

Environmental Law Update

12/10/2015

Stormwater Permits Are Not One Size Fits All

It's rare for a stormwater lawsuit to result in a court decision since most settle in the early stages, but a ruling by U.S. District Court Judge John C. Coughenour in the Western District of Washington provides useful guidance for determining which of several stormwater permits issued by the Washington Department of Ecology may apply. In the case of *Puget Soundkeeper Alliance v. Cruise Terminals of America*¹, decided on November 20, 2015, the answer is more than one permit may be necessary depending on the type of stormwater discharge.

In the case, Puget Soundkeeper Alliance, an environmental nonprofit organization, brought a Clean Water Act citizen suit against Cruise Terminals of America (CTA) and its landlord, the Port of Seattle (Port), alleging that they discharged industrial stormwater runoff and other pollutants into Elliott Bay without a National Pollutant Discharge Elimination System (NPDES) permit. The Court found that a portion of the facility's stormwater system drained into a municipal separate sewer system and another portion drained into a combined sewer system. CTA argued that it had sufficient coverage for the discharges under its Vessel General Permit (VGP) and the Port's Phase I Municipal Stormwater Permit.

The Court sided with Puget Soundkeeper Alliance, finding that the Municipal Permit itself may not be adequate for the cruise terminal's discharges to the municipal separate sewer system. The Court's ruling was supported by the permit language, which states that a separate NPDES permit is required for facilities that create stormwater discharges associated with industrial activity. However, the Court held that discharges to the combined sewer system are not considered discharges to "waters of the state" and do not require an Industrial Stormwater General Permit (ISGP). Thus, the Court held that no permit is required for discharges to the combined sewer system.

Puget Soundkeeper Alliance also argued that CTA and the Port were required to seek coverage under the ISGP, in addition to their coverage under the VGP, for vessel cleaning and maintenance activities conducted at the facility. The Court found that the VGP covers discharges incidental to normal vessel operations and coverage under the ISGP is not required for any incidental discharges directly into Elliott Bay from vessels that have obtained a VGP. The Court further held that even though the VGP covers all incidental discharges from a vessel,

¹ Case No. 2:14-CV-00476.

it does not cover incidental discharges from land-based facilities that work on vessels. Therefore, discharges from a land-based facility are not covered under the VGP. The Court reasoned that vessels with VGP coverage that dock at the cruise terminal are separate point sources from the cruise terminal's stormwater drainage system, which require coverage under the ISGP. With respect to CTA's operations at the Port's facility, the Court ultimately held that an issue of fact existed as to whether residue from vessel maintenance and cleaning activities fell on the cruise terminal and denied in part both of the parties' respective motions. The Court further held that because the Port and CTA exercised sufficient control over the cruise terminal, they both may be found liable for unpermitted discharges regardless of who the facility's operator is.

Judge Coughenour's order provides the regulated community with valuable guidance — not all stormwater discharges should be treated equally. While all incidental discharges from a vessel are covered under the VGP, incidental discharges from land-based facilities that maintain vessels require coverage under the ISGP. Additionally, the Municipal Permit does not cover facilities that create stormwater discharges associated with industrial activity. To confirm that your facility is in compliance with the Clean Water Act and has sufficient coverage under the appropriate stormwater permit, it is important to evaluate your facility's potential point sources, stormwater discharges, and drainage systems, and examine the language of the various permits to determine whether more than one may apply.

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