



**Driving Indiana's Economic Growth**

*Office of*  
ENVIRONMENTAL  
SERVICES  
INDOT



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# ICA/INDOT Const. Conference

- Introduction
  - Office of Environmental Resources (OES)
- Intent of Rule 5
  - Why Important?
- Statewide INDOT Rule 5 Compliance Data
- Contractor Expectations
  - Task Force/JTRP Study/EPA Rule



# Intent of Rule 5

- Intent of Rule 5. Storm Water Run-Off Associated with Construction Activity
  - Indiana Administrative Code
    - 327 IAC 15-5-1 Purpose
      - Sec. 1. The purpose of this rule is to establish requirements for storm water discharges from construction activities of one (1) acre or more so that the public health, existing water uses, and aquatic biota are protected.



# Intent of Rule 5

- Intent of Rule 5. Storm Water Run-Off Associated with Construction Activity
  - <http://www.in.gov/idem/4902.htm>
    - ["327 IAC 15-5 \[PDF\]"](#) is a performance-based regulation designed to reduce pollutants that are associated with construction and/or land disturbing activities."
  - "By Rule" permitted statewide
    - Submit Rule 5 Notice of Intent (NOI) to follow the rule.



# Performance Based Rule

- The Rule (IDEM/SWCD/Property Owner) doesn't care about:
  - My sub-contractor can't get on the project site for two weeks to fix the measures/add new measures etc.
  - I installed what was in the plans
  - I didn't install what was in the plans because...
- Non compliance
  - Sediment Leaving the Project Site
  - High Potential for Sediment to leave Project Site



# 327 IAC 15-5-4 Definitions

- (5) "Construction plan" means a representation of a project site and all activities associated with the project. The plan includes:
  - the location of the project site, buildings and other infrastructure grading activities
  - **schedules for implementation**
  - **other pertinent information related to the project site**
  - A Storm Water Pollution Prevention Plan (SWPPP) is **a part** of the construction plan.



## 327 IAC 15-5-7

# General requirements for storm water quality control

- (8) The storm water pollution prevention plan shall serve as a guideline for storm water quality, **but should not be interpreted to be the only basis for implementation of storm water quality measures for a project site.** The project site owner is responsible for implementing, in accordance with this rule, all measures necessary to adequately prevent polluted storm water run-off.

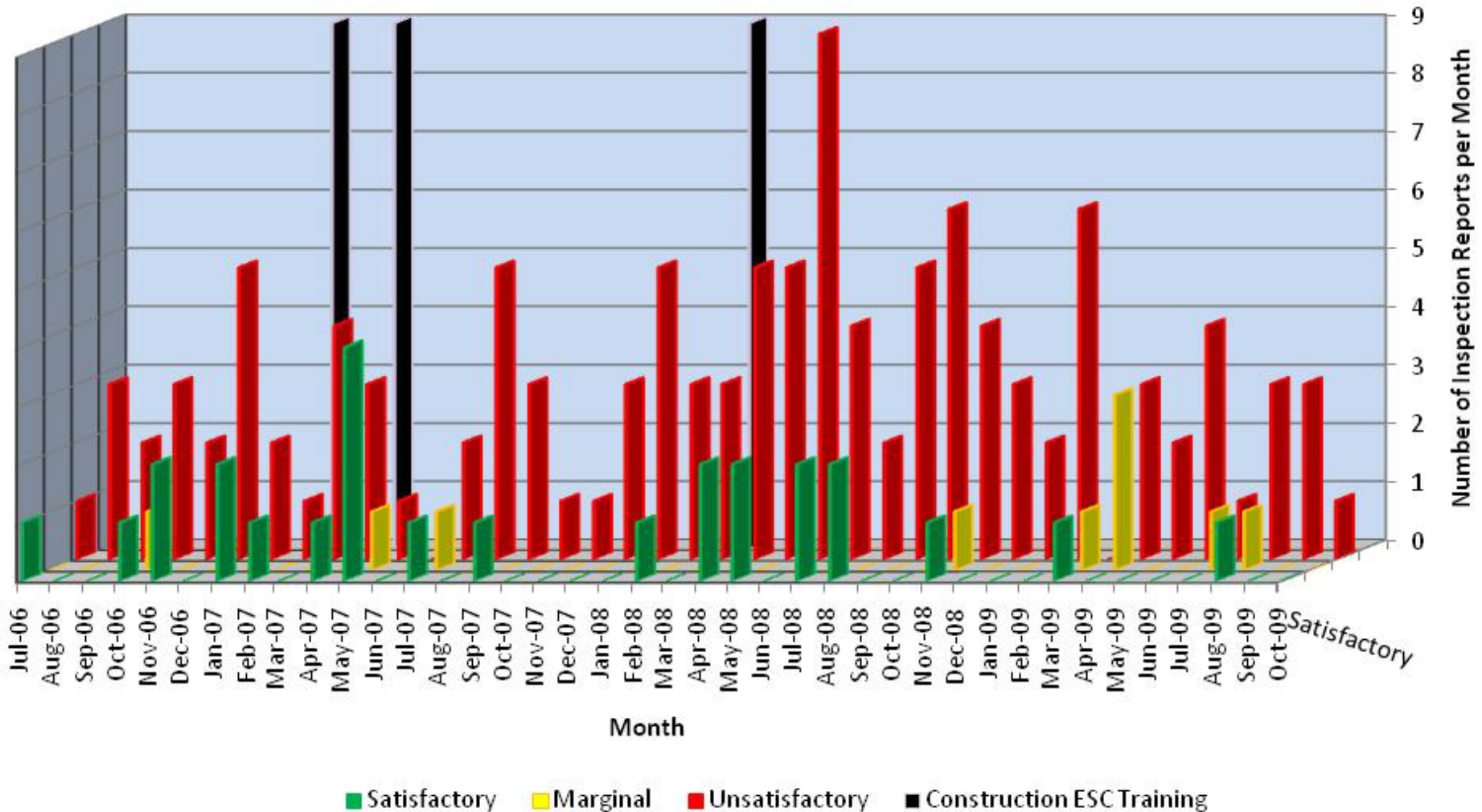


# Discussion Topics

- State of Indiana Compliance Data
  - Indiana Department of Environmental Management (IDEM) or the local Soil and Water Conservation Districts (SWCDs) Inspection Reports
    - January 1, 2007 to September 1, 2009
    - Analyzed for compliance
    - Overall Rating of Satisfactory, Marginal and Unsatisfactory



**Figure 1: Erosion and Sediment Control Inspection Report Results**  
**July 2006-October 2009 Inspections**  
 Report Prepared 11/3/09



# Inspection Report Results

- *Of the inspection reports received between June 1, 2006 and October 9, 2009:*
  - 155 inspection reports received
  - 62 contracts received inspection reports
  - **83.2 % of all reports** were either unsatisfactory or marginal
  - IDEM Inspections Complaint driven and not consistent across the State and INDOT Districts



# Inspection Report Results

- *Of the inspection reports received between June 1, 2006 and October 9, 2009: (cont.)*
  - Repeat Inspection Reports
    - Avg. 2.5 inspection reports/contract
    - 60% rec'd on previously inspected contracts
    - 79.0% unsatisfactory or marginal First Notice
    - **86.2%** unsat. or marg. **Repeat Inspections**



# INDOT Statewide Compliance

- *Largest Observed Violators*
  - Typically Larger Projects
    - New Alignment/Added Travel Lanes
    - (large grading = lots of exposed soil)
  - Overwintering Projects
    - Exposed Soils not stabilized prior to end of growing season
  - Projects with Dewatering
    - Dewatering methods typically aren't adequate
  - Projects with Work in Waterway
    - Bridges/structures



# INDOT Contract Items Results

- *Of the INDOT Contracts Active from January 1, 2007 to September 1, 2009:*
  - 493 Contracts let with E&SC items (\$1,932,601,471)
  - 0.46% (\$8,889,966) of budget Temporary E&SC items including change orders
  - 0.14% (\$2,705,642) of budget Temp. E&SC items dispersed
  - **70%** (roughly \$6 million) of E&SC Item dollars in the contracts were not paid for on INDOT contracts



# INDOT Rule 5 Compliance

- *Conclusions:*

- INDOT (Contractors) must acknowledge that a majority of our contracts are out of compliance with Rule 5 E&SC.
- Despite previous notification of a lack of compliance, INDOT staff and its contractors are not responsive to the violation notices resulting in repeat inspections, repeat violations and potential IDEM and EPA enforcement.
- The lack of implementation of \$6 million worth of E&SC items that are in the contracts must be further investigated and likely contributes to the lack of compliance.
- The risk of non-compliance is too great for current INDOT projects to delay participation in changing current INDOT practices.



# Discussion Topics

- Contractor Expectations



- *Specifications*

- *107.01*

- *“The Contractor shall keep fully informed of Federal and State laws; local laws; ordinances.....which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws....”*



## ■ 108.04 Prosecution of Work

- “An amended Erosion Control Plan shall be submitted....for those areas not included in the Department submittal or as necessary for changes initiated by the Contractor.”
- “The Contractor shall also submit a sequencing of the erosion and sediment control measures to be used on the project”



- 108.04 cont.
  - “The Contractor shall designate one or more of its employees as an Erosion Control Supervisor”
    - Shall oversee the installation of all erosion control measures and shall conduct weekly and post-event inspections and perform all other tasks related to...erosion control measures.



- 108.04 cont.
  - “A minimum of 10 days prior to commencing work, the Contractor shall prepare and submit to the Engineer, for approval, an erosion control plan that includes....”
    - (c) Proposed construction sequence and phasing of erosion control measures.
    - (g) Monitoring and maintenance plan for erosion and sediment control measures.



- 108.04 cont.

- Permanent erosion control measures shall be incorporated into the work at the earliest practicable time as the construction progresses to stabilize the site.
- In order to minimize pollution to bodies of water, the practices and controls set out below shall be followed:
  - (a) When work areas are located in or adjacent to bodies of water, such areas shall be separated by a dike or other barrier to keep contained.....



## ■ 205.04 Maintenance

- “Temporary erosion and sediment control measures shall be inspected by the Contractor’s Erosion Control Supervisor once every seven days and after each rain activity.”
- “The temporary protection measures shall be returned to good working conditions within 48 hours after inspection or as directed.”



# What's Coming?

- JTRP Study
  - BMP Recommendations for design/specs
  - Required certification for erosion control supervisor
  - Field Manual



# What's Coming?

- Task Force Recommendations
  - Monetary Damages for Contractor
  - Training
  - E&SC Specialist at each District
  - Demonstration Projects
    - Design Build E&SC
    - Rapid Stabilization Areas



- New EPA Regulations
  - Will require monitoring of runoff from construction sites
  - IDEM will be determining how regulations will be implemented in Indiana
  - Expect new guidelines within the next year or two.



# Questions?

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