



# Enforcement Alert

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## EPA Finding Many Industrial Dischargers Failing to Obtain Storm Water Permits as Law Requires

The leading cause of impairment for nearly 40 percent of surveyed U.S. water bodies that do not meet water quality standards is polluted storm water runoff, according to a recent *National Water Quality Report to Congress*. The report further shows that

### *Polluted Storm Water Contains High Levels of Contaminants, Resulting in Threats to Public Health, Environment*

polluted storm water discharges affect 13 percent of impaired rivers, 21 percent of impaired lakes and 45 percent of impaired estuaries (National Water Quality Inventory, 1996, <http://www.epa.gov/305b/>).



*EPA is uncovering numerous storm water violations and is taking enforcement action to return violators to compliance (U.S. EPA photograph).*

Storm water runoff also is one of the leading causes of beach closings. A recent survey of coastal and Great Lakes communities found that more than 1,500 beach closings and advisories were attributable to storm water runoff in 1998 (EPA and Natural Resources Defense Council data, 1998).

Storm water discharges from industrial activities impact the physical, biological and chemical health of a receiving water. Pollutants commonly found in storm water runoff may contain high levels of contaminants such as sediment, suspended solids, nutrients (phosphorous and nitrogen), heavy metals and other toxic pollutants and pathogens.

EPA is concerned that many industrial activities may be discharging storm water illegally, and, therefore, placing public health and the environment at risk. As such, the Agency has been edu-

cating industry on storm water compliance requirements and taking enforcement actions to bring violators into compliance.

In this issue of *Enforcement Alert*, EPA addresses:

- ▶ The requirements of the National Pollutant Discharge Elimination System (NPDES) storm water program;
- ▶ Federal enforcement priorities for dealing with storm water discharge noncompliance;
- ▶ EPA Regions III and VI enforcement efforts; and
- ▶ Common compliance problems at construction sites.

### About

#### Enforcement Alert

*Enforcement Alert* is published periodically by the Office of Regulatory Enforcement to inform and educate the public and regulated community of important environmental enforcement issues, recent trends and significant enforcement actions.

This information should help the regulated community anticipate and prevent violations of federal environmental law that could otherwise lead to enforcement action. Reproduction and wide dissemination of this publication are encouraged.

For information on how you can receive this publication electronically, contact the editor.

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## NPDES Storm Water Program

Mandated by Congress under Section 402 of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) storm water program is a comprehensive two-phased approach to addressing storm water discharges.

**Phase I**, currently being implemented, requires permits for municipal separate storm sewer systems (MS4s) serving large- and medium-sized communities (those with more than 100,000 inhabitants), and for storm water discharges associated with industrial activity (including from construction activity disturbing at least five acres of land). Permits for Phase I sources typically require operators to develop Storm Water Pollution Prevention Plans (SWPPP) that would minimize the discharge of pollutants in storm water. A SWPPP identifies the potential sources of pollutants in storm water discharges from a site, and includes measures that will be implemented to minimize the pollutant discharges, such as spill prevention and response, proper storage of waste fluids in containers, and employee training on environmental requirements.

Regulations addressing **Phase II** of the Storm Water Program were published in the *Federal Register* Dec. 8, 1999. The Phase II regulations address discharges from certain small MS4s and construction sites equal to or greater than one acre and less than five acres. A discharge of storm water from construction activity disturbing less than one acre also is included if it is part of a larger plan of development or sale whose total land disturbing activities total one acre or greater (or if designated by the NPDES permitting authority).

EPA defines storm water discharge

associated with industrial activity as “the discharge from any conveyance...used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” (40 CFR 122.26(b)(14)). This means any storm water coming in contact with any aspect of a defined industrial activity, and discharged through a discernible outfall, must be in compliance with the current NPDES storm water permitting program. Discharges of storm water from construction activity, including grading, clearing, excavation, or other earth moving process that results in the disturbance of land may require an NPDES storm water permit for construction under the NPDES program, depending on its size and whether it has been designated.

As with most NPDES programs, storm water permits may be issued through EPA Regions, or an authorized State/Territory NPDES permitting authority. State or territory permit standards typically resemble the relevant federal general permit.

## Agency Eyeing Illegal Storm water Discharges

EPA is currently focusing enforcement efforts on unpermitted discharges of storm water associated with industrial activities. The requirement to obtain and operate in com-

pliance with an NPDES permit has been in effect for more than seven years for these types of activities.

EPA continues to educate industry about storm water compliance requirements. Beginning last year, however, EPA began focusing on violators who fail to apply for and obtain storm water discharge permits. In addition to other enforcement remedies, EPA may seek civil penalties for noncompliance of up to \$27,500 per day for each day of violation.

The EPA's enforcement priorities include targeting:

- Industrial facilities discharging storm water without a permit;
- Large construction sites dis-

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## California Agency Agrees to Prevent Storm Water Runoff Pollution in San Diego

**San Francisco**—In one of the first civil judicial cases for violations of the storm water requirements, EPA, along with the San Diego Baykeeper and the Natural Resources Defense Council (NRDC), reached a settlement with the California Department of Transportation (Caltrans).

In addition to paying a \$430,000 civil penalty, Caltrans agreed to protect San Diego County's streams, wetlands, and coastline from polluted storm water runoff flowing from its highways and maintenance facilities. Under the settlement, Caltrans agreed to:

- Improve its existing storm water management system by conducting better storm drain maintenance, pilot testing retrofits from existing highways, and improving practices at maintenance yards;
- Improve soil stabilization and erosion control;
- Enhance environmental design features of future road projects; and
- Provide pollution prevention training for its employees.

**EPA Region 9 Press Release**

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charging storm water without a permit; and

- Industrial or construction storm water dischargers that have acquired a permit, but are not complying with the requirements of their permit.

EPA is encouraging regional offices and states to target compliance assessment and enforcement efforts in watersheds with water bodies of special concern. As a result of this renewed emphasis, EPA is uncovering numerous violations and taking enforcement action to promote compliance and deter future violations.

### EPA Regions Scrutinize Scrap/Auto Salvage Yards

**Region III:** EPA Region III has developed a comprehensive strategy for storm water enforcement starting with the scrap/auto salvage industry in im-



*EPA's Mid-Atlantic Region has recently cited 81 scrap and auto facilities for storm water violations (U.S. EPA photograph).*

paired watersheds located in environmental justice areas.

Last year the Region cited 81 facilities throughout the mid-Atlantic region (Virginia, Maryland, D.C., West Virginia and Pennsylvania) for storm water violations.

In a targeted effort to protect the Anacostia and Potomac watershed from polluted storm water runoff, EPA cited 27 facilities in the Washington, D.C., area for violating the Clean Water Act. Facilities included salvage yards, mari-

nas, tour companies and trucking and transportation operations. All citations alleged that these facilities allowed polluted storm water to discharge into storm sewers, which drain into waterways that feed the Anacostia River.

EPA inspections revealed that these facilities were discharging storm water associated with industrial activity without an NPDES permit and failing to supply information required by regulations that implement the CWA storm water requirements (40 CFR 122.26(c)). EPA has ordered all companies to correct these violations. Many of these facilities also discharged used motor oil in harmful quantities.

Additional storm water enforce-

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### Common Compliance Problems at Construction Sites:

- Facility does not have an NPDES storm water permit, Storm Water Pollution Prevention Plan (SWPPP) and proper Best Management Practices such as erosion controls.
- Facility has an erosion control plan but not a SWPPP.
- Facility does not have qualified personnel properly performing and documenting their bi-weekly inspections (monthly in areas receiving less than 20 inches of rainfall annually) and inspections after 0.5" or greater rainfall.
- Facility has not posted construction signs at the entrance to the facility in an area accessible to the public. All "operators" need separate signs to post (e.g. developer and general contractor). Home builders may post signs in front of their lots or in the front window of a structure if built.
- Common problems with the SWPPP include not having upland controls; and not having detention ponds for common drainage areas of 10 or more acres. Both of these requirements can be replaced by equivalent or superior controls if they are so designated in the SWPPP. If a facility cannot have either of these practices implemented, the SWPPP typically denote that the facility is not implementing these practices and should specify the alternative controls that are at least as effective.
- Erosion is the primary pollutant of concern at a construction site. However, other pollutants are frequently omitted from SWPPPs. SWPPPs are typically required to address potential pollutant sources such as diesel tanks, solvents, paints, concrete hardeners, hydraulic oil, etc.
- Off-site vehicle tracking is a problem at many sites. A stabilized construction entrance and/or alternative methods of cleaning mud from vehicles exiting the disturbed areas should be a top priority.



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ment activities in West Virginia and Virginia resulted in enforcement actions against 15 salvage yards for failure to obtain the required NPDES permit or not abiding by a storm water pollution prevention plan that is required in their permit.

**Region 6:** In June 1999, Region 6 sent out settlement offers to more than 2,000 auto salvage yards in Texas and New Mexico for alleged violations of CWA storm water discharges, offering to limit penalties to \$1,000 plus \$5 per

vehicle in exchange for the commitment to return to compliance. These offers are only offers to settle and facilities are not obligated to reply. To date only one facility has refused to accept the region's offer and was ordered to comply. This enforcement tool has encouraged large numbers of non-compliant businesses to come into compliance more expeditiously than the normal enforcement process allows, and results in swifter environmental protection.

Region 6 maintains a storm water compliance assistance website that includes regulations, permit language, and

guidance documents (<http://www.epa.gov/region6/sw>).

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## Industrial Dischargers May be Subject to Wetlands Permit Rules

In addition to the storm water requirements under Section 402, persons who discharge or propose to discharge may also be covered by Section 404 of the Clean Water Act.

Section 404 prohibits discharges of dredged or fill material to wetlands and other waters of the United States unless authorized by a Section 404 permit issued by the Army Corps of Engineers or by a state approved to administer the permit program. The Section 404 permit review process is aimed at avoiding unacceptable adverse environmental impacts to wetlands, and to the extent adverse impacts cannot be avoided, to ensure they are appropriately minimized or compensated. For example, persons engaging in construction activities that disturb five acres or more are covered under the Phase I Storm water requirements, and, depending on where the construction occurs, may also be subject to the Section 404 requirements. EPA is currently investigating a number of sites where ditching and draining activities may have violated both sections of the Clean Water Act.

### Useful Compliance Assistance Resources

**Office of Regulatory Enforcement:**  
<http://www.epa.gov/oeca/ore>

**NPDES Storm Water Program:**  
<http://www.epa.gov/owm/sw>

**National Response Center:**  
<http://www.nrc.uscg.mil/>

**EPA's Storm Water Phase II Final Rule Hotline:** (202) 260-5816 and  
<http://www.sw@epa.gov>

**Audit Policy Information:**  
<http://www.epa.gov/oeca/ore/apolguid.html>

**Compliance Assistance Centers:**  
<http://www.epa.gov/oeca/mfcac.html>

**Small Business Gateway:**  
[http://www.epa.gov/smallbusiness/major\\_environmental\\_laws.htm](http://www.epa.gov/smallbusiness/major_environmental_laws.htm)

