



NEW CONSTRUCTION PERMIT STORM WATER POLLUTION PREVENTION

Nebraska Stormwater Cooperative

Are your lawyers better than those of KB Homes?

Volume 1, Issue 4

July 2008

Welcome to the fourth issue of the *Storm Water Pollution Prevention Bulletin*. This bulletin is distributed by the cooperative Storm Water Management Programs to support the local development community in achieving compliance with storm water pollution prevention regulatory requirements. Topics will include technical information regarding practices and solutions, Storm Water Management Program activities and findings, sources of additional information, and examples of effective practices encountered during inspections. Please feel free to submit topics.



Construction sites across the country are dealing with new regulations associated with Non-Point Source Pollution. In most areas of Nebraska, the regulatory agency is the Nebraska Department of Environmental Quality which issues the construction stormwater (CSW) general permit that authorizes the discharge of pollutants in stormwater associated with construction activity, including clearing, grading and excavation. This issue contains examples of enforcement actions taken by the EPA. Note that the alleged violators in these examples settled and therefore received less stringent penalties. If your actions draw fines and delays, will this look favorable on you?

Four of the Nation's Largest Home Builders Settle Stormwater Violations

Recently, four of the nations largest homebuilders reached a settlement agreement with the US EPA. The cases stemmed from alleged violations of the stormwater run-off regulations put into place by the Construction Stormwater permit. Civil penalties totaled \$4.3 million dollars between the four companies. The companies must also implement company-wide compliance programs which exceed the current regulatory requirements. Additionally, at least one of the companies will be completing a supplemental environment project with a minimum cost of \$608,000.

Who is included in these settlements?

The companies covered by these four separate settlements are four of the nations largest homebuilders. Centex Homes, based in Dallas; KB Home, based in Los Angeles; Pulte Homes, based in Bloomfield Hills Mich.; and Richmond American Homes, based in Denver all reached settlement agreements which are now subject to approval by the federal court. If approved, the companies will be required to pay the settlement within 30 days.

What were the fines?

Centex: \$1,485,000

KB Home: \$1,185,000

Pulte: \$877,000

Richmond American: \$795,000

Why were they fined?

Since the companies reached a settlement, they were not actually found guilty in court. The alleged violations include not pulling permits until after construction had begun and failing to pull the permit at all. The sites that did have permits had alleged violations including:

- Failure to develop an adequate *Storm Water Pollution Prevention Plan (SWPPP)* for minimizing the amount of sediment and other pollutants in storm water runoff
- Failure to install or implement appropriate stormwater controls or *Best Management Practices (BMPs)* required by the SWPPP. (ie. Silt fences not installed where the plan said they would be; no BMPs were installed at construction entrances to prevent offsite trackout of dirt; concrete washout basins were not installed to prevent concrete from flowing into storm drains; portable toilets located directly adjacent to storm inlets without BMPs to prevent spills from entering the storm inlets, ect.)
- Incorrect installation of BMPs (ie. Silt fences were not properly trenched in and compacted; sediment ponds were not completed prior to commencing site grading)
- Failure to keep BMPs in effective operating condition (silt fences and inlet protectors full of sediment and no longer effective; silt fences fallen down or full of holes; rock construction entrances needing maintenance with additional rock)

The new construction general permit has become active & is available online at the NDEQ website, www.deq.state.ne.us

This new permit requires all regulated sites to reapply, even if coverage was secured under the previous permit.

Note: Your permit and your SWPPP contain specific provisions. The practices mentioned in this article are examples only. For example, rock entrances are only one way to control sediment track-out; rumble bars, wash racks and vehicle restrictions also serve the same purpose of reducing sediment track-out.



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▪ *Failure to routinely inspect BMPs to ensure proper operation and maintenance*

stringent requirements and an ongoing relationship with the regulatory agency.

Necessary steps for compliance:

The government complaints allege a common pattern of violations that were discovered by reviewing documentation submitted by the companies and through federal and state site inspections. Along with the monetary penalties, each company will be required to establish internal programs to address and improve compliance. In other words, the companies were avoiding compliance with the permit, they received monetary penalties and must now go beyond the requirements they sought to avoided.

The settlements require the companies to develop improved **Storm Water Pollution Prevention Plans** for each site, increase site inspections and promptly correct any problems that are detected. The companies must improve training of construction managers and contractors, and are required to have trained staff at each construction site. They must also implement a management and internal reporting system to improve oversight of on-the-ground operations and submit annual reports to the EPA. Yes, annual reports constitute an ongoing relationship and involvement by the EPA in the operations of these companies.

Improving compliance at construction sites is one of EPA's national enforcement priorities. Construction projects have a high potential for environmental harm because they disturb large areas of land and significantly increase erosion rates on that land. In addition to sediment (dirt), runoff can pick up other pollutants like concrete washout, paint, used oil, pesticides, solvents, debris and other materials used in the construction process.

These regulations, which were put into place by the Clean Water Act, require that construction sites not only prevent polluted discharges from leaving the site, but also have controls in place to assure that polluted discharges are prevented. These controls include simple pollution prevention techniques such as silt fences, phased grading and construction, temporary seeding of non-active areas and vehicle tracking controls. As the settlements show, attempts to avoid compliance measures can result in fines, more

- Evaluate the site and the proposed work to be undertaken.
- Develop a **Storm Water Pollution Prevention Plan** with a qualified individual, including; the framework for the records that must be kept, the measures which will be used to prevent erosion and sediment discharges, the measures which will be used to prevent other pollutant discharges. The SWPPP must include all of the items listed in the **Construction Storm Water** permit.
- Once the SWPPP is developed, you must request permit coverage by submitting the **Notice Of Intent**. The NOI should be submitted before site grading and other construction takes place.
- Seven days after the submission of the NOI, you can begin construction.
- Continue to follow the **Storm Water Pollution Prevention Plan** and implement the measures described within (BMPs).
- Inspect all control measures (BMPs) on a regular basis (usually a minimum of once every 14 days and after every rain event greater than 0.5 inches).
- Maintain and repair all BMPs found to be nonfunctioning and add additional BMPs where they are needed.
- Temporarily or permanently stabilize (protect from erosion) disturbed soil when that area of the site will not be actively worked.
- Continue to update the SWPPP as work progresses or as changes in the project require.
- Stabilize all disturbed areas of the site with perennial vegetation.
- Remove all temporary BMPs (silt fence, ect.).
- File the **Notice Of Termination (NOT)**.

Stick with the SWPPP, a properly developed and maintained SWPPP is your guide to compliance.

For additional information on your local Stormwater Program, or if you have any questions please visit:

www.nebraskah2o.org

The SWPPP needs to be updated as your work progresses. Please visit www.epa.gov/npdes/stormwater/cgp for more information on how to develop your SWPPP.

For additional resources, visit www.stormwaterusa.com

(private, for-profit website, not an endorsement by the City of Kearney or Nebraska H2O)