

Ohio EPA Enforcement of Municipal Storm Water Permits

by Joseph R. Durham



In 1987, Congress amended the Clean Water Act to require the U.S. EPA to establish phased National Pollutant Discharge Elimination System (NPDES) requirements for storm water discharges. In 1990, U.S. EPA published its Phase I regulations including permit application requirements and deadlines for certain categories of storm water discharges associated with industrial activity, and discharges from municipal separate storm sewer systems (MS4s). Nine years later, U.S. EPA published its Phase II regulations creating requirements for MS4s serving lesser populated areas. The Ohio EPA is responsible for implementing the federal storm water program.

Large municipalities with separate storm sewer systems serving populations greater than 250,000 and medium municipalities with a service population between 100,000 and 250,000, had to develop storm water management programs (SWMP) and apply for NPDES permits by November 16, 1992, and May 17, 1993, respectively. The Phase II regulations required small MS4s to apply for an NPDES permit by March 10, 2003. While many large municipalities (Columbus, Dayton and Toledo) have individual MS4 permits, approximately 290 Ohio municipalities, counties, townships and villages are covered under the MS4 General Storm Water permit (OHQ000002) issued by Ohio EPA on January 30, 2009.

In accordance with Part III of the General Permit, SWMPs are required to include Minimum Control Measures including public education and outreach, public participation, construction site runoff control, post construction site runoff control, pollution prevention and good housekeeping, and illicit discharge detection and elimination (IDDE). An illicit discharge is any discharge to a storm sewer that is not entirely composed of storm water, except for discharges authorized by another NPDES permit.

While, as you can see, this regulatory program has been slow to proceed, recent activities by Ohio EPA suggest increased enforcement on the storm water front. Recent audits of the MS4 permits by the Ohio EPA have referenced non-compliance with the illicit discharge detection and elimination component, including: failure to enact an ordinance or resolution to prohibit illicit discharges into a municipal separate storm sewer system; multiple household sewage treatment systems identified as being illicit discharges; and failure to implement a program to locate and eliminate illicit discharges.

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In October, Ohio EPA issued Notices of Violations to various MS4 permittees addressing violations and requiring:

- SWMP to include an official enforcement escalation plan or procedure describing action to be taken for violations and define roles for enforcement personnel;
- revisions to ordinances addressing illegal discharge to incorporate MS4;
- permittee to address public education and pollution prevention/good housekeeping at municipal facilities;
- city to enforce illicit discharge ordinance and review investigative procedures to ensure that all information about potential sources of illicit discharges and all evidence of potential discharges are documented; and
- city to enact the required illicit discharge ordinance and enforcement program within a prescribed time to avoid a referral for enforcement.

MS4 permit-related enforcement of this sort can be expected to increase as the Ohio EPA develops inspection histories with permittees and permit renewals come due. Chronic non-compliance may eventually result in more aggressive enforcement similar to what was seen when the State began targeting the separation of combined sewers by local governmental units. Additionally, one of U.S. EPA's recently published National Enforcement Initiatives for FY 2014-2016 "focuses on reducing discharges (of raw sewage and contaminated stormwater) from ... MS4s."

Eastman & Smith is assisting communities in addressing the IDDE required by the NPDES MS4 permits. In conjunction with Klema's Environmental Consultants, Eastman & Smith's Joseph R. Durham recently conducted a two-day Environmental Enforcement Workshop in Bowling Green, Ohio, sponsored by the Northwestern Water and Sewer District. Many communities in Wood County and surrounding areas participated and representatives received training in Ohio environmental laws and investigative techniques used to detect, investigate and remediate illicit discharges to storm drains. Thomas E. Stalter, P.E., Manager of Engineering for the Northwestern Water and Sewer District attended the workshop and said:

This workshop was very informative and relevant given the challenges our communities face complying with EPA's MS4 program. The real life examples and review of the laws regarding pollution and illicit discharges enlightened our view of the field of environmental investigation and prosecution. As a professional engineer, I found the theory and hands-on approach to work very well in explaining a complex and confusing process. The presenting team worked well together and did a great job presenting the material and responding to questions.

Eastman & Smith's attorneys routinely assist clients (including public entities, industry and clients involved with construction projects) with storm water permitting issues, compliance, and enforcement. In upcoming issues of *Legal Briefs*, articles will highlight regulatory developments with industrial-related storm water discharges and construction activities.

Should you have any questions regarding municipal storm water permits and/or regulations, please contact [Joseph R. Durham](mailto:Joseph.R.Durham) or visit our web site www.eastmansmith.com.

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