

# Regulation Justification



By James Lenhart

Examining whether regulations & verification programs kill innovation

For storm water control measures, there is a lot of activity centered on developing programs that verify that treatment technologies do what they need to do to satisfy increasingly stringent regulations.

Some argue that these programs stifle innovation and are barriers to entry into the market. On the surface, the presence of a program can delay entry of products into the market. Verification programs for manufactured treatment devices (MTDs) sometimes can take years and hundreds of thousands of dollars to complete. So from this perspective, one may conclude that, yes, these programs are barriers to market entry and hinder innovation.

Let's take a look from another perspective and say that there are no programs or verification processes in place. In this case, the market becomes a morass of confusing claims, nonstandard protocols to sell in a market that has no real bar set, and an uneven playing field. The result is a downward spiral of technology performance and accurate sizing due to intense competition. This represents a lose-lose-lose scenario in that it is bad for business, discredits the industry, and most importantly does not contribute to the goal of achieving cleaner waterways.

Some have used the cell phone industry as example of innovation. However, this innovation still is subject to industry regulations. New cell phones need to be radio frequency tested, and according to Federal Communications Commission protocols, batteries need to be tested to make sure they do not explode in your pocket. However, the most important test of all is the consumer. If the product does not work, the consumer will quickly vote with his or her pocketbook. I would like to say that is the case with storm water MTDs, but reality dictates otherwise in what is

principally a regulatory-driven market.

Another example is the testing required for new automobiles. Today, crash testing, emissions testing, mileage verification and so on cost manufacturers hundreds of millions of dollars. I do not think Henry Ford needed to do any of that in the early days. But times have changed, and while these tests can be an economic barrier to entry for small startups, it clearly would be a giant step backward to eliminate them. It is important to remember that in the early days of storm water treatment, the number of MTDs going into the ground was limited. Today, if you gain an approval, hundreds of these systems could be in the ground (for a design life often exceeding 30 years) in no time at all. Therefore, the risk of allowing a poorly vetted technology to go into the ground is much higher than it was as recently as 10 years ago.

Lastly, let's look at the standard highway guard rail. The technology has been around a long time and is well understood in terms of the strength of the steel and the geometry of the rail. Nonetheless, if a manufacturer decides to make the product, it must have it tested to demonstrate that it meets regulatory requirements, even though it may be exactly like another manufacturer's product.

With all this in mind, we need to continuously improve our verification programs while minimizing the time and expense to gain approvals. These programs serve as the best protection for the regulator, the credibility of an emerging industry and, of course, cleaner water. **SWS**

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