

Anticipating Increased Enforcement by U.S. EPA in Central Pennsylvania for Municipal Separate Stormwater Systems (MS4) and Wastewater Dischargers

By **David A. Rockman**

The United States Environmental Protection Agency (EPA) has announced a proposed settlement in litigation that threatens increased scrutiny and enforcement for municipal separate storm sewer systems (MS4) and other wastewater dischargers in Central Pennsylvania. The settlement comes in a set of lawsuits filed by neighboring states and the Chesapeake Bay Foundation to compel EPA to take enforcement action against dischargers in Pennsylvania to reduce pollution loadings into the Chesapeake Bay. The proposed settlement is subject to a 30-day public notice and comment period, after which it will be submitted for judicial approval. The notice and comment period runs through May 22, 2023.

The settlement focuses on pollution discharges in Central Pennsylvania, with sources in Lancaster and York Counties getting a primary focus and sources in Franklin, Lebanon, Cumberland, Centre and Bedford Counties having a secondary focus. The proposed settlement imposes the following obligations on EPA:

- EPA will review any NPDES discharge permits in Pennsylvania that have been administratively extended and are waiting renewal and reissuance. The renewal and reissuance process can bring stricter discharge limits;
- EPA will update its MS4 permitting guidance for the Chesapeake Bay watershed; and,
- EPA will increase its compliance assurance activities on MS4 sources, concentrated animal feeding operations, and other NPDES facilities within the targeted counties.

EPA will be publishing a list every six months of its activities under the settlement, including inspections, investigations and compliance evaluations in the targeted counties, and will also describe the results of any concluded enforcement actions, penalties and other corrective action measures that may have been imposed.

This increased compliance and enforcement activity by EPA, along with the publication of information that will help identify potential violators to the public, brings greater risk of both EPA enforcement and citizen suit enforcement. Citizens and citizen groups have the ability to prosecute violations of the Clean Water Act in federal court where any violation has been identified but neither EPA nor the Pennsylvania Department of Environmental Protection have brought their own enforcement action.

In anticipation of the finalization of the settlement and EPA's future actions driven by the settlement, it is prudent for MS4 and other affected dischargers to review their compliance status and take steps to achieve compliance, maintain compliance and ensure awareness of EPA's permitting guidance.

Under the proposed settlement, EPA will also evaluate funding opportunities to provide technical assistance to areas in the target counties that have the greatest potential to reduce nutrient discharges. This funding may include workshops for grant applicants and technical assistance to grant applicants to assist in the grant process and the reduction of nutrient loads into the Chesapeake Bay.