



EPA-State SNC National Compliance Initiative Symposium 2

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New Jersey's Clean Water Enforcement Act

Rich Paull, Director

Division of Water and Land Use Enforcement

New Jersey Department of Environmental Protection

Overview of New Jersey's approach to NPDES Enforcement

- ▶ Clean Water Enforcement Act (CWEA) Amendments to NJ Water Pollution Control Act were passed in 1990
- ▶ Included comprehensive requirements for NPDES permittees and NJDEP
- ▶ CWEA has resulted in improved compliance and has changed the culture of permittees in NJ

CWEA Inspection Requirements

- ▶ NJDEP must perform yearly inspections
- ▶ Exemptions for Stormwater only or non-contact cooling water
- ▶ Inspections must be performed within 6 months of the effective date of a new permit
- ▶ Inspections include yearly representative sampling for Majors and SIU's. Minors are sampled once every three years
- ▶ Random check of laboratory test results used to complete DMRs
- ▶ Perform inspection within 60 days of having triggered SNC

Penalty Regulations

- ▶ Factors to consider when calculating penalty include:
 - ▶ Violation Type
 - ▶ Violation seriousness
 - ▶ Toxicity
 - ▶ Frequency
 - ▶ Economic benefit
 - ▶ Recalcitrance
 - ▶ Extraordinary costs to the public

Effluent Violation Mandatory Penalties

- ▶ Civil Administrative Penalties up to \$50,000/violation/day
- ▶ \$1,000 mandatory minimum penalty for Serious violation
- ▶ \$5,000 mandatory minimum penalty for Significant noncompliant violation

DMR Omission Mandatory Penalties

- ▶ Mandatory penalty for DMR omissions of \$100/parameter/day for at least 30 days up to a maximum of \$50,000/DMR
- ▶ Routinely assess economic benefit for omissions = cost of the analysis

Penalty Settlements

- ▶ The amount compromised shall not be more than 50% of the amount assessed
- ▶ In no instance shall the amount of the compromised penalty be less than the statutory minimum amount
- ▶ Shall not compromise the assessed economic benefit gained by the violator

Affirmative Defenses

- ▶ Only applies to effluent violations.
- ▶ Upset
 - ▶ Notify our Hotline within 24 hours of becoming aware of the upset
 - ▶ Demonstrate facility is being properly operated
 - ▶ Have pre-approval for maintenance activities
- ▶ Bypass
 - ▶ Unavoidable to prevent loss of life, personal injury or severe property damage
- ▶ Lab Error

Interim Enforcement Effluent Limits

- ▶ NJDEP can relax permit limits through an Administrative Consent Order (ACO)
- ▶ ACO must contain an enforceable compliance schedule of corrective actions
- ▶ ACO must be advertised in a local newspaper with an opportunity for the public to submit comments

Mandatory Monthly Reporting

- ▶ A permittee who monitors a parameter less frequently than monthly shall be required to monitor monthly if the permittee:
 - ▶ Commits a serious violation
 - ▶ Fails to submit a complete DMR

Case Study

West Milford MUA

- ▶ MUA created in 1964 to handle infrastructure from small developments in that township
- ▶ Responsible for the oversight of 6 WWTPs (all minors) and 8 Potable facilities for 1,700 homes (20% of town)
- ▶ Much needed infrastructure improvements combined with a small rate payer base resulted in the inability to borrow and fund improvements
- ▶ NPDES unassessed penalty liability in excess of \$7,000,000 under the CWEA. 50% limitation on settlement once assessed

Logistical Solution

- ▶ MUA passed a resolution to sell its assets
- ▶ Township solicited bids for the sale of the MUA's assets
- ▶ Township adopted an ordinance to dissolve the MUA
- ▶ Township adopted an ordinance approving the sale of the systems
- ▶ Township placed the question of the sale of the assets on the ballot as a referendum
- ▶ Contract for sale of the assets was executed for \$12,500,000

Enforcement Solution

- ▶ NJDEP filed a complaint in Superior Court and executed a Judicial Consent Order. The agreement included a negotiated penalty of \$800,000
- ▶ Superior Court judge not bound by settlement limitations of the CWEA
- ▶ The JCO memorialized the sale of the assets

Tools needed for effective NPDES oversight

- ▶ Sufficient staff
- ▶ Trained staff
- ▶ Data management capabilities
- ▶ Close relationship with permitting counterparts
- ▶ Organizational support for enforcement

Factors of Culture Change

- ▶ Yearly inspections and sampling
- ▶ Mandatory penalties for effluent violations and omissions
- ▶ Limitations on penalty settlement
- ▶ Compliance assistance
- ▶ Education of regulated community, engineers and attorneys
- ▶ On-line availability of data to the public

CWEA 30 years later

- ▶ Permittees are more likely to make financial investments to upgrade equipment and facilities to remain in compliance.
- ▶ Significant noncompliance rates have been lowered in New Jersey. The Final State Review Framework Report from 12/30/16 lists an SNC rate for NJ Majors of 2.67% compared to the national average of 19.2%.
- ▶ The state's surface water quality has improved. A study conducted by the U.S. Geological Survey of trends in the quality of water in New Jersey streams from 1971 to 2011 has shown that total nitrogen and total phosphorous concentrations in NJ's streams are trending downward.