industry and certain parts of the mining industry. Generally speaking, the documents describe a proposed general permit that would require permittees to devise and implement pollution prevention plans to prevent contaminated stormwater from entering conveyances that discharge into state waters. Like EPA's new final rule on stormwater (see related story, p. 1), the New Jersey documents do not require regular sampling and testing for stormwater contaminants.

Martin Bierbaum, administrator of the Department of Environmental Protection and Energy's (DEPE's) Office of Regulatory Policy, said that the documents

do not constitute a formal draft permit. Therefore comments on them, due April 9, will not require formal responses by regulators. DEPE plans to use the comments to publish formal draft general permits and proposed amendments to the state water pollution permit rules. For more information, contact the N.J. Office of Regulatory Policy at (609) 633-7026. ■

Courses & Seminars

By American Society of Civil Engineers, Continuing Education Services, 345 E. 47th St., New York, N.Y. 10017. Tel: (800) 548-2723, Fax: (212) 421-1826.

"Urban Hydrology & Detention Pond Design: A Computer Workshop Featuring the Pond Pack (TM)," Newark, Del. June 10-11. Members \$645, Non-Members \$745.

"Detention/Retention in Urban Surface Water Management," Pittsburgh, Pa. June 5; Cincinnati, Ohio July 13. Members \$345, Non-Members \$395.

"Computer Aided Drainage Design," Melbourne, Fla. June 18-19. Members \$695, Non-Members \$795.

"How to Meet NPDES Requirements for Industrial and Construction Site Stormwater Discharges," San Francisco, May 18; Atlanta, June 9. Members \$345, Non-Members \$395.

By Executive Enterprises, Inc., 22 West 21st St., New York, N.Y. 10010-6904. Telephone: (800) 831-8333, Fax: (212) 645-8689.

"Stormwater Regulations: Practical Guidelines for Successfully Achieving Compliance," June 25-26, Chicago, Session #26TOX10/E2661; July 16-17, Atlanta, Session #26TOX11/E2661. Fee: \$995.



30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Environmental Packaging\$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act\$298
- Chemical Process Safety Report\$289
- Stormwater Permit Manual\$398
- Aboveground Storage Tank Guide\$397
- Underground Storage Tank Guide\$350
- Community Right-To-Know Manual\$324

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Company _____

Street Address _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-424-2959

Stormwater Permit Manual

Bulletin

Volume 1, Number 10

April 1992

'Much More Flexible' General Permit Monitoring Proposed

The U.S. Environmental Protection Agency (EPA) plans to publish its final baseline general permit for stormwater in two parts and has already submitted a proposal to the Office of Management and Budget (OMB) with sampling and monitoring options that are "much more flexible" than those proposed earlier, says Ephraim King of EPA's National Pollutant Discharge Elimination System (NPDES) office.

Late last year, OMB rejected a proposed monitoring plan that EPA submitted along with its draft general permit (see *Bulletin*, March 1982, p. 1). However, King told the *Bulletin* that the monitoring proposals in the document now at OMB were not drafted in response to OMB's earlier objections, but instead reflect comments by state environmental agencies and EPA regional offices on the draft general permit.

The document submitted to OMB in February also addresses the notice of intent (NOI) requirements for the general permit, extends part 2 application deadlines for group permit applicants to Oct. 1,

1992, and codifies changes in stormwater permit requirements for small cities that were required by last year's highway bill, King added. (see *Bulletin*, March 1992, p. 8).

"We're trying to publish the baseline general permits for the non-NPDES states later this spring, within an April-May time frame," King told the *Bulletin*. "Our deadline for this may slip by a few weeks, but that's our intended date."

King added that EPA believes publication of a final general permit would comply with the spirit of President Bush's 90-day moratorium on promulgation of new regulations that are not congressionally or judicially mandated because the baseline general permit is intended to ease paperwork burdens and simplify stormwater regulation for regulated industry and state and federal environmental agencies.

On a related topic, King said in late February that EPA had finished reviewing more than half of the part 1 group applications it has received—

(Continued on page 2)

States Moving on Draft General Permits

Several stormwater regulators interviewed for this month's state survey are moving toward imminent publication of draft or final general permits. Kentucky regulators, however, recalled their draft state permit some time ago in response to extensive criticism by regulated industry and are now waiting for the U.S. Environmental Protection Agency (EPA) to release its final baseline general permit before they publish their revised draft.

Pennsylvania's environmental regulations, meanwhile, possibly may preclude issuance of a general

(Continued on page 2)

Inside this issue. . .

- Union Carbide Official Discusses California Permitting Page 4
- Variety of Sampling Services Offered by Consultants Page 6
- Company Provides Training Video for New Sampling Personnel Page 8

**Thompson
Publishing
Group**

Publishers of environmental and safety compliance information

General Permit

(Continued from page 1)

approving some, sending others back for more information, or telling members of some groups that they are not covered by the stormwater regulations. King added that EPA is making a "major effort to get through the rest of the part 1 group applications by April."

Although some private consultants have predicted that EPA will face a major staffing problem in dealing with the baseline general permit, the part 1 group applications and the municipal stormwater permits that are due this spring, King says the agency has recently beefed up the staff in its stormwater office and will be making a critical effort to finish these tasks over the next several months. ■

State Survey

(Continued from page 1)

permit for stormwater. Regulators in the Virgin Islands, a U.S. territory that has been delegated authority for National Pollutant Discharge Elimination System (NPDES) permits, may lack authority both to issue general permits and to regulate stormwater. The following are other highlights from the *Bulletin's* latest state survey.

Colorado

Colorado is in the process of drafting a general permit and hopes to publish a draft by the end of March, Pat Nelson of the Water Quality Control Division said in February. "We hope to have a final published by mid-summer," Nelson added. A state hiring freeze that began last August has delayed progress on the general permit, but it is now going forward again.

Kentucky

Kentucky's Department of Environmental Protection (DEP) received many complaints after it pub-

lished its draft general permit with discharge limits on total suspended solids, oil and grease, pH, heavy metals and some other contaminants that were not included in EPA's draft general permit. State law requires DEP permits to be no more stringent than federal agency permits, so the agency is awaiting publication of the final EPA general permit to use as a model. DEP stormwater official Douglas Allgeier says Kentucky's general permit may not be identical to EPA's, but will resemble it quite closely. "We're going to re-propose our whole general permit this summer," Allgeier predicts.

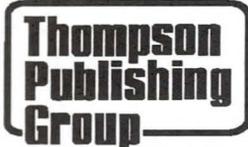
Ohio

Ohio's Environmental Protection Agency still lacks general permitting authority but hopes to acquire it soon. Eventually Ohio hopes to issue industry-specific general permits, but for the immediate future the agency hopes to cover construction sites under one state general permit and all other industrial stormwater dischargers under a second permit. "We've set a target date of having these two draft general permits out for public comment by mid-April," says Water Pollution Control Division staffer Mike Sapp. "As for when we'll have final permits—your guess is as good as mine. It's conceivable that we'll have them out by mid-July, but due to the large number of players involved, that's not a firm date."

Georgia

Last year, Georgia regulators suggested that state general permits would not be available until sometime in 1993, but Larry Hedges of the state Department of Natural Resources (DNR) says the agency's strategy is changing somewhat. Georgia now anticipates publishing a general permit for the construction industry and "maybe a couple of other industries" before Oct. 1, 1992.

DNR still does not intend to issue individual stormwater permits, Hedges says, but the state will accept individual permit applications or EPA-approved group applications. He adds that some dischargers may choose to submit group applications "to buy time before they're required to come under a general permit."



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Sr. Editor Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Linda Johnson; Production Assistant, Marlene Maeger; Customer Service Representative, Suzanne O'Brien. For subscription questions, call (800) 424-2959. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group; 1725 K Street, N.W., Suite 200; Washington, D.C. 20006. Reproduction or photocopying—even for personal use—is prohibited without the publisher's prior written consent. Consent is granted to reproduce individual items for personal or internal use provided that the base fee of U.S. \$5.00 per copy per page is paid directly to the Copyright Clearance Center, 27 Congress St., Salem, Mass. 01970, or to Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md 21801. For information on multiple subscription discounts, call (800) 424-2959 or for general information, contact the Copyright Clearance Center at (508) 744-3350.

Previously Georgia urged all stormwater dischargers to notify the DNR by letter, before the old EPA permit deadline of Nov. 18, 1991, of their intention to come under state general permits issued after that date. The deadline has now been moved, but DNR is still taking the same approach. "Get us a letter by Oct. 1 requesting to be covered, and after that we'll get general permits out as soon as we can," Hedges says.

Hedges adds, however, that "technically speaking, you can't apply for a general permit until it's issued. Technically speaking, an individual permit application or a group permit application are the only alternatives for facilities whose general permits aren't issued before the deadline."

North Carolina

North Carolina stormwater officials were hoping to publish public notices of draft general permits for the mining and construction industries by mid-March, Coleen Sullins of the Department of Environment, Health and Natural Resources (DEHNR) said in February. DEHNR is expected to publish a public notice on the state stormwater program as a whole by mid-April, Sullins added. The April notice will likely mention draft general permits for a number of North Carolina industries, but some chemical industry facilities will not be covered. North Carolina also has not been writing draft permits for certain industries, such as asphalt manufacturing and textiles, because most of the facilities are likely to come under EPA-approved group applications.

Pennsylvania

With financial assistance from EPA, Pennsylvania has been working hard on a draft general permit for the construction industry and a second draft general permit for other industrial stormwater dischargers, according to Alex Silenski of EPA Region 3. The state has established a March 15 target date to publish the draft construction general permit, and has told EPA that a final construction general permit will be issued by May 31 and a final industrial general permit, by July 30.

However, Silenski warns, Pennsylvania's statutory language governing general permits may put serious crimps in these plans. The state's toxic chemical regulations, for instance, may preclude the use of general permits for potentially toxic discharges. State law also may require the Department of Environmental Resources (DER) to seek public comments on each notice of intent (NOI) for general permit coverage and may require a DER review of each NOI for potential water quality impacts.

EPA's contractor-consultant has promised to find a way around these obstacles, Silenski says. "I think this will happen—that we'll have these general per-

mits, come hell or high stormwater. Otherwise the program won't be feasible."

Michigan

At press time, the Michigan Supreme Court had denied Gov. John Engler's request to bypass the lower appellate courts in his appeal of a district judge's ruling rejecting Engler's proposed reorganization of the Department of Natural Resources (DNR) (see *Bulletin*, March 1992, p. 6). The Supreme Court remanded the case to the state Court of Appeals with a request for rapid consideration, but without setting a deadline for action.

Michigan stormwater officials hope to publish construction and industrial general permits by Sept. 30, according to DNR staffer David Drullinger. Meanwhile, the governor's 1993 budget request proposes \$1.3 million in new permit fees to fund Michigan's partial implementation of the federal stormwater program.

Virgin Islands

The Virgin Islands has been delegated authority to administer NPDES wastewater discharge permits. But according to Mark Pacifico of the Department of Planning and Natural Resources, the territory may lack local authority to issue either general permits or permits for stormwater discharges. This makes stormwater regulation in the Islands very uncertain. On the other hand, only a few dozen industrial facilities are likely to need permits once they become available.

Fairly strict stormwater management controls already are required of construction projects in areas regulated by the territorial Coastal Zone Management Program. The territorial government hopes to get EPA funds to develop best management practices to control nonpoint source pollution, Pacifico says.

Puerto Rico

The Commonwealth of Puerto Rico lacks NDPES delegation, so EPA Region 2 will administer stormwater permitting in Puerto Rico. According to Region 2 official Jose Rivera, though, EPA's general permit for the commonwealth must receive certification from the Puerto Rico Environmental Quality Board (EQB). Eira Medina, chief of EQB's industrial section, indicates that Puerto Rico has prepared a draft general permit that EPA currently is reviewing. If EPA finds it acceptable, it will be reissued by Region 2 for EQB's certification.

Rivera expects that the stormwater general permit will cover only a few hundred facilities because stormwater discharges from the bulk of Puerto Rico's industries already are regulated under existing NPDES wastewater permits. ■

Union Carbide Official Talks About California General Permit

Joe Lopez is senior regional environmental affairs supervisor for Union Carbide Industrial Gases in the western United States. He is responsible for overseeing stormwater permit applications for the company's industrial gas facilities in Utah, Washington, Colorado and New Mexico and for four California facilities that will be covered under California's general stormwater permit. Under California's permit, notices of intent must be filed with the state by March 30 and applicants must prepare stormwater pollution prevention plans and monitoring plans by Oct. 1. Union Carbide's industrial gas facilities primarily produce oxygen, nitrogen and argon in California, although one plant in southern California also produces hydrogen. "None of our processes are chemical-intensive," Lopez says of the facilities, and he does not expect monitoring at these plants to turn up much evidence of stormwater contamination. Still, Union Carbide faces certain challenges in meeting the California requirements. The following is taken from a longer interview with Lopez conducted by Andy Feeney of Thompson Publishing Group (TPG) on March 2, 1992.

TPG: How do you see the special features of the California permit affecting your business?

Lopez: The way I see the stormwater general permit affecting our plants in California, it's not really that much different than the minimal requirements in the other states that I have responsibility over. But basically, I see the California general permitting plan going much deeper than the federal in its requirements for protecting the environment. I don't see it as much different in terms of cost savings from what we're going to be doing at the federal level.

TPG: How is the California permit more tailored toward protecting the environment?

Lopez: In going through and filling out the federal requirements for our Washington facility, I thought it was more of a paper exercise involving gathering some historical data and basically putting it down on paper. Whereas the requirements of the California general permit—you're required to come up with a stormwater pollution prevention plan and also a monitoring plan that you have to follow. So you're writing something down and you're committing and certifying that you're going to follow those requirements.

By the way, there are indications that Washington also is coming out with a general permit now.

TPG: Why don't you talk a little bit about how you're preparing the pollution prevention plans?

Lopez: What we've done in California is to take the general permit and kind of dissect the regulations and the requirements. We've made a general checklist of what the permit's requirements are and done an outline of the stormwater pollution prevention plan, which we've issued to the plants in California. Our environmental people in each plant are going to go through the outline and fill out every segment of the pollution prevention plan.

Mainly, they're asking, "What are we doing to protect our stormwater runoff by addressing the storage of chemicals outside, by containment measures, and through our handling practices? Are we taking good measures to train our employees to handle chemicals properly and not be careless?" Our emphasis will be on training and on making sure that every segment of the plan is covered, specifically in the area of chemical handling.

I would say this is all pretty much using information that we already have on site. For instance, we have existing SPCC plans; we have contingency plans; we have emergency action plans. I think a lot of the provisions of these plans can be incorporated into the stormwater pollution prevention plan.

I think there are some areas that are different as far as protecting storm drains and being more aware of work that goes on around storm drains, where there is a possibility of that activity impacting stormwater. But I would have to say that, overall, the pollution prevention planning just opens your eyes to areas where maybe you haven't been as alert as you should have been.

TPG: I would imagine your plants have pretty tough NPDES wastewater discharge requirements already.

Lopez: Correct. Of the three plants that we are going to permit in California, two of them have NPDES permits.

TPG: Are you going to take existing compliance measures that you've got for those permits and fold them into your pollution prevention plans?

Lopez: For stormwater pollution prevention—yes, I think we'll probably fold the existing plans into the stormwater pollution plan. But I think in terms of stormwater monitoring, when we start doing that, we might have to do a little more stringent monitoring in order to capture some of the things, maybe, that we're not checking right now.

TPG: Any examples?

Lopez: The areas that are not covered right now are truck and trailer parking areas. Some parameters that we will need to monitor include oil and grease, of course. But I think we'll also be looking at some heavy metals. I don't anticipate finding very much, because we've been doing stringent monitoring and our effluent has always been pretty good. But once we get down to the actual monitoring—and we are working very closely with an environmental consulting firm, Environmental Science and Engineering, who will advise us where we should look—I'm anticipating that it will be mostly monitoring for metals.

TPG: You mentioned training. How will you get beyond the environmental compliance circle of the company and persuade people on the shop floor to really take stormwater seriously?

Lopez: Our major concern in that area is increasing employee awareness of how we can impact stormwater runoff. I think that in the past, we've had a tendency of taking it for granted that if something got spilled, and we cleaned it up pretty soon, it wouldn't get into stormwater. I think now we need to start training our employees to think that anything that's spilled may be a source of stormwater contamination. It will have an impact—maybe not immediately—but down the road as an accumulation of the contaminant occurs.

TPG: Will you do the training through employee seminars? newsletters? I wonder if there are techniques you recommend for getting the word out.

Lopez: We might offer some offsite seminars, but basically we have what we call field safety and environmental people who are situated in each facility. And they would be charged with the task of bringing the employees up to speed concerning stormwater runoff. We won't go out and make too much of an expenditure in terms of hiring an outside service. We may for the initial training, but otherwise it's all going to be handled in-house.

TPG: What are you primarily employing Environmental Science and Engineering to do?

Lopez: At this point, Environmental Science and Engineering has assisted with going out and making a determination in terms of where the best places to start doing the monitoring are going to be. They'll also eventually come in and have a major say as to what type of equipment we're going to need: you know, can we use weirs, or do we need to do it manually? Also I'm going to use them as a double check in reviewing my stormwater pollution prevention plan and in helping me put together my monitoring plan so that it meets state requirements.

TPG: Some people say California's monitoring requirements are very stringent. You have to monitor twice a year, you've also got to do visual monitoring once a month in the rainy season, and you have to check for illicit connections during the dry season.

Lopez: All these requirements are new to us. But I don't think any of them are unreasonable. The regulations specify which are the dry months. Going out and making sure we don't have any illicit connections to our storm drains, and making sure no water is flowing through them in the dry months, is not difficult.

Now going out when it's raining, like today, and making sure there's no strange material floating through our storm drains, that's something that we've never done. We don't even do that for our NPDES permits. All our monitoring for our NPDES permit is done either through a grab sample or a composite sample on an ongoing basis.

This is something new where you have to get out there while it's raining and verify that there are no strange materials going down the drain.

"In terms of cost, the California permit isn't that different from what we're doing elsewhere"

TPG: Is that a problem?

Lopez: I'll tell you what the biggest problem is right now. I think in light of the economic situation and in light of manpower availability, the biggest concern will be the availability of people to do this kind of work. You know, our company is downsizing like everybody else is, for reasons that our management feels are good reasons. But for awhile, we're going to find it more and more difficult to do our monitoring because of the reduced manpower. And those kinds of considerations have to be taken into account when you're putting together stormwater monitoring and pollution prevention plans. Making sure that whatever you say that you're going to do, you have the manpower to do it. I think that's a very critical issue right now.

I think what concerns me, too, is that sometimes the rain is not always willing to cooperate and come during the time when all your employees are working. You have to consider: if it rains at midnight, and it's a storm event that should be monitored, then how are you going to do that?

TPG: I was wondering about that. I heard that some of your plants don't operate 24 hours a day.

(Continued on page 6)

NEWSMAKER INTERVIEW

(Continued from page 5)

Lopez: In California, the plants that we're addressing for our general permit all operate 24 hours a day. But at night, they're only manned by one or two people because these are the persons who sit in the control room and monitor all the gauges and alarms that might go off during that period. These employees would not be free to leave the control room to go outside and take a sample.

So we've elected, and this is for safety and protection of our employees, to take the samples during the working daylight period. We will not jeopardize our people or our operations because we have a lot of moving equipment in operation. Requiring a person to leave the control room and to go and take samples could be costly in terms of both dollars and health. So we plan to be monitoring in the daylight.

TPG: Even if it rains at midnight.

Lopez: That's right. That's what we're looking at right now. I don't know if that's going to change. We're going to do everything we can to take the samples, but as I say, we won't jeopardize the safety of our employees or the operation of our plants.

TPG: There may be 30,000 other facilities in California that will face the same general permit requirements that you face. Do you have any advice to them based on your experience so far?

Lopez: I think it's better to look at the stormwater regulation in the light that it's good for the environ-

ment; it's been a long time coming; and what has to happen now is that we in industry have to get ourselves focused in trying to comply with the regulation, instead of saying, "Maybe I don't fall under this requirement." Of course there are some small facilities that may fall out of the requirement, but I think the majority of industrial-type activities will fall under this regulation.

What we've found to be very beneficial is attending organizational-type meetings like those held by PIBA, for instance, which is the Peninsula Industrial Business Association, CICC, the Chemical Industry Council of California, and of course CMA, which is the California Manufacturers Association. All these associations will assist you in finding ways to comply with the regulation through their resources. Also you can get a lot of good information on what other companies are doing.

The other thing that has worked for us is securing the services of Environmental Science and Engineering to work with us, to look at all our facilities in California at once. In that way we can minimize the amount of work that needs to be done.

All of the facilities are pretty much the same except for the one where we produce hydrogen. We have multiple facilities, and I feel it's very cost-effective to do more than one site at a time. Of course, as you do this for California, consider the facilities that you have in other parts of the country and think how you can transfer this information to them when they have to prepare pollution prevention and monitoring plans. Use this knowledge as a springboard. ■

HAVE EQUIPMENT, WILL SAMPLE

Contractors Will Do the Monitoring For You

Stormwater sampling is one of the most burdensome requirements facing industry under the U.S. Environmental Protection Agency's (EPA's) stormwater permitting regulation. However, as the Oct. 1, 1992 deadline for filing individual permit applications approaches, some engineering firms are offering not only to train clients in sampling, but also to do the work for them.

Not every industrial discharger will choose to use these services. Some corporate stormwater officials say they prefer to have consultants train their employees in sampling techniques so that the employees can do the sampling themselves. This offers significant savings, the corporate officials argue, and is the only way to do the work at remote sites where contractors would have to travel long distances to collect samples during infrequent storm events.

Stormwater consultant Jerry Perrich of Environmental Science and Engineering (ESE) also notes that many or most industrial facilities will eventually be regulated under general permits for stormwater, once such general permits are available. Sampling data generally will not be required for the notices of intent (NOIs) corporations must file to receive general permit coverage, so collecting sampling data now is unnecessary for many firms, Perrich says. (For more information on permitting strategies, see Perrich's comments and those of other consultants in two recent Newsmaker Interviews, *Bulletin*, January 1992 and February 1992, p. 4).

Depending on a facility's location, local help may be available for industrial dischargers who need or wish to submit individual or group permit applications, but do not want to do sampling themselves.

The following are several consulting firms that have talked with the *Bulletin* about their stormwater sampling services:

- **Dewberry & Davis, Fairfax, Va.** This architecture and engineering firm has 1,000 employees and 18 offices in the Mid-Atlantic and Northeast states, as well as two environmental laboratories in Virginia. The firm provides a full range of stormwater permitting services and does design work in stormwater management and remediation as well.

For a fee, Dewberry & Davis will send a field crew to an industrial facility to set up either a permanent or a temporary automated stormwater monitoring station. The cost of renting a fully automated station is about \$1400 monthly, including setup and retrieval costs. Depending on the amount of analytical testing required and the site's location and accessibility, the overall price of stormwater monitoring per station may range from \$2,500-\$4,500. Lead time for setting up a monitoring program is about a month. For more information, contact Brian McDermott in the environmental engineering department at (703) 849-0564.

- **The Environmental Company, Inc., Charlottesville, Va.** This environmental consulting firm, founded in 1989, has approximately 40 employees in the firm's Charlottesville, Va., Huntington Beach, Calif., and Honolulu offices. About 18 people in the Charlottesville office are available for stormwater work, according to co-founder Jack Wilson. The Environmental Company normally works within a 100-mile radius of Charlottesville, but does some overseas work for the U.S. military, its largest client.

For stormwater clients, the firm will inspect a facility, identify all discharge points and test for unauthorized connections, making recommended corrections as needed. In addition, the firm will identify likely storm-water contaminants, set up and execute a sampling program and arrange with an outside lab to analyze the samples. Test results are then used to complete the client's stormwater permit application. Normally the company needs two weeks' lead time to set up sampling stations. "If it's not too big a job, though, we can usually free up a few bodies to start work within a week," says Wilson. If there is an existing site plan, lead time for a large facility may be three to four weeks. Lab turnaround time is usually an additional two to three weeks, with another two weeks needed to write the report and complete the application.

Price per outfall sampled varies according to location and sampling parameters considered.

For more information, contact Jack Wilson at (804) 295-4446.

- **RMC Environmental Services, Spring City, Pa.** RMC is a full-service environmental consulting firm with about 180 employees that primarily serves clients in Pennsylvania, Maryland, Delaware and New Jersey. According to Michael Wisniewski, vice president for engineering services, RMC will provide training in sampling techniques for a client's employees, install a weir or some other simple measuring station on site and train the client how to use it, or send two-person crews to sites within two hours' drive of Spring City, Pa. to conduct sampling.

For the average facility with a single stormwater outfall, the price for conducting the sampling, testing the samples and preparing the application form is approximately \$3500. Testing for additional outfalls runs to \$800 per outfall unless a second crew is required, in which case the price is around \$1100-\$1200 per additional outfall. Lead time for setting up a sampling regimen is roughly two weeks, but may be shorter in some cases. RMC provides pre-labeled and properly preserved sample bottles for clients doing their own sampling. For more information, contact Michael Wisniewski at (215) 948-4700.

- **Brown & Caldwell Consultants, Portland, Ore.** Brown & Caldwell is a full service environmental consulting firm with offices throughout the southern and western United States. Laboratory services are available in Anaheim, Glendale and Emeryville, Calif.

Stormwater services and permitting assistance are available through each Brown and Caldwell office, according to Jim Hansen in the Portland office. Hansen is part of a stormwater permitting team that develops permit application and compliance strategies for industrial clients.

Sampling strategies may differ for each facility, Hansen says, and will depend upon the size and complexity of the facility and the availability of skilled labor to perform the sampling. For some facilities, the firm will train the client's personnel so that sampling can be done in-house. For other clients, the firm will set up and operate automated sampling stations. Manual sampling may be conducted if required. The lead time for setting up a sampling regimen is about three weeks.

For more information, contact Jim Hansen at (503) 244-7005. For information on Brown & Caldwell stormwater services nationwide, contact Bill Ruzzo in the Denver office at (303) 750-3983.

(Continued on page 8)

Stormwater Sampling

(Continued from page 7)

- **Environmental Science and Engineering Peoria, Ill.** ESE is a nationwide, full service, multi-disciplinary environmental consulting firm with 30 offices, four national laboratories and more than 1,400 employees. ESE offers complete stormwater services including development of sampling and monitoring programs, design and installation of sampling stations, sale and leasing of sampling and flow measurement equipment, and laboratory analytical services.

For clients that are submitting individual permit applications, collecting sampling data for group applications, or proactively beginning to characterize their discharges, the firm will develop site-specific sampling and monitoring plans. ESE also will conduct training seminars to teach on-site personnel about techniques for flow measurement and sampling. In addition, ESE offers flow measurement equipment and a complete lab kit for sampling that includes a rain gauge, sampling bottles with preservatives, instructions, data and chain-of-custody forms, blue ice and a cooler. For more information contact Jerry Perrich at (800) 373-4786.

This information is intended as a service to Bulletin readers and does not constitute an endorsement by Thompson Publishing Group of any product or service. ■

New Service: Stormwater Sampling on Video

To help keep training costs down, Ogden Environmental and Energy Services Co. is offering a 25-minute video on stormwater sampling. It's part of a \$335 package offer that includes not just the training video, but also an Ogden Environmental stormwater sampling protocol manual and unlimited access to a toll-free stormwater help line.

According to stormwater project manager Jerry Tidwell, the video and manual are designed for use by corporate employees who do not necessarily have sampling experience.

The manual covers "virtually every aspect of the stormwater permitting process," but the emphasis of the video is on how to take and composite stormwater samples using techniques accepted by EPA. Other video topics include selecting stormwater outfalls, evaluating them for non-stormwater discharges, and determining representative precipitation events.

This training package is one of several stormwater services offered by Ogden Environmental, which previously was known as ERC Environmental and Energy Services Co. For more information on company services available from more than 20 offices around the country, contact Ogden's stormwater center at (703) 246-0500 or call the help line at (800) 658-8842.

This information is provided as a service to Bulletin readers and does not constitute an endorsement by Thompson Publishing Group of any product or service. ■

30 Day Risk-Free Review Offer

Yes, please enter my trial subscription for the following environmental compliance publications from Thompson Publishing Group to use and evaluate for 30 days at no risk. If they don't measure up, I'll return them, write cancel on my bill and owe nothing.

Compliance Manuals

Annual subscription includes indexed reference manual • monthly updates and supplemental pages • 12 monthly newsletters • special reports • direct access to our editorial staff.

- Guide to Eco-Labeling & Packaging.....\$398
- Clean Air Permits:
 - Manager's Guide to the 1990 Clean Air Act.....\$298
- Chemical Process Safety Report.....\$349
- Stormwater Permit Manual.....\$398
- Aboveground Storage Tank Guide.....\$397
- Underground Storage Tank Guide.....\$350
- Community Right-To-Know Manual.....\$324

Compliance Newsletter

Annual subscription includes 22 issues, comprehensive annual index, chart of state community and worker right-to-know laws.

- Community & Worker Right-to-Know News.....\$379

- Check enclosed (payable to Thompson Publishing Group)
- Please bill me (add \$5.50 postage and handling for each publication ordered.)

Name/Title _____

Street Address _____

Company _____

City/State/Zip _____

Telephone (____) _____

Signature _____

Complete and Mail to:

Thompson Publishing Group
1725 N. Salisbury Blvd., Salisbury, MD 21801-0330

Call Us Toll-Free At 1-800-424-2959

Stormwater Permit Manual

Bulletin

Volume 1, Number 9

March 1992

OMB Nixes Draft General Permit Sampling Proviso

The Office of Management and Budget (OMB) has rejected the U.S. Environmental Protection Agency's (EPA's) preferred sampling option in the agency's draft "baseline" general permit for stormwater dischargers, OMB announced in late January.

The OMB disapproval will not necessarily slow EPA's efforts to promulgate a final baseline general permit by early this spring, according to EPA sources. However, the action is a sign that EPA probably must change its proposed sampling provisions to win OMB approval of the final permit. The final result is likely to be less stringent monitoring requirements for some industrial stormwater dischargers covered by EPA's baseline general permit and those state general permits that are fashioned after it.

EPA sent its sampling proposal to OMB on Oct. 11, 1991, as part of an information collection request (ICR) connected with the draft general permit (see *Bulletin*, September 1991, p. 1). EPA outlined six alternative sampling options in the ICR.

EPA's preferred choice, Option 3, would have required annual sampling by all industrial facilities, except oil and gas drilling sites and certain inactive mining sites where site owners cannot be identified. Non-exempted sites would be required to retain sampling information on site, but would have to report the information to regulatory authorities only upon request. As an alternative to sampling, an exempted site would be allowed to submit a certification by a professional engineer attesting that good engineering practices were being followed to control stormwater pollution.

Option 4 involved a minimum requirement for annual sampling by regulated industry only in particularly sensitive watersheds and Option 5 consisted of "case-by-case monitoring . . . with no minimum requirement to conduct annual sampling."

The proposal EPA submitted to OMB noted that all six sampling options would be less burdensome

(Continued on page 2)

EPA Developing Federal Permit Fee System

The U.S. Environmental Protection Agency (EPA) is developing a proposed federal permit fee system that may end up imposing thousands of dollars in new fees on National Pollutant Discharge Elimination System (NPDES) permit holders in non-NPDES states.

According to EPA staffers, proposals to establish new fees for municipalities and industrial dischargers holding NPDES permits are being developed under the 1990 Federal Budget Reconciliation Act, which requires EPA to develop a system of user fees

(Continued on page 2)

Inside this issue. . .

- Further Deadline Extensions Eyed by Senate Majority Staff **Page 3**
- Rubber Industry Seeks to Write Model General Permit **Page 4**
- Michigan DNR Reshuffling Blocked by Lawsuit **Page 6**

**Thompson
Publishing
Group**

Publishers of environmental and safety compliance information

Draft General Permit

(Continued from page 1)

to industry overall than the existing stormwater permitting regulations at 40 CFR 122.44(i)(2), which require regulated stormwater dischargers to report their sampling results at least once a year. However, OMB rejected EPA's proposal.

The OMB decision, reported in the Jan. 29, 1992, *Federal Register* (57 FR 3202), stated that the Paperwork Reduction Act requires that agency information collection requirements be the least burdensome necessary to comply with legal requirements and meet program objectives. "EPA has not adequately demonstrated that its preferred approach . . . is less burdensome than the risk-based monitoring approaches described in Option 4 and Option 5," OMB added.

OMB's disapproval of the ICR constitutes a rejection of the "paperwork" associated with the draft baseline general permit and is not quite the same as a rejection of EPA's draft regulation itself, suggested Christine Triano of OMB Watch, a public interest group that monitors OMB actions. Triano said there are legal limits on the extent to which OMB may use disapproval of regulatory paperwork to impede the issuance of regulations themselves. However, the action does indicate OMB resistance to EPA's proposed course of action on stormwater sampling under the baseline general permit.

At press time, EPA stormwater program staffers declined to comment on OMB's actions. However, EPA Policy Information Branch staffer Harold Woodley said the OMB disapproval "means we have to make changes in the final rule and send them a second ICR in hopes that they'll approve it. It obliges us at EPA to make changes, to modify how we ask regulated entities for information."

EPA received notice of OMB's disapproval on Jan. 13 and had offered no official response to it by early February, Woodley said. ■

Permit Fee System

(Continued from page 1)

to pay for "services rendered" to permittees in non-NPDES states and certain other entities.

The president's proposed budget for fiscal year 1993 also requires EPA to collect approximately \$58.3 million in user fees, including \$20.5 million in fees that were already included in last year's budget and another \$15 million in new user fees that will primarily be imposed on the pesticide industry. The budget proposal calls for the remaining \$22.8 million to come from fees that are imposed to implement the 1990 budget agreement.

According to EPA executive officer Joel Szabat, fees for water discharge permit holders in non-NPDES states are currently considered "one of the clearest and most usable alternatives we have for collecting this revenue." However, Szabat says, there is a possibility that EPA could change its mind if such NPDES permit fees are subsequently found to be illegal or impracticable.

Judging from a Jan. 17 press release issued by EPA Region 6 administrator B.J. Wynne in Dallas, the average fee charged to large municipalities under a new permit fee system could amount to as much as \$9,000. Major industrial dischargers in non-NPDES states could pay an average of \$15,000 apiece for their federal NPDES permits.

Wynne cited this possible expense for regulated municipalities and industry in a Jan. 16 letter to Texas Gov. Ann Richards in which he urged Texas to expedite its negotiations with EPA concerning delegation of the NPDES program to Texas. Given that Texas is currently one of 12 states without NPDES delegation, Wynne said, failure to change its status could expose Texas NPDES permittees to the proposed new federal fees, "needlessly costing Texans a lot of money."

In a Jan. 24 reply to Wynne, Gov. Richards wrote, "I certainly share your concerns about the



Stormwater Permit Manual is published monthly by Thompson Publishing Group, 1725 K St. N.W., Suite 200, Washington, D.C. 20006, (202) 872-4000. The annual subscription rate is \$398. Publisher, Richard Thompson; Associate Publisher, Lucy Caldwell-Stair; Senior Editor, Jill S. Talbot, Esq.; Editor, Andy Feeney; Contributing Editor, Dr. Jerry R. Perrich, PE, Environmental Science and Engineering Inc.; Production Manager, Linda Johnson; Production Assistant, Marlene Maeger; Customer Service Representative, Suzanne O'Brien. For subscription questions, call (800) 424-2959. For editorial questions, call (202) 872-4000.

POSTMASTER: Send address changes to *Stormwater Permit Manual*, Thompson Publishing Group, 1725 N. Salisbury Blvd., Salisbury, Md. 21801. Please allow four weeks for change of address.

Copyright ©1992 by Thompson Publishing Group. All rights reserved. No part of this publication may be reproduced or transmitted by any means, electronic or mechanical, including photocopy, without written permission of the publisher. Federal copyright law renders reproduction without permission illegal and punishable with penalties up to \$50,000 for each violation. To report violations or for information on multiple copy discounts, call (800) 424-2959.

potential financial burden that could be imposed on regulated municipalities if Texas does not take over the federal program." The letter added that the Texas Water Commission intends to work closely with EPA to develop an NPDES delegation proposal that will qualify for EPA approval.

EPA is considering imposing fees on stormwater permittees as part of the proposed fee system, according to Deborah Nagle, an environmental engineer in EPA's Office of Wastewater Enforcement and Compliance, who is working to develop the permit fee proposal. Nagle said EPA will base the fees on its costs to write NPDES permits. Nagle also stated that the structure of the fee system proposal will be based not only on the 1990 Omnibus Budget Reconciliation Act, but also on the Independent Offices Appropriations Act (31 U.S.C. 9701). Nagle predicted that a proposed permit fee system could be published for public comment in the *Federal Register* within three months. It is possible that a final permit regulation could be published before the end of the year, Nagle said.

Background information released to the *Bulletin* by EPA Region 6 indicates that the Office of Management and Budget (OMB) wants the fees to cover the cost of the federal permit program in non-delegated states, but does not want the fees deliberately structured to encourage pollution prevention. Small industrial dischargers with revenues of less than \$100,000 and small publicly owned treatment works (POTWs) will probably be exempt from the fees, according to OMB. Some "future stormwater permits" also may be exempt, according to the background documents. Other exemptions may include facilities covered by general permits, federal facilities and industries discharging into POTWs.

At press time, stormwater officials at EPA headquarters had no comment on the permit fee issue. ■

Further Deadline Extensions Eyed by Senate

A draft revision of S. 1081, the Senate bill to reauthorize the Clean Water Act, has been prepared by the Democratic majority of the Senate Environment and Public Works Committee headed by Sen. Max Baucus, D-Mont. The draft revision would significantly extend several Congressionally mandated deadlines for the U.S. Environmental Protection Agency (EPA) stormwater program and reduce or eliminate many stormwater requirements for small municipalities.

The stormwater provisions of the draft revision are contained in new Section 128 proposed for inclusion in S. 1081. The provisions would push

back the deadline for permit applications by industrial dischargers and large municipalities to one year after enactment of the legislation—that is, late 1993, assuming the legislation is enacted in 1992. Section 128 would extend until Oct. 1, 1994, the deadline for EPA to issue stormwater regulations, instead of the current deadline of Oct. 1, 1992. The Section 128 provisions also would extend to Oct. 1, 1996, the deadline for EPA to issue permits to stormwater dischargers.

Under the draft revision, EPA would have until Feb. 4, 1993, to issue stormwater regulations for municipalities with populations of under 100,000. In the meantime, however, "industrial activity" would be defined so as to exempt such smaller municipalities from any permitting requirements for stormwater associated with industrial activity.

Additional provisions of Section 128 in the draft revision would define "controls to reduce pollutant discharges 'to the maximum extent practicable'" to specify that such controls shall be "management measures or treatment processes sufficient to assure in combination with other pollution controls, the attainment and maintenance of standards." Section 128 also would allow some municipal stormwater flows to be diverted to publicly owned sewage treatment works with reserve capacity to handle them, and would require permittees to implement stormwater quality management programs only at the beginning of their second five-year stormwater permit period.

There are indications that in preparing the draft revision, however, Baucus's staff did not clear these and other changes with the staff of Sen. John Chafee (R.I.), the committee's ranking Republican and a major player in Senate environmental legislation. Disagreements between Baucus and Chafee staffers could conceivably lead to the draft revision being scuttled or revised.

Environmental lobbyist Jessica Landman of the Natural Resources Defense Council (NRDC) told the *Bulletin* in a Feb. 6 interview that environmentalists have discussed the draft revision at length with both Democrats and Republicans on the Environment Committee. "We don't endorse rolling back deadlines on stormwater. The majority staff draft revision of S. 1081 is not acceptable to us," Landman said. "The revision hasn't been approved by the committee as yet. I think it may be more of a discussion opener than an indication of what the committee will finally approve."

According to other sources, the Senate Environment Committee is expected to approve a clean water bill early in the 1992 legislative session, and the House Public Works and Transportation Committee could finish work on a draft clean water bill by the end of February. ■

Rubber Industry Seeks to Write Its Own Model Permit

In collaboration with the CH2M Hill consulting firm and the Washington law firm of Collier, Shannon and Scott, the Rubber Manufacturers Association (RMA) is seeking to use the group permit application process to write its own model general stormwater permit for the rubber manufacturing industry. RMA hopes to present its proposal to the U.S. Environmental Protection Agency (EPA) for approval sometime this year. Thompson Publishing Group's Andy Feeney interviewed RMA officials about the effort in early December, 1991. Those interviewed for the Bulletin included Peter Pantuso, RMA director of government affairs; Douglas Bell, RMA manager of regulatory affairs; and Laurens van der Tak, CH2M Hill's project manager for the RMA group permit application project. This article is excerpted from a longer transcript of the group interview.

TPG: What is the general philosophy behind RMA's effort to develop its own draft model permit?

Bell: In the rubber industry, rather than allowing EPA to come to us and say, "This is what we believe the rubber industry's permit should look like," we are planning to take a more proactive role and go directly to the agency with a model permit developed through a collective effort of those of us in the rubber industry itself, our consultants, and our legal counsel. And we're going to EPA to show them the data we've collected and why we think that the model permit we've developed is best for both the industry and the environment.

TPG: That way, I guess, you get the benefits that are supposed to accrue to the individual application along with the benefits that accrue to the group application?

Bell: Definitely. And we're trying to act in an educational role towards EPA, because through representing the rubber manufacturers, we know best what goes on in the industry. We can help them to evaluate our [industrial] processes in developing the permit.

van der Tak: I don't know where it came up within the context of this group, but the first time I encountered the idea was in a discussion with Ephraim King at EPA concerning the stormwater program. At the time, my concern was more with the selection of parameters for analyses, but I asked him, "What would you think if we submitted, as part of the part 1 application, a statement saying here are the parameters we're proposing to monitor and reasons why we'd like your feedback?"

To paraphrase Ephraim, he sort of suggested, any input you can provide as part of your application is going to be appreciated, because we're vastly understaffed. The idea was, if you can even write the permit, that will provide a building block for EPA. It'll ease the process.

TPG: What did you do after you got that encouragement?

van der Tak: Well, it hasn't all been done yet. What we did is go out to each of these RMA sampling sites and do a survey of stormwater best management practices (BMPs). CH2M Hill's regional coordinators filled out a survey for each facility to get a sense of where the rubber industry is in terms of the status of their stormwater management practices. All the way from the non-structural types of practices, such as the sweeping of streets and training of employees and that sort of thing, to structural practices, such as detention ponds and the like. The idea is that we're going to translate that along with information from the sampling program into a model permit. When we get all the information, we'll provide it to the RMA Environment Committee. They'll probably write a model permit that I'm guessing will be very similar to EPA's general permit, but hopefully with conditions that reflect the unique characteristics of the rubber industry.

Bell: With the backing of the testing program under our belt, hopefully we'll have some justifications for that.

van der Tak: Exactly. Some of the facilities are sampling for a lot more parameters than others. If it turns out that none of those particular parameters show up in large concentrations or show up at all, then we would have good reason to argue that we do not have to analyze for those on a regular basis. Perhaps we can even eliminate or reduce the frequency of sampling, which is going to be one of the hardest things for all these facilities to deal with. Sampling even once a year is a big burden for some of these facilities that don't have personnel to do it and that have the expense of hiring consultants like me once a year to do it. If we can reduce the number of parameters and the frequency of sampling, we'll be in a lot better shape.

TPG: Do you run into some tricky cost/benefit questions when you have to decide how much money to spend on sampling, in order to convince EPA that you don't need to do so much sampling?

van der Tak: We've been somewhat up against that. As a consultant to RMA, in several instances, I have been in something of a bind. Well, maybe this facility ought to be, in some cases, analyzing for certain parameters. The language is somewhat vague in the regulations. You have to analyze for something that you know or expect to be present in excess of ten parts per billion. But you don't know if it's likely to be present in excess of ten parts per billion unless you've sampled. And you can only expect it's there if you really use a lot of the stuff and you use it out of doors, etc., etc. So you're right. There is a tradeoff. Do you actually go out and sample to find out, or not?

Bell: I think that on the whole, we've erred on the side of being overly cautious with our sampling. I think all of our environmental managers and engineers that are represented on our Environment Committee at RMA have been very forthcoming with information. I think we've gone, in some cases, definitely above and beyond what EPA is asking.

van der Tak: In a few cases, definitely. It went beyond what I thought was reasonable, because some of the chemicals were used in extremely small quantities and stored indoors. After asking a lot of questions of these facilities, I realized they didn't have to go ahead and do it.

TPG: How many facilities overall are you talking about getting permitted? How many are doing sampling, and how many are represented on your Environment Committee?

Bell: There are presently 263 facilities in our group. Also, we're probably looking to petition EPA to add additional facilities, for people who just failed to be reached by our outreach and EPA's outreach about stormwater regulation. We're looking at sending another mailing out to our people about it, telling them they have to be in compliance.

Ten percent of those facilities will be sampled. We're looking at 27 facilities as of right now. Plus, we're looking at additional facilities being sampled if we do add facilities to our group.

Pantuso: The Environment Committee has about 20 to 25 company representatives. These are typically the environmental experts at the companies. The companies run the gamut in terms of size and in terms of the products manufactured. These are very astute, very bright individuals in the environmental field who have come up to speed on the stormwater issue. They've really been the fourth arm, if you will, of this whole operation. There's been the Association, CH2M Hill, the law firm of Collier, Shannon and Scott, and the Environment Committees—all four, working together, have helped make this a successful program so far.

TPG: Will this application cost a fortune?

Pantuso: This effort is not inexpensive. But there is also, obviously, a tradeoff involved. It's much more cost-effective for the companies to put together a group application as opposed to doing it individually. When we looked at putting together a stormwater group to prepare for both part 1 and part 2 of the group application—when we looked at all of what had to be done, including the testing, the training at individual companies, the development of the sampling handbook, the legal efforts and our efforts here at RMA—we decided we were looking at a little less than half a million dollars.

We charge members of the association a fee of \$1500 per facility in the group. Non-members are charged \$2500, recognizing that some of what we do here has a cost and that members would otherwise be subsidizing non-members in this regard. That's the reason for the price differential.

If the companies filed individual permit applications, they'd have a separate cost of up to \$20,000 for each facility that's now in the group. It's been our assumption that the collective cost would be in the neighborhood of \$6 million-\$7 million. The group permit therefore represents a savings of \$6 million.

van der Tak: That agrees with our estimate, on the consulting end. If we were to provide consulting services to an individual facility and do the sampling ourselves, depending on the number of outfalls and the complexity of the facility, the cost could range from \$5,000 at the very, very cheap end to up to \$15,000 per facility. At some big facilities, it's not unlikely that it would cost \$25,000 to do this.

TPG: If it isn't proprietary information, could I ask what part of the cost is for sampling?

van der Tak: It's increasing. Can I give them a breakdown on our estimated budget?

Pantuso: That's fine, if you don't have a problem with it.

van der Tak: We have a contract which is totaling on the order of \$180,000, and will probably come very close to that. We originally budgeted \$26,000 plus for the sampling, but it's probably going to be 50 percent or more above that. That was based originally on one outfall per plant and a very minimum set of parameters, and the reality is that they have increased. But a contingency was built into the project to account for all those sorts of things.

Bell: That approximately \$39,000 cost doesn't cover the consulting. That's for the person to send

(Continued on page 6)

NEWSMAKER INTERVIEW

(Continued from page 5)

the samples to the lab and to have a kit for the samples. That doesn't take into consideration the consultant and his time and travel.

van der Tak: RMA felt it important, and in retrospect it has proven very valuable, to have individuals from CH2M Hill visit each and every sampling facility. In other instances, we've actually come out to give training seminars at plant offices. And given the complexity of the operations and the variety of manufacturing processes taking place, it's proven to be very valuable to have taken that tack. When you add that on, it more than trebles the cost.

TPG: Where are you in the process right now?

van der Tak: We have conducted site visits to all 27 facilities that are doing the sampling. They have all identified their outfalls and identified the parameters for which they have to do sampling. They all now have sample kits from our labs. And at this point, four facilities have actually collected samples. For the others, they will just have to wait until it rains and they find the time to do it. So there are some concerns about the overall schedule, but they are in position to collect the samples when an appropriate storm comes. ■

Michigan DNR Reshuffling Blocked by Lawsuits

Part of Republican Gov. John Engler's proposed reorganization of the Michigan Department of Natural Resources (DNR) has been ruled unconstitutional by a state circuit court judge.

Back in November, Gov. Engler signed four executive orders that proposed to dramatically restructure DNR and eliminate more than a dozen associated boards and commissions, including the state Water Resources Commission that provides a public forum for contested permit applications by industry (see *Bulletin*, January 1992, p. 1). One of the four orders, creating a new Michigan Science Advisory Council to resolve disputes at environmental cleanup sites, was subsequently rescinded by the governor. Prominent state Democrats and Michigan environmental groups filed various lawsuits to block the remaining three orders (see *Bulletin*, February 1992, p. 3).

In a Jan. 30 ruling on Executive Order 1991-31, which sought to abolish the previously existing DNR and create a new organization under tighter

control by the DNR director, Ingham County Circuit Court Judge Peter Houk ruled that Gov. Engler had violated Article III, Section 2 of the Michigan Constitution concerning separation of powers in state government.

Responding to a lawsuit brought against the governor by Speaker of the House Lewis Dodak and other prominent state Democrats, as well as a second lawsuit brought by the Michigan United Conservation Clubs, the court issued a permanent injunction preventing implementation of Executive Order 1991-31.

However, the judge did not rule on a separate suit by the Michigan Environmental Protection Foundation (MEPF) challenging the legality of Executive Order 1991-32, which creates a Michigan Environmental Science Board to serve at the governor's pleasure.

According to MEPF, a subcommittee of the proposed Environmental Science Board would review permit applications using standards that are not mandated by Michigan statute, including the scientific and economic "reasonableness" of proposed permit conditions. The board subsequently would advise the governor and the DNR director about its findings.

Gov. Engler contends that under Michigan's Special Commissions Act, he has a right to establish advisory commissions of this sort. MEPF maintains that the science board would not be purely advisory and would improperly influence DNR permitting decisions.

MEPF has filed a cross-appeal in the case asking the Court of Appeals to rule on the establishment of the science board.

Gov. Engler has appealed Judge Houk's ruling on Executive Order 1991-31 to the state Court of Appeals and simultaneously has asked the Michigan Supreme Court for an accelerated decision on the issue, even before the appeals court issues a ruling. The governor's attorneys argue that under Article V, Section 2 of the Michigan Constitution, under the precedent established by the 1982 ruling in *Soap & Detergent Association v. Natural Resources Commission* (415 Mich. 728, 747, 330 N.W.2d 346), and under legal reasoning expressed during the 1961 Michigan Constitutional Convention, the governor has "legislative" authority to reorganize the state executive branch as he sees fit.

Sources close to the two appeals cases decline to predict when they will be heard. However, one source suggests that the Michigan Supreme Court could decide by mid-March whether to grant the governor an expedited review of Judge Houk's decision on Executive Order 1991-31. ■

STORM WARNINGS

Recent Stormwater-Related News in Capsule Form

- **EPA Issues Nonpoint Source Pollution Report.**

The U.S. Environmental Protection Agency (EPA) has released a new report to Congress concerning the national effort to control nonpoint source pollution, now the nation's leading cause of surface water pollution. The report, "Managing Nonpoint Source Pollution," finds that all states have now completed EPA-approved assessments of their nonpoint source pollution problems and that EPA has fully approved 44 of the 50 proposed state management programs. For copies of the report, contact Ann Beier at (202) 260-7108.

- **EPA, States Reach Agreement on Great Lakes Initiative.**

EPA and the eight states bordering on the Great Lakes reached agreement in December on the advisability of EPA's publishing a massive, 700-page guidance document on the control of Great Lakes pollution. Environmentalists and industry alike are reportedly critical of the agreement because it will defer addressing many urban stormwater runoff questions until some later date. However, the guidance document will propose consistent water quality standards for the entire Great Lakes water basin and include some important new provisions for controlling toxic chemical pollution. According to reports received by the *Bulletin*, a *Federal Register* notice on the draft guidance proposal could be issued by June. Under the Great Lakes Critical Programs Act of 1990, states bordering the Great Lakes will have to incorporate the provisions of the final guidance document into their water quality standards within two years of publication.

- **EPA Hotline Number Revised.**

The listing for the EPA Stormwater Hotline number has been changed in this month's update to the *Stormwater Permit Manual*. The revised number for the McLean, Virginia, EPA hotline operated by Science Applications International Corporation is (703) 821-4823.

- **White House Budget Proposes Cuts in State NPS Grants—Again.**

The president's proposed budget for fiscal year 1993 proposes to cut spending on state and local grants for nonpoint source pollution control programs from \$52.5 million to just \$25 million. The proposed spending cuts appear to contradict EPA's overall emphasis on the importance of cleaning up nonpoint source pollution, but there is some

possibility that EPA is counting on Congress to restore the cuts. Last year, in its fiscal 1992 budget, the White House proposed to cut approximately \$26 million from the fiscal year 1991 spending level for nonpoint source pollution grants. Subsequently, however, Congress more than doubled the president's spending request for nonpoint source grant programs.

By proposing to slash funding for nonpoint source grants when such grants are widely perceived to be essential in addressing the nation's single most important remaining source of water pollution, EPA and the White House may be engaged in "phantom" budget-cutting activities that appear to meet Gramm-Rudman deficit reduction targets, but only at a price unacceptable to Congress, which must make its own decisions on the budget.

In other budget news, the proposed fiscal 1993 budget includes a sizable increase in EPA budget authority for "multi-media" pollution control activities. Coordination of pollution prevention grants, money for civil and criminal investigations and legal support for enforcement actions are among the activities qualifying for funding under EPA's "multi-media" initiatives.

- **EPA Preparing Draft Issue Paper on Wetlands, Stormwater Regulation.**

In an effort to avert potential conflicts between municipal stormwater pollution control efforts and federal efforts to protect wetlands, EPA hosted a workshop on wetlands and stormwater on Jan. 8-10, 1992, in Clearwater, Fla. According to Diane Fish, Chief of the Strategies and Initiatives Section in EPA's Office of Wetlands, Oceans and Watersheds, EPA is circulating a draft issue paper based on discussions at the workshop and is hoping eventually to issue a guidance document on municipal stormwater pollution prevention and wetlands. The topic was scheduled to be addressed at a March 5-7 workshop in Houston on "Urbanization and the Riverine Environment: A Balancing of Values." EPA may publish a final issue paper by June. For more information, and to be included on an EPA mailing list for copies of the final issue paper, call EPA's Wetlands Hotline at (800) 832-7828. ■

Small Cities Exempted From Most Permitting

Small municipalities of less than 100,000 in population are exempted from most "industrial" storm-water permitting requirements—at least until October—under the omnibus federal transportation bill enacted into law last year (see *Bulletin*, January 1992, p. 6).

Section 1068 of the new law, the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240), states that prior to Oct. 1, 1992, smaller municipalities may be judged to be engaged in "industrial" activities for stormwater permitting purposes only if they operate airports, utility generating plants or unpermitted sanitary landfills.

The United States Environmental Protection Agency's (EPA's) Nov. 16, 1990, stormwater permitting regulations suggested that small municipalities must obtain stormwater permits for such "industrial" facilities as sewage treatment plants, school bus maintenance yards and police, fire, and highway construction vehicle maintenance and repair facilities.

Congress, however, has exempted these facilities from permitting until at least Oct. 1, 1992. A memorandum sent by EPA's stormwater section chief William Swietlik to the National Association of Towns and Townships (NATaT) indicates that EPA intends to exempt most municipal transportation facilities indefinitely, so long as they are "auxiliary" facilities to municipal agencies primarily engaged in non-regulated activities.

Congress's action and EPA's memo are explained in greater detail in the January/February 1992 issue of the association newsletter, *NATaT's Reporter*. ■

Conferences and Seminars

Offered by University of Madison-Madison/Extension, Department of Engineering Professional Development, College of Engineering, Engineering Registration, The Madison Center, 702 Langdon St., Madison, Wis. 53706; (800) 462-0876; fax: (608) 263-3160.

- *Using Effluent Toxicity Identification Evaluations: An Advanced Course Focusing on the Technical Details of Acute and Chronic Procedures.* April 30-May 1, Berkeley, Calif. Tuition: \$695.

Offered by Government Institutes Inc., 4 Research Place, Suite 200, Rockville, Md. 29850; (301) 921-2300; fax (301) 921-0373.

- *Stormwater Discharge Compliance Course.* March 19-20, Arlington, Va. Tuition: \$895.

- *The Clean Water Act Compliance Course.* March 17-18, Arlington, Va. Tuition: \$895.

- *Environmental Laws & Regulations: Compliance Course.* March 17-18, Boston, Mass.; April 7-8, San Francisco, Calif.; May 12-13, Arlington, Va. Tuition: \$895.

Offered by Executive Enterprises Inc., 22 West 21st St., New York, N.Y. 10010-6904; (800) 831-8333; fax (212) 645-8689.

- *NPDES Permitting: How to Apply For and Negotiate the Permit.* April 27-28, Washington, D.C.; May 21-22, Chicago, Ill. Tuition: \$995.



Stormwater Permit Manual

New!

Bulletin

30-day
Free Trial

Yes! I want the all-new *STORMWATER PERMIT MANUAL* to help my company survive—and master—the new wave of stormwater regulations. Enter my no-risk subscription with this understanding: I'll put the *Manual* to work for 30 days. If it doesn't measure up, I'll return it and owe nothing. I understand my subscription includes 12 monthly updates to the *Manual* and the *Bulletin*. I will be billed annually until I decide to cancel.

COMPLETE AND MAIL TO:
Thompson Publishing Group
1725 N. Salisbury Blvd.
Salisbury, MD 21801-0330

999996

NAME/TITLE _____

COMPANY _____

STREET ADDRESS _____

CITY/STATE/ZIP _____

TELEPHONE (____) _____

SIGNATURE _____

Payment enclosed. (\$398)

Bill me. (\$398 plus \$5.50 postage and handling)

CALL US TOLL-FREE AT (800) 424-2959