

“What keeps you up at night?”

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To Satisfy EPA, Builder Must Implement a Company-Wide Management, Reporting and Training Program for Stormwater Compliance

By David J. Falcone, John C. Snyder and Carl B. Everett

The Federal Register of October 18, 2011 contained a notice of the lodging of a consent decree in *United States v. Ryland Group, Inc.* ("Ryland"). Ryland, one of the nation's largest homebuilders, has agreed to establish and implement a company-wide management, reporting and training program, in addition to paying a \$625,000 penalty, to resolve EPA enforcement actions under the Clean Water Act. The agreed order will require Ryland's program to go beyond the current regulatory requirements. In addition to the federal compliance actions, Ryland was facing related claims that it violated stormwater regulations in six states: Colorado, Florida, Illinois, Indiana, Maryland, Nevada and Virginia. The proposed consent decree will also resolve those claims. The public comment period on the consent decree runs for 30 days and judicial approval could occur by the end of November.

In the summer of 2008, EPA imposed similar requirements in consent decrees involving four other national builders, K B Home, Centrex Homes, M D C Holdings and Pulte Homes. In an Alert issued at that time, Saul Ewing warned that those consent decrees were "the result of the EPA's Stormwater Initiative. Developers should be mindful of stormwater issues and related regulations that pertain to any development . . . it will be relatively simple for the EPA or a state to adapt the template used in the consent decrees discussed above to enforce alleged violations committed by other developers across the country." It is clear that the creation of company-wide programs that expand the company's obligations beyond the limits of the current regulatory requirements is an important focus of the EPA's initiative.



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Any company in any facet of the development industry needs to be mindful of the current focus on stormwater regulation and company-wide compliance. Neither ignorance nor mistaken interpretation will be tolerated by the regulators. The wise and proactive companies will implement their own management, training and reporting programs to assure continued compliance with the law and to avoid the expanded requirements that have been imposed by the EPA, such as in the above-reference consent decrees.

If you need assistance in establishing a management, reporting and training program for your company, we are ready to assist you.

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