

Commentary

New Storm Water Regulations Effective July 1, 2010: How to Save Time and Money While Staying In Compliance

by Joseph Caldwell

You may be about to or have foreclosed on property that grading has started or been completed, but the project was never built out. If you already foreclosed, did you know it is your responsibility to keep the property in compliance with the newest Storm Water Regulations that will take effect on July 1, 2010? If you are interested in saving your institution money by avoiding costly fines, become familiar with the materials outlined below.

New storm water regulations related to construction activities are set to go into effect on July 1, 2010. the impact of these new regulations can greatly increase the overall construction cost of future projects. It is important for lenders to understand the existing and new regulations and what impact these regulations have on the properties that are to be or have been foreclosed upon.

Background Information

Storm water runoff is regulated under the Federal Clean Water Act (CWA) by the National Pollutant Discharge Elimination System(NPDES) permit program. In the State of California, the State Water Resources Control board is responsible for issuing NPDES permits. Rather than issuing individual permits for each construction project, the State Water board has issued a General Construction Permit that most projects are covered under. A project applicant agrees to abide by the terms of the general construction permit, and the applicant is relieved of the time and cost of obtaining an individual construction permit. Under the existing permit, developers and contractors were required to prepare and implement Storm Water Pollution Prevention Plans (SWPPPs) for construction projects. The SWPPPs required that Best Management Practices (BMPs) be installed to reduce the sediment discharge and erosion of a construction site. Silt fences along the boundaries of construction sites and sand bags around catch basins are but a few of the BMPs that are included on almost every construction site. As the new, or soon to be, project owner, you are now responsible for insuring the property stays in compliance.

How You Can Comply with the New Regulations

Rather than having a one size fits all approach, the new permit requires that each project undergo a risk analysis and be categorized in one of three risk categories based on the sediment discharge potential of the site and the proximity of the site to impaired downstream waters. The updated new permit requires that specific BMPs be utilized based

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on site risk. Depending on a site's risk level, storm water sampling and analysis is required for pH and turbidity. Sites that exceed specified pH or turbidity levels will automatically be in violation of the permit.

The updated permit requires that site specific SWPPPs be prepared and implemented by trained and certified professionals. Applicants and annual reports will now be posted electronically. While this will cut down paper work, it will also allow interested parties instant data access which in turn can lead to more rigorous enforcement of the permit. With added requirements in the updated permit will come added expense in both the preparation and implementation of site specific SWPPPs. The BIA estimated that it would cost over \$150,000 to implement the mandated BMPs on a five acre high risk site. If SWPPPs are not properly implemented and maintained for a site, there can be fines levied of up to \$37,500 for each day of violation.

The good news is that there are certain steps that you can take now that could provide substantial cost savings for the land you now own or are about to own. All construction projects currently covered under the existing General Construction Permit will have to reapply for coverage under the new permit in July. In most cases, the existing project will be assigned the lowest risk level and this will remain in effect until September 2, 2011. This allows projects that are currently in the pipeline to be "grandfathered" in for a period of time. Being proactive in obtaining coverage under the existing permit could provide a significant cost savings for a future project, thus making your land more valuable to prospective buyers.

Even after July 1st, there are still steps that can be taken that can save money and make a property more valuable and attractive to developers in the future. Under the new permit, a site's erosion risk analysis can be calculated using a generalized (and potentially conservative) approach. This generalized approach is fairly simple, but simple is not always the best. Under the updated permit, a detailed site specific soil loss analysis can be performed that more accurately reflects the site. The results of the detailed analysis can in many cases be the difference between a high and medium risk site, or a medium or low risk site. Proper analysis of a site can prevent the unnecessary implementation and cost of BMPs specified by the updated permit.

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