

EPA Explores Changes to Municipal Stormwater Programs

The U.S. Environmental Protection Agency (“EPA”) is currently seeking public input concerning potential changes to the nation’s Municipal Separate Storm Sewer System (“MS4”) program. Concerns have already been raised that some of the changes proposed by EPA could impose significant financial burdens on municipalities and counties across the country already struggling with a variety of infrastructure issues.

EPA’s basis for proposing an overhaul of the MS4 program is the result of a study finding that (i) the current MS4 program is inadequate to control stormwater’s contribution to pollution in the Nation’s waterbodies, (ii) too much discretion is given to dischargers to set standards and ensure compliance with MS4 permits, and (iii) these problems have resulted in poor accountability and uncertain effectiveness. In response, EPA is considering changes to the MS4 program that would include expanding the program to more rural areas, imposing uniform requirements on stormwater systems, and requiring the implementation of measures to reduce flows from permitted stormwater systems. Although EPA has not yet proposed formal changes to the program, it has requested comments regarding several changes it is considering, including the following:

- Reconsidering the criteria that trigger obtaining an MS4 permit—Coverage under the current MS4 program is triggered by the population and “urbanization” of an area. EPA appears to be reconsidering these criteria in favor of a focus on factors such as the percentage of impervious cover in an area.
- Developing a single set of consistent requirements for all regulated MS4s which would replace the existing Phase I and Phase II permitting structure.
- Establishing substantive post-construction requirements to limit stormwater flows from newly developed or redeveloped areas—Although new development is subject to permitting requirements during construction activities, once construction is complete these requirements often cease to apply under the current program.
- Requiring retrofitting of existing developments to limit impacts from stormwater in such areas—EPA has preliminary suggested that requirements for “green roofs,” parking lot island infiltration areas, open swales, rain gardens, planters, permeable pavements, and rainwater cisterns are being considered.

EPA has indicated that it will continue to accept comments on recommendations for rulemaking through February 26, 2010. EPA also intends to gather data about current stormwater management practices by sending survey questionnaires to owners, operators, developers, and contractors of developed sites, owners and operators of municipal separate storm sewer systems (MS4s), states and U.S. territories. A formal 30-day public comment period on the questionnaires will be proposed later this spring with the intention of publishing a proposed rule in late 2011 for adoption in 2012.

If you would like assistance in preparing and submitting comments on either EPA's proposed changes to the MS4 regulatory program or the survey questionnaires about current stormwater management practices, please contact Kevin R. Murray, Patrick S. Malone or Nicole C. Squires at 801-533-0066.

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