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Commercial/Industrial/Institutional (CII) Stormwater Sources: U.S. Environmental Protection Agency Exercises Clean Water Act Residual Designation Authority for Three Massachusetts Watersheds

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The United States Environmental Protection Agency (“EPA”) exercise certain Clean Water Act residual designation authorities to address stormwater discharges in three Massachusetts watersheds.

The designations were undertaken in response to petitions that had been filed by the Conservation Law Foundation and the Charles River Watershed Association.

The initial Conservation Law Foundation petition was styled:

Petition for a Determination that Certain Commercial, Industrial, Institutional, and Multi-Family Residential Property Dischargers Contribute to Water Quality Standards Violations in the Charles River Watershed, Massachusetts, and that NPDES Permitting of Such Properties is Required

Two additional petitions were filed by the Conservation Law Foundation requesting the same residual designation for the Mystic River and Neponset River watersheds.

Section 402(p) provides the EPA Administrator, on a case-by-case basis, the authority to designate certain stormwater discharges as requiring a Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permit. Such designation requires that EPA determine that stormwater discharges contribute to a violation of applicable water quality standards. This Clean Water Act authority is designated the “Residual Designation Authority.”

The 402(p) authority can be used to address commercial, industrial, and institutional (“CII”) sites. These might include shopping centers, malls, employee parking lots, office buildings, etc. Stormwater can be generated in such an urban environment. This may include rain falling on impervious surfaces (i.e., concrete and asphalt) which becomes runoff. The runoff mobilizes pollutants as it flows into storm sewers and waterways.

Any person may petition EPA to request that a stormwater discharge be required to obtain an NPDES permit.

The previously referenced three petitions requested a determination pursuant to 40 C.F.R. § 122.26(f)(2) that discharges of stormwater that are not currently subject to direct permitting by EPA from privately owned CII and multi-family residential real properties of one acre or greater in the three watersheds:

. . . contribute to violations of water quality standards in the Charles River and Boston Harbor, of which the Mystic River watershed is a sub-basin, and (3) the Neponset River, and require permits under the National Pollutant Discharge Elimination System.

In announcing this action EPA states that this is the first time it has exercised this Clean Water Act Residual Designation Authority on this broad of a scale to address watersheds in a major urban area.

EPA states it intends to issue general permits that would address discharges from CII properties in these watersheds. A CII property would then be required to seek permit coverage under the general permit. Such general stormwater permits will require best management practices similar to those used in other stormwater permits.

A copy of the EPA news release with related documents can be downloaded [here](#).