

Summer storms on out and fall blows on in

By Debbi Sellers

It is that time of year when the temperatures are dropping, along with the rain and leaves. As a result, WCIA Member's storm water facilities, such as man-made retention and detention ponds, begin to fill with water and debris. In addition, if temperatures get low enough, you could see storm water ponds freeze over completely. While these ponds are designed and constructed to assist with the management and control of storm waters, they can also be an attractive area for children to play. Whether catching frogs, splashing in the water or sliding on the ice, all of these activities pose the potential for injury or even death to children.

So, what is a Member to do? Should signage be installed or should the ponds be fenced? Perhaps bushes or shrubs should be planted around the perimeter to prevent access or maybe nothing needs to be done at all. In order to determine the correct option, Members need to have a good understanding of the law, local ordinances as well as the risks associated with each specific storm water facility.

Currently, there are no legal requirements to provide signage at or around storm water facilities. A Member may choose to post warning signs, which may be a defense against attractive nuisance claims. The message, placement and number of signs should be tailored to the site, potential hazard(s) and likely trespassers. At a minimum, signage should be:

1. Clearly visible and legible;
2. Durable and weather-resistant;
3. Permanently affixed to immovable objects;
4. Placed where trespassers are likely to see it; and
5. Regularly monitored to ensure it hasn't been removed, defaced or worn out.

The Member should review sign standards and regulations to determine appropriate verbiage, size and location(s).

When considering whether or not to install fencing, a good rule of thumb is to use fences in cases where storm water facilities pose greater hazards than natural waterways or when the fence creates less danger than it is intended to mitigate. A fence, barricade or some other device may be required under one of the following circumstances:

1. Where local ordinances, design criteria, engineering designs, development requirements or county or local storm water regulations establish standards for fencing or barricading the facility or otherwise generally require it;
2. Where fencing or access prevention is required by the Member as a part of SEPA environmental review, a subdivision, site plan, master use, building permit, or other land use approval;
3. Where the facility does not resemble a “natural body of water,” children frequently trespass at the facility and one or more conditions make it unreasonably dangerous, such as excessively steep slopes and/or slippery banks; or
4. Where there is an adjacent or nearby facility that provides care for the elderly or persons with disabilities including but not limited to Alzheimer’s, dementia or vision impairment.

In addition to the criteria outlined above, Members should carefully review the following sources to determine whether there is any requirement for or standard governing fencing of or preventing access to storm water facilities, such as:

1. The Member’s adopted comprehensive plan or comprehensive storm water or utility plan;
2. Adopted wetlands studies or criteria;
3. Interlocal agreements or contracts with counties or other jurisdictions; or
4. Agreements with the State, particularly Department of Ecology; and land use agreements or contracts with developers or private property owners (these should be recorded).

For further information on open storm water facilities, please refer to WCIA's Retention/Detention Ponds guideline, PWK.17, in the Liability Resource Manual. The Liability Resource Manual is available through the Member Resources page on the WCIA website: <http://www.wciapool.org/member-resources>. You may also contact your WCIA Risk Management Representative with any questions.