

## New Storm Water Requirements for Construction Activities

Implementation of Phase II of the Federal Storm Water Regulations began on March 10, 2003. Prior to the implementation date the State had issued two general permits to facilitate compliance with the regulations. The MS4 permit for small to medium entities was issued in December of 2002 (Details regarding the requirements of the MS4 permit will be the subject of later articles.). This article will focus on the Small Construction Storm Water General Permit and changes in the applicability of construction storm water requirements for both large and small construction projects.

Phase I construction storm water requirements were mandatory if an activity disturbed 5 acres or more or was part of a larger development. Additionally, public entities that served a population less than 100,000 were exempt from mandatory coverage. This meant that in Mississippi, only the State, the City of Jackson, and private entities had to get coverage and comply. On March 10, 2003, the population exemption expired. Thus, anyone disturbing more than one acre was subject to the construction storm water requirements. In a practical sense, all towns and counties building roads, buildings and utilities were subject to the regulations. Projects begun prior to March 10, 2003 still in progress, were subject to the regulations since no “grandfather clause” was included. This applied to large and small construction storm water projects.

A common misconception is that “linear projects,” such as utility construction, are not be subject to the regulations. Any project that disturbs one or five acres is subject to either the small or large construction storm water requirements. Consider the installation of a mile of water line. If the water line is installed with a track hoe (with a tread width of 10 feet), the disturbed area is, minimally, 52,800 square feet (10x5280), a little over an acre. This does not include the area disturbed by the construction of pumping stations, material handling areas, etc. It is, therefore, subject to the small construction requirements.

The Department settled a case involving a governmental agency, within the last twelve months, for a mid five figure penalty for failure to implement phase II construct storm water regulations on a linear project. The settlement also required retroactive development and implementation of appropriate storm water controls.

The Department has been conducting an aggressive outreach program. However, as the example indicates, there has been less than uniform compliance and an apparent lack of understanding of the applicability of regulations. It is important that construction activities have the necessary coverage and are fully implementing your storm water pollution prevention plan.

The Small Construction Storm Water Permit requires that an applicant complete the Notice of Intent (NOI) form and develop a storm water pollution prevention plan (SWPPP) *prior* to beginning construction. Most applicants do not have to submit the NOI or SWPPP to the Department. However, the SWPPP must be implemented and the NOI must be available upon demand by a Department inspector. Failure to do so represents non-compliance. As in the past, activities that disturb five or more acres must have the NOI and SWPPP submitted to and approved by the Department prior to beginning construction activities.

As you can see, it is important to understand the changes in the storm water regulations. If you have any questions regarding storm water construction requirements you may contact Jim Morris at [Jim\\_Morris@deq.state.ms.us](mailto:Jim_Morris@deq.state.ms.us); (601)961-5151 or visit the storm water page of the MDEQ web page: [http://www.deq.state.ms.us/MDEQ.nsf/page/epd\\_epdgeneral](http://www.deq.state.ms.us/MDEQ.nsf/page/epd_epdgeneral) .