

## Technical Evaluation of Oregon DEQ Permit Compliance during Tenant/Landowner Dispute



EKI assisted a tenant operating a glass sorting and recycling company associated with a dispute regarding compliance with stormwater discharge regulations and the provisions of the lease agreement with the property owner (Owner) and the glass recycling company (Tenant). The property was formerly a metal foundry (Property) and stormwater from the Property discharges into the Columbia Slough, which is a direct tributary to the Columbia River. Stormwater discharges from the Property are regulated by the National Pollutant Discharge Elimination System (NPDES) 1200-COLS General Stormwater Discharge Permit (Permit) by the Oregon Department of Environmental Quality (DEQ) and was issued to the Owner.

At issue was the Owner's compliance with the Permit and the Tenant's obligations under their lease agreement. The Owner alleged that (1) Tenant's operations at the Facility were responsible for recent increases in constituents of concern in stormwater that had resulted in exceedances of the benchmark concentrations established in the Permit and (2) that the Tenant was responsible for implementing Tier II Corrective Actions, which included expensive engineering reports and construction of stormwater treatment measures.

Based upon a review of historical stormwater quality data, it appeared that the increase in concentrations of constituents of concern in stormwater coincided with the Tenant's occupancy at the Facility. However, EKI's review of all sampling procedures identified that the Owner had altered sampling locations after the Tenant's occupancy, and that the samples collected at the new locations were not representative of stormwater discharges and therefore, would overestimate discharge concentrations. Additionally, because the Owner was the permit holder and the provisions of the lease agreement stated that the Owner was responsible for all stormwater monitoring, EKI was able to demonstrate that the lease agreement did not obligate the Tenant to implement stormwater treatment measures because the Owner's data was insufficient to draw any direct correlation to the Tenant's occupancy and that any stormwater improvements were the sole responsibility of the Owner.