

PHASE II STORM WATER RULE IN EFFECT

Smaller communities and construction sites that are one to under five acres must have an NPDES permit to address storm water runoff.



The results of applying compost to stabilize a stream bank slope is evident in these "before and after" views.

ON March 10, 2003, the U.S. Environmental Protection Agency's Phase II regulations for storm water management under the Clean Water Act became effective. Urbanized areas with smaller population bases and construction sites that disturb equal to or greater than one and less than five acres of land are now required — through the use of a National Pollutant Discharge Elimination System (NPDES) permit — to implement programs and practices to control polluted storm water runoff. Phase I of the rule became effective in 1990, and covers large municipal separate storm sewer system (MS4s) generally serving populations of 100,000 or greater and construction sites disturbing five acres of land or greater.

What relevance does this have to producers and marketers of high quality compost and mulch products? In short, a big market opportunity. The connections include best management practices (BMPs) such as compost blankets (seeded and unseeded) for slope stabilization and revegetation and compost filter berms and socks for sediment control and storm water filtration.

PHASE II SUMMARY

In a nutshell, the Phase II rule requires any construction activity disturbing at least one, but less than five acres, to implement sediment and erosion control best management practices (BMPs). That requirement became effective on March 10, 2003 and all small construction activities must apply for permit coverage. In addition, designated small MS4s are required to have an ordinance or other regulatory mechanism for the implementation of proper erosion and sediment controls on applicable construction sites. Procedures must be put in place to review sites' control plans and conduct inspection and enforcement.

EPA is currently developing a new Construction General Permit (CGP) that will include both large and small construction sites (one acre and above). The new CGP is expected to be finalized in May, 2003. Between March 10, 2003 and the time that the new CGP is finalized, small construction activities are encouraged to utilize the existing No-

tice of Intent (NOI) form (available in PDF format on EPA's website — www.epa.gov/npdes/stormwater) and follow the requirements of the CGP for large construction sites. Although this will not provide operators permit coverage, it will assist EPA in notifying such operators when the new CGP is finalized, according to the agency. Furthermore, operators of small construction activities are encouraged to comply with the permit provisions of the expired CGP, including development of a storm water pollution prevention plan and implementation of soil erosion and sedimentation BMPs.

Most states are authorized to implement the NPDES program for storm water. In unauthorized states, EPA is the permitting authority. At the local level, a soil and water conservation district may ultimately oversee BMP implementations and enforcement. "The construction site needs to have the NPDES permit," explains Rod Tyler of Fil-trex International in Grafton, Ohio, which markets compost-based systems for storm water management. "But exactly how the program is implemented in a locality will vary all over the country. For example, in some places, a building permit won't be issued unless the construction company or developer has a storm water management plan in place. In many places, the local soil and water conservation office will play the role of gatekeeper."

Legal challenges to Phase II's implementation have not been successful. In January, the Ninth Circuit Court of Appeals in San Francisco ruled that EPA's storm water program is constitutional, rejecting claims that the agency exceeded its authority by requiring cities and developers to decontaminate storm water before discharging it into rivers, according to a report by the Environment News Service (ENS). Three cases covering 22 separate constitutional, statutory and procedural challenges to the Phase II rules were consolidated into the decision. The court also ordered EPA to review its regulations allowing polluters to design their own runoff control programs without review by the public or approval by EPA, notes the ENS report. "Discharges from municipal storm sewer systems and from construction sites must not be permitted until public notice is provided of the proposed discharge," states the ruling.

More detailed reports on all aspects of using compost and mulch products in the storm water management and erosion control arenas will appear in the next few issues of *BioCycle*. — N.G. ■

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