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The Environmental Practice Group at Murtha Cullina is pleased to provide clients and friends with information about topics of interest in the labor and environmental area.

Francis A. DiLuna
781.933.5505
fdiluna@murthalaw.com

Michael J. Donnelly
860.240.6058
mdonnelly@murthalaw.com

Andrew W. Lord
860.240.6180
alord@murthalaw.com

David Platt
860.240.6062
dplatt@murthalaw.com

Gregory A. Sharp
860.240.6046
gsharp@murthalaw.com

Alfred E. Smith, Jr.
203.772.7722
asmith@murthalaw.com

Mark R. Sussman
860.240.6034
msussman@murthalaw.com

Diane C. Bellantoni
860.240.6126
dbellantoni@murthalaw.com

Kathleen E. Connolly
617.457.4096
kconnolly@murthalaw.com

Loni S. Gardner
203.772.7705
lgardner@murthalaw.com

Sarah P. Kowalczyk
860.240.6068
skowalczyk@murthalaw.com

INDUSTRIAL STORMWATER PROPOSALS THREATEN CONNECTICUT INDUSTRY

Two environmental groups have proposed sweeping changes to Connecticut's General Permit for Discharges of Stormwater Associated with Industrial Activities that could cause significant enforcement and compliance issues for industrial businesses in Connecticut.

Enforceable effluent limitations; mandatory best available control technology; and replacement of the current streamlined application process are among the many changes proposed by Connecticut Fund for the Environment and Soundkeeper in papers filed in the permit proceedings before the Department of Environmental Protections ("DEP"). Hearings are scheduled to start December 8 in Hartford. Parties wishing to intervene must do so at least five days before the start of the hearings.

Businesses with industrial SIC codes in Connecticut have been required to register for the Stormwater General Permit since 1992. The General Permit has been renewed at five year intervals ever since. Past permits have been largely self-implementing, and registering for coverage has been straightforward. The Department is in the process of renewing the existing permit. The current proposal from DEP includes a number of modifications of concern to industry, but does not include the far-reaching changes sought by the environmental intervenors.

For example, the previous permit contained only "target" values for various chemical constituents, which include total suspended solids, copper, lead, and zinc, may be picked up as stormwater flows across roofs, yards and storage areas and discharges to ground and surface water bodies via pipes, storm sewers and dry wells. General Permit registrants are expected to compare the target values to actual values measured from samples of stormwater run-off they collect annually as a check on how the best management practices contained in their Stormwater Pollution Prevention Plans are working. The monitoring results are submitted by registrants to the DEP, but exceedances of the target values are not considered violations of the permit, and they do not subject the registrants to penalties. However, the DEP analyzes the data to identify trends and progress toward meeting stormwater goals.

The Department has proposed “action levels” in the proposed permit renewal which, if exceeded, would require facilities to take corrective measures, but compliance would remain self-implementing. These action levels are not intended by the Department to be enforceable effluent limitations.

Under the CFE/Soundkeeper proposal, the DEP would adopt effluent limitations for constituents which, if exceeded, would subject the registrant to penalties of \$25,000 per exceedance. The two groups are also seeking to require the use of best available pollution control technology to treat stormwater run-off, which is likely to be an expensive undertaking for industry. The environmental groups also seek to change the current registration process from one in which an industrial source simply files the required paperwork with DEP and receives a registration to one which would require individual public notice, opportunity for comment, and possibly a hearing.

For further information on this issue, contact Greg Sharp at 860-240-6046, or Mark Sussman at 860-240-6034.

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