

New York's Stormwater Phase II Program By Peter G. Vars, P.E.

On March 10, 2003, local municipalities are required to be in compliance with New York's Phase II Stormwater Program. This State extension of the EPA program guidelines will have dramatic implications on how stormwater management plans are designed and implemented, and how a municipality monitors construction sites. The Phase II program is an extension of the current Phase I program that has been in effect since 1988. Both originate from requirements contained in the 1987 amendments to the Clean Water Act to address stormwater conveyed pollutants. This article will focus primarily on the construction activity component of the program. The program also contains requirements for municipalities in how they manage their MS4s (Municipal Separate Storm Sewer System).

The current Phase I program regulated construction activity on sites that created five acres or greater of "disturbance". Under this program, the landowner is responsible for preparing a "Stormwater Pollution Prevention Plan ("SPPP"), filing an "NOI" (Notice of Intent) to commence construction activity, and implementing the stormwater management plan during construction. Upon completion of construction and the re-establishment of groundcover, the owner files a "NOT" (Notice of Termination).

This program was primarily administered at the local level with NYSDEC having oversight responsibilities. This oversight consisted of NYSDEC issuing a SPDES General Permit for Construction Activity. Design of a project's SPPP per the published design guidelines and conditions contained in the General Permit amounted to an owner's conformance with the Phase I program.

The proposed Phase II program reduces the threshold of disturbance to one acre. This essentially will result in *all* site construction activity to be subject to the regulatory requirements of the program. Even single lot development, not just subdivision development, will fall under these requirements. Additionally, NYSDEC is assuming a much more active role in the Phase II program, as are certain local jurisdictions. The new General Permit for Construction Activity were expected to be issued on December 10, 2002 and local municipalities would have begun applying the new threshold effective this date. After this to-be-determined threshold is established, if your construction activity is greater than one acre in area, you will be required to file an NOI and prepare a SPPP for local municipal review.

The emphasis of the program will continue to be to control stormwater runoff quantity and quality at construction sites. Landowners will be responsible for preparing an SPPP which details how stormwater will be managed during the construction process. This plan will be required to utilize identified Best Management Practices (BMPs) for controlling erosion and sediment on-site. These practices include "non-structural" controls such as phasing of disturbance, preserving natural vegetation and buffer strips, and maintenance, as well as structural controls such as storage basins (silt sinks, retention ponds), silt fence, seeding, mulch, infiltration features (trenches & drywells), and check dams. All of these features combine to formulate an effective plan to promote pollutant removal from stormwater and enhance water quality.

Locally, municipalities have formed a stormwater coalition coordinated through the Monroe County Health Department and the Soil & Water Conservation District to ensure conformance with the new Phase II regulations. This coalition will issue standard requirements for the elements of the SPPP. In addition, NYSDEC has issued a new Stormwater Design Manual that is to be utilized in preparing the plan. This manual provides the BMP's and guidance for the design engineer to ensure compliance with the SPDES General Permit.

So, what does this mean for the developer and builder? Actually, some of the changes that will evolve out of the Phase II program have already begun to be implemented by local municipalities. This includes municipal requirements for stormwater wetlands to be installed in lieu of the traditional detention or retention basin. In addition, we believe you will see a higher priority placed by the municipality on re-establishing groundcover and better construction maintenance practices. Towns will likely now require a Letter of Credit line item for seeding of all disturbed areas, including road right-of-ways and topsoil stockpiles, with a binding schedule for the seeding to take place. Weekly monitoring of erosion control measures will be required with on-site inspections conducted by the municipality. Finally, during the design and pre-construction phase, the municipality will want to be satisfied that the SPPP prepared for the project will be effective in protecting water quality during the entire period of construction.

New regulations, new guidelines and new government coalitions are nothing new for the land development industry. The real challenge is how to meet them head on and never break stride in achieving your business objectives. At BME Associates we like to think that this is the way we have always done business – thinking on our feet and adapting to the ever-changing regulatory environment. We've studied the new regulations. We've even been designing “by the book” for quite some time. Why? Because it makes sense for our clients, our communities and our environment. Let BME Associates guide you through the changes, through design and through construction to help bring about a successful project.