

***INSPECTORS, INSPECTIONS,  
AND DEALING WITH  
RECALCITRANT PERMITTEES  
ON PROBLEM  
CONSTRUCTION SITES***

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# **Prioritizing Problem**

## **Construction Inspection**

### **Workload**

- Hundreds of active permits
- Which sites may have most impact on beneficial uses??
- Based on referral from another regulatory agency or citizen complaint
- Based on slope lengths, soil erodibility, proximity to sensitive receiving waters, etc.
- DON'T GET "STUCK" ONE SITE!!!

# **Initial Inspection Protocols for** **Prioritized Sites**

- Preparation and File Review
- Entrance Interview
- Site Inspection
- Exit Interview
- Memo
- Report

# **Preparation and File Review**

- For sites deemed complex or risky, request submittal of SWPPP
- Check on soil type and associated erodibility
- Proximity to receiving waters
- Address potential 401 Certification issues
- If needed, call SWPPP author and discuss concerns prior to site inspection
- Suggest where SWPPP improvements can be made
- Make sure permittee is made aware of changes

# **Entrance Interview**

- Know the names of the site personnel you are going to meet
- Establish a rapport
- Often times walk the site with them prior to the entrance interview
- Review complaint (If pertinent)
- Review compliance history
- Discuss construction critical path (especially those construction milestones that act to control site pollutants)
- Review SWPPP and associated ESC blueprint



# **Suggested Initial Problem Site**

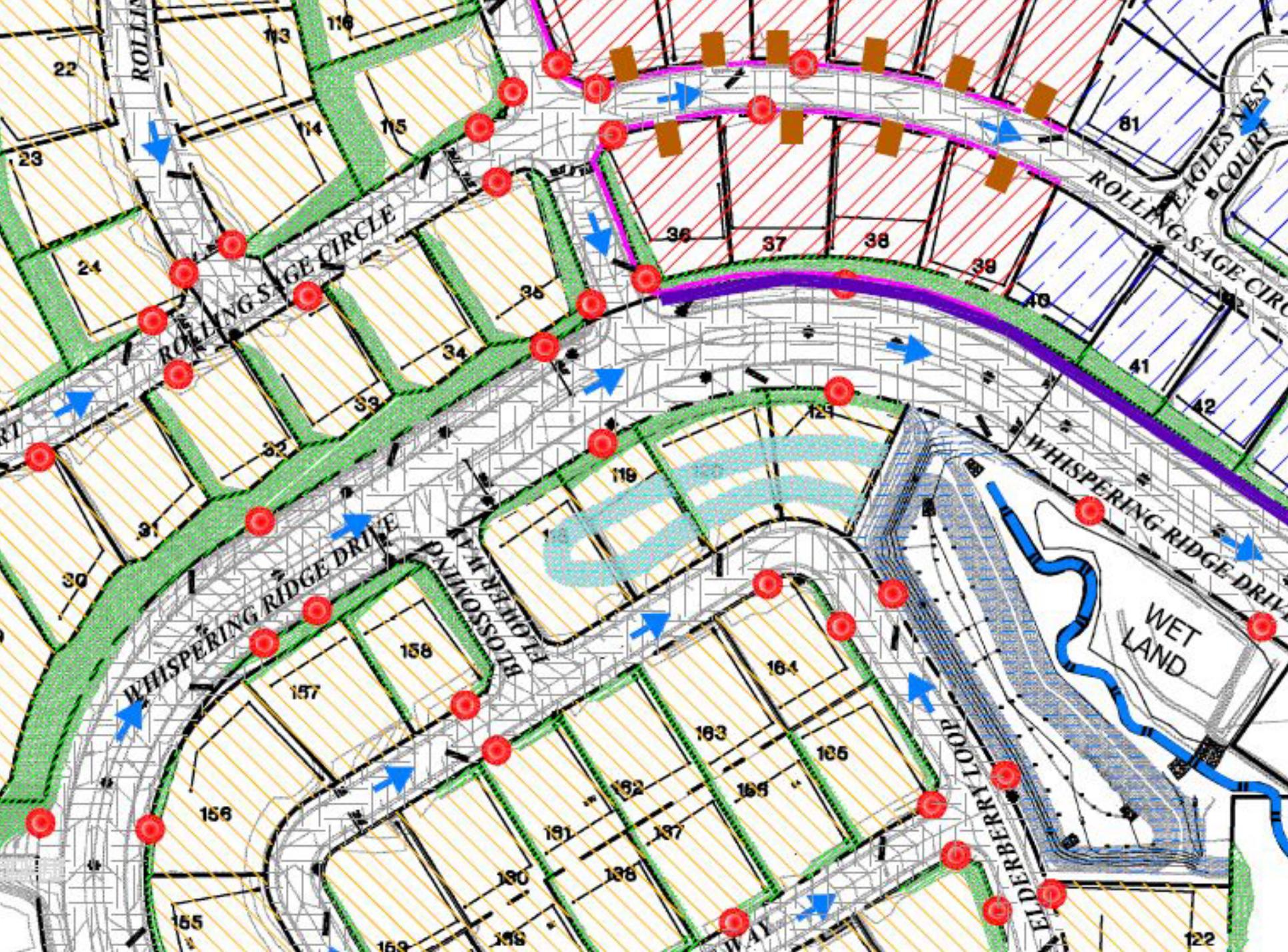
## **Enforcement Inspection**

### **Protocols**

- Make first site inspection prior to onset of rain season or as soon after complaint as possible
- Establish rapport with appropriate site personnel with courtesy and professionalism
- Walk site with persons responsible for ESC implementation prior to viewing SWPPP
- Discuss complaint issues
- Acknowledge ANY appropriate and effective ESC onsite

# **SWPPP Document Compliance**

- Available and updated due to changed conditions?
- Shown as overlay on grading blueprint?
- Being followed both in terms of BMP installation, maintenance, repair, and required site monitoring and reporting?
- Often the “low hanging fruit” in terms of enforcement



# LEGEND



RECOMMEND INACTIVE FINISHED LOTS TO BE STABILIZED WITH SPRAY-ON APPLICATION (1.5 TON STRAW/ 150 lb TACK) AS SHOWN.



ACTIVE VERTICAL CONSTRUCTION AREA



COMPLETED OCCUPIED LOTS



PERMANENT SEDIMENT BASIN



NEW TEMPORARY SEDIMENT BASIN EXPANSION



TEMPORARY STABILIZED ROCK BASE CONSTRUCTION ENTRANCES



COMPLETED STABILIZED SLOPES WITH STRAW AND TACKIFIER (2.0 TON STRAW/ 150 lb TACK)



STABILIZED TEMPORARY STOCKPILE MATERIALS



PAVED STREETS



FIRE LANE



STABILIZED DRIVEWAY WITH ROCK AGGREGATES



RECOMMENDED SILT FENCES OR FIBER ROLLS BEHIND CURBS OR SIDEWALK FOR ACTIVE AREAS



ROCK/RETAINING WALL



UNNAMED DRAINAGE DITCH



SALES TRAILER



STORAGE AREA WITH STABILIZED ROCK ENTRANCE



CONSTRUCTION TRAILER



RECOMMEND CHECKDAMS (GRAVEL BAGS) AS VELOCITY REDUCER



INLET TO BE PROTECTED BY GRAVEL BAGS



RUNOFF FLOW DIRECTION



MODEL HOMES

# **Initial Inspection Suggestions**

- Show concern when viewing problem areas and let site personnel know that you will be back soon to re-inspect
- Recommend approaches, suggest BMP options that can be employed
- Take pictures of problem areas in presence of site personnel
- Record (on paper) statements from SWPPP contact and BMP installers

# **Initial Questions**

- **Where did runoff flow pre-development?**
- **Has it significantly changed with development?**
- **Complaint was received, where are problem areas onsite?**
- **Have site drainage issues been reviewed and approved by local governance?**
- **Hopefully a known response**
- **Hopefully not**
- **Known to site personnel?**
- **If not then warn approving agency that they may be responsible for discharges that violate water quality objectives**



# **Now Comes the Tough Work**

What is the relative impact to receiving waters?

Were BMPs available onsite?

Should samples be taken onsite and/or in receiving waters?

What was the response from onsite personnel?

What was the message you wanted to convey relative to site conditions?

# **Many Violation Options**

- No NOI onsite
- No SWPPP onsite
- SWPPP not signed by appropriate person
- SWPPP not being followed
- SWPPP not being updated in reasonable time period
- Lack of pre-storm, post-storm or extended storm inspections and documentation
- Discharge offsite to neighboring property (nuisance discharge)

# **Violations**

- Lack of BMP maintenance
- Failure to repair BMPs within 48 hours of cessation of storm event
- Threatened discharge of polluted runoff to receiving waters (coupled with SWPPP indifference)
- Discharge of polluted runoff to receiving waters
- No annual report submittal



# **Exit Interview**

- Review observations
- Get clarifications
- List violations
- If necessary, state that inspection report will be sent to permittee
- Express why any formal enforcement would be forthcoming
- IF NOV, have template NOV document that can be sent out in timely manner with photographs

# ***Post Inspection thoughts for sites of concern***

- Is there an effort being made to implement an ***effective*** ESC plan?
- Is it a ***combination*** of erosion and sediment controls?
- Are the ***other*** pollutants of concern being addressed?
- Are you being ***“brushed off”*** by site personnel?
- Is the landowner involved or have they ***“contracted away”*** their ESC contractual agreements?
- If so, do they realize that we still enforce on the ***landowner?***

# ***You've Done The Inspection***

- Pre-inspection file reviews
- Right equipment
- Introductory interview
- Great notes
- Representative samples
- Accurate diagrams
- Copious photographs
- Exit interview

# **And the site is.....**

- A mass graded mess in late September....
- No erosion controls onsite....
- No water trucks for dust control
- Tracking onto public roads
- Horrendous housekeeping....
- Lots of subcontractors but no SWPPP coordinator....
- Paint, stucco, concrete dumped everywhere....
- Materials piled in streets

## **But What if.....**

- Site pollution controls were not in place because PGE has to trench in utilities next week
- Site SWPPP coordinators were sure that they did not have to perform ESC until October 15....
- County has held up construction permitting due to incomplete plan submittal....
- As far as our jurisdiction.....
- **NO EXCUSES!!!!!! ALL ARE VIOLATIONS**

# **What is a “Recalcitrant” Permittee?**

- One who doesn't want to spend any money for Erosion/Sediment Controls (ESC)
- One who initially spends money to produce an effective ESC control strategy but never maintains controls or adds additional controls
- One who tries to implement effective ESC but is failing miserably
- One who thinks that polluted stormwater runoff is “no big deal”
- One who really doesn't think their site is causing polluted runoff
- One who hates government inspectors and does nothing for spite

# **The Compliance Chain**

- Permittee is following SWPPP that adequately addresses four phases of construction (site grading, roads/utilities, vertical construction, landscaping)
- Performing routine maintenance
- Performing site visual inspections
- Updating SWPPP as necessary
- Repairing damaged BMPs within 48 hours after major runoff event











# **Lesson learned?**

- Discharger spent 5X \$\$\$ they should have on ESC by doing it wrong, wrong again, then right
- Fined 40K by Regional Water Board
- Required to professionally train 2 employees in effective ESC









# *Lesson learned?*

- Permittee initially installed effective ESC
- Followed “right” with two years of wrong
- Permittee Issued Notice of Violation and stern warning regarding winter 08’
- Required to submit photo-documentation
- Permittee faces very expensive site fixes before building can begin

# **Building a Major Enforcement Case via the “Three I s”**

- **Initial Site Visit:** (Initial complaint inspection)
  - Allow “fix-it” period
  - Discuss violation options
- **Investigation Visit:** (second inspection)
  - Document observations
  - Significant improvements?
  - Are personnel present?
  - Permits posted?
  - Discharge noted?
  - Photographs of BOTH site conditions and discharge to receiving water
  - If problems persist then requires written response to permittee
- **Inspector Indictment :** (Third inspection)
  - ACLC information gathering

# **Inspector Indictment**

- You have built your case during first two inspections, now you are going for information to potentially present to the Board at a hearing
- Quantify sediment discharges
- Quantify gallons of polluted runoff discharged
- Pictorial evidence of discharge (receiving stream, culverts, ditches, onsite conditions)
- Evidence of disconnect with SWPPP (not following nor not updating as required)

## **Followed by.....**

- # cubic yards of sediment (measured) discharged to receiving waters....
- # gallons of polluted runoff discharged to Smiley Creek....(usually “ballpark” but make it defensible)
- Number of days of observed discharge...(specific)
- Condition of BMPs (or lack thereof)
- SWPPP compliance (low hanging fruit)





# **Dry Season vs. Wet Season**

- As inspectors, do we “catch our breath” during California’s dry season?
- Dust erosion can be more of an issue than polluted stormwater runoff and often draws more complaints
- Inlet protection should be bulletproof so as to prevent dirt from entering system
- Tracking dirt offsite





11 4 35

# Are BMPs Procured?

- Are effective BMPs for the site noted in SWPPP and are present and ready for subsequent use?
- Are hydroseeders on retainer for date specific applications?
- Are vulnerable areas being addressed (steep cut and fill slopes, stockpiles, active drainage areas)
- Will these actions deter enforcement based on threatened discharges?
- Will the persons charged with implementing ESC have the knowledge to do an effective job?
- Is the SWPPP specific regarding the timing and locations of BMPs to be installed?

# **Post Inspection**

- Drop off any samples within holding time
- Chain of custody
- Summarize Interviews
- Photo Log
- Determine Follow-up inspection schedule
- Write report
- Recommend enforcement action

# **Inspection Reports**

- Must be written “near in time” to the inspection
- May not have all the information found in your inspection notes
- Document report with pictures
- Make report presentable as evidence
- If appropriate, mail it out to permittee as soon as possible
- Connects owner to conditions onsite
- Puts oversight onus on permittee to ensure that site conditions improve

# **Lack of BMP Maintenance**

- Is a symptom of lack of overall ESC commitment
- Can lead to additional enforcement actions
- Runs afoul of any trust developed between inspector and site contact
- And.....
- Can lead to discharges that end up being worse than if no BMP had been installed







# Rainy Season Action Plan (RSAP)

- Inherent part of SWPPP
- **Inspection** – Within 24-48 hours prior to predicted rain event with 40% chance of happening
- **Maintenance** – Prior to rain!!
- **New BMP Installation** – If necessary, prior to rain
- **Documentation** – Pre AND post storm event

# **Violation of Construction**

## **Stormwater Permit 99-08 DWQ**

- 3 acre site
- Discharger began grading site in September 2007 for small subdivision
- Site initially inspected in mid September 2007
- Exposed soils existed throughout site
- Discharger warned about threat of discharges from site and the need for obtaining coverage under 99-08 DWQ
- Permit coverage was obtained in late October 2007





# January 08'

- Second complaint called into Regional Water Board
- Alleged drainage ditch filling with sediment from construction site
- Believed to be coming from discharger's property
- Pictures emailed along with complaint



# February 19 inspection

- Inspection revealed ineffective erosion controls onsite
- Significant road erosion
- Significant onsite erosion of fill slope and drainage ditch
- Sediments choking drainage ditch, up to 6 inches in depth, throughout 200' X 40' ditch







# Transition of ACLC R1-2008-0105 to an Order

- Complaint issued by Regional Water Board
- Discharger was requested to waive the hearing by paying the ACLC
- No response to ACLC from discharger during 30-day hearing waiver period
- Staff contacted discharger who confirmed he is refusing payment of Administrative Civil Liability
- Complaint thus became a proposed Order for consideration of the Board, with a Civil Liability for one day of discharge

# **October Board Hearing**

- Finger pointing
- Claims of no discharge
- Unfair to punish the “little guy”
- Health issue as excuse
- “I have no money”
- Case ended up with discharger ordered to construct water quality feature equal in time, materials and effort to the ACL fine

# **Those Other “Nasties” that Occur at Construction Sites**

Trench dewatering

Water line flushing

Exposed springs

Muck storage

Stockpile adventures

Offsite soil disposal

Staging areas

Lime addition



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Is this a good practice?

# **Inspector Epilogue**

- You are not going to get to every site
- You are not going to help, or direct site personnel to get help, to solve every polluted stormwater runoff issues on problem sites
- You are going to get results by pursuing solid enforcement cases on a small number of construction sites with significant discharges of polluted runoff to receiving waters
- The word spreads like wildfire (especially with a press release)

# *Epilogue continued*

- Two realities hit permittees (and their contractors) hard....and one is NOT a fine
- **STOP WORK ORDERS** – Work with local government inspectors who have the authority to issue SWOs in the event of significant discharges
- **MEDIA COVERAGE**– An article or public notice in a local paper can quickly spread the news that the Regional Water Board is pursuing enforcement against a permittee

- **Stormwater pollution control is NOT sexy.**
- **It's tedious and at times overwhelming.**
- **Not dealing with stormwater pollution will lead to a “death by a thousand cuts”.**
- **Dealing with it is tantamount to “healing by a thousand band aids”.**
- **It's an international issue.**
- **The efforts required, and the resulting pollutant loading reductions due to these efforts, cannot be understated.**
- **Your efforts at inspecting and gathering information for an effective enforcement action at problem sites help to improve water quality at ALL construction sites**

Questions?

