



Client Alert

MACDONALD, ILLIG, JONES AND BRITTON LLP

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USEPA Issues New Guidance on MS4 Permits

On April 14, 2010, USEPA issued its 109 page "Municipal Separate Storm Sewer System Permit Improvement Guide" as a means to assist permit writers to strengthen the Municipal Separate Storm Sewer System (MS4) NPDES discharge permits. The purpose of the Guidance is to ensure that MS4 permits contain language that is clear, specific, measurable and enforceable.

The MS4 Stormwater Management Program derives its authority from the National Pollution Discharge Elimination System (NPDES) program under the Clean Water Act. Under the MS4 program, operators of municipal stormwater systems are required to implement a stormwater management program. Initially, the program only covered medium and large MS4s, but has been since expanded to include small MS4s. As part of the small MS4 program, operators are issued MS4 permits that impose various requirements intended to control stormwater discharged from their systems into various water bodies, including streams, rivers, lakes and bays. Specifically, the MS4 permit for small MS4s covers six elements: (1) public education and outreach; (2) public participation/involvement; (3) illicit discharge detection and elimination; (4) construction site runoff control; (5) post construction runoff control; and (6) pollution prevention/good housekeeping. The new Guidance seeks to strengthen the agencies' ability to determine whether municipalities are complying with these six elements.

For example, in the education/outreach section of an MS4 permit, the Guidance recommends imposing deadlines for completing the education programs and identifying the specific percentage of the target population that must receive the program message. As another example, in the construction site runoff control section of the MS4 permit, the Guidance recommends a number of provisions that increase the municipalities' oversight of construction activities, including requiring specific minimum requirements for erosion and sediment controls, soil stabilization and other control measures, requiring the municipality to maintain a construction site inventory and imposing specific site inspection and enforcement provisions.

USEPA and, consequently, the states issuing these MS4 permits, believe that the existing permit language in many MS4 permits does not provide enough specificity or measurable and tangible obligations to allow for easy enforcement. Accordingly, at the time MS4 permits are renewed, MS4 permit holders can expect the agency to tighten existing permit language, as well as to add language and requirements to improve its ability to enforce the permit. From the permit holders' perspective, it will be important to be familiar with this Guidance during renewal time, and possibly during any enforcement actions, to understand the agency's permit or enforcement position. As a general observation, the Guidance clearly shows that USEPA intends to be more active in enforcing municipal obligations under the stormwater control program.

For more information, please contact the author of this article, any member of MacDonald

Illig's Environmental Law Group, or the MacDonald Illig attorney with whom you've worked.

For more information:

➔ Mark J. Shaw
(814) 870-7607
mshaw@mijb.com

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100 STATE STREET, SUITE 700	PHONE: (814) 870-7600
ERIE, PA 16507-1459	FAX: (814) 454-4647

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