

Federal Environmental Regulations: A Primer for Staying in Compliance

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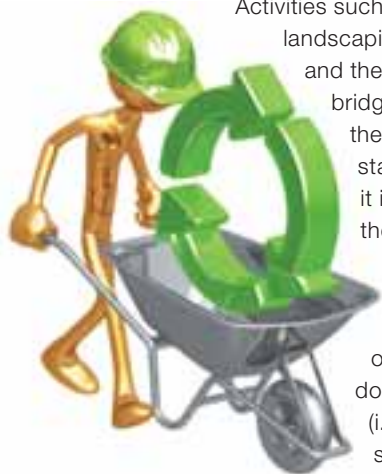
In today's world, there are tremendous pressures to comply with a myriad of environmental regulations when approaching any developing site. Whether restoring brownfields or industrial sites, enhancing a natural area adjacent to an affected site, performing a planned release, expanding operations or dealing with an accidental spill, it's often necessary to take care of important ecological and natural resource issues — issues that, if unaddressed, carry weighty liability for all parties involved. So what are the main issues to address and how can you be sure you're taking all aspects of your site into consideration?

The U.S. Environmental Protection Agency is the governing body for most federal environmental regulations, and while all states are allowed to enforce their own environmental regulations, they must be *at least* as stringent as the federal regulations. The EPA provides regulation to protect various aspects of the natural environment of any construction site, including wildlife, water, soil, and air, and governs the safe handling of waste substances that may be present at construction sites such as hazardous and soil waste, polychlorinated biphenyls (PCBs), petroleum and hazardous chemical spills.

Activities such as clearing and grading, landscaping, demolition, excavation, and the building of roadways, tunnels, bridges and houses, are all under the jurisdiction of both federal and state environmental regulations; it is important to know what these regulations are to avoid any complications or liability for non-compliance. A critical point for subcontractors to be aware of is that the regulations typically do not specify a responsible party (i.e., owner, developer, contractor, sub-contractor), and consequently all parties may share the liability

if the requirements under the regulations are not met. Therefore, it is imperative that contractors be educated on the requirements mandated by the federal and state environmental agencies.

What follows are a few of the most common issues that require attention, as well as some suggestions to avoid pitfalls.



Storm Water Runoff

Storm water runoff caused by rainfall or snow melt flows over the ground and may provide a source of natural and man-made pollutants into the waterways, thereby negatively affecting the water quality. Any construction project that moves soil or disturbs land requires soil erosion and sediment control measures to be taken. Silt fences and hay bales, which protect the loose soil and/or sediment from traveling with the storm water runoff into waterways or drainage pipes, are efficient and effective ways to manage this concern. Additionally, if one or more acres of land will be disturbed, a Clean Water Act permit may have to be secured for storm water that runs off of the construction site. The permit may include the development of a Storm Water Pollution Prevention Plan (SWPPP) that details all measures that will be taken to control the storm water runoff. Be sure to know what your local regulations require.

Wetlands

The EPA defines wetlands as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.” Previously, it was thought that wetlands were of no value and, as a result, were routinely destroyed and degraded. Today regulations recognize that wetlands provide numerous significant environmental services, including the natural treatment of contaminated water, in addition to providing critical habitat for sensitive, protected wildlife species. Permits are needed for any construction activity that takes place within a wetland; and in some states, such as New Jersey, activities within the buffer or transition area around



the wetland are regulated. Buffers can vary in size from 50 to 150 feet, depending on the classification of the wetland. It is vital to have your site evaluated by an expert who can provide you with suggestions for restoration and mitigation techniques.

Threatened or Endangered Species

The Endangered Species Act protects threatened and endangered (T&E) species and their habitats. The regulations prohibit development or construction activities from adversely affecting T&E species and/or their habitats. No activity may “take” (kill, harass, injure, etc.) a listed species without the permission and authorization of the U.S. Fish and Wildlife Service (FWS). Prior to any planned construction activities, contact the local natural heritage program or local FWS office to determine if there are any known T&E species or potential habitats for any T&E species on or near the proposed project site. If it is determined that the project could have a negative impact on any T&E species and/or their habitats, a plan must be developed to minimize the impacts. Regional FWS offices can provide additional details on the steps that are involved in this process.

Solid and Hazardous Waste

Hazardous wastes are defined as any wastes that are potentially harmful to human health and/or the environment. They can be in the form of a liquid, solid, contained gas, or sludge. The Resource Conservation and Recovery Act (RCRA) is the federal legislation that governs solid and hazardous waste. If a substance has one of the four properties of ignitability, corrosivity, reactivity, or toxicity, it is considered a RCRA hazardous waste (these hazardous wastes and their allowable concentrations are provided under EPA’s RCRA Subtitle C). Additionally, state environmental agencies may have stricter allowable concentrations for hazardous waste than even the federal regulations. Contractors that excavate, remove, and/or transport hazardous waste such as contaminated soil are required to abide by the state and federal soil and hazardous waste regulations.

In addition to the regulations discussed previously, other types of environmental regulations that contractors may encounter include:

- Dredged and fill materials.
- Spill reporting.
- PCB wastes.
- Air quality.
- Asbestos.
- Historic properties.

Useful Resources

The EPA publication *Managing Your Environmental Responsibilities: A Planning Guide for Construction and Development* is a valuable



resource for contractors that provides an introduction to federal environmental regulations. It outlines the permits that may be required to complete a project, the penalties for non-compliance, where to acquire the necessary permits, and where to get additional information. It also provides checklists to help navigate through the permitting process. To download a copy of the manual, visit the EPA Web site at www.epa.gov/Compliance/resources/publications/assistance/sectors/constructmyer/myerguide.pdf.

The Construction Industry Compliance Assistance Center (CICA) also has a Web site that provides information on environmental regulations. CICA’s Web site has a section titled “Selected Compliance News” containing news articles pertaining to environmental compliance for contractors and developers. Visit www.cicacenter.org/.

Dr. Mark Laska is president and CEO of Great Eastern Ecology Inc. (GEE), New York, N.Y., an ecological consultancy with additional offices in Pittsburgh, Pa., and Ontario, Canada, offering guidance and consultation in ecosystem restoration, biological surveys, environmental permitting and planning, site contamination, environmental communication and green design. GEE’s expertise is in the conversion of developed, isolated and contaminated areas into viable, valuable habitat. To learn more, call GEE at (212) 579-6800 or visit www.greateasternecology.com.



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**All Construction Sites
Require the Essential Service of
Clean Portable Restrooms.**

**INTERNATIONAL PLUMBING CODE (IPC)
SECTION 311**

**UNIFORM PLUMBING CODE (UPC)
SECTION 412.7**

**AMERICAN NATIONAL STANDARD
INSTITUTE (ANSI) Z4.3**

**The First Article of the
ASA Contractors Bill of Rights states that a
Safe and Healthy Workplace will be provided.**

**Protect the Health & Dignity
of the Subcontractor.
Insure that Clean Portable Restrooms are
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1 Portable Restroom per 10 workers.**