

Lessons Learned in Permit Enforcement



Responsible Parties, Permit Enforcement, Financial
Assurance and Foreclosure

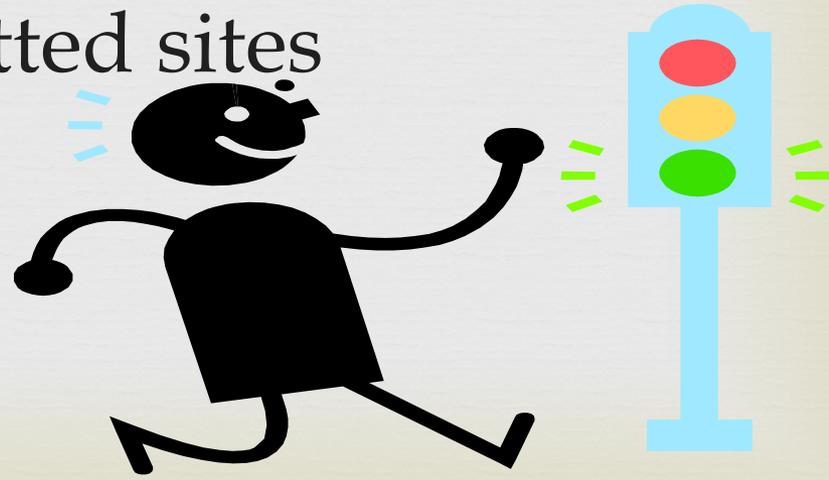
Waukesha County Storm Water Workshop – 2013

Alan Barrows

Presentation Overview



- ☞ Who is a “responsible party”
- ☞ Roles in plan implementation
- ☞ Permit enforcement
- ☞ Financial assurances
- ☞ Foreclosures on permitted sites



Who is a responsible party?



- Any person or entity holding fee title to the property or acting as the owners representative, including any person, firm, corporation or other entity performing services, contracted, subcontracted or obligated by other agreement to design implement, inspect, verify or maintain the BMPs and other approved elements or erosion control and storm water plans and permits under this ordinance. (Sec. 14-332 of the Waukesha County Code of Ordinances)



Responsible Party

Storm Water Permit



- ☞ Permit holder
- ☞ Project engineer
- ☞ Erosion control inspector
- ☞ Erosion control contractor
- ☞ Grading contractor



Roles in Implementation



- ❧ The permit holder ensures that qualified professionals are involved in the project including a professional engineer to oversee and verify construction
- ❧ The permit holder provides a financial assurance to ensure compliance with the approved erosion and storm water management plans and other storm water permit requirements

Financial Assurance



- ❧ Ensures compliance with the approved erosion and storm water management plans and other storm water permit requirements
- ❧ May be in the form of cash, bond, escrow account, or letter of credit
- ❧ The amount of the financial assurance is determined by the published fee schedule
 - ❧ \$20,000 for each BMP
 - ❧ \$1,000 - \$5,000 for sites w/o a storm water plan
 - ❧ 50% of the amounts above for cash deposit



Roles in Implementation



- ❧ The project engineer is responsible for achieving compliance with the approved plans including implementation of the approved inspection plan and verification of construction in accordance with permit requirements
- ❧ The erosion control inspector conducts weekly and post-rainfall inspections and maintain an inspection log for the site (can be the project engineer)
- ❧ Maintenance is required w/in 24 hours of inspection



Roles in Implementation



- ❧ If maintenance or additional BMPs are needed, a follow up inspection is completed by the engineer/inspector and documented in the inspection log
- ❧ The engineer/inspector makes the inspection log available to regulatory authorities upon request



Roles in Implementation



- ❧ Bi-monthly “spot checks” by the regulatory agency
 - ❧ Documentation of site conditions and compliance with approved erosion control plan and permit requirements
 - ❧ Follow up communication regarding necessary maintenance and additional measures to the permit holder, project engineer and EC inspector
 - ❧ Establishes a timeframe for bringing the site into compliance with permit requirements (24 hours)



LRD construction inspection report

- Project name
- Location
- Inspection date
- Permit holder
- Inspector
- Project phase
- Modification needed
- Communication
- Compliance (yes/no)
- Compliance date



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 515 W. Moreland Blvd., Room AC260
 Waukesha, WI 53188-3868
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Construction Site Inspection Report

Erosion, Sediment & Storm Water Management BMPs

Project Name: _____
 Project Location: _____
 Inspection Date: _____ Inspected By: _____
 Permit Holder: _____ Project Phase: _____

Inspection Results:

<u>Modifications Required:</u>	YES	NO	N/A	<u>Modifications Required:</u>	YES	NO	N/A
Silt Fence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mulch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ditch Checks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Seeding	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rip Rap	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sod	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Erosion Mat	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Inlet Protection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Temp. Settling Basin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Storm Water Basin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Project Schedule	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tracking Pad	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments/Recommendations:

Any boxes checked "YES" must have comments and recommendations on the following pages. Provide comments concerning the effectiveness of, and any reasonable corrections needed to maintain or increase the effectiveness of, in-place erosion control and storm water management measures as described below by the individual erosion control item or other general erosion control measures.

Communication Notes:

Phone Fax Written E-Mail Personal Discussion To Whom: _____
 Comment: _____

Phone Fax Written E-Mail Personal Discussion To Whom: _____
 Comment: _____

Compliance with Approved Plans, Permit Requirements and Technical Standards:

Is the site in compliance with the permit conditions? (YES NO)
 Compliance determination date: _____
 Lead staff contact initials: _____

LRD construction inspection report

Photos and descriptions of BMPs that need maintenance, installation or correction

	<p>Ditch Checks</p> <ul style="list-style-type: none">• The north ditch of the westbound lane, east of Martin Drive is being used as a stockpile location for broken concrete, soil, rubberized asphalt, etc.• This ditch has approximately 3 acres draining through it from the east.• This area drains to the box culvert/creek crossing at STA 126+00• Ditch checks should be installed to manage the sediment in runoff from the stockpiles before the creek, spaced per DNR technical standard 1062 and the ECIP.
	<p>Silt Fence</p> <ul style="list-style-type: none">• Just west of the stockpiles shown above is a large stockpile of rubberized asphalt in the ditch.• The asphalt stockpile essentially blocks the ditch and has crushed the silt fence which serves as the only sediment control BMP between the 3 acre drainage area and the creek.• Fix the silt fence.
	<p>Parkland Drive Ditch</p> <ul style="list-style-type: none">• A new section of storm sewer was recently installed in the Parkland Drive ditch.• Install a ditch check below the work area.• Stabilize the banks.

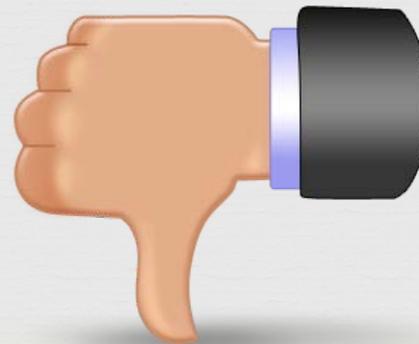
Roles in Implementation



- ✧ The regulatory agency conducts a follow up inspection to verify that corrections have been made on-site and completes an inspection report to document site conditions and compliance status



OR



Roles in Implementation



☞ If the site is in compliance an inspection report indicating so will be provided by the regulator



Compliance with Approved Plans, Permit Requirements and Technical Standards:

Is the site in compliance with the permit conditions? (YES NO)

Compliance determination date: 4/10/13

Lead staff contact initials: AB

Permit Enforcement



☞ If the site is still not in compliance an inspection report will be completed, a notice of violation is issued and a deadline for compliance is established by the regulator



Compliance with Approved Plans, Permit Requirements and Technical Standards:

Is the site in compliance with the permit conditions? (YES NO)

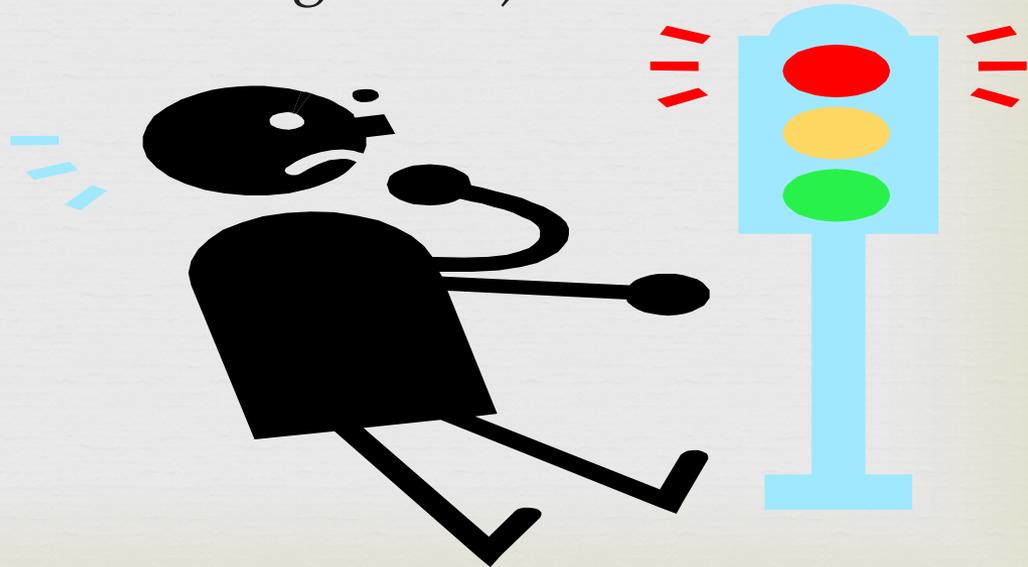
Compliance determination date: 4/10/13

Lead staff contact initials: AB

Permit Enforcement



- ❧ Forfeiture (\$100 - \$1000 / violation / day)
- ❧ Stop Work Order
- ❧ Permit Revocation
- ❧ Injunction (temporary restraining order)
- ❧ Emergency Action
- ❧ Citation



Permit Enforcement



Project Closure Requirements

- ❧ As-built survey of post-construction BMPs
- ❧ Engineer verification of construction and inspection
- ❧ Preparation of maintenance agreement addenda
- ❧ Verification of native/wetland plantings
- ❧ Removal of temporary BMPs (silt fence, inlet screens)

CONDITIONS OF RELEASING THE
FINANCIAL ASSURANCE



Permit Enforcement



- ❧ The financial assurance can be used to cover any costs incurred to complete installation or maintenance of best management practices
- ❧ In the case of an emergency, authority is given to enter the property and take any necessary emergency action to eliminate an immediate threat to public health, safety, welfare, the environment or downstream property, or if the permit holder or other violator refuses to take the corrective action



Permit Enforcement



- ⌘ Financial assurance intended to address immediate violations, not to complete project construction
- ⌘ Any cost incurred as a result of emergency action shall be billed to the permit holder or other responsible party or subtracted from the financial assurance
- ⌘ Reasonable notice is provided to the permit holder and other responsible party before exercising this authority



Foreclosure



- ❧ Permit requirements and construction of approved BMPs can be enforced through the recorded maintenance agreement
- ❧ The maintenance agreement indicates that the owner agrees to install and maintain storm water BMPs in accordance with the approved plans and storm water permit requirements
- ❧ The agreement runs with the property and is binding upon all heirs, successors and assigns

Foreclosure



- ❧ Attend the Sheriff's sale and provide contact information for the regulatory authority (permit issuer)
- ❧ Provide copies of inspection reports to the new owner regarding site conditions and outstanding permit requirements
- ❧ Determine estimated cost to bring the site into compliance with permit requirements (obtain 3 bids)

Foreclosure



- ❧ Establish a compliance deadline with the new owner to bring the property into compliance and submit project documentation
- ❧ If the site remains out of compliance and a letter of credit is being held, submit a draw request to the financial institution that issued the LOC based upon the lowest responsible bid
- ❧ Attempt to obtain a letter from the new owner indicating “no objection” to enter the property

Questions?

