

# Fargo District Perspective

SWPP and NPDES

Kevin Gorder



# Why did we start?



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

SEP 30 2011

Ref: 8ENF-W-NP

**CERTIFIED MAIL #7008-3230-0003-0730-1580**  
**RETURN RECEIPT REQUESTED**

Contractor

Francis G. Ziegler, P.E., Director  
North Dakota Department of Transportation  
608 E. Boulevard Ave.  
Bismark, ND 58505

Re: Administrative Complaint and  
Notice of Opportunity for Hearing  
Docket No. **CWA-08-2011-0039**

Dear Messrs. [redacted] and Ziegler:

Enclosed is a document entitled Administrative Complaint and Notice of Opportunity for Hearing (Complaint). The United States Environmental Protection Agency (EPA or Agency) is

# EPA Complaint

- Count 1 – Failure to Develop an Adequate SWPP Plan
- Count 2 – Failure to Implement the SWPP Plan
- Count 3 – Failure to Implement and Maintain BMPs
- Count 4 – Failure to Conduct and Document Inspections
- Count 5 – Failure to Maintain a Copy of the Permit at the Site
- Count 6 – Failure to Amend the SWPP Plan

# Count 1 – Failure to Develop an Adequate SWPP Plan

- No permit language in SWPP
- SWPP plan included contractors whose roles are not defined
- No details for concrete batch plant and concrete washout areas
- Does not explicitly define the potential sources of pollution
- Project to start in May and finish in October 2010
- Typical Soils exist. Erosion of soils should be low.

# Count 1 – Failure to Develop an Adequate SWPP Plan

- SWPP describes the area will flow into the Red River. Did not mention two legal drains and the Sheyenne River
- SWPP plan does not describe how waste will be handled
- SWPP states “Site....maintenance will be completed in accordance to the NDDoH Guidelines
- Plan does not identify when each control measure will implemented during the project for each major phase of the site activity
- No BMPs in place at the legal drains
- Unprotected soil stockpile

# Count 1 – Failure to Develop an Adequate SWPP Plan

- Site inspections and maintenance will be completed in accordance with NDDoH Guidelines
- No details on how rain would be measured
- Inspection reports were incomplete, did not detail areas that were inspected, and were not signed.
- No amendments were made to the SWPP plan or site map

# Count 2 – Failure to Implement the SWPP Plan

- Open ditches flowing directly into Legal Drains and the Sheyenne. SWPP plan and site map left these areas silent.
- SWPP plan states silt curtains will be downstream of the bridges but the placement of the BMP is not defined on the site map.
- SWPP identifies a concrete batch plant would be used but does not include any details on the proper operation of the batch plant.
- SWPP does not define what will be done with concrete washout.

# Count 3 – Failure to Implement and Maintain BMPs

- Site map shows silt fence along wetlands but there were areas where it was knocked down and needed maintenance.
- SWPP plan and site map do not define storm water inlets. Inspection revealed an inlet near the Sheyenne was unprotected.
- SWPP plan states straw wattles will be “placed as per plan specifications.” Inspection shows wattles are installed incorrectly.

# Count 4 – Failure to Conduct and Document Inspections

- SWPP did not identify the inspection schedule. It stated “... will be completed in accordance to NDDoH guidelines. ....deficiencies would be noted and corrected.” Should have said every 7 days, 14 days, within 24 hours of a rain greater than 1/2 “
- SWPP did not include details on how rain would be measured.
- Inspection reports did not include details regarding BMP maintenance. Report stated “called Pro landscapers about a few wattles.”

# Count 4 – Failure to Conduct and Document Inspections

- No information on inspecting surface waters for evidence of sediment disposition
- No information on inspecting vehicle exit points for off site tracking.
- Inspection reports not signed
- No amendments were made to the SWPP and site plan.

# Count 5 – Failure to Maintain a Copy of the Permit at the Site

- Superintendent was not on site the day the EPA and NDDoH arrived. SWPP was in his pickup.

# Count 6 – Failure to Amend the SWPP Plan

- Added items but they were not added to the SWPP or site plan.

# Other Issues

- Used old template for the SWPP – New form issued by the NDDoH in July. Permit application was in April. Inspection occurred in August.
- Sheyenne River is a 303(d) river – Impaired water body
- Inspection reports not signed by authorized representative
- Made corrections after the visit, sent EPA pictures but some items were not complete, EPA commented on incorrect installations.

# Final Agreement

- Contractor would pay \$40,000 Settlement
- Periodically review at least 10% of SWPPP Plans prepared by NDDOT contractors
- Continue developing a website focusing on storm water and storm water management
- Continue training opportunities for NDDOT and outside engineering consultants
- Continue working with contractors and NDDoH

# Website

- <https://www.dot.nd.gov/divisions/environmental/storm-water/storm-water-management.htm>
- Includes
  - Training Videos and Presentations
  - Storm Water Poster
  - NDDOT Erosion and Sediment Control Handbook
  - Initial SWPP Checklist for NDPDES Permits
  - NDDoH Storm Water Field Inspection Report
  - EPA Expedited Settlement Agreement Form
  - Numerous Links for information and templates

## EPA protects Sheyenne River from unauthorized construction site discharges

Release Date: 06/28/2012

Contact Information: Contacts: Seth Draper, 303-312-6763; Matthew Allen, 303-312-6085

### EPA protects Sheyenne River from unauthorized construction site discharges

*Gowan Construction to pay \$40,000 for Clean Water Act violations near Harwood; NDDOT to improve stormwater management and oversight*

Contacts: Seth Draper, 303-312-6763; Matthew Allen, 303-312-6085

(Denver, Colorado – June 25, 2012) The U.S. Environmental Protection Agency has reached an agreement with Gowan Construction, Inc. (Gowan) and the North Dakota Department of Transportation (NDDOT) resolving alleged violations of the Clean Water Act at an interstate highway construction project affecting the Sheyenne River near Harwood in Cass County, North Dakota. Gowan is based in Oslo, Minn. and maintains a branch office in Grand Forks, N.D.

Under a consent agreement signed on June 12, 2012, Gowan will pay a penalty of \$40,000. As part of the agreement, NDDOT has agreed to inspect active construction sites, review stormwater pollution prevention plans created for the department's projects, and conduct reviews to ensure their contractors are complying with the Clean Water Act. NDDOT agreed to develop a website devoted to stormwater management that offers resources for contractors, and plans to continue to provide stormwater training opportunities for its contractors.

"EPA will vigorously enforce the laws to protect our nation's water resources," said Mike Gaydos, EPA's Enforcement Director in Denver. "EPA is encouraged that Gowan and the State of North Dakota are taking steps to ensure compliance with requirements that limit runoff of pollutants into surface waters."

The alleged violations were discovered during an EPA inspection of Gowan's construction site on Interstate 29, northwest of Fargo, in August, 2010. The project created a land disturbance of 220 acres (the size of 198 football fields), which intersected and overlaid the Sheyenne River. The Sheyenne River is a major tributary to the Red River of the North.

EPA observed unauthorized stormwater discharges at the site and alleged that Gowan and NDDOT had failed to maintain stormwater controls (such as silt fences, straw wattles, and silt curtains), failed to comply with inspection requirements, and failed to develop an adequate stormwater pollution prevention plan, all in violation of the Clean Water Act and their permit. The inspection was conducted when the project was 50% complete. During construction activities, 1100 tons of sediment was estimated to have been discharged in violation of the Clean Water Act. After EPA's inspection an estimated 950 tons of sediment was reduced from entering surface water.

Stormwater runoff is generated when precipitation from rain and snowmelt events flows over disturbed and unprotected land surfaces. This runoff accumulates debris, chemicals, sediment or other pollutants that could adversely affect water quality if unchecked and untreated. Sediment can kill fish directly, destroy spawning beds, suffocate fish eggs and bottom dwelling organisms, and block sunlight resulting in reduced growth of beneficial aquatic grasses. In addition, sediment can impact the treatment of drinking water resulting in higher treatment costs, and can result in the loss of drinking water reservoir storage capacity and decrease the navigational capacity of waterways.

Information from NDDOT on stormwater requirements can be found online at [www.dot.nd.gov](http://www.dot.nd.gov) or by calling 701-328-2563.

Developers, contractors, and other landowners who plan to conduct construction activities disturbing one acre of land or greater should obtain stormwater permit coverage with the North Dakota Department of Health at: <http://www.ndhealth.gov/wq/storm/StormWaterHome.htm>.

For more information on EPA's stormwater permitting program: [www.epa.gov/npdes/stormwater](http://www.epa.gov/npdes/stormwater).

Re: Construction Storm Water Inspection -  
NPDES Permit No. NDR103219

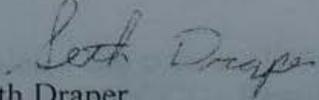
Enclosed is a copy of the inspection report for the Environmental Protection Agency's (EPA's) inspection performed at I-29 "Harwood" construction site on August 3, 2010 in Fargo, North Dakota. Deficiencies were noted during the inspection and summarized in the enclosed table titled "Findings and Corrective Actions." Within thirty (30) days of receipt of this report, please coordinate and provide EPA and the North Dakota Department of Health (NDDH) a summary of the corrective actions taken to address the deficiencies identified in the report. These summaries should be sent to:

Seth Draper (8ENF-W-NP)  
U.S. EPA Region 8  
NPDES Enforcement Unit  
1595 Wynkoop Street  
Denver, CO 80202-1129

Gary Bracht  
North Dakota Department of Health  
918 East Divide Avenue, 4th Floor  
Bismarck ND 58501-1947

Please contact me at 303-312-6763 if you have any questions regarding this letter or the enclosed report.

Sincerely,

  
Seth Draper  
NPDES Enforcement Unit  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures: MOA, 3560, Inspection Report, Summary of Findings, Photolog

# What did we do?

- Director said we would not have another violation in the state.
- In depth discussion at the preconstruction conference
- Site visits by District Administration to ensure project staff and contractors understood the importance of this program.
- Assistance from Central Office including site tours and suggestions of corrective measures.

# Reviewed all SWPP's

- Started looking at all the SWPP's in the District and comparing them to the template
- Many items were missing or incomplete
- Started following all water off the project to ensure all runoff was accounted for
- Checked for items not in use
- Checked rain gauge locations
- Suggest placing a mailbox on site with the latest SWPP inside

# Reviewed all SWPP's

- Made sure items were installed correctly
- Some contractors did not want to dig in bio rolls because the manufacturer's recommendations said they did not need to. I told them to attach manufacturer's recommendation to the SWPP.
- Ensured inspections were completed
- Withheld estimates

# Paperwork Issues

- Most common issue was copying our plans. No mention of BMP's during construction
- 303 Impaired waterway analysis not completed
- Inspections completed by someone not listed on SWPP
- Using items but not listing them on the SWPP (Sandbags)
- Site plan lacking details on installed items
- Borrow sites
- Rain gauge and documenting rainfall
- Not installing all the items in the SWPP
- Vegetative buffer needs 90% coverage. Corn field does not meet this requirement.

# Paperwork Issues

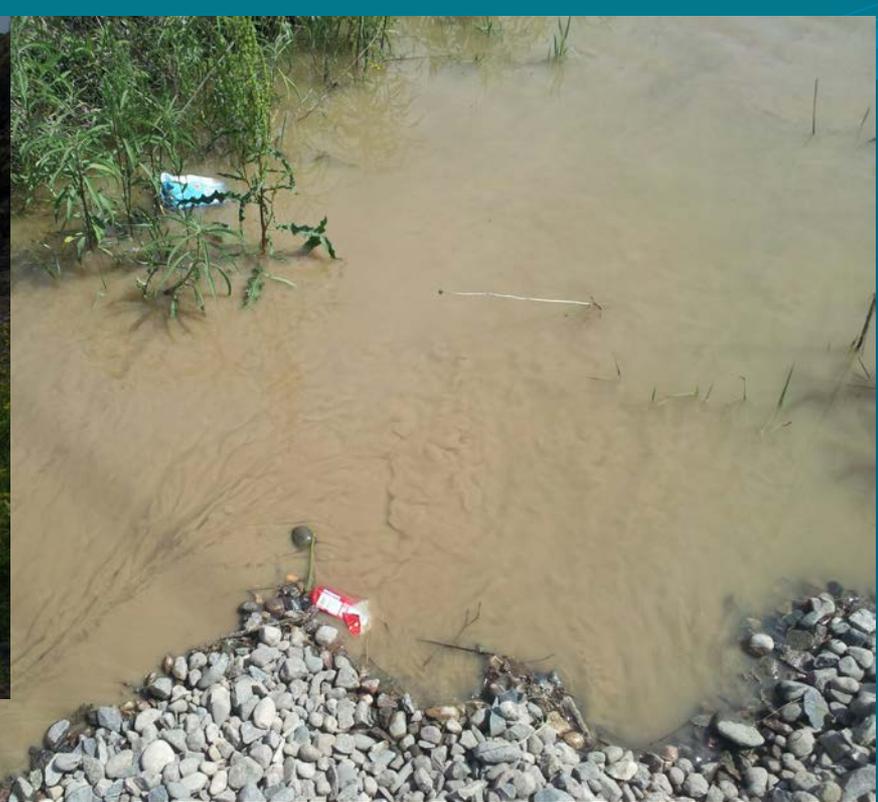
- Listing the engineer as the owner. Needs to be the NDDOT or LPA
- Tried to deflect all risk to DOT or Engineering firm
- No timetable on when devices will be installed or used.  
Bridge project with concrete and grading
- Chain of responsibility

*removed 12/12/12*  
*still in place*





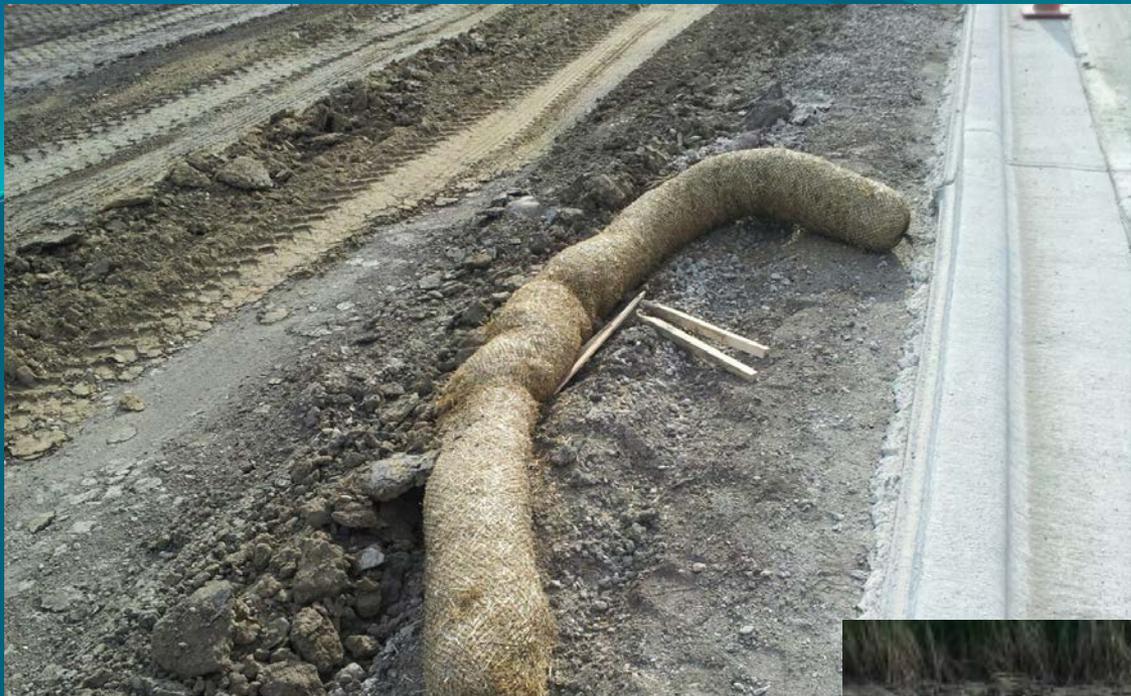












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