

Storm warning

Requirement for stormwater permits may affect all businesses. **Interviewed by Leslie Stevens-Huffman**

The 1987 amendment to the Federal Clean Water Act has proven to have far-reaching implications for San Diego County construction firms and anyone needing construction.

In January 2007, the San Diego Regional Water Quality Control Board adopted a revised National Pollutant Discharge Elimination System (NPDES) permit that requires local governments to further control urban sources of water pollution. As the effects of the amendment trickle down, many business and all new construction projects will be directly impacted.

The permit requires the proper management of runoff from rain and even house-keeping and gardening activities. In some cases, the runoff will need to be treated on-site before it can be released into the municipal storm drain system. Such treatment will require the local installation and maintenance of a water treatment system. The permit requirements will add to the construction costs of new homes or typical business development projects such as new parking lots.

"The new permit requirements not only are more extensive, but they require measures of effectiveness," says John Lormon, chair of the Environmental and Land Use Practice Group at Procopio, Cory, Hargreaves & Savitch LLP. "All of this will have an impact on costs for homeowners, businesses and taxpayers."

Smart Business spoke with Lormon about the business effects imposed by the permitting requirements and how CEOs can prepare for the changes.

How will the new urban runoff management program affect the construction industry?

The construction industry will be affected in several ways. For example, that industry is going to see changes in terms of how much land can be graded at any one time.

Because grading can alter the amount of runoff water and the pollutants contained in that water, the permit may only allow for a limited disturbance of land at one time. This could affect construction time lines and potentially project costs.

There are also implications for low-impact development projects such as the construc-



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tion of restaurants, parking lots or office buildings. When you convert ground that previously absorbed runoff to hardscape, you are changing the volume, velocity and makeup of the runoff. This change is a major concern for water quality regulators; thus, new restrictions are being imposed on development.

Creating additional hardscape can also cause runoff to alter streams, banks and beds, changing habitats. Where site development exceeds 50 acres, the project proponent will be subject to additional requirements, including development and compliance with a hydromodification plan. In time, most projects will be subject to these requirements.

The permit requires the local government to reduce the discharge of pollutants in urban runoff to the maximum extent practicable through various management practices [such as treatment and development of management plans], and these requirements will be passed down from local governments to development projects through ordinances and the land use permitting processes.

These same water quality issues will affect environmental review and could create new mitigation requirements, further adding to project costs.

Are there wider-reaching implications?

Certainly, CEOs should expect to see some of these costs passed through to them under triple net leases, and the permitting process may slow down new construction projects or build-outs. The cost impact may not be as immediate for CEOs who lease building space, but as those buildings undergo renovation, or if the CEO relocates or expands the business, there is the potential for impact.

Also, the agencies have developed stormwater civil and criminal enforcement initiatives. Wal-Mart recently paid a stormwater violation penalty of \$3 million.

How will this impact the cost of doing business and the cost of construction?

The building industry says that this may add as much as \$30,000 to the price of a new home. Other estimates project a \$100,000 cost of construction increase for office buildings, while the cost to government and taxpayers is projected to be \$250 million over the five-year life of the current permit.

What should CEOs do in anticipation of this urban runoff management program?

First, they should pay careful attention to site selection and keep both the stormwater quality impacts and the potential cost escalation in mind.

Second, they should anticipate that new construction might be slowed or impacted by the permitting process.

Third, as CEOs look at all new real estate transactions, they should do their due diligence and strongly evaluate projects that might result in hydromodification or treatment requirements.

Fourth, the SEC requires public companies to disclose environmental liabilities.

Last, keep budgets in mind. All of these changes are a consultant's dream, and any time there are uncharted waters to navigate, consultants are usually hired to help pave the way.

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