

U.S. EPA Region 8 NPDES Inspection Report

National Database Information	
Inspection Date: June 27, 2023	Inspection Type: Compliance Evaluation Inspection
Entry / Exit Time: 15:45 / 17:05	NPDES ID: SDR10I02I (EPA 2022 Stormwater Construction General Permit)
Major / Non-Major Facility: Non-Major	NPDES Program Sector(s): Stormwater Construction
NAICS Code: 23 (Construction)	Inspection ID: 202306_SDR10I02I
Lead inspector and affiliation: Akash Johnson / U.S. EPA Region 8	
Inspector and affiliation: Stephanie Passarelli / U.S. EPA Region 8	

Site/Facility Location Information	
Site/Facility Name & Location: SDDOT Project No. NH-B 0212(184)143; Project Control No. 04XG U.S. Highway 212 between Station 12+70 and Station 81+00 (source: SWPPP), approximately 1.7 road miles west of Lantry, South Dakota 45.027822, -101.457500	Email Report to: Steven Jacobs P.E., Project Engineer South Dakota Department of Transportation steven.jacobs@state.sd.us

Contact Information	
	Name(s)/Title
Site/Facility Contacts	Steven Jacobs / Project Engineer / South Dakota Department of Transportation (present)
	Darwin Towne / Superintendent / Midwest Contracting, LLC (present)
Indian Health Service Contacts	N/A
Tribal Government Contacts	David Nelson / Environmental Director / Cheyenne River Sioux Tribe (not present)
“Operator” (as defined in Part 1.1.1 of the CGP)	South Dakota Department of Transportation
Responsible Official(s)	Various responsible officials identified in NOI, SWPPP, and onsite.

Permit/Site/Facility Information																			
Permit on site and available: Did not evaluate	Permit Application Date: August 12, 2022																		
Effective Date: August 26, 2022	Expiration Date: February 16, 2027																		
Total Project Area: 44 acres (source: SWPPP)	Total Area to be Disturbed: 28 acres (source: NOI and SWPPP)																		
Latitude: 45.027822	Longitude: -101.457500																		
Receiving Water(s): Main channel and tributary of Little Bear Creek																			
Weather Conditions: During inspection: Overcast; no precipitation; damp/muddy from recent precipitation events. 7 days prior to inspection: NOAA NCEI CDO Precipitation Data from nearest station (approximately 7.33 miles west of site) with data: <table border="1"> <thead> <tr> <th>Date</th> <th>Precipitation (inches)</th> </tr> </thead> <tbody> <tr> <td>6/21/2023</td> <td>0</td> </tr> <tr> <td>6/22/2023</td> <td>0</td> </tr> <tr> <td>6/23/2023</td> <td>1.8</td> </tr> <tr> <td>6/24/2023</td> <td>2.3</td> </tr> <tr> <td>6/25/2023</td> <td>0.2</td> </tr> <tr> <td>6/26/2023</td> <td>0</td> </tr> <tr> <td>6/27/2023</td> <td>0.3</td> </tr> <tr> <td>Total</td> <td>4.6</td> </tr> </tbody> </table> Station Information: ID: USC00392429 Name: DUPREE, SD US Latitude, Longitude: 45.04689, -101.60228 Elevation: 727.9 meters asl Date data accessed: January 19, 2024 Data source: https://www.ncei.noaa.gov/cdo-web/		Date	Precipitation (inches)	6/21/2023	0	6/22/2023	0	6/23/2023	1.8	6/24/2023	2.3	6/25/2023	0.2	6/26/2023	0	6/27/2023	0.3	Total	4.6
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6/27/2023	0.3																		
Total	4.6																		
Inspector's source of information: Facility representatives and records, EPA records and databases, Google Earth Pro aerial imagery, NOAA precipitation data, and inspection observations.																			

Areas Evaluated During Inspection		
<u>Permit</u>	<u>Self-Monitoring Program</u>	Pretreatment
<u>Records</u>	Compliance Schedule	<u>Pollution Prevention</u>
<u>Facility Site Review</u>	Laboratory	<u>Stormwater</u>
<u>Effluent/Receiving Waters</u>	<u>Operations and Maintenance</u>	Combined Sewer Overflow
Flow Measurement	Sludge Handling/Disposal	Sanitary Sewer Overflow

Report Review and Signature		
Lead Inspector Name/Signature/Final Date	Draft Date	Contact Information
AKASH JOHNSON  Digitally signed by AKASH JOHNSON Date: 2024.02.02 14:31:02 -07'00'	January 26, 2024	U.S. EPA Region 8 Denver, Colorado johnson.akash@epa.gov (303) 312-6067
Reviewer Name	Review Date	Contact Information
Stephanie Passarelli	January 31, 2024	U.S. EPA Region 8 Denver, Colorado passarelli.stephanie@epa.gov (303) 312-6803
Management Reviewer Name/Signature/Date		Contact Information
EMILIO LLAMOZAS  Digitally signed by EMILIO LLAMOZAS Date: 2024.02.02 14:10:14 -07'00'		U.S. EPA Region 8 Denver, Colorado llamozas.emilio@epa.gov (303) 312-6407
Emilio Llamozas, NPDES and Wetlands Enforcement Section Supervisor		

Inspection Narrative and Facility Description

1.0 Introduction

On Tuesday, June 27, 2023, I, U.S. Environmental Protection Agency (EPA) inspector Akash Johnson, accompanied by EPA inspector Stephanie Passarelli (collectively, “we”), conducted a compliance evaluation inspection of South Dakota Department of Transportation (SDDOT) SDDOT Project No. NH-B 0212(184)143; Project Control Number 04XG (project; site). The project was located in Dewey County, South Dakota, within the exterior boundaries of the Cheyenne River Reservation (Reservation). We were accompanied by the individuals identified as “present” on page 1 of this report for the entirety of the inspection. A letter notifying the Cheyenne River Sioux Tribe of the EPA’s inspection presence on the Reservation was sent on May 18, 2023. The inspection was announced to SDDOT several hours in advance. The purpose of the inspection was to evaluate compliance with applicable National Pollutant Discharge Elimination System (NPDES) requirements. Throughout the inspection, we took notes of our discussions and observations in bound logbooks. Photographs taken during the inspection are included in the enclosed photo log.

2.0 Project and Permitting Overview

2.1 Project Overview

The project comprised improvements to U.S. Highway 212 (highway; road) as it crossed over Little Bear Creek (referred to interchangeably as “creek”) via a bridge (45.027833, -101.457511) and an apparent anabranch or tributary of Little Bear Creek via a culvert (45.026775, -101.452459), east of the Little Bear Creek main channel. As of this report drafting, no distinct name for this apparent anabranch or tributary of Little Bear Creek is known to me (it is referred to as “Little Bear Creek” in some project documents); it is referred to as the “eastern tributary” in this report.

On the northern, downgradient side of the highway, in the western portion of the site segment between the eastern tributary and Little Bear Creek crossings, an unnamed drainage originated and flowed generally east before presumably joining Little Bear Creek or the eastern tributary north of the project extents. As of this report drafting, no name for this unnamed drainage is known to me; it is referred to as the “unnamed drainage” in this report.

In the Stormwater Pollution Prevention Plan provided to the EPA by SDDOT on June 28, 2023 (SWPPP), and in the August 12, 2022 Notice of Intent (NOI) submitted by SDDOT for coverage under the EPA’s NPDES Construction General Permit for Stormwater Discharges from Construction Activities (CGP; permit), the total project area was estimated as 44 acres and the total area to be disturbed was estimated as 28 acres; these figures were not verified as part of the inspection.

According to the SWPPP and various other SDDOT project documents, the project spanned from Station 81+00 (eastern extent) to Station 12+70 (western extent). The project is described in some SDDOT project documents as “Replace Structure (119’ Prestressed Girder), Approach Grading, & Asphalt Resurfacing.” During the inspection, project representatives explained the scope of work included offsetting (to the north) and rebuilding the road on either side of the bridge over Little Bear Creek and replacing the bridge. We did not discuss whether any portions of the culvert conveying the eastern tributary under the highway were to be moved or replaced during the project, with the exception of the culvert outlet apron, which had recently been installed prior to the inspection. Project representatives stated the culvert was plugged while earth disturbance was occurring in the vicinity.

Inspection Narrative and Facility Description

2.2 NPDES Permitting and Project Timelines

The relevant version of the CGP became effective February 17, 2022 and expires February 16, 2027. SDDOT submitted a NOI for CGP coverage August 12, 2022 and coverage for the site became effective August 26, 2022. SDDOT is the sole project entity that submitted a NOI and obtained coverage under the CGP.

The NOI identifies an expected project start date of September 7, 2022 and an expected project end date of July 24, 2024. Based on information in the SWPPP and provided by project representatives during the inspection, disturbance began approximately October 27, 2022 and work was suspended for winter conditions between approximately November 9, 2022 and May 2, 2023. During the inspection, project representatives indicated the majority of work was expected to be completed around November 2023. As of this report drafting, CGP coverage for the site remains active and will continue until the CGP expires at 11:59 PM on February 16, 2027 or until coverage is terminated, whichever occurs first.

2.3 404 Permitting

CWA Section 404 requirements may be applicable to elements of the project, such as the highway crossings over the eastern tributary and Little Bear Creek. After the inspection, SDDOT shared documentation relating to Department of the Army Nationwide Permit No. 14, site-specific Permit No. NOW-2019-1434-PIE, issued to SDDOT for the project on September 23, 2019 (404 permit). Compliance with the 404 permit and other potentially applicable CWA Section 404 requirements was not evaluated during the inspection.

3.0 Inspection Narrative

I called SDDOT to announce the inspection several hours in advance. The inspection began when we arrived onsite at approximately 15:45. We convened with SDDOT representative Steven Jacobs, Project Engineer, and Midwest Contracting LLC representative Darwin Towne, Superintendent, outdoors on the north side of the highway, presented our inspector credentials, and conducted an opening conference. During the opening conference, we explained the general purpose and scope of the inspection and discussed various elements of the project and CGP implementation. Project representatives indicated the SWPPP and self-inspection reports were maintained electronically and could be emailed to the EPA after the inspection. We did not review any records onsite.

We then proceeded with the site review portion of the inspection. We did not observe the entirety of the project area during the site review; we generally focused on the northern, downgradient side of the highway between the eastern tributary and Little Bear Creek and remained on the north side of the highway for the entirety of the inspection.

The site was damp and, where disturbed, muddy, due to recent precipitation events. Project representatives indicated it had rained at the site within the last 24 hours. Precipitation data relevant to the site is displayed in the Permit/Site/Facility Information section of this report. A discussion of how this data was obtained is included in Section 4.

We began the site review by observing disturbed area and stockpiled soils in the vicinity of the eastern tributary culvert outlet (Photographs 398-402). No stormwater or sediment controls had been installed between disturbed soils and stockpiles and the eastern tributary. Beyond the northern extent of the disturbed area, SDDOT indicated they were intending to maintain a 50-foot vegetated buffer between

Inspection Narrative and Facility Description

disturbed area and the eastern tributary, wherever feasible. Project representatives stated the 404 permit applied to work in and around the eastern tributary in this area. No stormwater or sediment controls were installed between disturbed areas of the site covered under the CGP and areas of the site SDDOT presumed to be covered under the 404 permit.

Erosion rills up to several feet deep were observed in disturbed soils upgradient of the eastern tributary (Photographs 398-402). Sediment deposition into the eastern tributary channel from upgradient disturbed areas was apparent (Photographs 398, 400-405, and 407-413). Project representatives indicated the culvert that would normally convey the eastern tributary under the highway was plugged and standing water or evidence of recent flow observed in this area was the result of recent precipitation. During the inspection, no active flow through the culvert or channel immediately downstream of the culvert was apparent. The culvert outlet apron appeared to have been recently installed, and project representatives stated the bottom interior of the apron was intended to be installed at grade or several inches below grade (Photograph 402).

A floating silt curtain had been installed across the eastern tributary channel (perpendicular to the direction of flow) approximately several hundred feet downstream of the culvert (Photographs 403-405, 407-410, and 413). Project representatives indicated the silt curtain had been installed in accordance with the 404 permit and the intent of the silt curtain was to capture sediment deposited into the eastern tributary channel from upgradient disturbed areas and prevent it from flowing further downstream, then the captured sediment could be removed from channel prior to re-opening the culvert. Project representatives indicated sediment had not been removed from the upgradient side of the silt curtain since its installation; but the intent was to remove sediment captured by the silt curtain prior to reopening the culvert.

The silt curtain had become detached from its eastern anchor post and had been pushed to the western side of the channel (roughly parallel with the direction of flow), and there was visible evidence of recent flow in the channel, such as downed vegetation, debris, and sediment deposition in the channel both upgradient and downgradient of the silt curtain (Photographs 403-405, 407-413). Project representatives indicated the silt curtain had likely detached because it had been overwhelmed by stormwater and sediment during a recent precipitation event. Presumably, some or all sediment that had been retained by the silt curtain prior to its detachment had been washed further downstream.

We then walked west along the north side of the highway between the eastern tributary and Little Bear Creek crossings (Photographs 406, 414-428). Along this segment of the project, Little Bear Creek flowed roughly parallel to the highway at times. From various vantage points near the highway, it was difficult to discern whether the main channel of Little Bear Creek or potential side channels of the creek were closest to the road; multiple channels in this area may be referred to collectively as "Little Bear Creek" in this report (Photographs 406, 414-417, 419, 428). As discussed in Section 2.1, the unnamed drainage originated in the western portion of this segment (Photographs 420-428) and flowed generally east before presumably joining Little Bear Creek or the eastern tributary north of the project extents. Disturbed soils and stockpiles were present along the north side of the highway throughout this entire project segment. In the eastern portion of this segment, for about 200 feet, no stormwater or sediment controls were installed and a vegetated buffer of at least 50 feet had not been maintained in all areas between unstabilized soils and Little Bear Creek (Photographs 406, 414, and 415). Project representatives indicated disturbance in this area had commenced approximately a week prior to the inspection. In the western portion of this segment, straw wattles had been installed between unstabilized soils and the unnamed drainage, but sediment had overwhelmed the straw wattles and

Inspection Narrative and Facility Description

entered the unnamed drainage in the vicinity of its origin (Photographs 420-428). Water was flowing through the unnamed drainage from the point of its origination.

The last portion of the site we observed included the vicinity of the new bridge construction and Little Bear Creek on the north side of the highway (Photographs 429-441). On both (east and west) sides of Little Bear Creek, no sediment or stormwater controls had been installed between disturbed soils and stockpiles and the creek (Photographs 429, 430, 436, 437, 441) and sediment deposition from disturbed areas into the creek was apparent (Photographs 429, 430, 438-441). Project representatives indicated 404 permit requirements were applicable to work in and around Little Bear Creek in this area. No stormwater or sediment controls were installed between disturbed areas of the site covered under the CGP and areas of the site SDDOT presumed to be covered under the 404 permit.

Looking south, under the highway, we could see a floating silt curtain had been installed across Little Bear Creek on the upgradient (southern) side of the existing bridge, and the creek channel appeared to have been re-graded as it passed under the highway (Photograph 430). Little Bear Creek was then routed through a metal corrugated culvert to pass under a temporary dirt access road over the creek (Photographs 429, 430, and 441). Several dozen feet downstream of the culvert, another floating silt curtain had been installed across Little Bear Creek, but the silt curtain appeared to have become wrapped around itself or had been otherwise damaged or improperly installed, and the majority of the creek's flow appeared to be passing directly underneath the curtain instead of being intercepted by it (Photographs 431-433). Project representatives indicated the silt curtain had likely become wrapped around itself or had been otherwise adversely impacted by recent high flows in Little Bear Creek resulting from precipitation.

Before leaving the site, we conducted a closing conference with Steven Jacobs and Darwin Towne where we discussed preliminary findings based on onsite observations. Project representatives indicated corrective actions to address the preliminary findings would commence within the next 24 hours. Steven Jacobs indicate he would email me photographs documenting completed actions, along with the SWPPP and self-inspection reports. The onsite portion of the inspection concluded when we left the site at approximately 17:05.

4.0 Post-Inspection Activities and Conclusion

After the inspection, on June 28, 2023, Steven Jacobs provided me access to electronic files for the SWPPP, self-inspection reports, and photographs of corrective actions taken to address some of the preliminary findings identified during the closing conference. On July 20, 2023, Steven Jacobs also provided me access to documentation relating to the site's 404 permit. I reviewed the documents provided by Steven Jacobs and incorporated relevant information into this report.

During drafting of this report, I also reviewed precipitation data for Dewey and Ziebach counties for 7 days including and preceding the inspection, accessed via the National Oceanic and Atmospheric Administration, National Centers for Environmental Information, Climate Data Online portal (<https://www.ncei.noaa.gov/cdo-web/>). Precipitation data from the nearest weather station reporting data (located approximately 7.33 miles west of the site) is displayed in the Permit/Site/Facility Information section of this report.

Findings and requested corrective actions identified pursuant to this inspection are included in the section below.

Findings and Corrective Actions

Finding 1: No sign or other notice of permit coverage was posted at the site.

Project representatives indicated a sign had previously been posted at the site but had recently blown down and had not yet been replaced.

Permit Requirements:

1.5 REQUIREMENT TO POST A NOTICE OF YOUR PERMIT COVERAGE

You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to the construction site. The notice must be located so it is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way [footnote 11: If the active part of the construction site is not visible from a public road, then place the notice of permit coverage in a position that is visible from the nearest public road and as close as possible to the construction site.]. At a minimum, the notice must include:

- a. The NPDES ID (i.e., permit tracking number assigned to your NOI and the EPA webpage where a copy of the NOI can be found (<https://permitsearch.epa.gov/epermit-search/ui/search>));
- b. A contact name and phone number for obtaining additional construction site information;
- c. The Uniform Resource Locator (URL) for the SWPPP (if available), or the following statement: “If you would like to obtain a copy of the Stormwater Pollution Prevention Plan (SWPPP) for this site, contact the EPA Regional Office at [*include the appropriate CGP Regional Office contact information found at* <https://www.epa.gov/npdes/contact-us-stormwater#regional>];” and
- d. The following statement “If you observe indicators of stormwater pollutants in the discharge or in the receiving water, contact the EPA through the following website: <https://www.epa.gov/enforcement/report-environmental-violations>.”

Corrective Action:

Re-post the sign or other notice of permit coverage at the site. In a response to the EPA, provide a photograph of the re-posted sign and indicate the date it was re-posted. Alternatively, if work at the site is complete, provide a statement to the EPA indicating whether the sign was ever re-posted and, if so, the date of re-posting.

Findings 2.1-2.3:

In several areas along the northern, downgradient side of the highway, sediment and stormwater controls were either not installed between disturbed areas and downgradient surface waters or had not been maintained. All of these areas appeared to be within 50 feet of surface waters and were located along the site perimeter. These areas included:

- **Finding 2.1: Sediment and stormwater controls were not installed between disturbed areas and the eastern tributary.**

In the vicinity of the eastern tributary on the north side of the highway, no stormwater or sediment controls had been installed between stockpiles or other disturbed areas and the eastern tributary (Photographs 398-402). Project representatives stated the 404 permit applied to work in and around the eastern tributary in this area. No stormwater or sediment controls were

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installed between disturbed areas of the site covered under the CGP and areas of the site SDDOT presumed to be covered under the 404 permit.

Erosion rills up to several feet deep were observed in disturbed soils upgradient of the eastern tributary (Photographs 398-402). Sediment deposition into the eastern tributary channel from upgradient disturbed areas was apparent (Photographs 398, 400-405, and 407-413). While no active flow through the eastern tributary culvert was apparent during the inspection, the downstream floating silt curtain had become detached from its eastern anchor post and had been pushed to the western side of the channel (roughly parallel with the direction of flow), and there was visible evidence of recent flow in the channel, such as downed vegetation, debris, and sediment deposition in the channel both upgradient and downgradient of the silt curtain (Photographs 403-405, 407-413). Project representatives indicated the silt curtain had likely detached because it had been overwhelmed by stormwater and sediment during a recent precipitation event. Presumably, some or all sediment that had been retained by the silt curtain prior to its detachment had been washed further downstream.

- **Finding 2.2: Sediment and stormwater controls were not installed between disturbed areas and Little Bear Creek.**

Along the northern side of the highway, in the eastern portion of the segment between the eastern tributary and Little Bear Creek crossings, for about 200 feet, no stormwater or sediment controls were installed and a vegetated buffer of at least 50 feet had not been maintained in all areas between unstabilized soils and Little Bear Creek (Photographs 406, 414, and 415). Project representatives indicated disturbance in this area had commenced approximately a week prior to the inspection.

In the vicinity of Little Bear Creek on the north side of the highway, on both (east and west) sides of the creek, no sediment or stormwater controls had been installed between stockpiles and unstabilized areas and the creek (Photographs 429, 430, 436, 437, 441) and sediment deposition from disturbed areas into the creek was apparent (Photographs 429, 430, 438-441). Project representatives indicated 404 permit requirements were applicable to work in and around Little Bear Creek in this area. No stormwater or sediment controls were installed between disturbed areas of the site covered under the CGP and areas of the site SDDOT presumed to be covered under the 404 permit.

Downstream of this area, a floating silt curtain had been installed across Little Bear Creek, but the silt curtain appeared to have become wrapped around itself or had been otherwise damaged or improperly installed, and the majority of the creek's flow appeared to be passing directly underneath the curtain instead of being intercepted by it (Photographs 431-433). Project representatives indicated the silt curtain had likely become wrapped around itself or had been otherwise adversely impacted by recent high flows in Little Bear Creek resulting from precipitation.

- **Finding 2.3: Sediment and stormwater controls between disturbed areas and the unnamed drainage had not been properly maintained.**

Along the northern side of the highway, in the western portion of the segment between the eastern tributary and Little Bear Creek crossings, straw wattles had been installed between

Findings and Corrective Actions

unstabilized soils and the unnamed drainage, but sediment had overwhelmed the straw wattles and entered the unnamed drainage in the vicinity of its origination (Photographs 420-428).

Permit Requirements:

2 TECHNOLOGY-BASED EFFLUENT LIMITATIONS

You must comply with the following technology-based effluent limitations in this Part for all authorized discharges [footnote 12: For each of the effluent limits in Part 2, as applicable to your site, you must include in your SWPPP (1) a description of the specific control(s) to be implemented to meet the effluent limit; (2) any applicable design specifications; (3) routine maintenance specifications; and (4) the projected schedule for installation/implementation. See Part 7.2.6.].

2.1 GENERAL STORMWATER CONTROL DESIGN, INSTALLATION, AND MAINTENANCE REQUIREMENTS

You must design, install, and maintain stormwater controls required in Parts 2.2, 2.3, and 2.4 to minimize the discharge of pollutants in stormwater from construction activities [footnote 13: The permit does not recommend or endorse specific products or vendors.]. To meet this requirement, you must...

2.1.3 Complete installation of stormwater controls by the time each phase of construction activities has begun.

- a. By the time construction activity in any given portion of the site begins, install and make operational any downgradient sediment controls (e.g., buffers, perimeter controls, exit point controls, storm drain inlet protection) that control discharges from the initial site clearing, grading, excavating, and other earth-disturbing activities [footnote 16: Note that the requirement to install stormwater controls prior to each phase of construction activities for the site does not apply to the earth disturbance associated with the actual installation of these controls. Operators should take all reasonable actions to minimize the discharges of pollutants during the installation of stormwater controls.].
- b. Following the installation of these initial controls, install and make operational all stormwater controls needed to control discharges prior to subsequent earth-disturbing activities.

2.1.4 Ensure all stormwater controls are maintained and remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.

- a. Comply with any specific maintenance requirements for the stormwater controls listed in this permit, as well as any recommended by the manufacturer [footnote 17: Any departures from such maintenance recommendations made by the manufacturer must reflect good engineering practices and must be explained in your SWPPP.].
- b. If at any time you find that a stormwater control needs routine maintenance (i.e., minor repairs or other upkeep performed to ensure the site's stormwater controls remain in effective operating condition, not including significant repairs or the need to install a new or replacement control), you must immediately initiate the needed work, and complete such work by the close of the next business day. If it is infeasible to complete the routine maintenance by the close of the next business day, you must document why this is the case and why the repair or other upkeep to be performed should still be considered routine maintenance in your inspection report under

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Part 4.7.1c and complete such work no later than seven (7) calendar days from the time of discovery of the condition requiring maintenance...

2.2 EROSION AND SEDIMENT CONTROL REQUIREMENTS

You must implement erosion and sediment controls in accordance with the following requirements to minimize the discharge of pollutants in stormwater from construction activities.

2.2.1 Provide and maintain natural buffers and/or equivalent erosion and sediment controls for discharges to any receiving waters that is located within 50 feet of the site's earth disturbances.

- a. Compliance Alternatives. For any discharges to receiving waters located within 50 feet of your site's earth disturbances, you must comply with one of the following alternatives:
 - i. Provide and maintain a 50-foot undisturbed natural buffer; or
 - ii. Provide and maintain an undisturbed natural buffer that is less than 50 feet and is supplemented by erosion and sediment controls that achieve, in combination, the sediment load reduction equivalent to a 50-foot undisturbed natural buffer; or
 - iii. If infeasible to provide and maintain an undisturbed natural buffer of any size, implement erosion and sediment controls to achieve the sediment load reduction equivalent to a 50-foot undisturbed natural buffer.

See Appendix F, Part F.2 for additional conditions applicable to each compliance alternative.

- b. Exceptions. See Appendix F, Part F.2 for exceptions to the compliance alternatives...

Appendix F.2.2 Exceptions to the Compliance Alternatives

The following exceptions apply to the requirement to implement one of the Part 2.2.1.a compliance alternatives (see also Part 2.2.1.b):

- The following disturbances are exempt from the requirements Part 2.2.1 and this Appendix [footnote 1: This exemption does not apply, however, to disturbances within 50 feet of a receiving water that are adjacent to the disturbances listed here (i.e., construction permitted under CWA Section 404, or construction of a water-dependent structure or water access area) and that are covered by this permit.1:
 - Construction approved under a CWA Section 404 permit; or
 - Construction of a water-dependent structure or water access areas (e.g., pier, boat ramp, trail).
- If there is no discharge of stormwater to waters of the U.S. through the area between the disturbed portions of the site and any waters of the U.S. located within 50 feet of your site, you are not required to comply with the requirements in Part 2.2.1 and this Appendix. This includes situations where you have implemented controls measures, such as a berm or other barrier, that will prevent such discharges...
- For "linear construction sites" (see Appendix A), you are not required to comply with this requirement if site constraints (e.g., limited right-of-way) make it infeasible to implement one of the Part 2.2.1.a compliance alternatives, provided that, to the extent feasible, you limit disturbances within 50 feet of any waters of the U.S. and/or you provide supplemental erosion and sediment controls to treat stormwater discharges from earth disturbances within 50 feet of the receiving water[.] You must also document in your SWPPP your rationale for why it is

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infeasible for you to implement one of the Part 2.2.1.a compliance alternatives, and describe any buffer width retained and supplemental erosion and sediment controls installed...

Note that you must document in your SWPPP if any disturbances related to any of the above exceptions occurs within the buffer area on your site...

2.2.3 Install sediment controls along any perimeter areas of the site that are downslope from any exposed soil or other disturbed areas [footnote 20: Examples of perimeter controls include filter berms; different types of silt fence such as wire-backed silt fence, super silt fence, or multi-layer geotextile silt fence; compost filter socks; gravel barriers; and temporary diversion dikes.].

- a. The perimeter control must be installed upgradient of any natural buffers established under Part 2.2.1, unless the control is being implemented pursuant to Part 2.2.1a.ii-iii;
- b. To prevent stormwater from circumventing the edge of the perimeter control, install the perimeter control on the contour of the slope and extend both ends of the control up slope (e.g., at 45 degrees) forming a crescent rather than a straight line;
- c. After installation, to ensure that perimeter controls continue to work effectively:
 - i. Remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control; and
 - ii. After a storm event, if there is evidence of stormwater circumventing or undercutting the perimeter control, extend controls and/or repair undercut areas to fix the problem.
- d. Exception. For areas at “linear construction sites” (as defined in Appendix A) where perimeter controls are infeasible (e.g., due to a limited or restricted right-of-way), implement other practices as necessary to minimize pollutant discharges to perimeter areas of the site.

Corrective Action:

On June 28, 2023, Steven Jacobs provided me photographs indicating the floating silt curtain had been re-affixed to its eastern anchor post in the area discussed in Finding 2.1 (eastern tributary), straw wattles had been installed in the areas discussed in Finding 2.2 (Little Bear Creek), and sediment had been removed from around straw wattles in the area discussed in finding 2.3 (unnamed drainage).

In the photographs provided by SDDOT on June 28, 2023, it did not appear any stormwater or sediment controls had been installed between disturbed areas and the eastern tributary. Based on our conversations with project representatives while onsite and information included in Steven Jacobs’s June 28, 2023 email to me, the EPA understands SDDOT was relying on the silt curtain to capture any sediment deposited into the eastern tributary channel while the upstream culvert remained plugged. Steven Jacobs indicated in his June 28, 2023 email to me SDDOT was in the process of mobilizing heavy machinery to remove sediment from the eastern tributary channel.

No additional corrective actions are requested pursuant to Findings 2.1-2.3 at this time.

Finding 3. Stockpiles were not located away from natural site drainage features and sediment barriers were not installed along all downgradient perimeter areas of stockpiled soil or land cleaning debris.

Stockpiles with no downgradient sediment or stormwater controls were located in the vicinity of the eastern tributary (Photograph 398-400 and 402) and Little Bear Creek (Photographs 406, 429, 436, 437, and 441).

Findings and Corrective Actions

Permit Requirements:

2.2.5 Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil [footnote 25: The requirements in Part 2.2.5 do not apply to the storage of rock, such as rip rap, landscape rock, pipe bedding gravel, and boulders. Refer to Part 2.3.3a for the requirements that apply to these types of materials.]:

- a. Locate the piles outside of any natural buffers established under Part 2.2.1 and away from any constructed or natural site drainage features, storm drain inlets, and areas where stormwater flow is concentrated;
- b. Install a sediment barrier along all downgradient perimeter areas of stockpiled soil or land clearing debris piles [footnote 26: Examples of sediment barriers include berms, dikes, fiber rolls, silt fences, sandbags, gravel bags, or straw bale.]...

Corrective Action:

Manage stockpiles at the site in accordance with Part 2.2.5 of the Permit. In a response to the EPA, provide photographs of any stockpiles at the site showing they are being managed in accordance with Part 2.2.5 of the permit. Alternatively, if work at the site is complete, provide a statement to the EPA indicating whether required stockpile controls were ever implemented and, if so, the date(s) of implementation.