

TALKING POINTS
Post-Construction Stormwater Issues
September 2014

**EPA lacks authority to mandate stormwater retention
or regulate the flow of stormwater.**

The U.S. Environmental Protection Agency (EPA) in 2009 began developing new stormwater discharge regulations under the National Pollutant Discharge Elimination System (NPDES) for newly constructed and re-constructed properties. EPA's goal was to significantly expand the scope of its existing stormwater program to regulate "post-construction" stormwater discharges. Such regulations would raise issues regarding EPA's ability under the Clean Water

- CWA Section 402(p) established a limited stormwater permit program for discharges “associated with industrial activity” (which includes certain active construction site discharges) and certain sized MS4s...all other stormwater discharges were exempted by Section 402(p)(1). Post-construction discharges are not associated with industrial activity as defined by EPA 40 CFR § 122.26(b)(14) – (15).
- Congress limited EPA’s authority over MS4s (and any power EPA delegates to state