



## Newsletters

### Informing Illinois Newsletter - July 2018

July 10, 2018

Informing Illinois recently published two alerts. The first considered a Fourth Circuit decision that opens the way for citizen suits over point source discharges to groundwater, a decision that could impact municipalities either through findings of liability or in permitting requirements. The second considers the issue of municipal liability when providing a positive law enforcement employment reference that conceals a prior history of unconstitutional conduct.

#### **CWA Liability Expanded to Include Migrating Groundwater Contamination with a "Direct Hydrologic Connection" to Jurisdictional Surface Waters**

On April 12, 2018, the U.S. Court of Appeals for the Fourth Circuit held that the Clean Water Act (CWA) regulates point source discharges through groundwater with a "direct hydrologic connection" to the surface water. The Court's 2-1 decision in *Upstate Forever et al. v. Kinder Morgan Energy Partners, L.P.*, joined the Ninth Circuit in a significant expansion of CWA liability whereby companies now face potential citizen suits under the CWA for either direct or indirect discharges to groundwater from spills or leaks to wells, surface impoundments, underground storage basins, and pipes.

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#### **Municipal Liability for Police Employment Reference that Hides History of Unconstitutional Conduct**

In settling an employment dispute with a former employee, it is almost routine for the parties to agree that a response to future requests for an employment reference will be limited, often to providing only the dates of employment. This agreement not only advances the interest of settlement but may prevent defamation and other suits by the former employee. What if the separating employee is a police officer with a history of unconstitutional conduct in the performance of his or her duties, such as the use of excessive force?

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*For more information, please contact Charles Schmadeke.*

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