

Federal Regulatory Developments – EPA’s Construction Stormwater Rulemaking

The Environmental Protection Agency confirmed July 18 that it will propose its post-construction stormwater rule in mid-2013, almost two years beyond the original deadline mandated under a legal settlement. EPA said on its website that it intends to propose the rule to strengthen the national stormwater program by June 10, 2013, and complete final action by Dec. 10, 2014. EPA has been intending since 1999 to develop a stormwater rule, but the rulemaking progressed slowly until a deadline was set in a 2010 settlement with the Chesapeake Bay Foundation (*Fowler v. EPA, D.D.C., No. 1:09-cv-5, 5/11/10*).

The proposed rule would apply to stormwater discharges from newly developed and redeveloped sites and make other regulatory improvements to strengthen the stormwater program. EPA reported the size threshold for sites to be covered has not been determined. The rule would spell out performance standards for reducing runoff. The revisions to the stormwater rules would be incorporated into permits for municipal separate storm sewer systems, or MS4s, as the permits are renewed. EPA in April had noted that the rule would not be ready by the deadline dictated by a legal settlement. They also stated problems with the cost-benefit analysis of the upcoming stormwater rule could delay the proposal by at least a year.