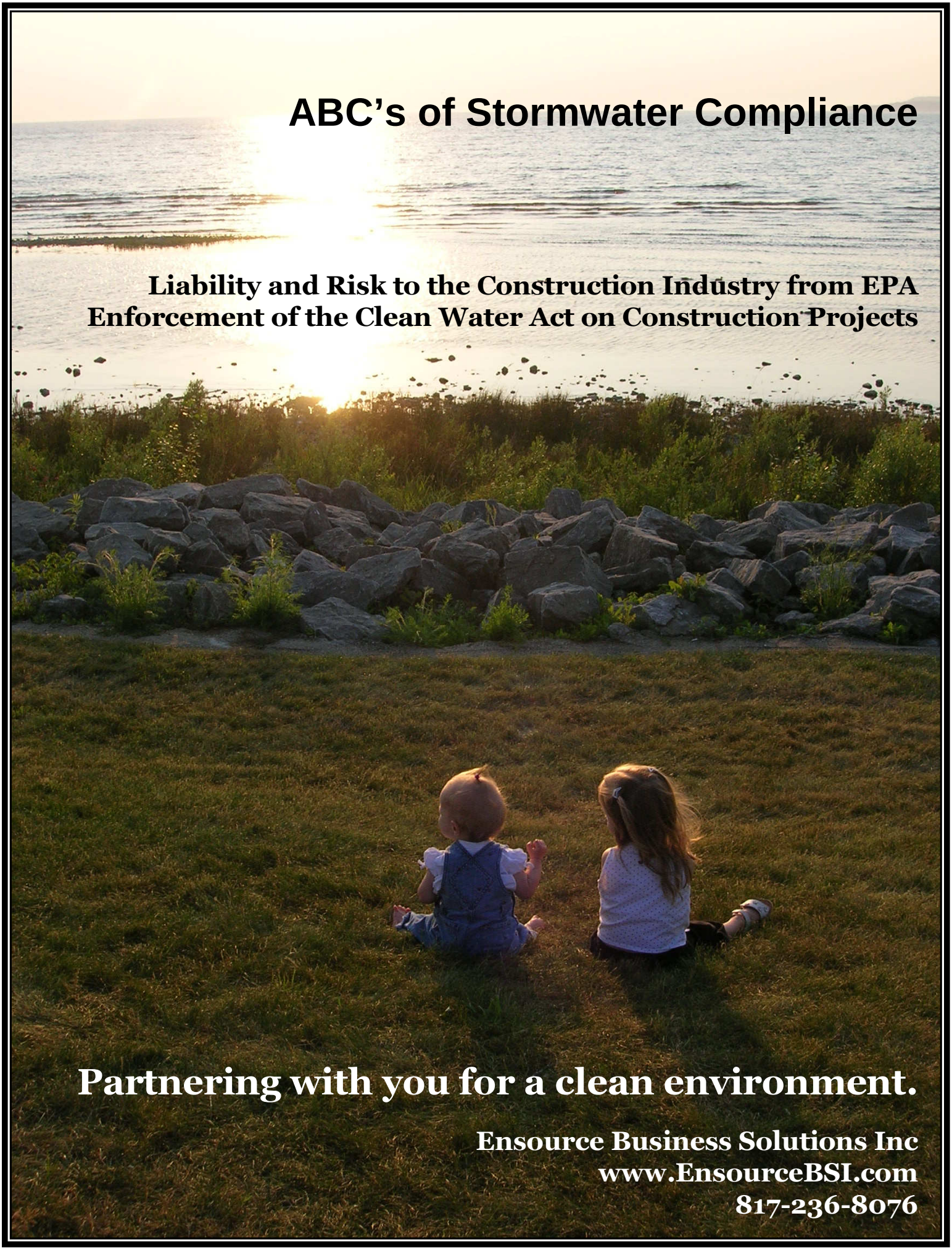

ABC's of Stormwater Compliance

Liability and Risk to the Construction Industry from EPA Enforcement of the Clean Water Act on Construction Projects

Partnering with you for a clean environment.

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What You Should Know

Everyone's reaction to storm water is different; in many respects it follows the grieving process.

1. **Denial and Shock** – these regulations don't really exist, or they don't apply to you.
2. **Anger** – you are angry at the world for having to do this.
3. **Depression** – you get depressed at the thought of compliance and you feel hopeless.
4. **Loneliness** – you are not quite sure what to do or where to go to find the answers.
5. **Acceptance** – you finally accept that compliance is part of the process.
6. **Hope** – you begin to realize that although the regulations can be vague, it is manageable.

At Ensource, we are here to help you make it through the process as painlessly as possible and show you how to control your compliance, manage it effectively, and limit additional effort. The first step is to understand what is involved and where to turn to find answers. We have prepared these pages to help you find these answers you need.

Although the regulations are numerous, ever changing, different between cities, states, and the federal government, and vague in their descriptions and interpretations at time, there are several common goals and requirements between them. **These requirements can be summed up in the following, what we call the ABC's of Storm Water Compliance.** You will still need to know what the entities in your area require, but this will get you on the right path to finding out the right information and making good decisions.

Am I required to comply?

1. Check with your state and local entities to determine the exact requirements in your area, but generally, if you are disturbing 1 acre or more, or your land is part of a larger common plan of development (ie. a custom home lot in a subdivision, or a commercial out-parcel) then you must comply with the regulations.
2. Some states and local entities will not require you to comply with as many items if your site is less than 5 acres in size. You will want to check with them to determine the exact extents of compliance requirements.

Before you start, prepare a Storm Water Plan.

1. Generally, the civil engineer that prepares the site documents can or will prepare a plan as part of the construction plan packet. Contrary to popular belief, a plan is more than just a map of the site. In fact, the map is only a minor part of the plan. The plan lays out who will operate on the site, the areas disturbed and in what stage, the controls used and in what order to control erosion and sedimentation, diagrams of the proper installation of the controls, allowable non-storm water discharges, the potential pollutant sources that the site contains, the inspection frequency and requirements, copy of the regulations, possibly endangered species reports and other information. This is the short list of requirements. If you were sold just a map, then you did not get your money's worth, and you will have to amend the plan yourself or purchase a new one.
2. If you do not receive a storm water plan as part of the packet, or it is inadequate, there are several companies that we can refer you to that will prepare the proper documents for you.

3. Depending on the state and local regulations, the plan does not have to be prepared and stamped by a registered engineer. Therefore, if your local and state regulatory entities allow, and if you feel confident enough in your knowledge of storm water, you can prepare your own plan.
4. Sign the storm water plan. This is not expressly required in all areas; however, it is required in most. In order for you plan to be valid, there will be a page for you to sign and certify the plan.

Complete a Permit Application

1. Each state, and local entity if they require additional permits have a permit application and a list of additional documentation required to submit for permit coverage. You can click on the links provided to review what your state requires for a permit.
2. Install a posted notice. Most areas require you to install a sign at the entrance points of a project that posts a notice showing the storm water permit and a document that lists who the operator of the site is, how to contact them, and where the storm water plan can be found. Even if your area does not require such a sign, it is still a good practice to have it. You will want to contact your state to determine what needs to be posted.

Determine which BMP controls need to be installed to prevent sediment and pollution discharge, and have them installed.

1. Controls are generally called BMPs or Best Management Practices and include such as silt fence, erosion control blankets, street sweeping, additional detention ponds, additional inspections and additional training.
2. This must be done prior to the start of construction.

Evaluate the condition of your site by performing inspections.

1. These can vary from weekly, to bi-weekly and after every rain event, to weekly and after every rain event, to before every rain event and during every rain event and after every rain event. You will need to check with your local and state entities to find out what interval will keep you in compliance.
2. Delegate the authority to someone to perform inspections for the project. Though not expressly written in the regulations, and sometimes confused by different states, you need to have a letter of delegation that gives someone other than the person who signed the permit the authority to inspect the site. Inspections have been thrown out because the person that performed them did not have a letter of delegation giving them the authority to do so.
3. Note any BMP that is in need of repair.
4. Note any BMP that needs to be added/performed.
5. Note any BMP that needs to be removed.
6. Update the plan and maps to reflect the current site conditions. As you add or remove or change BMPs, you will need to mark these changes in pen and ink on the plan with an initial and a date. If you find an error in the plan or change the way you are operating the site, you will want to update the plan as well. This does not have to be done by an engineer. The plan is a living document and designed for you to update in the field as needed.

Follow-up on any deficiencies on your site and correct them.

1. If you noted an item in the inspection that needs to be addressed, then you will need to correct that item as soon as practicable, but no later than 7 days if possible.
2. You may ask, "Do I protect myself by not noting an item that needs to be fixed in the inspection report?" The answer is NO! In fact, if you do not note the item, then you have falsified a federal and/or state document and can face sever penalties. It should be noted that you will not be cited for finding problems and fixing them. You will, however, be penalized for failing to note items.

Get your site stabilized when construction is complete.

1. Each entity may have different rules regarding how stabilization is defined, but the following is an excerpt from a General Permit with language that is similar to most areas you will encounter.
    1. All soil disturbing activities at the site have been completed and a uniform (e.g, evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
    2. For individual lots in a residential construction site by either:
2. The homebuilder completing final stabilization as specified in condition (a) above; or
3. The homebuilder establishing temporary stabilization for an individual lot prior to the time of transfer of the ownership of the home to the buyer and after informing the homeowner of the need for, and benefits of, final stabilization.
4. For construction activities on land used for agricultural purposes (e.g. pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to a surface water and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization conditions of condition (a) above.

Have your permit coverage terminated.

1. Generally each state and local entity will have a form to complete and send in to terminate your coverage. This is usually called an NOT or Notice of Termination.

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