



What happens when you don't know
What you don't know re:
Stormwater Regulation

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Stormwater regulations

Who enforces?

NDDOH

EPA

Stormwater issues due to Growth in Western ND

- Cities are exploding in Bakken.
 - Stormwater, sewage, runoff
 - States regulate WWTP/sewage



- Housing
 - Mancamps, Apartments, New Subdivisions
 - Construction – sedimentation/erosion
 - Protect drains, sweep streets, erosion barriers, etc.
- Commercial Developments

Most common topics of enforcement

Growing stormwater enforcement by state and federal
Civil and potential for criminal

Failure to apply for permit coverage

Disturb more than 1 acre

Disturb less than 1 acre as part of larger common plan

If potential for violation of water quality standard

Failure to prepare SWPPP

Failure to implement BMPs

Failure to maintain BMPs

Failure to conduct or document inspections

Potential fines of \$37,500 per violation per day

Considerations in Enforcement

Whether there is an infrequent or isolated violation

Frequent or repeat violations

Other types of noncompliance involved

Degree of impact to the environment

Extent of financial benefit to the violator

Cooperation

Possible Enforcement Responses

NOV – written document issued informing of violation of statute.

Expedited Settlement Offer – consent agreement and final penalty order by EPA with quick resolution.

- * corrects deficiencies
- * certifies that deficiencies corrected
- * pays penalty

Administrative Order – Written agreement to achieve compliance

Administrative Penalty Order – Same as AO, with penalty

Civil Action – seeks penalties and injunction for violation

Who is responsible for getting permit?

Operator

Person who has operational control over plans/specs

Person with day to day supervision and control of site

Owner? General contractor?

Engineers?

Check agreement with engineers.

If you expect them to advise of permits and prepare SWPPP, you better spell it out.

EPA Voluntary Self Disclosure

Under Audit Policy, EPA may reduce or forgive civil penalties for voluntary and prompt disclosure, with expeditious correction. EPA will forgo economic-benefit based penalties.

Only applies if meet conditions.

Repeat violations ineligible.

EPA not utilizing much – limited disclosures.

Consult legal counsel before embarking.

ND Duty to Report Non-Compliance

Report to EPA and DOH.

Lagoon overflows

Bypassing treatment facilities

Violations of maximum effluent

Examples of Fines – Depends on Enforcer and Jurisdiction

Contractor – construction runoff from excavation,
clearing, grading with pollution of stream:

\$735,000 in 2013 in Oregon

Also required assignment of Stormwater manager
at all sites and education for supervisors

Charleswood (EPA) – West Fargo, ND

No BMPs and no inspections logged

No actual pollutio

Overall development developer \$37,500 fine.

Individual lot developers, \$0.

Four large homebuilders - \$4.3 million in penalties

Centex Homes, KB Home, Pulte, Richmond American.

Range from \$795k to \$1.485 million

ND case – Pumping gas into storm drain - \$3000 fine

ND case – construct apartment building \$24,500

Less than 1 acre, but on a block with other development

No Stormwater permit – but had City of Fargo ESC permit

Sediment in drains, on roads, no inspections

ND case – Construction project with sediment discharging to storm drains. No BMP to control erosion. No NDPDES permit. No SWPPP. Delayed compliance. \$10K fine, \$10K SEP (donation to Gateway Science Center for water science projects)

ND case –Construction. No permit or SWPPP. No BMP. Delayed compliance. Industrial stormwater. \$11K penalty. \$5K donation to Bismarck Public Schools re: soil research. \$6K to Girl Scouts to purchase trees.

ND case - \$7500 – Construction project with sedimentation in Hay Creek. No siltation fences installed or diversion berm, failure to identify storm sewer inlets on map, no updated SWPPP with \$5000 suspended if develop SWPPP and comply for 2 years, hire stormwater manager to oversee.

ND case: Expedited Settlement Agreement. No NPDES permit.
Fine \$2750.

Similar to above - \$2000.

Similar to above - \$5500.

ND case: No SWPPP or permit, \$1750 penalty

Similar case: \$3500 penalty

Similar case: \$1000 penalty

Strategy: Open Record Request

RECOMMENDATION:

Do not ignore notice.

Act quickly.

Get into compliance.

Consent Agreement Negotiations

ND

No admission needed

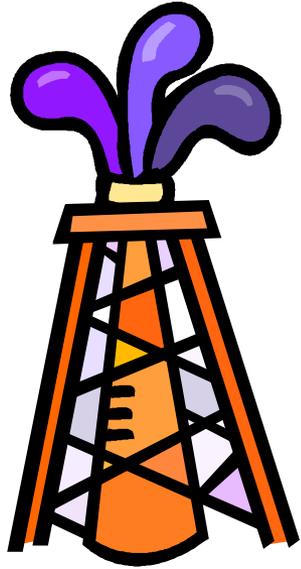
Suspended /delayed penalties

SEPs (not as stringent requirements as EPA)

EPA

Not willing to commit to no further penalties

QUESTIONS?



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