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Compliance Strategies for the Texas Construction Storm Water Permit

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By now, most engineers, developers, and construction contractors are aware that the Texas Pollutant Discharge Elimination System (TPDES) storm water construction general permit (CGP; permit # TXR150000) became effective on March 5, 2003, and that the permit contains requirements for both

large sites (more than 5 acres of disturbed land) and smaller sites (1 to 5 acres of disturbed land).

However, many operators are just beginning to learn that remaining in compliance with the new CGP could require greater attention to detail than in years past. The scope of the state CGP is similar to the federal permit that it replaced, which was administered by the Environmental Protection Agency (EPA). However, the Texas Commission on Environmental Quality (TCEQ) is able to oversee that scope more stringently than the EPA, by virtue of both a larger staff and a local presence. TCEQ operates 16 regional offices distributed throughout Texas; EPA maintains one office in Dallas for oversight of the states of Texas, Louisiana, Arkansas, Oklahoma, and New Mexico. Furthermore, although this CGP is new, the TCEQ's experience with storm water management is not. Many TCEQ personnel honed their inspection skills by administering the Industrial Multi-Sector General Permit (MSGP), which is a different storm water permit that is estimated to apply to as many as 8,000 manufacturing businesses in Texas. The MSGP has many regulatory provisions in common with the CGP, but it became effective a year and a half before the CGP. TCEQ's earlier MSGP expertise transferred readily to the CGP, and that experience is often apparent when agency personnel conduct construction site inspections.

An effective construction storm water management program must incorporate TCEQ permit requirements as well as municipal engineering standards.

For these reasons, older construction storm water management strategies will no longer guarantee compliance. Many operators follow standard engineering practice, building codes and other industry references in managing storm water planning as incidental to project design. Engineers are usually tasked with fulfilling local requirements during a project's development stages; they often produce a storm water pollution prevention plan (SWP3) from a boilerplate well ahead of groundbreaking. When storm water planning is limited to that approach, the SWP3 can have the appearance of being "tacked on" to the engineering specifications. As such, the SWP3 may not continue to reflect site conditions once construction is underway. Furthermore, unless adequate training is provided, an SWP3 may be poorly understood by subcontractors, which naturally tend to be more focused on deadlines than paperwork.

TCEQ has never viewed storm water management as a provision to be satisfied primarily through project design. TCEQ views SWP3s as site-specific "living documents," the creation of which is only the first compliance step. Thus, operators should view storm water management as an ongoing process, as well as a requirement of code that is addressed during engineering.

There are additional forces at work that may focus attention on storm water management, even if TCEQ does not get directly involved via a site inspection. Inter-agency coordination is increasing regarding related environmental permitting issues (for instance, water rights and wetlands), and these other agencies often verify storm water compliance prior to providing a permit decision in their area of regulation. Municipalities that passively accepted carbon copies of storm water Notices of Intent (NOIs) in years past are beginning to monitor construction sites, as required by their own municipal sepa-



A section of silt fence is partially buried by mobile sediment at an active Texas construction site. Regulatory agencies and private interests are increasing their demands for more effective storm water controls.

rate storm sewer system (MS4) permits. Many community groups have a growing interest in watershed management, and they do not hesitate to file complaints on operators who fail to maintain the best possible storm water controls (complaints to TCEQ almost always trigger inspections). Finally, an operator's civil liability costs can dwarf environmental compliance costs if private parties seek damages for mitigation of the downstream sedimentation or flooding that uncontrolled construction run-off can produce.

Operators will need to acknowledge these new realities and refine their future storm water management strategies accordingly, in order to protect their own financial interests as well as the environment.

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