E&SC Local Program Case Study: Dealing with Difficult Developers

PRESENTED BY
Holly E. Miller, PE, CPESC, CFM
Assistant Town Engineer

Agenda

- Case Study #1 - Shearon Farms
- Case Study #2 - WF Fire Station #4
- Investigative Costs/Time
- Lessons Learned
Case Study #1 - Shearon Farms

- Timeline
- NPDES & Self Inspections
- NOV’s/Civil’s
- Site maintenance
- Communication
- Documentation
- Job phasing

Site Plan
Notice of Violation #1

- Failure to follow the approved plan
- Failure to provide adequate ground cover within 14 days of grading
- Insufficient measures to retain sediment onsite
- Failure to take all reasonable measures
- Failure to maintain erosion control measures
- Tracking mud or dirt into offsite/into street

Site Violation #1
Violation Timeline

12/16/2014  Failed monthly inspection
3/12/2015  Failed monthly inspection
3/23/2015  NOV mail/emailed owner/developer
4/1/2015  Stop work order issued
4/2/2015  Lifted stop work order
4/7/2015  Meeting onsite with owner/developer
(hand delivered NOV)
4/10/2015  Phone call with owner/developer
4/27/2015  Field reinspection
5/4/2015  Continuing NOV emailed, mailed

Violation Timeline, cont...

5/7/2015  Phone call with owner/developer,
items will be completed tomorrow
5/12/2015  Failed monthly inspection
5/18/2015  Phone call from designer re: sediment basin mods
5/18/2015  Email received from designer regarding basin ok
5/20/2015  Failed monthly inspection
5/21/2015  Civil Penalty #1 Assessed
A. Type(s) of Violation

- Failure to follow approved plans: $2,500
- Failure to provide adequate ground cover: moderate $1,000
- Failure to take all reasonable measures: $750
- Lack of planning: $1,000
- Lack of maintenance: $2,500
- Failure to maintain measures: moderate $2,500
- Sediment offsite: slight at construction entrance: $500
- Sediment offsite: severe at silt fence overtopping into inlet: $5,000 x 2

Total: $20,750

B. Degree and Extent of the Harm Caused by the Violation:

<table>
<thead>
<tr>
<th>Degree</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severe</td>
<td>$1,000 to $5,000</td>
</tr>
<tr>
<td>Moderate</td>
<td>$500 to $1,000</td>
</tr>
<tr>
<td>Slight</td>
<td>$0 to $500</td>
</tr>
<tr>
<td>None</td>
<td>$0</td>
</tr>
</tbody>
</table>

Total: $20,750

C. Adherence to Plan/Effectiveness of Plan Submitted by Violator
(Effectiveness of Steps Taken to Correct Violations): $1,500

D. Prior Record of Violator in Complying or Failing to Comply with the Ordinance and Rules: $0

E. Whether the Violation was Committed Willfully: $5,000

F. Amount of Money the Violator Saved by Noncompliance: $5,000

G. Cost of Rectifying the Damage: $5,000

H. Staff Investigative Costs: $3,500

TOTAL DAILY PENALTY: $38,000
ACTUAL DAILY PENALTY: $5,000

Date(s) of Violation: From 3/12/15 to 5/18/15

67 Days at $5,000 per Day = $335,000 Penalty

Actual Penalty $2,500
Violation Timeline, cont…

5/21/2015  Phone call from home builder, emailed docs
5/21/2015  Phone call from owner
5/21/2015  Emailed developer and asked for NPDES inspections
5/21/2015  **Stop work order issued**
5/22/2015  Email notice of appeal, incorrect address
5/26/2015  Meeting onsite with developer and builder
            went over all items, handed out copies of civil & docs
5/28/2015  Phone call with developer, emailed appeal process go
to Town Board per UDO
5/29/2015  Field visit/reinspection

Violation Timeline, cont…

5/29/2015  Stop work order lifted
6/7/2015    Emailed developer reminding him of BOA letter
8/12/2015   Emailed designer reminding him of BOA letter
8/12/2015   Designer replied to email advising developer not to
tapeal
9/10/2015   Received appeal letter via email from designer
9/8/2015    Dropped Civil *
Violation Timeline

9/23/2015  Failed monthly inspection
9/30/2015  Local Program Review Site Visit
           w/NCDEQ DEMLS!!!
10/7/2015  CNOV #2 issued
10/30/2015 Failed follow up inspection
11/2/2015  Civil Penalty #2 issued
### Civil Penalty Assessment #2

**A. Type(s) of Violation**

<table>
<thead>
<tr>
<th>Violation</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to follow approved plans</td>
<td>$500</td>
</tr>
<tr>
<td>Failure to provide adequate ground cover</td>
<td>$250</td>
</tr>
<tr>
<td>Failure to take all reasonable measures</td>
<td>$500</td>
</tr>
<tr>
<td>Failure to maintain measures</td>
<td>$500</td>
</tr>
<tr>
<td>Sediment offsite</td>
<td>$1,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,750</strong></td>
</tr>
</tbody>
</table>

**B. Degree and Extent of the Harm Caused by the Violation:**

- Severe: $1,000 to $5,000
- Moderate: $500 to $1,000
- Slight: $0 to $500
- None: $0

Total: $0

**C. Adherence to Plan/Effectiveness of Plan Submitted by Violator**

(Effectiveness of Steps Taken to Correct Violations)

- $250

**D. Prior Record of Violator in Complying or Failing to Comply with the Ordinance and Rules**

- $1,000

**E. Whether the Violation was Committed Willfully**

- $500

**F. Amount of Money the Violator Saved by Noncompliance**

- $250

**G. Cost of Rectifying the Damage**

- $1,000

**H. Staff Investigative Costs**

- $500

**TOTAL DAILY PENALTY**

- **$7,250**

**ACTUAL DAILY PENALTY**

- **$5,000**

**Date(s) of Violation:** From 9/30/15 - 11/2/15

33 Days at $5,000 per Day = $165,000 Penalty

Actual Penalty $2,500
Violation Timeline, cont…

- Site in “limbo”
- Plats stopped prior to recording
- Street completion outstanding since 2010 (and prior)
- 04/05/2016 Inspector spoke to developer
  “complete project in 90 days”

Cost of Investigations

Engineering
- 8 inspections
- 2 NOV’s
- 2 CNOV
- 2 Civils

Legal
- 2 consultations

Estimated investigation cost = $3,500 (54.5 hours)
Case Study #2- WF Fire Station #4

- Communication
- Documentation
  - NPDES & Self Inspections
  - Pictures
- Site maintenance
- Job phasing

WF Fire Station #4 Site Details

- Private Fire Department not Town
- 1.5 Acres
- Falls Lake Watershed- Upper Neuse
- Phase E&SC plan
- Two Bioretention ponds
- Angry neighbors
Violation Timeline

- 11/14/15- 9/21/15  Passed E&SC Inspections
- 5/8/15  Failed E&SC Inspection
- 9/30/15  Failed E&SC Inspection
- 10/2/15  LP Review, NOV Issued
- 10/30/15- 1/29/16  Passed E&SC Inspections
Notice of Violation

- Seed basin interior slopes, exterior slopes and ditches with winter seed per plan
- Repair and maintain construction entrance (X2) and ditch entrance
- Provide additional erosion control measures to contain onsite sediment
- Provide concrete washout
- Reestablish water trickling path to basin and adjust baffles in basin
- Rework sediment basin outlet structure and skimmer
- Install stone around all inlet protection fence
- Silt fence and seed stockpile from edge of EP
- Remove mud in street
- Provide NPDES/Self inspection reports
Cost of Investigations

Engineering
3 inspections
1 NOV
Legal
0 consultations

Estimated investigation cost = $435 (12 hours)

Local Program Lessons Learned

- A good plan doesn’t stop on paper
- Communication is key
- A little maintenance goes a long way
- Documentation/site pics are very important