


STORMWATER COMPLIANCE AND ENFORCEMENT: TIPS FOR AGENCY INSPECTIONS AND RESOLVING ORDERS AND PENALTIES

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Stormwater - The Big Picture





STORMWATER COMPLIANCE THROUGH REGULATION

- Federal regulation by EPA
 - Clean Water Act NPDES Permits
- State regulation by Dept. of Ecology
 - General Stormwater Permit Program
 - In 2007, the legislature created the Puget Sound Partnership to oversee and implement over \$238 million to clean up and restore the Puget Sound, its habitat and native species, earmarking \$29M to reduce stormwater runoff



STORMWATER COMPLIANCE THROUGH REGULATION

- Local regulation by counties and cities
 - Codes and Ordinances
 - Field citations (construction)
- Citizen suits
 - Clean Water Act
 - Puget Soundkeepers
 - NEDC



STORMWATER COMPLIANCE THROUGH INSPECTIONS

- EPA Inspections
 - NPDES Permit Compliance
 - Contaminated Sites and Sediment Cleanup
- Ecology Inspections
 - Stormwater Permit Compliance
 - Source Control
- Local Inspections
 - Wastewater and Stormwater discharges
- Citizen Group Inspections
 - Notice of Intent to Sue

Industrial Stormwater Discharges





Industrial Stormwater Compliance and Enforcement Issues

- Permit Categories (SIC Code)
- Permit Status (for life)
- SWPPP Status
- Site Characterization
- Sediment Contamination Source Control
- Joint Inspections
- Source Tracing



Ecology Industrial Stormwater General Permit (ISWGP)

- Re-Issued October 2009
- Effective January 1, 2010
- Self-Regulating/Self-Reporting
- Consensus Based Work Group (2008-2009)
- Rewritten in “plain English”
- Technical revisions to benchmarks and action levels



New and Improved ISWGP?

- SWPPP implementation required
- BMPs to be revised as necessary to achieve incremental compliance
- New reduced benchmarks for zinc and copper (required monitoring)
- Allows facility to suspend sampling if runoff meets benchmark for four consecutive quarters



ISWGP Regulation

- Over 1200 industrial stormwater permit applications
- Focus on stormwater management for a broad spectrum of facilities with similar pollutant-generating activities
- Similarities include:
 - Impervious surfaces
 - Vehicles and petroleum usage
 - Dirt, dust, debris
 - Metals



ISWGP APPEAL

- Boeing, Gunderson Rail, Copper Development Association
- Columbia Riverkeeper, Puget Soundkeeper Alliance,
- Olympians for Public Accountability, Arthur West
- Case scheduled to be argued before PCHB

Inspections



Construction Stormwater Sources



Construction Stormwater Sources



Construction Stormwater Discharges





EPA National Stormwater Enforcement Priorities 2008-2010

- Target stormwater discharge violations
- Residential construction (national builders)
- Big box store construction
- Ready-mix concrete sources
- Sand and gravel sources



EPA Stormwater Enforcement Actions - Big Box Stores

- Home Depot - \$1.3M, Feb 2008
- Pattern of Stormwater Violations
 - Unpermitted discharges to storm sewers
 - Failure to maintain SWPPP
 - BMP violations
- Consent Decree with Nationwide Compliance Program



EPA Stormwater Enforcement Actions - National Homebuilders

■ Centex, Pulte and KB Homes

- Unpermitted discharges to storm sewers
- Failure to develop adequate SWPPP
- Failure to install, inspect and maintain BMPs

■ Centex (VA, MD, TN, MS, CO, UT, NV)

- \$1.485 million civil penalty with Consent Decree

■ KB Homes (VA, MD, CO, NV)

- \$1.185 million civil penalty with Consent Decree

■ Pulte (VA, MD, TN, CO, NV)

- \$877,000 penalty/\$608,000 SEP with Consent Decree



EPA Stormwater Enforcement Actions - National Homebuilders

- ❖ *Consent Decree with Nationwide Compliance Program*
- Implement a management and reporting system to ensure greater oversight and compliance
- Trained site managers
- Three stormwater management tiers
 - SWPPP criteria
 - Pre-construction inspections (on EPA forms)
 - Stormwater training programs



EPA Region 10 Construction Stormwater Enforcement

- 2006 Idaho DOT; \$895,000 settlement
- 2008 Tamarack; \$185,000 settlement
- Boise Construction Sites; \$13,000 settlement



Washington Construction Stormwater General Permit

- Clearing, grading or excavation of one acre or more
- Permit Status (2011 -2016)
- SWPPP
- BMPs
- Inspections
- Monitoring



CONSTRUCTION STORMWATER GENERAL PERMIT

- Self-Regulating
- Self-Reporting
- Temporary until Terminated
- Transfer and Termination
 - There's an App for that



Inspection Target Points

- Permit and SWPPP
- BMPs (silt fences, catch basin protection, soil stabilization)
- Tracking in Roadway
- Runoff
- Turbidity, pH (reporting/corrective action)

Soil Stabilization



Soil Stabilization



Runoff



Sediment Entering Catch Basin



Sediment bypassing sandbags and hay



Improper Cover/Stabilization



Unstabilized Soils? Unprotected Catch Basin?





What Happens When Things Go Wrong

- Ecology issues inspection report with necessary corrections (technical assistance)
- Warning Letter or 2nd Inspection if no follow up or corrective action
- Opportunity to discuss and resolve BMP compliance



What Happens When Things Go Wrong

- First line of defense is timely compliance
- Second line of defense is the written response
- Pay me now or pay me later
 - CESCL
 - Lawyer
 - Consultant



Ecology NOVs and Administrative Orders

- Notice of Violation (last chance to comply)
- Formal Administrative Action
 - Compliance deadline
 - Alternative is to appeal within 30 days
 - Pollution Control Hearings Board (PCHB)
 - Potential benefits of appealing orders
 - Potential detriments of appealing orders
 - Homeowner intervention



Ecology Civil Penalty Actions

- Typical Violations
 - No permit or SWPPP
 - Inadequate SWPPP/BMPs
 - Reporting and Sampling
 - Water Quality Violations
 - Benchmarks
 - Action Levels

Turbidity





Ecology Civil Penalty Actions

- Seek technical and legal advice
- 30 days to file appeal with PCHB or
- Request for Mitigation
 - Presented to Ecology
 - Determination by Ecology
 - Can appeal to PCHB



PCHB Appeals

- Formal Notice of Appeal filed and served
- PCHB scheduling order
- Prehearing Statement and Issues
- Prehearing Conference
- Document Request and Discovery
- Settlement Negotiations
- Administrative Hearing
- Judicial Appeal



Enforcement Issues and Pitfalls

- Operator and/or Owner Personal Liability
- Employee and/or manager liability
- City ordinances and code requirements
- Construction at partially completed residential plats (HOAs, access and common areas)
- Property Sales and Permit Transfers (subject to written Agr. and approval)
- Permit Termination (100% stabilization subject to Ecology Approval)



Lessons learned to avoid problems

- Plan ahead before clearing (LID?)
- Contract considerations
- Obtain Permit and Prepare a practical SWPPP before digging
- Prepare inspection reports and file DMRs
- Maintain BMPs and address failures
- Oversight and inspection is critical
- Address any complaints
- HOA control



FIVE POINT COMPLIANCE SUMMARY

1. Obtain Permit and Develop SWPPP Before Construction
2. Implement and Maintain BMPS (CESCL)
3. Undertake Corrective Action and Update BMPs (and SWPPP) as necessary
4. Respond timely to inspection reports, warning letters, orders and NOVs
5. Terminate or transfer permit as soon as possible