

**Recent Impact On The Construction Industry
Due To
Increased Local Regulatory
Activity**

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CONSTRUCTION INDUSTRY

Developers and Contractors are both noticing increased regulatory inspection and enforcement.....

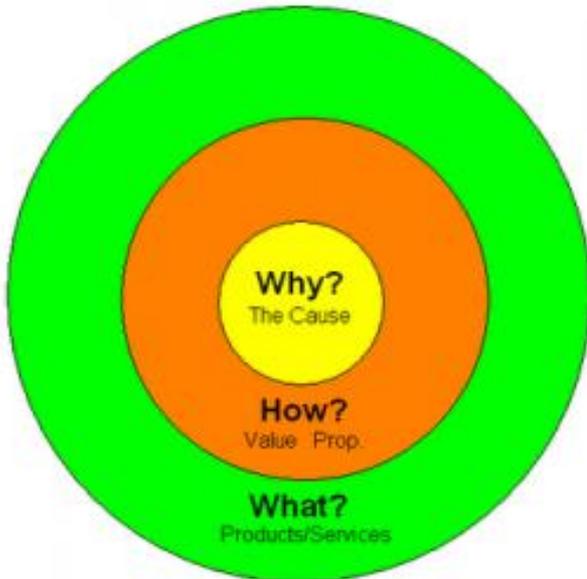
WHY???



LET'S EXPLORE

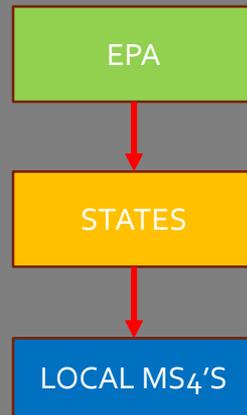


Golden Circle Concept



What drives regulation?
How does the regulatory process work?
Why is local regulatory increasing?

WHAT IS THE FOUNDATION OF REGULATION?



U.S. Congress passed the Clean Water Act CWA creating the U.S. Environmental Protection Agency (EPA)

States created Dept. of Environmental Quality (DEQ)

EPA and CWA mandated large municipalities to create Stormwater Programs creating Municipal Separate Storm Sewer Systems (MS4's) and empowered MS4's with authority to administrate and enforce through local Ordinance



HOW DOES THIS CWA PROCESS WORK?

Initially, EPA created rules and regulations to support the CWA and the National Pollutant Discharge Elimination System (NPDES) was born.

EPA Created Stormwater General Permits to support the NPDES rules and regulations for the construction industry.

EPA created an inspection and enforcement program to enforce the NPDES

EPA gave authority to local MS4's to create Ordinances to support the NPDES



HOW ARE THE STATE DEQ'S INVOLVED?

Initially, States created the DEQ to meet EPA CWA expectations and to create and meet State specific stormwater needs

In recent years, the EPA delegated authority to the State DEQ's to create the Construction General Permit, provide oversight and enforce the NPDES which ultimately became "State" PDES ("T" for Texas as example)

Most States assumed the authority and began writing and issuing Construction General Permits that were more focused on State water quality needs and conditions



AND....MS4'S?

The **"BIG SECRET"** that a lot of people don't know....!

MS4's (municipalities) are issued a specific NPDES or a State PDES Permit....just like construction project owners, contractors and operators have General Permits

Yes, that is right....

The large Cities under Phase I NPDES had a separate Permit outlining expectations of the MS4

Recently, smaller Cities and Cities embedded within large metropolitan areas are now also MS4's with their own Permit and expectations



MS₄ RESPONSIBILITIES

Create a Stormwater Management Plan (SWMP) outlining local water quality efforts and programs that support their Permit

In a Large MS₄ (and small MS₄) there are more tasks to accomplish to meet their Permit expectations than just inspecting and enforcing on construction sites and aggravating operators

Examples of Responsibilities are:

- Create/maintain structural controls and stormwater collection system operations
- Identify areas of new development and significant re-development
- Roadways-street sweeping and cleaning (including inlets)
- Develop flood control projects
- Manage pesticide, herbicide and fertilizer applications
- Monitor and respond to illicit discharges and improper disposal
- Spill prevention and response
- Monitor and manage industrial high risk runoff
- Public education and public participation
- Monitoring Program (dry and wet weather and high risk runoff sampling/analysis)

Last but not least.....

- Monitor, manage and enforce construction site runoff



BASIC TOOLS OF MS4 MANAGEMENT

Create fair and consistent inspection and enforcement program

Educate the construction industry, operators and public as to rules, regulations of the General Permit and policies and procedures of the local Ordinance

Trained, certified regulatory inspectors as well as expectations of trained and certified construction industry inspectors (all parties work in a technical/profession level)

Monitor water quality not only from a micro (site) perspective but also from a larger watershed perspective

Local MS4's have the opportunity to work to compliance on sites instead of sole issuance of fines



NOW...TO THE “WHY”?

Why does it seem that there is a recent impact on the Construction Industry due to increased local regulatory Activity?

We are all here today to seek the answer to this question

The answer is not simple.....

The cause has not “happened” over night.....

The result is probably not what you expected!

There are multiple causations for increased local regulatory activity and enforcement



DRILLING TO THE CAUSE

Overview:

Local MS4's are reacting and responding to increased accountability, responsibility and expectations initiated by EPA and defined by State DEQ's in the MS4 Permits

State DEQ's are obligated and required to identify and implement national rules and policies, insert regional details and pass them down to MS4's through the State MS4 permits as well as State Construction General Permit during Permit renewal cycles

There is a "pass through" of more strict policy, rules and regulations passing from federal EPA direction to State DEQ's which outline policies impacting the local MS4's and their codified Ordinances for construction activity

The "Buck Stops" at the MS4 (local, on the ground at "Ground Zero" of the construction industry)



RELEVANT POLICIES AFFECTING MS4'S

In the recent years NPDES has moved from Phase I to Phase II

With more focus on improving water quality and obtaining timely success of water quality initiatives, EPA and States Have implemented tougher rules and policies

Examples of recent rules and policies:

- USEPA Construction and Development Rule
- USEPA Effluent Limit Guidelines (ELG) for Construction and Development
- USEPA recent discussion and pursuance of a new definition of “Waters of the U.S.”
- USEPA and State DEQ municipal MS4 Permit Audit Programs
- State defined “Total Maximum Daily Load (TMDL)” policies and expectations for localized “Waters of the State”
- MS4 trending nationally to Ordinance requirements for “Certified Inspectors” and “Certified” or “Registered” professionals in SWPPP designers.

Some of these items have been promulgated through legal actions



NOW WHAT DO WE DO?

Now that there is an understanding by the construction industry as to “WHY” there is now increased regulatory activity through MS4’s...

What do we do with the understanding we now have and how can partnerships to success be achieved?

SOLUTION:

- Communication
- Partnering
- Taking ownership of your local municipality

How do we begin this process???



COMMUNICATION

The local MS4 community and the construction industry Community need to communicate to share information on current local policies and expectations of ordinances and laws (based on EPA, DEQ and MS4 water quality regulations).

This can be achieved through:

- MS4 Briefings at local Construction Industry Association monthly or scheduled membership meetings
- MS4 training workshops or classes
- Meet during new Permit renewal periods. MS4 and construction community (Associations) can discuss new draft Permit language for purpose of understanding new rules, policies and future planned local implementation of those new proposed rules and policies.



PARTNERING

Compliance with construction stormwater regulations, rules and law involves developers, contractors, engineering community, suppliers and the MS4.

All of the local stormwater community need to commit to partnering and work together to meet the expectations of stormwater rules, policies and law (don't create an **“Us versus Them”** scenario. The is **NOT** a “win-win” situation)

All local construction community needs to make an effort to understand and implement (within reason) policy and practices for meeting stormwater permit expectations. Understanding and agreement creates a professional, quality and productive environment (without conflict).



TAKING OWNERSHIP

Construction community needs to understand the MS4 Permit position and circumstances and engage work practices that implement good management of stormwater rules and policy on construction sites.

If"things" happen on your construction site, as operator, take ownership and responsibility to correct and remediate the issue. Don't ignore it and wait on the MS4 regulator to point it out to you (***this is where trust is built or destroyed***).

If there is misunderstanding about stormwater rules or Policies...**"ASK"** for clarification and expectation....don't assume.

MS4 regulatory community needs to be willing to meet, discuss, clarify and work with an open and willing construction community.



SUMMARY

Stormwater rules and policy are developed and promulgated through legislative processes.

Those of us in the industry can influence rules and policy during comment periods for new rule proposals by EPA and States. After legislative action taken, only legal actions can challenge.

Federal, State and MS4 agencies are implementing and enforcing stormwater rules and policies (in most cases they did not “create” the law)

Construction industry needs to understand these facts and work to communicate, partner and take ownership to implement management practices on construction sites with the most reasonable and economic methodology to meet the spirit of the stormwater regulations and rules.



QUESTIONS?

