

## Resolution 7-22

### An Emergency Declaration Concerning Pollution Discharges

#### Amendments 7-10 - Finlayson

##### **Amendment 7:**

On page 3 strike lines 9 down through 11 and insert:

1. “A Stop Work Order shall be issued to any project that has an off-site illicit discharge caused by contractor negligence.”

*Justification: It is not clear what being “in 100% compliance” with the standards in Chapter 17.08 or the MDE Erosion and Sediment Control standards means. Would it be different if the site was in 100% compliance and a discharge occurred? Would a SWO be issued? If not, then how is it to be dealt with?*

*This also accounts for Force Majeure events (hurricane, tornado, derecho etc.) where collateral damage is impossible to predict.*

##### **Amendment 8:**

On page 3 strike lines 12 down through 14 and insert:

2. “A Stop Work Order shall be issued if the contractor makes no effort to remediate the conditions identified in the Field Correction Order within the timeframe given.”

*Justification: If inspection finds a site to be out of compliance with any provision of Chapter 17.08 or the MDE Sediment & Erosion Control standards it is to be considered a Failed Inspection (see para. 4 in the Resolution). If the inspection fails, a written Field Correction Notice (FCN) shall be issued detailing the required corrective action to be taken (see para. 8 in the Resolution). The deficiency is to be cured within 24 hours unless compelling evidence can be provided to justify a longer period (see para 9 in the Resolution). Depending on severity of the violation, fines are to be issued for each violation for each day it remains in effect until cured (see para. 5 in the Resolution). If the Field Correction Notice is not fully complied with within the given timeframe (usually 24 hours), a Stop Work Order (SWO) is to be issued regardless of the severity of the non-compliant item.*

*Examples of deficiencies that would cause the issuance of a SWO are:*

- a. Minor tears in Silt Fence*
- b. Missing sections of silt fence around soil stockpiles*
- c. Missing mulch on portions of haul routes*
- d. Any maintenance item*

*This is inconsistent and does not conform to the Progressive Enforcement methodology in use by agencies within MD. Below are excerpts from the Anne Arundel County Code.*

***Anne Arundel County Code – Excerpts from Article 16 and Article 9***

*(d) **Enforcement measures available.** For a violation of this article or any term or condition of a permit, the Department may take enforcement measures through any appropriate means, including:*

- (1) injunctive or any other appropriate court proceedings;*
  - (2) the suspension or revocation of the permit, denial of certificates of occupancy, or the denial of the issuance of additional permits until the violation is cured;*
  - (3) the issuance of a stop work order;*
  - (4) the issuance of notice of a violation;*
  - (5) the imposition of civil fines; and*
  - (6) the pursuit of a criminal prosecution.*
- (Bill No. 58-10)*

***§ 16-5-103. Stop work order.***

*(a) **Grounds for issuance.** The Department may issue a stop work order if it determines that a person has violated this article or any term or condition of a permit.*

*(b) **Content.** A stop work order shall describe the violation and prohibit all construction on site other than work expressly designated in the order to environmentally or materially secure the site.*

*(c) **Notice; compliance.** The Department shall notify the permittee of a stop work order by first class mail, postage prepaid, or by an electronic or facsimile communication. The Department shall post the order at the work site and the permittee shall comply immediately.*

*(d) **Removal.** A stop work order may not be removed from the site by anyone other than the Department.*

*(Bill No. 58-10)*

***Factors in assessing fines.*** *The following factors shall be considered in determining the amount of any fine assessed under this section for violations in the critical area:*

- (i) the gravity of the violation;*
- (ii) any willfulness or negligence involved in the violation;*
- (iii) the environmental impact of the violation; and*
- (iv) the cost of restoration and mitigation, including any cost incurred by the State or County.*

**Amendment 9:**

On page 3 strike lines 30 down through 34.

***Justification:*** *The risk that arises if the City tells the contractor “How” to meet the standards is that if they follow City direction and there is a failure, the City will not be able to fine them –*

*because they followed the City's direction on "How" to cure the deficiency. The contractor is responsible for determining how to meet the standards as well as the method (s) to be used. This is called "Means & Methods" not "Ways & Means".*

**Amendment 10:**

On page 3 strike lines 35 down through 37 and insert:

"9. "Field Correction Notices shall require corrections within a timely period, reviewed and approved by the Director. All Field Correction Notices shall be posted in a location accessible to the general public."