

NPDES
&
Enforcement on Construction Sites

2/5/2020 NPDES Programs 1

Why Worry?



3rd Party
You

© KURT JONES 2003

2/5/2020 NPDES Programs 2

What's the Point?

- Comply with your NPDES Permit to Eliminate pollutants entering the MS4
- Provide a level playing field
- Encourage education
- Avoid Fines, bad PR and jail time

2/5/2020 NPDES Programs 3

How do we do it?

- Establish procedures for site planning
- Adopt requirements for selection, installation and maintenance of BMP's
- Apply procedures for inspection and enforcement on construction sites
- Notify contractors of the NPDES regs and provide educational opportunities

2/5/2020

NPDES Programs

4

Proper Installation & Maintenance



2/5/2020

NPDES Programs

5

How Do We Prioritize?

Identify Contractor's Strengths and Weaknesses using:

- Evaluating Daily Site Operations
- Recognizing Failures and Successes
- Conducting Internal Review of Sites
- Weekly Progress/Training Meetings

2/5/2020

NPDES Programs

6

Program Adjustments

- Revamp legal authority as required
- Upgrade procedures to simplify enforcement
- Improve staff training with lessons learned

2/5/2020

NPDES Programs

7

Who Cares?

- The CWA mandates our actions and requires compliance/enforcement
- CDPHE
- Citizens and 3rd Party Interests
- The EPA

2/5/2020

NPDES Programs

8

Do We See A Problem?



2/5/2020

NPDES Programs

9

Inspection Processes

- Pre-con meetings
- Weekly Progress Meetings
- Grading/Erosion Control Permit
- On-site inspections
- Faxed inspection reports
- Complaint response, citizens or staff
- Sensitive locations and problem contractors receive special attention

2/5/2020

NPDES Programs

10

There are Good & Bad of All Kinds...



2/5/2020

NPDES Programs

11

Are We Keeping The Sediment On Site?

- Tracking is Preventable
- BMPs Must Be Used
- BMPs Will Be Maintained
- Enforcement is Required



2/5/2020

We've Got A Problem

Street, Curb, Gutter and Inlets Are The MS4!

Enforcement is Required



2/5/2020

Enforcement Is Mandated

Pollutants Entering a
Water of the U.S.

Enforcement Must Solve
This Problem and Future
Similar Problems



2/5/2020

Concrete Delivery to the Construction Site

- Onsite Washout
- Clearly Marked
- On the Plan



2/5/2020

Here's The Real Story



You Can't Stage A Picture Better Than This



The Permitting Tool

Collect Surety

Have Owner Sign

Place a Lien if Required

2/5/2020

Enforcement Procedures

- Verbal or Written
- Written
- Written NOVL with deadline
- Post-dated Stop Work Order
- Charge back (cash letter of credit)

2/5/2020

NPDES Programs

19

Tools

- Ordinances
- Grading/Erosion Control Permit
- SWMP
- NOVL's
- Stop Work Order
- Consistent response
- Ongoing Inspector training
- Contractor Education

2/5/2020

NPDES Programs

20

How Do We Keep It Flying?



2/5/2020

NPDES Programs

21

Program Reality

- Construction Process is Dynamic
- Distinct Phases during project
- Failures happen
- Consistent Regional Approach
- Training is required
- Document the project

2/5/2020

NPDES Programs

22

Paper Trails



2/5/2020

NPDES Programs

23

Related Documents

- Erosion Control Permit
- Storm Water Mgt Plan (SWMP)
- Stop Work Orders
- Faxed Inspection Reports
- Ordinances for Grading and Stormwater Pollution recoup monies spent on enforcement

2/5/2020

NPDES Programs

24

The Agony of Defeat

EPA seeks \$1 million in storm-water fines

FOR IMMEDIATE RELEASE

07/21/2003

Contact: Melissa Palmer 303-732-8271
 Denver, CO 80216
 DAVEE 303-732-8271
 Frank Mowbray 303-732-6730
 General Inquiries 800-227-8917

EPA Region 8 fines 12 companies at nine Colorado construction sites for violating storm water regulations

DENVER – U.S. Environmental Protection Agency's Denver office is seeking penalties totaling \$1.2 million against 12 construction companies that are building nine major projects in the greater Denver-area for violations of federal storm water regulations.

The regulations protect waterways from becoming fouled with runoff from construction sites. Nine of the twelve are Colorado companies.

While construction is still underway, EPA is also issuing administrative orders requiring compliance with the storm water regulations.

The enforcement actions are being taken for failure to obtain a storm water

Runoff program defended

Storm-water oversight lagging, critics charge

By [Name]

ST. LOUIS, Mo. (AP) — A runoff program that has been defended by the U.S. Environmental Protection Agency as a key tool for cleaning up the nation's waterways is being criticized by some environmental groups as a "runoff program" that is not doing enough to protect the environment.

The program, which requires construction sites to install runoff control measures, has been a major focus of EPA's efforts to reduce nonpoint source pollution. However, critics argue that the program is too weak and that more aggressive measures are needed to address the problem.

2/5/2020 25

Stay Above The Fray and Off The Radar



Do the Right Thing

- Report to SQC, Issue Citations as Appropriate
- Construction Discharges May be Felonies

Train Staff and Citizens


- Staff & Public education is a high priority, distribute Videos/Door hangers/Brochures/Articles etc.
- Municipal Staff need to watch for & report potential violations

Consistent Enforcement Actions

- Construction Sites, Commercial and Residential
- Illicit Discharges Eliminated
- Address Chronic and Recalcitrant Offenders
- Provide a Level Playing Field for All Contractors

Direct Discharge (to waters of United States including wetlands)

• A person, Negligently or Knowingly Discharges a pollutant from a point source into a water of the United States without a NPDES or 404 Permit or in violation of a permit...



Statute: 33 U.S.C. 1319(1) & (2)

Penalty:

- Negligent Violations: 1 year and/or \$2,500 – \$32,000 per day;
 - Subsequent convictions 2 years and/or \$50,000 per day.
- Knowing Violations: 3 years and/or \$5,000 - \$50,000 per day;
 - Subsequent convictions 6 years and/or \$100,000 per day.

Good Building Gone Bad

- \$32,000 per day in fines
- Project Delays
- Future “Special Attention”
- Bid Projects Lost

2/5/2020

NPDES Programs

28

Resources

1. Your Stormwater Quality Coordinator/Environmental Mgr
2. Ordinances
3. The Colorado Stormwater Council at www.Colorado-Stormwater-Council.org
4. Urban Drainage and Flood Control at www.UDFCD.org
5. Troy Arnold at the Colorado Attorney General's Office
303.866.6186 or troy.arnold@state.co.us.

Information on the Storm Water Phase I & II Rules are published in the Federal Register. Available at <https://www3.epa.gov/npdes/pubs/fact1-0.pdf>

For other NPDES info, check out EPA's Water Resource Center at <https://www.epa.gov/laws-regulations/summary-clean-water-act>

For State NPDES info, read about the CDPHE at <https://www.colorado.gov/cdphe/wqcd>
