



NATIONAL STORMWATER CENTER®

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August 24, 2009

Mr. J. Charles Fox
Senior Advisor to the Administrator
Chesapeake Bay Program Office
US Environmental protection Agency
410 Severn Avenue, Suite 109
Annapolis, MD 21403

Dear Mr. Fox:

This is to document my comments to you at the Town Hall Meeting on Chesapeake Bay made on August 11, 2009. These comments are limited to the discharge of sediment from active construction sites.

Construction managers are generally directed to use sediment ponds for disturbed areas that exceed 10 acres. The problem is the clay soil found in the Mid-Atlantic area is difficult to remove without use of chemical addition. Because design engineers are not required to remove the clay, the result is a discharge of sediment from all sediment ponds in the entire region.

There are several EPA activities that can correct this problem.

The EPA Effluent Guideline for the Construction and Development Industry will be promulgated by December of this year. The proposed rule has a turbidity discharge standard of 13 NTUs to correct this problem for disturbed areas greater than 30 acres. This is a technology-based standard, states may be more restrictive to protect water quality. To protect the Chesapeake Bay, the Mid-Atlantic States should be more restrictive and require a turbidity effluent limit for all sediment ponds during construction. Sediment ponds should remove sediment.

By early October, the EPA Administrator will receive recommendations from the AA for Enforcement and Compliance Assurance to “raise the bar for clean water enforcement performance.” The Administrator’s directive is “to place a high priority on the problems that have the biggest impact on water quality, such as wet weather pollution . . .”

John Penn Whitescarver, QEP, Executive Director

J. Fred Heitman, CFP, Director

David N. Lyons, PE, Director

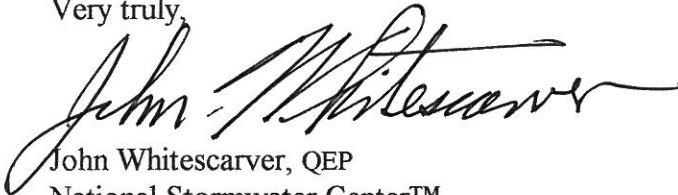
Diane Gorny, CSI, Director

In Virginia and Pennsylvania, the construction permit program is administered, not by environmental protection departments, but the Conservation and Recreation Department in Virginia and local county conservation districts in Pennsylvania. EPA has a non-discretionary duty under the Clean Water Act to withdraw NPDES authorization from these states for lax enforcement. However, I recommend EPA withhold Section 106 grants until enforcement is demonstrated.

Current stormwater permits for construction sites issued by Maryland do not restrict sediment discharges. The permits allow the permittee to select a management practice, usually a silt fence and a sediment pond. NPDES Permits need enforceable discharge restrictions. Under a settlement agreement, the Maryland Department of the Environment will update erosion and sediment control standards by May 31, 2010. EPA Region 3 has NPDES oversight responsibilities, now is a good time to do it.

Thank you for listening to the public. If I can be of assistance, please contact me.

Very truly,



John Whitescarver, QEP
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cc:

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Cynthia Giles, EPA AA Enforcement and Compliance Assurance
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