



Enforcement Alert

Volume 5, Number 4

Office of Regulatory Enforcement

April 2002

EPA Addresses Pollutants in Storm Water Through Systematic Enforcement Strategy

Polluted storm water runoff remains a principal cause of impaired water quality. Despite the U.S. EPA's long-term efforts to educate industries on the Clean Water Act's storm water compliance requirements, illegal storm water discharges are still occurring and threatening public health and the environment.

EPA enforcement actions against violators of storm water requirements are

sending a strong message that storm water violations must be corrected and future violations prevented through appropriate controls.

In June 2001, **Amtrak**, the nation's largest passenger rail operator, reached a settlement with the federal government for failing to develop and implement appropriate storm water controls and for other environmental violations at nine Amtrak sites in New England. The company

agreed to establish a company-wide environmental management system (valued at \$11 million), pay a \$500,000 penalty and spend \$900,000 on environmental projects.

In another settlement in June 2001 with EPA and the Justice Department, **Wal-Mart Stores Inc.** agreed to a \$4.5 million effort to improve the



Polluted storm water runoff is a significant contributor to water quality impairment. (U.S. EPA photo).

retailer's compliance with storm water requirements at its construction sites nationwide. On average, Wal-Mart constructs over 100 new sites annually. The government alleged that the company failed to comply with storm water requirements and illegally discharged pollutants from 17 construction sites in Texas, New Mexico, Oklahoma and Massachusetts. The environmental controls required by this settlement will significantly reduce discharges of harmful sediment-laden storm water to streams and rivers across the country. Wal-Mart also agreed to pay a \$1 million civil penalty.

In addition to these recent national



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 newsletter electronically, send an email to the editor.

Editor: Virginia Bueno
bueno.virginia@epa.gov

In this issue of *Enforcement Alert:*

- Federal storm water requirements
- Agency's strategy to enforce storm water requirements
- The Anacostia River Watershed storm water enforcement and other EPA enforcement efforts



settlements involving storm water violations, EPA has successfully used risk-based approaches focused on watershed-specific compliance problems. These approaches include partnering with the public and private sectors to address impaired watersheds, providing compliance assistance, identifying violators and taking necessary enforcement action, and working with states to promote enforcement strategies and sharing information on innovative enforcement approaches. Watershed-based enforcement strategies are being used successfully in efforts involving the Anacostia River in Washington, D.C. In addition, EPA Region 1 is aggressively working with communities along the Charles River in Massachusetts to systematically identify and remove illegal sewer connections to storm drains.

Industrial Activities Regulated Under NPDES Storm Water Program

The Clean Water Act prohibits the discharge of “any pollutant” to waters of the United States from a point source unless it is authorized by a permit. This includes discharges of storm water runoff from industrial activities.

In 1990, EPA issued Phase I regulations requiring 11 categories of “storm water dischargers associated with industrial activity,” that discharge storm water to a municipal separate storm

sewer system (MS4) or directly to waters of the United States to obtain authorization to discharge storm water under a storm water permit. EPA’s Phase I storm water regulations consider construction activities resulting in the disturbance of at least five acres of total land area to be an industrial activity requiring coverage under a storm water

permit.

The 1990 regulations establish what is commonly referred to as Phase I of the storm water program. In addition, large and medium MS4s (those serving more than 100,000 people) are also subject to Phase I regulations, and are required to submit comprehensive permit applications and develop and implement a Storm Water Management Program (SWMP).

Owners and operators are responsible for determining whether their facility fits into one of the 11 categories potentially subject to regulation. The 11 categories of industrial activities can be found at <http://www.epa.gov/npdes/pubs/list.pdf>. If an industrial activity is



Impact of Polluted Storm Water Runoff

Storm water runoff is a major cause of water quality impairment. Storm water runoff can carry high levels of pollutants like mud and sediment, oil and grease, suspended solids, nutrients, heavy metals, pathogens, coliform bacteria, toxins, and trash into sewer systems and ultimately into our streams, rivers, lakes, estuaries, wetlands and oceans resulting in an unhealthy environment for aquatic organisms, wildlife and humans (U.S. EPA, 1992, *Environmental Impacts of Storm Water Discharges: A National Profile*).

According to the *Report to Congress on The Phase I Storm Water Regulations*, February 2000, urban storm water runoff contributes to 13 percent of impaired rivers and streams, 21 percent of impaired lakes, 4 percent of the impaired Great Lakes Shoreline, 55 percent of impaired ocean shorelines, and 46 percent of impaired estuaries. Storm water runoff not only poses a threat to ecological health (e.g., shellfish bed closures, elimination of habitat, stream bank erosion, flooding, channelization) but can also substantially affect human health. In 1998, more than 1,500 beach closings and advisories were associated with storm water runoff (Natural Resource Defense Council, 1999, *A Guide to Water Quality at Vacation Beaches*). A study conducted in Santa Monica Bay, Calif., concluded that there is a 57 percent higher rate of illness in swimmers who swim adjacent to storm drains than in swimmers who swim more than 400 yards away from storm drains. In addition, the study documented a relationship between gastrointestinal illness in swimmers and water quality (Haile, R.W., et al 1996, *An Epidemiological Study of Possible Adverse Health Effects of Swimming in Santa Monica Bay*).

What is a Watershed?

Watersheds are nature’s boundaries. They are the areas that drain to water bodies, including lakes, rivers, estuaries, wetlands, streams, and the surrounding landscape. Ground water recharge areas are also considered. *Surf Your Watershed*, <http://www.epa.gov/surf>, is an online resource that allows you to enter your zip code and find your watershed, certain programs that are currently on-going in your watershed, as well as water quality and pollution information for that area.



subject to Phase I of the storm water program, the owner or operator must obtain storm water permit coverage from the appropriate federal or state authority. As with most NPDES programs, storm water permits may be issued through EPA Regions, or an authorized state/territory NPDES permitting authority. State/Territory permit standards must be at least as stringent as the relevant federal permit standards.

Typically, permit coverage is obtained by submitting a Notice of Intent (NOI). This NOI Form, NPDES Form 3510-6, can be found at <http://www.epa.gov/npdes/pubs/msgp-noi.pdf>. However, before submitting an NOI, a Storm Water Pollution Prevention Plan (SWPPP) must be prepared. A SWPPP identifies structural and non-structural controls that will be used at the industrial facility or construction site to minimize the discharge of pollutants, or erosion and discharges

of sediment to receiving waters. The controls are typically low-cost and low-technology, like good housekeeping, preventive maintenance, spill prevention and response, employee training and proper material handling. Model SWPPP's can be found at <http://www.epa.gov/reg3wapd/stormwater/>.

EPA's Phase II regulations, which become effective in 2003, require NPDES permit coverage for storm water discharges from certain regulated small municipal separate storm sewer systems (MS4's) and construction activity disturbing between one and five acres of land (e.g., small construction activities). Additional information on Phase II can be found at http://cfpub.epa.gov/npdes/stormwater/swphase2.cfm?program_id=6.

Storm Water Enforcement Strategy

The requirements for Phase I

NPDES storm water permit application and coverage have been in effect for more than eight years, and EPA and states have focused on educating industry about storm water compliance requirements. For example, compliance assistance efforts include: numerous training opportunities, storm water websites, public service announcements, guidance documents, fact sheets and outreach to small businesses. Nonetheless, many industrial dischargers are still discharging storm water illegally, threatening the environment and public health.

In recognition of the low compliance rate for industrial storm water dischargers, EPA is beginning to emphasize enforcement as outlined in its *2000 Storm Water Enforcement Strategy*, a five-step watershed and risk-based targeting approach for enforcing storm water requirements (see <http://www.epa.gov/oeca/ore/water/>



A Public Risk Diminished



Before: EPA inspectors discovered this non-compliant auto salvage yard situated in the Anacostia River Watershed strewn with oily engine parts, tires, junked cars stored on oil-saturated dirt. The site did not have a NPDES permit nor stormwater pollution prevention plans or controls (U.S. EPA photo).



After: Same auto salvage yard. The oil saturated dirt was scraped and recovered, and the yard cleaned up. In addition to paying a civil penalty, the owners applied for a NPDES permit and prepared a storm water pollution prevention plan and implemented appropriate controls (U.S. EPA photo).



2000str.html). Intensive compliance assistance will continue. The long-term goal of the *2000 Strategy* is full compliance for the regulated industrial community; the short-term goal is full compliance by those storm water dischargers that pose a significant risk to a particular impaired watershed or geographic area (e.g., risk-based targeting). Consistent with the *2000 Strategy*, EPA and states are escalating enforcement against storm water dischargers that continue to discharge storm water without a permit via integrated “sweeps” across impaired watersheds, and against industrial sectors like large construction sites that significantly impact water quality.

The major pollutant associated with construction activity is sediment. A 1998 report to Congress indicates that sediment is the largest cause of water quality impairment in rivers. In 1999, less than one-third of the 62,000 construction starts applied for permit coverage. Of the sites that applied for permit coverage, noncompliance with permit requirements remains significant.

An Enforcement Case Study: The Anacostia River Watershed

EPA's *2000 Storm Water Enforcement Strategy* is currently being implemented in the Anacostia River watershed by Region III and EPA Headquarters. In addition, the Washington D.C. Metropolitan Environmental Crimes Unit has provided significant support. The strategy is outlined here:

Step 1: Identify an Impaired Watershed: The EPA targeted the Anacostia River, an impaired watershed with high human health and ecological risk factors like toxic contaminated sediments and significant loss of natural habitat.

The Anacostia River receives significant urban storm water runoff which contributes to contaminated sediments, high fecal coliform counts and low dissolved oxygen. All of these conditions contribute to the watershed's poor health and inability to meet water quality standards for fishable and swimmable uses. It is considered a priority watershed by the Chesapeake Executive Council, the Chesapeake Bay Commission, and numerous non-profit environmental groups.

Step 2 and 3: Identify Non-filers and Non-compliers: Various information sources are used to establish lists of non-filers and non-compliers. These include: permit application databases (federal notice of intent form and D.C. building permit databases); citizen complaints; federal (U.S. Park Service, Department of Agriculture, and the Arboreteum) and state governments (Md., Washington D.C., Va.), resource trustees and police units (Washington D.C. Metropolitan Environmental Crimes Unit). Over 1,000 compliance assistance packages were sent out to non-filers and noncompliers identified above.

Step 4: Prioritize: The industrial non-filers and non-compliers are prioritized according to risk to the watershed, EPA Region III's priority industrial sectors (e.g., auto salvage yards and marinas), sectors with potential for highly contaminated runoff (e.g., transportation facilities), and industries with contaminants exposed to rainfall (e.g., large construction sites and concrete/asphalt facilities).

Step 5: Investigate and Take Appropriate Enforcement Action: Two hundred inspections have been conducted, reviewed and ranked according to EPA non-compliance scoring criteria. Enforcement actions, like administrative compliance orders, administrative penalty orders and civil and criminal judicial cases, have been initiated

against 27 “high scorers.” All 27 sites where enforcement actions were taken have been reinspected and EPA is currently evaluating the inspection reports to determine where and to what extent enforcement needs to be escalated. Fifteen sites were in compliance and require no further enforcement action.

Currently, EPA is implementing the second phase of the *Anacostia Strategy*. The Agency will continue the tasks initiated under the first phase but will add industrial priority sectors to include concrete and asphalt facilities and construction sites. Inspections of selected sites are planned for the near future. In addition, EPA is looking for better ways to quickly address pollution sources, and enhance stakeholder involvement in continued environmental assessment of the watershed.

Implementation of the *Anacostia Strategy* has been very successful, demonstrating that risk-based targeting can help an EPA Region or a state leverage limited resources to effectively focus intensive enforcement efforts against numerous and varied polluters in a watershed burdened with severe environmental threats. To illustrate, in the Anacostia watershed, with very limited resources, EPA has sent out more than 1,000 compliance assistance packages, conducted more than 200 inspections, issued 23 administrative orders and three expedited settlement offers, and referred one civil judicial action.

Other EPA Regional Enforcement Activities

Region IV (Ga., Fla., Ala., N.C., S.C., Tenn., Ky.): Region IV's enforcement program also closely follows the basic principles outlined in the *2000 Strategy*. Region IV has conducted enforcement sweeps in a targeted watershed against priority sectors with po-





tential for highly contaminated runoff like large construction sites and ship-building/repair facilities. In addition, the Region has worked very hard to integrate all available authorities into its storm water enforcement program to include: working with states on inspections and inspector training; working with EPA Headquarters by providing support to the environmental audit program resulting in the submission of eight environmental audit reports; and, working with several states on joint enforcement sweeps.

Region IV's enforcement approach has been very successful. During the last two years, the Region has issued administrative penalty orders for construction sites operating without a storm water permit and various other industrial discharge violations, conducted numerous joint state and EPA inspections, and issued notices of violation, information request letters, and administrative orders to industrial facilities that had, among other things, failed to conduct required storm water monitoring.

Region VI (Texas, Miss., La., Okla., Ark.): EPA's storm water team in Region VI has effectively integrated storm water enforcement efforts in the State of Texas by working extensively with stakeholders, like the cities of Dallas and Fort Worth and the Dallas chapter of the Association of General Contractors (AGC) to heighten awareness of storm water requirements. Region VI, the AGC, and the city of Dallas coordinate workshops and seminars stressing the importance of compliance with storm water regulations. The partnership has increased awareness of storm water requirements. For example, awareness of storm water requirements has been improved in recent years through the efforts of all stakeholders.

Region VI also has worked extensively with the city of Dallas storm

water and inspection and enforcement team to determine which facilities require enforcement at the federal level. The city of Dallas submits a quarterly list of noncompliant industries and facilities to EPA and both work together to determine where to escalate enforcement. In addition, Region VI routinely enforces against companies that refuse to comply with the city of Dallas' municipal separate storm sewer regulations. According to Everett Spencer, the storm water coordinator in Region VI, "Federal actions against [storm water] non-compliers is a given ... operating without a required permit deserves an automatic enforcement response ... "

Region IX (Ariz., Calif., Hawaii, Nev., Am. Samoa, Guam): The Region is heavily involved in storm water enforcement activities and program development. Currently, the Region is conducting comprehensive environmental audits of MS4s located in California (audits are planned in Nevada and Arizona as well). In addition, the Region is gearing up to inspect hundreds of auto and metal recyclers in Southern California, a Regional priority sector, and is working with nonprofit organizations, industry and the State of California to develop compliance assistance and outreach materials for auto recyclers.

Region IX is at the forefront in addressing violations of MS4's. The Region brought one of the first civil judicial MS4 cases in the nation against California Department of Transportation (CALTRANS) for discharge of storm water without a permit and for violations of Construction General Permit conditions at various CALTRANS construction sites in San Diego county. The case was settled in March 1998, resulting in a civil penalty of \$430,000, a supplemental environmental project valued at \$750,000, and substantial injunctive relief.

In addition, Region IX has issued

several administrative penalty orders, primarily for violations of construction storm water requirements, and has assessed \$423,000 in penalties. Finally, the Region has issued numerous administrative orders against all different types of storm water violators and conducted countless inspections.

For more information, contact Lauren V. Kabler, EPA's Water Enforcement Division, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, at (202) 564-4052; Email: kabler.lauren@epa.gov.

For compliance assistance information, contact Gloria Lowe, Office of Compliance, at (202) 564-2181; Email: lowe.gloria@epa.gov.

Useful Compliance Assistance Resources

Office of Enforcement and Compliance Assurance:
<http://www.epa.gov/compliance>

Water Compliance Resources Compliance and Enforcement:
<http://www.epa.gov/oeca/main/compasst/water.html>

NPDES Storm Water Program:
<http://www.epa.gov/npdes/stormwater>

National Compliance Assistance Clearinghouse:
<http://cfpub.epa.gov/clearinghouse/>

Compliance Assistance Centers:
<http://www.assistancecenters.net>

Small Business Gateway:
<http://www.epa.gov/smallbusiness>

Storm Water Resource Locator:
<http://www.envcap.org/swrl>

Enforcement Alert: "EPA Finding Many Industrial Dischargers Failing to Obtain Storm Water Permits as Law Requires":
<http://www.epa.gov/Compliance/resources/newsletters/civil/enfalert/stormwater.pdf>



United States
Environmental Protection Agency
Office of Regulatory Enforcement
(2248A)
Washington, D.C. 20460

Official Business

Penalty for Private Use \$300

'Enforcement Alert' newsletter

Get News and Information Electronically

The Office of Enforcement and Compliance Assurance now offers an email, subscription-based information service called "OCORELINK." Subscribers to this electronic service (known as a "listserv") will receive periodic news and information about compliance products and trends designed to help the regulated community meet its compliance requirements. You'll also receive important information on enforcement issues, recent trends and significant enforcement actions, and will be notified when issues of *Enforcement Alert* has been posted on the web.

How to Subscribe:

1. Send email to the listserv@unixmail.rtpnc.epa.gov.
2. Leave the subject line blank, or put a period in the subject area.
3. Type the following in the body of the message
subscribe ocorelink Your First Name Your Last Name
4. Send the email with no further text in the body of the letter.

EPA Compliance Incentive Policies

EPA has adopted two policies designed to encourage greater compliance with environmental laws and regulations, including the General Duty Clause. The "Incentives for Self-Policing, Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy) and the "Policy on Compliance Incentives for Small Businesses" (Small Business Policy), provide incentives to conduct environmental audits by substantially reducing penalties for entities that voluntarily discover, disclose, and expeditiously correct violations of environmental law. More information about the Audit Policy and Small Business Policy can be obtained at <http://www.epa.gov/oeca/ore/apolguid.html> and <http://www.epa.gov/oeca/smbusi.html>, respectively.

