

Construction Law Issues: ADEQ: A Flood is Coming

By Charles D. "Skip" Davidson

The Arkansas Department of Environmental Quality (ADEQ) administers the federal Clean Water Act and the Arkansas Water and Pollution Control Act. Pursuant to Arkansas law, the director of ADEQ is authorized to set schedules of compliance for facilities permitted under the Act necessary to assure compliance with both, applicable state and federal effluent limitations, including but not limited to, those mandated by the National Pollutant Discharge Elimination System program (NPDES) under the federal regulations. NPDES storm water permits are issued by ADEQ. Violations of the federal Clean Water Act and the Arkansas Water and Air Pollution Control act are subject to penalties of up to Ten Thousand Dollars (\$10,000) per day per violation.

Requirements for the storm water control in Arkansas come from three (3) different permits: the industrial permit, construction permit, and municipal permit. Operators of a wide range of construction and industrial activities must

obtain NPDES permits for non-point source discharges of storm water. Conditions in the permit typically require the creation of a storm water pollution prevention plan ("SWPPP") design to control and reduce pollutants in storm water from these sites.

Arkansas law makes it unlawful to place or cause to be placed any sewage, industrial waste, or other waste in a location where it is likely to cause pollution of any waters of the State; and it shall be unlawful for a person to violate any provision of a permit issued by ADEQ.

It is the stated policy of the ADEQ to seek compliance with the laws and regulations it administers through cooperative efforts and to afford suspected violators an opportunity to resolve violations through informal means prior to initiating formal enforcement proceedings.

Routine compliance inspections are performed. Inspections may reveal violations including, failure to obtain a permit, storm water pollution prevention

plan not being available onsite; failure to comply with the erosion control plan, failure to inspect the erosion control measures, failure to track rainfall data to ensure inspections are conducted within Twenty-four (24) hours of the end of a storm that is 0.5 inches or greater, evidence of storm water sediment discharge to the waters of the State and off-site vehicle tracking of sediment.

ADEQ has indicated that they plan a large scale inspection in central Arkansas in the month of July. Compliance is cheaper than a fine. There is a storm coming. Be prepared with the appropriated plan, permit, and maintenance.



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