

From: [BROWN Courtney](#)
To: [ROOT Jenny](#)
Subject: FW: Vote on Stormwater classification plan
Date: Friday, January 03, 2014 3:44:03 PM

For the admin record.

From: CARLOUGH Les
Sent: Thursday, April 18, 2013 11:35 AM
To: LOBOY Zach; NIGG Eric; JOHNSON Keith; ADES Dennis R
Cc: NOMURA Ranei; BROWN Courtney; BACHMAN Jeff
Subject: RE: Vote on Stormwater classification plan

Ok, the votes are in with three votes (Zach, Keith, and Eric) in favor and one abstention (Denny). So, we will move ahead with the proposed revision to the Class I. Each of the votes in favor also wanted to highlight the need for more work on the implementing guidance which must consider the complexity and newness of the 1200Z and must only lead to a minority of significant violators being subject to PEN or higher Class I penalty. As I said below, and promised each of you – OCE will certainly work with you to craft a guidance that meets the needs and is workable. We have working drafts from Courtney and Zach and will start there when folks are back in the office. Thanks again for your patience and diligence in working through this.

From: CARLOUGH Les
Sent: Friday, April 12, 2013 1:57 PM
To: LOBOY Zach; NIGG Eric; JOHNSON Keith; ADES Dennis R
Cc: NOMURA Ranei; BROWN Courtney; BACHMAN Jeff
Subject: Vote on Stormwater classification plan

Thank you all for your patience with this issue. I do think we understand the various concerns and that we may be able to reach agreement. Zach suggested that we send out the proposal on Division 12 for your vote along with some information on how the guidance might be utilized to create the outcome we all want – especially the part about smaller 1200Z failures not becoming immediate Class I referable violations. So, here is the general proposal:

On the Classification, we keep the language in the redline for a Class I Division 12 classification: **“failing to substantially implement a stormwater plan in accordance with an NPDES permit.”**

On the guidance for both that Class I and for applicable Class II violations we work together to draft guidance that lays out which types of case should not be referred and which should be referred. OCE does not intend to push a guidance interpretation that does not consider the importance of the violation to the regulatory system or to the environment and it is not our intent to avoid effective informal solutions when appropriate. Attached are two discussion documents for this effort. First, Courtney redrafted her February draft guidance to better reflect some of the concerns we all raised. It has the following effects:

- identify specific conditions of the permit and BMPs that are most important for implementation and therefore might be cause for “failure to substantially implement.”
- include an express limitation that only a “a majority of” violations of that specific condition/BMP be eligible for referral. Adding the “majority of” language is our

interpretation of “substantially.”

- ties the violations to either actual significant environmental harm or the threat of serious harm to human health or the environment.

Second, Zach sent along some concerns related to guidance that we should consider. These are documents we should use in our discussion and it will be important to weight the ideas against what we believe is the appropriate enforcement outcome.

Please let me know if you agree with this plan. If you do, we’ll set up a time to work further on the guidance and complete that step too. If we are still not in agreement on the classification change, I’ll let Leah know that we are ready to escalate for a higher level decision.

Thanks.