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## Construction, Design & Engineering

### Preparing for the storm (water); avoiding financial drain

Call it the trickle-down effect.

In 1987, the U.S. Environmental Protection Agency's Clean Water Act was amended to contain the National Pollution Discharge and Elimination System (NPDES) regulation. This measure requires storm water management to be implemented on construction sites in two phases. Phase I generally applies to construction sites larger than five acres, and Phase II extends the regulation to sites from one to five acres.

While good for the environment and relatively easy to respect, the regulations were often ignored due to lack of enforcement by the EPA.

Times have changed.

In 2000, the EPA launched an aggressive enforcement program because of low compliance rates. Additionally, the deadline for compliance with Phase II of the storm water amendment was March 10, 2003.

The result has been citations and related fines — big fines.

Fines are given for a number of violations: failure to obtain a NPDES storm water permit, failure to abide by and sustain an approved storm water management plan, and failure to complete and maintain current inspection documentation of the



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SWMP. At the rate of \$1,000 per day, noncompliance can cost a bundle.

Wal-Mart is a good example. A few years ago it was building 17 new stores in four states. It neglected proper storm water management practices and

ended up with \$1 million in fines from the EPA and \$4.5 million in remediation plans.

With better understanding and careful planning, these financial impacts could have been avoided.

When designing, implementing, monitoring or inspecting a SWMP, the following steps will reduce the risk of violations:

#### ■ Know your local EPA/NPDES representatives.

Good communication is very important in order to comply with somewhat unclear regulations. Questions may arise, particularly on complex sites with multiple areas of ground disturbance and/or multiple owners. A good way to help ensure you are meeting all the steps neces-

sary for compliance is to meet with your local EPA/NPDES regulating authority representatives from the state, county and city levels prior to breaking ground and communicate often throughout the process.

#### ■ Clearly assign responsibility for obtaining and maintaining the storm water permit.

It is the responsibility of the owner/developer to comply with the EPA regulations. Fines for noncompliance are assessed against the entity that obtained the NPDES permit and, therefore, it is the owner's job to designate who is responsible for acquiring the necessary paperwork. Typically, the civil engineering firm retained to develop the site grading plans is tasked with developing the SWMP and the general contractor is responsible for implementing and monitoring the plan.

#### ■ Consistently monitor compliance with the plan.

A qualified civil engineering firm should be used to develop the SWMP. Potentially, fines can be incurred if the plan was ill-conceived or becomes inadequate due to a change in site conditions. As conditions are likely to change on a construction site, the owner, contractor and civil engineer need to work together to amend the SWMP as condi-

tions evolve. This includes maintenance of straw bales, silt fences and other methods used to limit sediment discharge into the common water supply.

Fines also can be incurred where a viable SWMP is in place, but inspection and/or documentation has been inadequate. CTL|Thompson Inc. works with civil engineers, contractors and owners to provide site inspection services to support SWMP implementation and document compliance. Our inspectors can provide timely feedback regarding SWMP effectiveness and recommend SWMP modifications. Our environmental services/construction observation team will observe conditions on the job site and provide inspection documentation to verify compliance. Verification of compliance through timely inspection, modification to address changes in site conditions and adequate documentation are the keys to success.

In late 2003, the EPA announced a potential of \$928,500 in fines for 11 companies that had failed to meet the construction storm water permit program in Colorado. With increased enforcement and more rainfall than in years past, it's important to take a second look at the regulations. Particularly in the calm before the storm. ▲