STORM WATER REGULATIONS

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The stormwater regulations currently in effect can best be explained as “EPA’s Train to Somewhere.” The track is the regulations themselves. The engine and caboose are the United States Environmental Protection Agency’s (EPA) responsibility. Each state with “primacy” has a car on this train for which they are responsible. The loading schedule has been set, although allowances are being made for the unruly crowd which gathered at the station. Anyone not meeting the revised schedule will be required to pay a premium to catch up later on.

I use somewhere as the destination of the tracks because the final rule on limitations is not done. The promised general permits that should serve as a guide are mired in bureaucratic red tape. However, since the vast majority of permits issued under individual or group application processes will not be issued until mid-summer 1992, EPA is not under immediate pressure of needing standards on which to cite non-compliance. While the eventual destination is clean water, the exact route is unknown because the definition of clean water keeps changing. Using past environmental history as a guide, the track will change direction several times and may even lap back over itself.

The engine belongs to EPA; however, the various environmental activist groups are on board and stoking the fires. The train is still standing still but the boiler is fully primed and roaring. When the brakes are released, the train will go barrelling down the track. As law suits develop, the train will slow and the direction will

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become more obvious. The initial trip down the track will be hectic as those coming under the regulation try to stay on the train.

The caboose is the final part of the train. Its function is to see that those on the train stay there and to identify those who never got on board. The caboose, like the rest of the train, is assigned but has no form and is not staffed. It is, however, the most dangerous. The environment has become a cause celebre in recent years. The EPA's lawyers and the Justice Department have found that they get public support when they prosecute environmental cases. The director of EPA Region V stated in April that the easiest cases to prosecute are those that miss the train when it pulls out of the station. No doubt many entities will miss the train. Most of these will miss because they don't believe it applies to them.

City maintenance garages handling fleet vehicles and private school bus compounds (public compounds have been exempted) need stormwater permits. Commercial garages do not need a stormwater permit. From all outward appearances, the public school bus compound and the commercial garage do the same thing: wash vehicles, refuel, change oil, repair vehicles, and perform other miscellaneous maintenance functions. Commercial garages may handle a couple of hundred vehicles a day if they have refueling, while the private bus compound may only serve ten vehicles. Yet, commercial garages are exempt because they are by definition a service facility rather than an industrial facility.

These types of distinctions not only exist between the definitions of service and industrial facilities, but they also exist within the known covered categories. These distinctions beg questions such as, “Why does repair and maintenance of fuel pumps at a bulk oil facility bring it under regulation, while the same type of pumps are exempt when part of an oil transmission pipeline?” Inevitably, this hair-splitting will cause some people not to board the train. Past program start-up history suggests if you have a reason to believe you are not regulated, ignore it until forced. More recent legal actions indicate this to be a poor choice as the climate is pro-environmental.

Part of the answer to this problem is the state controlled cars. There are several points to consider here: the states are not geared to administer the program—they don't want to make rules more stringent than their neighbors, and they can be overruled by the USEPA. Using the train analogy, the states have been given a flatbed car and informed that they are to construct a passenger car. The first inclination is to leave it as a flatbed until USEPA gets adamant and provides specific direction. The states recognize this approach is apt to result in directives more onerous than otherwise required. In order to give guidance to the regulated community, the state must build a superstructure on their car.
As the states answer questions about facilities in the gray areas, their superstructure becomes more defined.

So, where does the train to somewhere leave us now? The first thing to realize is that the track is laid and boarding is necessary. Getting exempted now only delays the coverage. Future regulations will bring all communities and facilities under administration.

A special problem of concern to transportation is the stormwater permits required for construction areas. Very specifically, EPA has indicated that the contractor will be the responsible person for the permit. As a minimum 60-day process period, a contractor cannot go to work immediately following being awarded the construction contract. If the user gets the permit how will it affect awarding the contract? Will some contractors bid higher because the permit obtained causes revisions to their normal work methods? (Note that there are several ways to control construction erosions.) Will a contractor bid low figuring they can get permit conditions changed and, if so, would it constitute a change order?

The stormwater permit regulations have many unknowns, which only time will answer. My advice is to get on board early and cut a deal while the program is in flux. An issued permit should be good for 5 years—adequate time for the bugs to be worked out and a semblance of order brought to the whole situation.