



FEDERAL STORMWATER REGULATIONS

- **The EPA seeks to impose significant new regulatory burdens on state and local governments.**
- **The EPA plans to impose for the first time direct regulation of new and, potentially, existing residences and commercial buildings.**
- **Congress must exercise its oversight duties of these EPA actions.**

Position: ICSC contends that EPA's proposed actions would exceed its statutory authority in the absence of explicit, prior approval from Congress.

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Current Activity: The U.S. Environmental Protection Agency (EPA) is currently drafting new federal Clean Water Act regulations that would establish a comprehensive program to restrict or eliminate stormwater discharges from privately developed properties. Currently, individual homes and commercial buildings are regulated by state and local governments. EPA originally claimed that it was compelled to complete this major regulatory expansion no later than November 2012 under a "voluntary consent agreement" the EPA signed with an environmental organization. However, the EPA has negotiated an extension of the deadline for a draft proposal until June 10, 2013 and expects to make the rules final by December 10, 2014.

EPA has indicated that it may apply these new regulations to all developed properties in America with over 5,000 square feet (less than 1/10 of one acre) of impervious surfaces such as roofs, parking lots or driveways. Given the millions of properties that would be covered by any such regulations, should EPA choose this course of action, it is likely the Agency will simply force the states to shoulder most of the resulting costs for implementation and enforcement. EPA has also suggested it may require municipal stormwater systems (and therefore the private property owners within that jurisdiction) to retrofit existing stormwater controls and possibly even replace existing parking lots and roads. Replacing an existing parking lot with "pervious paving" can easily exceed \$100,000 per acre.

Under the Clean Water Act and its amendments Congress restricted the scope of EPA's regulatory actions by identifying limited categories covered by nationwide authority (including industrial sites, major sewage treatment systems and active construction sites). For specifically identified sources of local water pollution, the Clean Water Act provides additional tools for EPA action, such as "residual designation authority." However, in this situation, EPA is asserting a blanket authority to greatly expand federal regulations across numerous categories simultaneously. In addition, EPA is exploring ways to mandate specific technologies and stormwater control practices, rather than simply setting a limit on the amount of pollution actually discharged. Such an unprecedented action would largely strip the states and private sector of their control of property design and related siting decisions. In other words – federal land-use controls.

Rationale: ICSC contends that these actions would exceed EPA's statutory authority in the absence of explicit, prior approval from Congress. EPA's regulatory expansion would add significantly to the cost of owning and operating commercial property and may even preclude cost-effective alternatives. If the EPA is allowed to proceed with its stormwater plan it will delay or kill many new and redevelopment projects around the country – along with the jobs and local revenues they would create.

Summary: Given the billions of dollars in regulatory compliance costs at stake as well as serious questions about the limits to EPA's statutory authority, Congress must exercise its oversight duties before EPA is allowed to take any of these actions.