

Stormwater Enforcement: U.S. Environmental Protection Agency and Pennsylvania Department of Transportation Enter into Consent Agreement



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The United States Environmental Protection Agency (“EPA”) and Pennsylvania Department of Transportation (“PDOT”) entered into an August 29th Consent Agreement and Final Order (“CAFO”) addressing alleged violations of certain Clean Water Act National Pollution Discharge Elimination System (“NPDES”) regulations addressing stormwater. See Docket No. CWA-03-2018-0032.

The Pennsylvania Department of Environmental Protection (“DEP”) is stated to have issued a general NPDES permit titled General Permit for Stormwater Discharges Associated with Construction Activities (“PAG-02”).

PDOT obtained coverage from DEP for “construction stormwater discharges at “numerous highway project sites since PA DEP first issued the PAGE-02. . .” The state agency further applied for and was granted permit coverage under individual permits issued by DEP for construction stormwater discharges at highway projects that do not qualify for coverage under the PAG-02.

The CAFO provides that PDOT indicated:

. . . it retains contractors to construct its highway projects and requires these contractors to become co-permittees under the PAG-02 or Individual Permit coverage for the project. Furthermore, PennDOT asserts that its agreements with its contractors impose responsibility for complying with the permit terms and conditions on the contractors, including the responsibility to fully implement the required Best Management Practices (“BMPs”).

EPA is stated to have performed inspections of certain PDOT facilities subject to permit coverage under the previously described permits on multiple dates since at least 2011. Inspection reports identifying “apparent violations” of certain Individual Permits and the Clean Water Act are referenced in the CAFO. Further, the federal agency is stated to have submitted two formal information requests to PDOT to which the Pennsylvania agency responded.

The CAFO alleges violations which include:

- Failure to perform self-inspections and recordkeeping
- Failure to implement BMPs

The CAFO assesses a civil penalty of \$100,000.

A [copy of the CAFO](#) can be found here.