

# Residual Designation Authority

NACWA Law Seminar

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Natural Resources Defense Council

# Increasingly Stringent Stormwater Control Requirements



# EPA Revisions to National Stormwater Regulations

Once-in-a-generation opportunity to reform minimum requirements applicable to urban and suburban runoff sources.

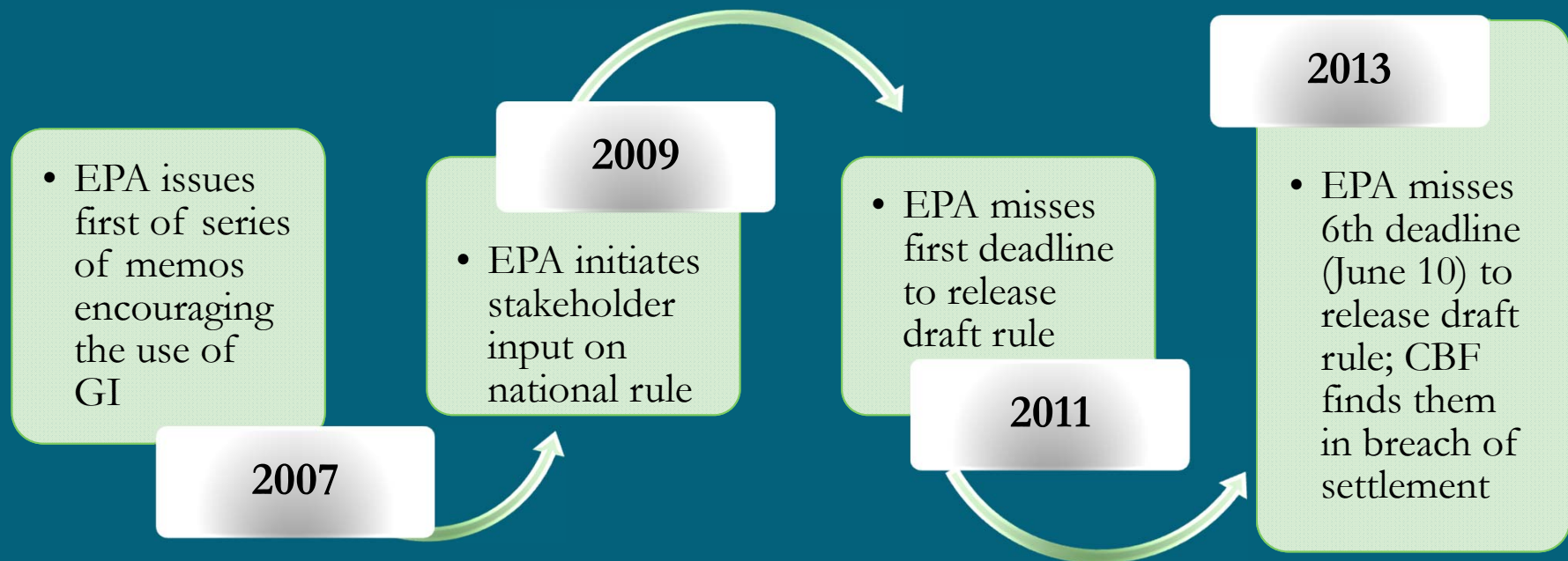
## **What we suspect will be in the proposed rule:**

- Performance standards for discharges from newly developed and redeveloped sites.

## **What will NOT be in the rule:**

- Requirement to retrofit existing developed sites.

# EPA Regulatory Process Delays



# EPA's Residual Designation Authority

The Clean Water Act directs EPA to require NPDES permits for additional sources of stormwater runoff.

- 33 U.S.C. § 1342(p)(2)(E):
  - EPA shall require NPDES permits for “A discharge for which the Administrator or the State, as the case may be, determines that **the stormwater discharge contributes to a violation of a water quality standard** or is a significant contributor of pollutants to waters of the United States.”
- 40 C.F.R. § 122.26(f)(2): Citizens may petition for EPA to make such a determination.

# EPA's Residual Designation Authority

- 64 Fed. Reg. at 68,781 (the Phase II rule):
  - “EPA believes...that individual instances of storm water discharge might warrant special regulatory attention, but do not fall neatly into a discrete, predetermined category. Today’s rule preserves the regulatory authority to subsequently address a source (**or category of sources**) of storm water discharges of concern on a localized or regional basis.”
  - “The designation authority can be applied within different geographic areas to any single discharge (i.e., a specific facility), or category of discharges...The added term ‘within a geographic area’ allows ‘**State-wide**’ or ‘**watershed-wide**’ designation within the meaning of the terms.”

# EPA's Residual Designation Authority

- What does it mean to “contribute to a violation of a water quality standard”?
  - EPA's 2003 guidance to Vermont: “it would be reasonable to require permits for discharges that contribute **more than *de minimis* amounts** of pollutants identified as the cause of impairment to a water body.”

# Our Petitions



AMERICAN RIVERS  
CONSERVATION LAW FOUNDATION  
NATURAL RESOURCES DEFENSE COUNCIL

**Petition For A Determination  
That Stormwater Discharges From  
Commercial, Industrial, And Institutional Sites  
Contribute To Water Quality Standards Violations  
And Require Clean Water Act Permits**

July 10, 2013

Curt Spalding, Regional Administrator  
EPA Region 1  
Mail Code: ORA  
5 Post Office Square, Suite 100  
Boston, MA 02109  
Spalding.Curt@epa.gov

- NRDC, American Rivers, Conservation Law Foundation, and local partners
- Filed July 10, 2013
- EPA Regions 1, 3, 9



# Sites Identified for Designation

Impervious surfaces on commercial sites, industrial facilities, and large institutions are discharging stormwater runoff containing lead, copper, zinc, sediments, BOD/COD, phosphorus, and nitrogen into these impaired waters and are thereby contributing to violations of water quality standards. Therefore, EPA must determine that these sources require NPDES permits.

that stormwater discharges from commercial, industrial, and institutional sites, as a class, are contributing to the non-attainment of water quality standards in watersheds that are impaired because of heavy metals, sediment, COD/BOD, and/or phosphorus. As a result, EPA must designate all non-*de minimis* point source stormwater discharges from commercial, industrial, and institutional sites, which are not currently subject to Clean Water Act permitting requirements and are within the Region's watersheds that are impaired by those pollutants (listed in Attachment A).

# Benefits of Designation

- Better water quality in our communities
- More green infrastructure (with many benefits)
- Equitable distribution of clean-up costs
  - “Polluter pays” principle
  - Easing the burden on local governments

# RDA: A 2-Step Process

## STEP ONE: The Designation Phase

The “whether” phase

Do identified sites meet the Clean Water Act criteria for residual designation?

→ What is a “non-*de minimis*” discharge?

Decision based on **science only**

# RDA: A 2-Step Process

## STEP TWO: The Implementation Phase

The “how” phase

Different implementation options (e.g. general permits)

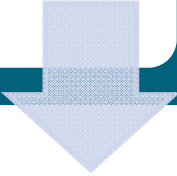
Can consider administrative and logistical issues

New England experience offers lessons, but other approaches are also possible

**DO NOT** want any new costs/burdens for municipalities

# Where Are We Now?

90-day deadline passed during government shutdown



Interim responses from all 3 EPA Regions, asking for 2-4 more months



In the meantime, discussions with EPA and outreach to stakeholders

# For More Information...

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