



Stacy Stotts

Talking Legislation

The latest in storm water penalties, and how to avoid them

Storm water legislation is more stringent than ever, and new requirements are almost certainly on their way. To find out what is happening in the legal trenches, *Storm Water Solutions* Associate Editor Rebecca Wilhelm spoke with Stacy Stotts of law firm Stinson Morrison Hecker's Environment & Natural Resources Div.; Stotts has extensive experience in the storm water sector, representing clients in environmental regulatory and administrative matters and providing compliance counseling, for example.

Rebecca Wilhelm: *What is the focus of storm water legislation currently in place?*

Stacy Stotts: The focus of requirements is to prevent sediment that may run off from construction sites. Sediment impacts water quality in streams and lakes and for those who are nearby construction sites.

Wilhelm: *What are the potential penalties for failing to comply with storm water regulations?*

Stotts: These storm water requirements are federal in nature, but states and local governments may have more stringent requirements, so penalties differ based on which authority brings action.

The federal penalty would be \$32,500 per day per violation, so fines can add up quickly. Local and state penalties tend to be lower, but they are still significant.

Typically, the way these cases progress is that first the site will receive an inspection—whether local, state or federal. Then it will get a notice of violation before any penalty action is brought.

Wilhelm: *What kind of group is likely to face the most scrutiny under storm water legislation?*

Stotts: Typically, these requirements apply to any operator or owner that disturbs one acre or more of land,

so the responsibility really falls on developers, the construction industry and others who are disturbing land and need to be mindful before they do so.

Wilhelm: *What do you foresee on the regulatory horizon, and what is the impetus behind these changes?*

Stotts: The storm water runoff regulations flow from the Clean Water Act (CWA) itself. Right now, we understand that the U.S. Environmental Protection Agency is intending to focus more energy on the CWA, and proposed rules especially would affect larger construction development sites. If finalized, these would set kind of a floor for what the best management practices (BMPs) must be at particular sites.

For larger sites, the agency might require effluent testing, which would require constructing some measures to make sure a site has a structural BMP to collect the water to test it to make sure turbidity limits are met.

Wilhelm: *What guidance can you give on the best ways to prepare for and follow up on inspections?*

Stotts: Make sure that somebody is responsible for the storm water permit in place, have a site-specific storm water prevention plan and make sure that somebody is always checking your BMPs, especially after a rain event.

It is also important that the person responsible for making sure everything is as it should be has his or her records on site—that goes a long way. Paperwork is important: records, records, records. Not having the papers is easy pickings for a violation.

If violations are found, the best thing to do is correct them immediately and inform the inspectors. The sooner you do this, the better your odds are that nothing further will occur in terms of penalties. **[SWS]**

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