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Salt Lake County Stormwater Settlement: A Sign of Things to Come for Other Utah Municipalities?

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In January 2016, Salt Lake County entered into a Consent Decree with the United States Environmental Protection Agency (EPA) and the Utah Department of Environmental Quality (UDEQ), Division of Water Quality (DWQ). The Consent Decree resolved outstanding compliance issues with the County's stormwater pollution control permit and related regulations. The Consent Decree contains findings that: (1) the County failed to develop and implement a Stormwater Management Plan (SWMP) that met the requirements of the County's permit, and (2) the County failed to provide adequate resources to implement its SWMP.¹ Under the Consent Decree, the County agreed to pay a penalty of \$280,000 – the largest penalty ever levied for stormwater violations in the State of Utah.

The Consent Decree also contains many prospective compliance requirements, including: (1) the County must maintain at least nine full-time equivalent employees to carry out the County's responsibilities under its SWMP; (2) preparation of an inventory of all permanent stormwater control structures at sites constructed since January 1, 2001, and a plan for maintenance, inspection, and enforcement of requirements for such structures; (3) the County must implement stormwater pollution control measures at its own facilities; (4) develop and implement stormwater controls for larger construction sites in the County; and (5) train staff regarding controlling illicit pollution discharges to stormwater. Notably, the Consent Decree includes a strict timeframe for compliance along with stipulated daily penalties for non-compliance.

The County's stormwater permit is issued pursuant to the federal Clean Water Act and the Utah Water Quality Act and administered by DWQ, based on a delegation of authority from EPA. The Permit applies, not only to the County, but to all incorporated areas with small municipal separate storm sewer systems (MS4's) within the County (the Jordan Valley Municipalities).

The County's permit, and other stormwater permits issued by the DWQ in recent years, implement requirements that are at the forefront of stormwater regulation in the country and can present significant new challenges for Utah municipalities. The permit was amended in 2013 to add requirements for post-construction stormwater control structures and performance standards, green infrastructure/"low impact development" requirements, and other measures that EPA was expected to address in a

nationwide rulemaking. EPA ultimately deferred that rulemaking in March 2014, but has continued to focus on leveraging local permits as a means of implementing post-construction requirements.

The Consent Decree provides strong indication that EPA and the UDEQ will not hesitate to enforce the requirements of such permits, particularly where a municipality has been put on notice of deficiencies in its program. Given this, municipalities should carefully review their stormwater programs for permit compliance and ensure they have sufficient resources to fully implement their programs.

Holland & Hart LLP will be hosting a seminar on stormwater compliance for municipalities on May 3, 2016, in coordination with accenaGroup. Please e-mail SMBowmer@hollandhart.com for further information about the seminar.

¹ See January 28, 2016 Consent Decree in *United States of America and State of Utah v. Salt Lake County, Utah* ("Consent Decree").

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