

## EPA Stormwater Regulations Continue to Drift

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For well over a decade, the **U.S. Environmental Protection Agency (EPA)** has been in search of a regulatory approach to address post-construction stormwater discharges. In contrast to its regulations [for stormwater discharges from construction sites](#), this initiative targeted stormwater discharges after a project has been developed or redeveloped. EPA's efforts to regulate post-construction stormwater discharges made little progress until 2010, when EPA settled a case with the Chesapeake Bay Foundation over water quality impacts to the Chesapeake Bay. As part of that settlement, EPA agreed to issue draft post-construction stormwater regulations by September 2011. These regulations would apply nation-wide and require commercial and residential property owners to manage stormwater discharges once development or redevelopment was completed. The result would be new and potentially substantial operational requirements and costs being imposed on millions of commercial and residential properties across the United States.

EPA's September 2011 deadline for these post-construction stormwater regulations slipped to April 2012, and EPA just announced that it will issue draft regulations by June 2013, and final regulations by December 2014. The reader can draw his or her own conclusions about the timing of these new deadlines relative to the pending presidential election. In any event, this new timeline represents a substantial delay from what EPA had originally proposed.

In addition to the timing issue, EPA's announcement reveals some other noteworthy points. First, the agency has justified the delay on the grounds that it is undertaking a cost-benefit analysis of the proposed regulatory program. EPA initially collected cost information from property owners across the U.S. [by issuing mandatory requests for information under Section 308 of the Clean Water Act](#). While the manner in which EPA chose to collect cost information was both troubling and problematic, it is encouraging to see that the agency is paying attention to the cost implications of these proposed regulations. Notably, EPA Region I commissioned a cost study for a stormwater general permit program it [has proposed as a pilot project](#) for commercial and industrial properties in the headwaters of the Charles River in Massachusetts. That study, issued in September 2011, found that the compliance costs for the proposed general permit would be much higher than initially anticipated. As a result, EPA Region I [has deferred implementation of that pilot project](#).

EPA has also revealed some information about the anticipated framework for these nation-wide post-construction stormwater regulations. Most importantly, the program would be implemented by municipalities through their municipal separate storm sewer system (MS4) permits. This means that, as those MS4 permits are renewed, municipalities would become obligated to regulate stormwater

discharges into their MS4 – shifting EPA’s role as regulator to the municipalities. These municipalities would face substantial cost and administrative burdens as a result, at a time when many municipalities are already struggling to stay solvent. It is quite possible that municipalities would look to cover these new costs through the imposition of permit fees or creation of stormwater utilities – either of which would have to be paid by property owners.

EPA has not yet announced a threshold for determining which properties would be subject to these post-construction stormwater regulations, but this threshold would likely be tied to the amount of impervious area (pavement, roof area, sidewalks). In connection with the stormwater general permit EPA Region I is evaluating for its Upper Charles River pilot project, Region I has proposed a two-acre impervious area threshold for commercial and residential properties.

Given election year politics, further announcements on these regulations seem quite unlikely until after the election. And it is quite likely that the outcome of the presidential election will determine whether these regulations move forward in 2013 or not.

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