

# ASSEMBLY CALIFORNIA STATE LEGISLATURE

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### **Assembly Bill 1315: Stormwater Pollution Liability**

#### **Summary:**

AB 1315 clarifies that public works project owners are responsible for stormwater pollution prevention and must provide contractors, subcontractors and small businesses who are not the holders of the stormwater permit, a construction plan to prevent unlawful discharge, in conformance to existing law.

#### **Background:**

Although the National Pollutant Discharge Elimination Systems (NPDES) permit allocates Stormwater Pollution Prevention Plan (SWPPP) design responsibility to project owners, including the corresponding risk of penalties for design defects, many owners attempt to transfer design responsibility/risk to their contractors. This is done through broad contractual indemnity provisions and design-risk shifting requirements contrary to California Public Contract Code.

When SWPPP design responsibility/risk is transferred from an environmental stakeholder (the owner, e.g., the city or county) to a non-stakeholder, there is less incentive and ability to preserve the local environment. By offloading their risk, owners lack the incentive to ensure the Qualified SWPPP developer (QSD) is proficient and familiar with the site and surrounding area. Contractors may select the QSD based on criteria adverse to the intent of the Permit (e.g., lowering costs).

#### **Purpose:**

AB 1315 will require public works project owners design SWPPPs with the best level of protection for California's beaches and waterways. Notably, this bill does not relieve contractors of their duty to prevent stormwater pollution. Where a contractor is negligent in constructing the SWPPP, the owner retains the right to hold the contractor responsible for the resulting penalties. Additionally, the Regional Water Quality Control Boards retain their rights to fine any person directly for violations of the Permit.