“Current” Events in Stormwater

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Clean Water Act – Section 402

All “point” sources discharging “pollutants” into “waters of the U.S.” must obtain an NPDES permit or state permit.
Legislative History

- Before 1987 stormwater was not generally regulated
- Water Quality Act of 1987 required permitting of certain stormwater discharges:
  - Existing permitted facilities
  - Industrial activities
  - Large and medium MS4s
  - Others as determined by permitting authority
    - Residual Designation Authority
Regulatory Authority

EPA issued rules implementing the 1987 Water Quality Act, 40 CFR 122.26

Three types of stormwater discharges were phased in:

- MS4s – large, medium and small (1994)
- Construction projects (1 acre or more)
- Industrial activities

CSOs were subject to traditional NPDES permitting procedures
Maine Delegated NPDES Authority

- Chose to regulate point sources of stormwater for industrial stormwater permits.
- DEP has authority to regulate indirect or non-point sources of stormwater.

38 MRSA § 413(1)

- Chose to focus on management efforts rather than laboratory testing.
CSOs in Maine

- Currently 31 CSO Communities with 145 License Discharge Points – Monitoring Requirements
- Permitted by DEP
  - Nine Minimum Controls - BMPs
  - CSO Master Plan
  - Annual Progress Report – March 1
- $460M+ Invested to Date
- 150M+ to be Invested in Next 5 Years
- Bypass Communities – Bypass of Secondary Treatment
What is an MS4?

- A municipal separate storm sewer system (MS4) is:
  - A conveyance or system of conveyances...owned by a state, city, town, or other public entity that discharges to waters of the U.S. and is:
    - Designed or used for collecting or conveying stormwater
    - Not a combined sewer
    - Not part of a Publically Owned Treatment Works (POTW)
MS4s in Maine

◊ 30 Municipalities Now Subject to Small MS4 Requirements – Urbanized Area
  ▪ 2 Transportation Entities
  ▪ 8 State or Federal Facilities
◊ First General Permit issued in 2003
◊ New General Permit effective July 1, 2013
◊ Stormwater Program Management Plan
  ▪ Six Minimum Control Measures
Industrial Stormwater – General Permit

- Regulated Industrial Activity – 700 facilities plus 700 no exposure facilities
  - First EPA Multi-sector General Permit issued in 1990s; 2005 First Maine IGP
  - Updated Multi-sector General Permit issued in April 2011- Expires April 2016
  - 30 categories of Industrial Facilities by SIC code
Stormwater From Construction Sites

◊ General Permit

◊ Regulated Construction Activity
  • 1 acre or more of ground disturbance
  • NOI – ESC Plan
  • Originally issued in 2003, Reissued in 2006
  • Expired in 2008 but continues in effect
  • Expected reissuance, ???
Other Regulation of Stormwater

Stormwater Management Rules – Chapter 500 – originally issued in 1997

- One (1) acre disturbed area threshold
- Basic Standards – Erosion/sedimentation control
- General standards – quantity/quality
- Major amendments to Rules – September 2014
- LD 147 – Two Changes

Local stormwater ordinances
Residual Designation Authority (RDAs)

Stormwater discharges not otherwise required to obtain a permit can be designated as requiring a permit under certain conditions. 40 CFR § 122.26(a)(8)(D).
RDAs in Region 1

- Charles River RDA
- Long Creek RDA
- Burlington/Lake Champlain
- Regional RDA
Regional RDA Petition

Petition filed July 10, 2013

- Require permits for Commercial & Institutional stormwater dischargers to impaired waters
- Applies throughout New England
- Region 1 – Neither granted or denied – will review impacts on specific waters
- Hundreds of potential new permittees
Stormwater Enforcement

✓ Few Enforcement Actions Under State Authority
  ❖ More Technical Assistance

✓ More Enforcement Activity by Environmental Groups
  ❖ Citizen Suits – Industrial Sectors
  ❖ RDA Petitions

✓ EPA Enforcement Initiative in Maine
  ❖ Information Requests/Inspections
  ❖ NOVs Issued – Fines Sought
  ❖ Audits With/Without Maine DEP