



EPA's response to the National Association of Home Builders' Request for Correction of the May 12, 2004 Fact Sheet submitted pursuant to EPA's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Environmental Protection Agency can be found on EPA's Office of Environmental Information Web Site at <http://www.epa.gov/quality/informationguidelines>. This version shows detailed footnotes for information provided in the fact sheet, but is otherwise the same document.

## **U.S. v. Wal-Mart Stores, Inc.**

### **FACT SHEET**

May 12, 2004

(revised: December 28, 2004)

### **Today's Announcement**

Today, the United States lodged a settlement between the United States, the State of Tennessee, the State of Utah, and Wal-Mart Stores, Inc. In the next few months, we will undertake additional enforcement actions against other nationwide construction customers.

- Wal-Mart is one of the largest retail construction developers in the country, building well over 200 stores each year across the United States under the brand names Wal-Mart Stores, Wal-Mart Supercenters, and Sam's Clubs.
- In 2001, Wal-Mart settled claims that it had violated the storm water requirements at about 17 sites across the country. That settlement called for payment of a \$1 million penalty and a compliance and training program.
- After the settlement, follow-up inspections at 24 Wal-Mart stores revealed that violations continued. Specifically, EPA and state inspectors found:
  - ✓ failure to obtain permits for some sites
  - ✓ discharges of excessive sediment to sensitive water ways
  - ✓ failure to install and/or maintain adequate sediment and erosion control devices
  - ✓ failure to develop and/or implement a storm water pollution prevention plan
  - ✓ failure to inspect sediment control devices to ensure adequacy and condition and that operating properly

- ✓ failure to develop an adequate plan for controlling sediment and minimizing erosion
- Wal-Mart has agreed to a settlement with the United States, the State of Utah, and the State of Tennessee to resolve these violations. This settlement addresses violations at over 24 sites in 9 states (California, Colorado, Delaware, Michigan, New Jersey, South Dakota, Tennessee, Texas, and Utah).
- Under this settlement, Wal-Mart will:
  - ✓ pay the largest civil penalty ever paid for violations of the storm water regulations – \$3.1 million to be divided between the United States, Tennessee and Utah
  - ✓ perform a supplemental environmental project that will result in the protection of sensitive wetlands or waterways in one of the affected states; and
  - ✓ develop an extensive compliance program to provide better oversight of the contractors
- The compliance program required by this settlement requires Wal-Mart to take a comprehensive and preventive approach to compliance by focusing on:
  - ✓ the use of qualified individuals – Wal-Mart will undertake an extensive training program including: an annual seminar to educate its employees and contractors on storm water controls; a certification program for construction site employees to ensure they know how to prevent excessive discharges; and provision of training materials to site employees
  - ✓ careful oversight of its contractors through: regular and frequent inspections by contractor and Wal-Mart employees; documentation of the compliance efforts; and imposition of sanctions by Wal-Mart on its contractors for failure to comply with the storm water requirements

### **Environmental Harm and Public Health Impacts Associated with Storm Water Runoff**

- Discharges of storm water runoff can have a significant impact on water quality. Several studies reveal that storm water runoff from urban areas can include a variety of pollutants, such as sediment, bacteria, organic nutrients, hydrocarbons, metals, oil and grease. These pollutants can harm the environment and public health.

- According to EPA's *National Water Quality Inventory: 2000 Report*, prepared under Section 305(b) of the Clean Water Act, urban storm water runoff and discharges from storm sewers are a primary cause of impaired water quality in the United States. These sources contribute to 13 percent of impaired rivers and streams, 18 percent of impaired lakes, 55 percent of impaired ocean shorelines, and 32 percent of impaired estuaries.

### **Environmental Harm Associated with Storm Water Runoff from Construction Sites**

- The discharge of storm water runoff from construction activities (e.g., land development, road construction) can have significant impact on rivers, lakes, and wetlands. Construction alters natural landscapes. During construction, earth is compacted, excavated and displaced, and vegetation is removed. These activities increase runoff and erosion, thus increasing sediment transported to receiving waters. In addition to sediment, as storm water flows over a construction site, it can pick up other pollutants like debris, pesticides, petroleum products, chemicals, solvents, asphalts and acids which may also contribute to water quality problems.
- Although erosion and sedimentation are natural processes, when land is disturbed by construction activities, surface erosion can increase up to 200 times on sites formerly under pasture, and up to 2,000 times on sites formerly forested. Agriculture processes produce the largest sediment loads, however, construction results in the most concentrated form of erosion - the rate of erosion from construction sites can exceed that from agricultural land by 10 to 20 times.
- Sediment-laden runoff results in increased turbidity and decreased oxygen in a stream, which in turn results in loss of in-stream habitat for fish and other aquatic species.
- Sediment-laden runoff can kill fish directly, destroy spawning beds, and suffocate fish eggs and bottom dwelling organisms.
- Sediment-laden runoff can increase difficulty in filtering drinking water, resulting in higher treatment costs, and can result in the loss of drinking water reservoir storage capacity and decrease the navigational capacity of waterways.
- Sediment-laden runoff blocks light and reduces growth of beneficial aquatic grasses.
- Sediment/siltation is listed in the *National Water Quality Inventory: 2000 Report* as the second leading cause of impairment in assessed rivers and streams, the third leading cause of impairment in assessed lakes, ponds and reservoirs, and the leading cause degrading wetland integrity. Construction sites are one source of sediment loading. Construction is specifically listed as the second leading *source* of pollutants degrading wetland integrity.

## The Compliance Status of Construction Activities

- Ten industrial categories are specifically required to apply for and comply with NPDES permits to control their discharges involving storm water runoff. Construction activity that disturbs 1 or more acres is one of these categories. The primary method to control storm water discharges is through the use of best management practices as specified in these permits.
- Construction sites of 5 or more acres have been required to obtain an NPDES permit and install controls to prevent pollutants from leaving these sites for over ten years.
- EPA and the states have spent years educating the regulated community. Compliance assistance efforts have included numerous training opportunities, storm water Web sites, public service announcements, guidance documents, fact sheets, brochures and model Storm Water Pollution Prevention Plans.
- Despite extensive outreach efforts by EPA and the states, compliance within the construction industry remains poor. Results from EPA and State inspections of industrial facilities indicate that a majority of facilities and sites do not have coverage under an NPDES storm water permit. Of the sites that have applied for permit coverage, non-compliance with permit requirements remains significant.
- *The Report to Congress on The Phase I Storm Water Regulations* estimated that:
  - ✓ there are more than 62,000 construction sites of 5 or more acres that should be obtaining a permit each year;
  - ✓ less than one-third (about 20,000) actually obtained permits before breaking ground;
  - ✓ inspections by EPA and states indicate that many sites that did obtain permits failed to adequately implement the permits and control sediment and erosion.
- Many of the steps to control storm water runoff are simple and not costly, including:
  - ✓ planning construction projects to reduce the amount of time soil is left exposed;
  - ✓ installing relatively simple and low cost sediment and erosion control devices such as silt fences.

- OECA first designated storm water as a priority area in the FY 1998-1999 MOA Guidance. Storm water will continue as an MOA priority in FY 2005-2007. We intend to focus our efforts on large-scale developers where there is a corporate-wide pattern of non-compliance. These developers fall into two categories of large-scale construction operations: (1) commercial development of "big-box" stores and their associated contractors, and (2) large national and residential builders.

## References

- The following EPA documents were used in developing this Fact Sheet:
  - ✓ *Economic Analysis of the Final Phase II Storm Water Rule, Final Report* (U.S. EPA, October 1999)
  - ✓ *Environmental Assessment for Proposed Effluent Guidelines and Standards for the Construction and Development Category* (U.S. EPA, June 2002)
  - ✓ *Report to Congress on the Phase I Storm Water Regulations* (U.S. EPA, Feb. 2000)
  - ✓ *Report to Congress on the Phase II Storm Water Regulations* (U.S. EPA, Oct. 1999)
  - ✓ *National Pollutant Discharge Elimination System - Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Final Rule* (U.S. EPA, Dec. 1999)
  - ✓ *Environmental Impacts of Storm Water Discharges: A National Profile* (U.S. EPA, 1992)
  - ✓ *National Water Quality Inventory: 2000 Report* (U.S. EPA, Aug. 2002)
  - ✓ *National Water Quality Inventory: 1998 Report to Congress* (U.S. EPA, June 2000)
  - ✓ *National Water Quality Inventory: 1996 Report to Congress* (U.S. EPA, 1998)