

When It Rains It Pours: Construction and Stormwater Management in Nebraska

01.28.2021

Rain, sleet, and snow are part of life in Nebraska. While this natural precipitation is essential to crops grown in the state, it can present significant challenges at construction sites. When rain, sleet, or snow runs off streets, parking lots, lawns, and other surfaces, it is referred to as “stormwater.” Stormwater that does not soak into the ground and instead runs into storm drains, sewer systems, and drainage ditches can negatively affect the environment by causing erosion and damaging a community’s water supply and aquatic population. Because of the potential detrimental affects of stormwater, state and federal agencies regulate stormwater in many ways, including requiring construction projects to implement a stormwater management plan. Construction operators should be familiar with these regulations and obtain all necessary stormwater permits.

Construction sites can appear to be chaotic places. Often, excavation, concrete work, masonry work, cutting, welding, and framing occur simultaneously or in quick succession. Each of these activities have the potential to disturb existing soil or create debris in the form of building materials and products like cement, grout, adhesives and paint. When it rains, stormwater runs over the loose soil and these materials and debris that are uncovered outside. As the stormwater flows over the site, it picks up debris, sediment and chemicals. The stormwater then flows into nearby storm drains and ultimately into rivers, streams, lakes and wetlands. Sediment that the stormwater places in these waterbodies can reduce the amount of sunlight necessary for aquatic plants and animals to

ATTORNEYS

Kianna L. Moore
Andrew S. Tugan

PRACTICE AREAS

Construction
Environmental

When It Rains It Pours: Construction and Stormwater Management in Nebraska

thrive. It can also clog fish gills, hinder navigation and negatively impact spawning areas.

To mitigate adverse effects from stormwater runoff, the federal Environmental Protection Agency (“EPA”) has empowered Nebraska to issue permits for construction site stormwater runoff. So, while both federal and state agencies regulate stormwater, the permitting process all occurs at the state level.

The Nebraska Department of Environment and Energy (“NDEE”) is the state agency responsible for issuing stormwater permits for construction sites. A permit is required if construction activities disturb more than one acre of land. A useful guide to determine if your project will require a permit is as follows: ask (1) will the project disturb one acre or more of land or is it related to a larger project that will disturb one acre or more of land? If yes, (2) does the project have the potential to discharge stormwater to waters of the United States (nearly any stream; lake; river; bay; wetland or reservoir) or a storm sewer? If yes, (3) you must obtain a permit.

These permits impose relatively clear standards on construction operators. First, a complete and accurate construction stormwater Notice of Intent (“NOI”) must be submitted to the NDEE for coverage. The NOI must be received by the NDEE at least seven days in advance of any construction activities. An operator is then required to implement a Stormwater Pollution Prevention Program (“SWPPP”) to manage the runoff over the course of the construction project and to ensure vegetation is established before the permit is closed. A qualified designer should craft the SWPPP to ensure all potential pollution sources are identified and accurately describe all pollution control measures that will be implemented as part of the construction activity to control pollutants in stormwater runoff.

Once a construction operator obtains the permit, it is effective for a period of five years from its issue date. The NDEE makes it easy for construction operators to apply for the permit by doing so online. It should be noted that there are several other components to the stormwater permit that construction operators should be aware of, such as site inspections and other administrative procedures. Indeed, Nebraska even has a post-construction stormwater permit management program.

Therefore, it is highly recommended that contractors consult with knowledgeable legal counsel and engineers early in the construction planning process and certainly before beginning any construction activities. This will mitigate the likelihood of stormwater impacts and reduce the likelihood that government agencies intervene in the construction project.