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## Property Owners Face Stiff New Wetlands Regulations

By CAMINE L. LABRIOLA

Wetlands perform in our ecosystem what our kidneys do for our bodies: they serve the indispensable function of protecting and purifying these most fragile and precious systems. And like our kidneys, wetlands come with a steep price tag if we don't care for them. On May 1, the fines imposed on owners by environmental agencies have increased to \$11,000 per day—with a maximum of \$27,000—for a phase one violation by their land developers, builders and contractors who have failed to control conditions such as erosion and runoff.

To better assess wetland protection and the growing importance of water quality concerns, new industries are forming to guide business and property owners through the new regulations that are now imposed by agencies and departments at virtually every level of government. Two of the most pressing concerns facing the land development industry are the heightened awareness of water quality pollutants from non-point sources and the effects of storm water runoff, which have increased due to rainfall-related problems. Consequently, governmental bodies have created more extensive regulations and have expanded law enforcement in these areas.

Each state has adopted its own set of

plans and practices for protecting the environments indigenous to the different regions of the country. New York State regulates these areas under what is called SPDES Phase II, which have been revised with new mandates as of May 1, 2004. The result of a collaborative effort



by the federal Environmental Protection Agency, the New York State Transportation Department, Environmental Conservation and others have created new levels of standards and enforcement procedure in what is commonly termed accepted "best-management practices." This led to the creation of a new layer of inspection that calls for a certified professional erosion soil expert. So, depending on the magnitude and environmental impact, anyone undertaking new projects may be required to appoint an independent CPESC inspector.

As a practical matter, even if you follow best practices for every project specification, and even if you've laid out the best erosion-control plans, you may still be responsible, based on your contract, to provide additional storm water protection plans and protection. As suddenly as a thunderstorm can occur, the work in progress on your project may quickly interfere with the water quality of neighboring streams, ponds and wetlands, the

consequences of which could become a major legal issue for you.

Some useful ways to protect you can be achieved by the use of retention basins, stone checkdams, and new apparatus for slope protection such as coconut-core rolled matting, which filters dirty water and provides support for the habitat. Also, "best-management practices" and adding phases to your project can be beneficial. Another way is to consider additional slope protection, often employed to prevent turbidity entering streams and to increase protection of wetland retention. The regulatory agencies assigned on the project may also require a new emergency plan.

Bear in mind that matters of wetland mitigation and habitat restoration have become high-stakes. Maximum fines have increased to \$137,500 for a class two penalty violation—for not meeting the new Phase II SPDES permit standards. Owners may also be subject to stop-work orders and even jail sentences. Within the past two years, several projects have witnessed criminal charges brought against the companies performing the work—work that was designed and even inspected by state officials!

Here are some helpful resources to assist owners, developers and professional to stay abreast of the new regulations. You should visit these sites to become better aware of contingent liabilities, environmental risks and to help control matters that effect a project's economic value. [www.nyc.gov/watershed](http://www.nyc.gov/watershed); [www.epa.gov/npdes/stormwater](http://www.epa.gov/npdes/stormwater); and [www.cpesc.net/policies](http://www.cpesc.net/policies). Remember, proactive measures using new protective systems and apparatus prove to be the most cost-effective way to prevent delays and ensure greater project profitability.

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