Stormwater Construction Permit(s)/An Overview: Jordan Wimpy (Mitchell Williams) Arkansas Bar Association Mid-Year Presentation

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My colleague, Jordan Wimpy, undertook a presentation at the Arkansas Bar association Mid-Year Conference titled:

Stormwater Construction Permit(s): An Overview ("Presentation").

The Presentation was part of the event's construction agenda.

The Clean Water Act National Pollutant Discharge Elimination System ("NPDES") was established pursuant to the Clean Water Act to regulate the discharge of pollutants to Waters of the United States. The United States Environmental Protection Agency ("EPA") administers the NPDES program. However, the authority to operate the NPDES program can be delegated. The Arkansas Department of Energy and Environment – Division of Environmental Quality ("DEQ") administers the NPDES permitting program within the state.

EPA and the NPDES authorized states (such as Arkansas) have issued various types of General Stormwater Permits for discharges associated with the movement of stormwater. For example, the Multi-Sector General Permit for industrial stormwater discharges applies to businesses such as cement mixing, scrap metal, trucking, food processing, printing and publishing, oil and gas extraction, and asphalt paving and roofing materials. However, a separate General Permit is used for construction activities. It was developed to address stormwater discharges associated with construction activities involving clearing, excavating, and grading that disturbs the land. Construction permits are utitlized because of unique issues associated with temporary active construction operations that disturb soils.

Jordan's Presentation consisted of the following components:

- Overview.
- Applicability.
- Key terms and provisions.
- Seeking Coverage.
- Common mistakes (enforcement items).

The Presentation noted that DEQ's General Permit authorizes stormwater discharges from large or small construction activities that result in a total land disturbance of:

- Equal to or greater than one acre, or

- less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
- Construction site in which construction activities including clearing, grading, and excavating result in a land disturbance of greater that one acre and less than five acres.
- Includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.
- Construction site in which construction activity including clearing, grading, and excavating result in disturbance of greater than five acres.
- Includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or greater.

The federal Clean Water Act statute language, regulations, and Arkansas rules implementing the Clean Water Act which require such permits were discussed. Further, key terms were addressed such as:

- Commencement of Construction.
- Construction Activity.
- Construction Support Activity.
- Larger Common Plan of Development or Sale.

The website addresses for obtaining the relevant permit forms on DEQ's website were identified, along with the contents of the Notice of Intent form. Further, the components of the Construction Permit were detailed with particular emphasis on:

- Allowable non-stormwater discharges.
- Things excluded (unless specifically authorized) from a General Permit.

Permit compliance issues included:

- Technical
- Erosion and sediment controls.
- Soil stabilization.
- Pollution Prevention Measures (e.g., minimize exposure, minimize spills and leaks, implement BMPs).
- Administrative:
- SWPPP, SWPPP, SWPPP.
- Inspections.
- Retention of Records.
- Certifications.

An example of a Stormwater Pollution Prevention Plan was addressed along with examples of Best Management Practices.

Common mistakes identified included:

- Failure to obtain coverage.
- Failure to post the Notice of Coverage.
- Failure to update the SWPPP.
- Failure to conduct inspections.
- Failure to retain inspection reports.
- Failure to maintain BMPs.
- Sediment leaving the site.

A copy of the Presentation can be downloaded here.