

Compliance key to riding waves of controversial stormwater rules

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Local municipalities are struggling to stay afloat amid waves of unprecedented stormwater regulations that forever will change how urban runoff is viewed, treated and combated in San Diego County.

With the recent appeal of current stormwater legislation, along with proposed new legislation, it's no surprise that local municipalities and citizens are leery. However, despite the controversy and confusion surrounding stormwater, adherence to the latest regulations still is required by law. Now, more than ever, taking measures to understand and comply with these regulations is critical.

Municipal stormwater permit upheld

In a recent landmark case, a San Diego Superior Court judge ruled that the Municipal Stormwater Permit — put into effect February 2001 by the San Diego Regional Water Quality Control Board (RWQCB) to reduce stormwater pollution — was issued legally and will remain in place. The permit requires all San Diego County municipalities — which encompass 18 incorporated cities, the Port of San Diego and the county itself — to have RWQCB-approved urban runoff management plans in place, or face potential enforcement from the RWQCB or a third party.

The Superior Court ruling follows an intense lawsuit initiated by the local chapter of the Building Industry Association, along with the cities of San Marcos and Santee, and an association of local fire districts. The plaintiffs argued that the RWQCB lacked authority to issue such a broad and strict permit, and that it did so knowing that permit goals could not be achieved by the imposed February 2002 deadline.

The BIA in particular had expressed its opposition since the legislation's early development stages, arguing that the permit undoubtedly would drive up housing costs. The rules challenged in the lawsuit require builders to control erosion at construction sites and to install post-construction pollution-control devices to reduce urban runoff pollution. According to the BIA, the permit puts an

unfair onus on builders to solve a widespread environmental problem.

On the other hand, attorneys for the defense argued that the RWQCB indeed did have the authority to issue the permit, and that the agency followed all the correct preparation procedures. The permit had been developed during a seven-year process that included numerous public hearings, negotiations and reviews. Pro-environmental groups San Diego Baykeepers and the Natural Resources Defense Council also defended the permit.

Despite the ruling, all parties seem to agree on one point: The Municipal Stormwater Permit is the largest, strictest set of water and land use regulations to hit any municipality in the United States in the last decade. Other than the less-strict Los Angeles permit, there exists no set of standards against which to measure what can be expected in terms of water quality improvement for San Diego.

To date, the RWQCB has not fined any of the municipalities governed by the permit. However, the RWQCB has been inspecting the programs that local municipalities have developed, as well as overseeing how programs are being implemented and their effectiveness.

The BIA is considering an appeal of the Superior Court's decision, perhaps to the state Supreme Court. In the meantime, any local municipality can initiate a public hearing to amend the permit, which is up for renewal every five years, by submitting a petition to the RWQCB.

County proposes contradictory legislation

Adding to the turmoil surrounding stormwater pollution, San Diego County officials recently wrote and sponsored a bill that, by many accounts, directly contradicts the Municipal Stormwater Permit.

Assembly Bill 1517 proposes that urban runoff should be managed as an environmental resource, rather than classified as a pollutant. According to the bill, discharges from storm drains that pollute streams, rivers and the ocean "are an inevitable consequence of rainfall" and "should not be prohibited directly or indirectly" by the state.

Opponents of AB1517 are concerned that the bill would hinder the RWQCB's authority to enforce the directives of the Municipal Stormwater Permit and penalize municipalities that fail to comply. Likewise, it is feared that AB1517 would weaken enforcement of permit directives by each individual municipality.

So far, local developers appear to be the most likely supporters of AB1517, which has yet to be presented to Gov. Gray Davis for review. Environmentalists and stormwater pollution regulators have been critical of the bill, contending that it would only reverse the current momentum to combat urban runoff.

Phase II federal rules become effective

Separate from state and county stormwater regulations, a new wave of federal stormwater legislation recently hit more than 8,000 municipalities across the United States — including municipalities in San Diego County.

Since 1990, municipalities nationwide have operated under the National Pollutant Discharge Elimination System (NPDES) storm water program, part of the federal Clean Water Act set forth by the Environmental Protection Agency. In early 1998, the EPA proposed the "Phase II" regulations of the NPDES program to expand permitting requirements for certain urbanized areas and construction sites.

Effective March 10, 2003, municipalities falling under the Phase II umbrella have had to implement compliant stormwater programs or face potential enforcement from the EPA.

Specifically, Phase II targets small municipal separate storm sewer systems (MS4s), which generally serve populations of less than 100,000; industrial activities operated by a municipality smaller than 100,000; and any construction activity disturbing between 1 and 5 acres. MS4 owners can include state departments of transportation, local sewer districts, universities, hospitals, military bases, prisons and other institutional facilities.

Targeted MS4s must develop stormwater management plans that incorporate the following six required control measures:

- Public education and outreach;
- Public participation and

involvement;

- Illegal discharge detection and elimination;
- Construction site runoff control;
- Post-construction runoff control for new development and redevelopment; and
- "Good housekeeping," which entails the development and implementation of a program (i.e., a Storm Water Pollution Prevention Plan) to prevent or reduce pollutant runoff from municipal operations.

Compliance proving to be key

With no foreseeable end in sight for the unrest surrounding the latest stormwater regulations, the fact remains that targeted municipalities still are required by law to comply — or face enforcement and costly penalties.

Thus, taking a proactive approach can prove to be extremely beneficial. For one-on-one help, municipalities may want to consider working with a qualified environmental consultant. A number of environmental consulting firms have experienced on-staff stormwater specialists who can evaluate existing stormwater programs and help to implement required control measures that meet compliance requirements.

To assist MS4 owners and operators subject to the Phase II rule, the EPA also has developed a "tool box" containing fact sheets, guidance documents, a menu of best management practices, training and outreach efforts, technical research, an information "clearing house" and compliance monitoring and assistance tools. The tool box can be obtained through the EPA's Web site at www.epa.gov/own/sw/phase2.

Municipalities also should keep in mind that by complying with stormwater regulations, they also are doing their part to keep San Diego's waters clean. Urban runoff is the leading cause of beach closures.

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