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USEPA enforcement efforts reinforce need to comply with stormwater discharge regulations

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Efforts by the U.S. Environmental Protection Agency (USEPA) to control pollutant discharge to surface waters via stormwater runoff have been in place since the 1990s. However, recent enforcement actions taken by the agency throughout USEPA Region I reinforce the need to ensure proper permitting of such discharges and development of proper on-site control measures, planning documents, and compliance assurance procedures and reports. Heavy fines assessed by the agency during 2012 for non-compliance with stormwater discharge control regulations attest to the USEPA's continuing commitment to seek out and control these discharges.

As early as 1987, the U.S. Congress amended the Federal Clean Water Act (via Section 404 of the Water Quality Act of 1987) to direct USEPA to develop a phased approach to stormwater discharge control. Initial regulations were forthcoming in 1990 for a broad swath of facilities involved in "industrial" activity, ranging from air transportation facilities to salvage yards. Most of the facilities subject to the regulations are now covered by the Stormwater Multi-Sector General Permit (MSGP) that became effective in September 2008. The 2008 MSGP revised the 2005 version of the general permit and clarified requirements for development and monitoring of stormwater discharge control structures, Stormwater Pollution Prevention Plans (SWPPP), and enhanced electronic information and data submittal. To achieve permit coverage for stormwater discharges under the MSGP, a facility must install controls adequate to minimize stormwater discharge of pollutants, develop an SWPPP, and submit a Notice of Intent (NOI). Continued compliance requires submission of annual compliance reports. NOI for existing facilities, necessary to obtain coverage under the 2008 MSGP, were due by January 5, 2009. NOI's for new facilities are due 30 to 60 days prior to the planned discharge, depending on specific conditions. Information on NOI submission requirements can be found on USEPA's website.

USEPA continues to engage in broad spectrum oversight of stormwater discharges both in the municipal (i.e., combined sewer discharges and overflows) and private sectors. For example, in August 2012, the U.S. on behalf of the USEPA negotiated a Consent Decree with the City of Boston's Water and Sewer Commission mandating implementation of a comprehensive and costly program by the city to address stormwater and associated pollutant discharges in storm drains. It is significant that this enforcement action came about as a result of a citizen suit under the federal Clean Water Act brought by the Conservation Law Foundation, and subsequently adopted and pursued by the USEPA. It appears likely that the success of this tactic will energize other nonprofit environmental organizations to bring similar actions against public and private parties. A similar action addressing combined sewer overflows was brought at about the same time against the city of Fitchburg, Mass.

The USEPA has also taken action to ensure compliance at construction sites, another area subject

to stormwater discharge management because of the high likelihood that such discharge, if uncontrolled, can lead to severe and negative short term impacts to receiving water quality. For example, in December 2012, USEPA took enforcement action and assessed a \$24,000 fine against a developer of a seven lot subdivision in the town of Uxbridge, Mass. for failure to obtain a permit for control of stormwater discharges from construction activity and to implement required "best management practices" for runoff control.

Other recent examples of USEPA enforcement action include the July 2012 Consent Decree with Fairhaven Shipyard Companies, Inc., of New Bedford, Mass. regarding unpermitted discharge of vessel cleaning wash water and MSGP non-compliance for failure to properly control and monitor stormwater discharges. Penalties assessed amounted to \$175,000 and, according to USEPA's press release, may have been higher but for considerations related to Fairhaven's ability to pay. In September 2012, USEPA announced a similar enforcement action and penalty against Strategic Materials, Inc.'s recycling facility in Franklin, Mass. for initial failure to prepare the required SWPPP and, following that, for failure to comply with discharge control and monitoring requirements. Later in December 2012, USEPA brought an enforcement action against CSG Holdings, Inc., for operations at its sand and gravel facility in Columbia, N.H. In addition to several other alleged violations, the USEPA found that the facility had directly discharged high solids-containing process wastewater and stormwater and had done so without obtaining any of the necessary permits. Although the USEPA's initial announcement referenced a "possible fine" of \$532,000, the final assessed penalty was reduced to \$150,000 for reasons that are not clear from the available record.

It is too early to say whether this recent pace of enforcement actions by USEPA is indicative of any enhanced effort to target stormwater discharge violations. Nevertheless, the examples above demonstrate that the USEPA remains ready to pursue and enforce against such violations and to assess heavy fines. Unfortunately, compliance with stormwater permitting regulations continues to be classified by some facilities or construction projects as a low priority item, and violations through neglect or inadvertent oversight are not uncommon. Good business practice dictates that facilities subject or potentially subject to these regulations ascertain their current regulatory status, review and update SWPPPs as necessary and appropriate, and ensure compliance with monitoring procedures and annual reporting obligations.

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