**Q. My onsite construction manager received a citation from the county regarding an alleged violation of the local soil erosion, sedimentation and pollution control ordinance. The citation was written to him personally, even though he does not own the property being developed and the applicable permits are all in the name of my company. Is it proper for the county to write the citation in his name and if so, what can we do to handle it?**

A. First, it is important to note that every local sedimentation and erosion control ordinance is different, so without knowing the specific county involved and the exact language of the ordinance, it is impossible to give a definitive answer. As a general matter, however, most local ordinances permit inspectors to write citations to individuals working on construction/development sites, even when those individuals do not own the property being developed and the applicable permits are not in their names.

Unfortunately, it is a relatively common practice for inspectors to write citations in the name of individual employees in an effort to bring increased pressure or leverage on the company conducting the development. Inspectors know that the company cannot operate without its employees, and inspectors want to have a real person to answer to their charges.

When a citation has been written to an employee, the company’s lawyer can appear on behalf of the employee at the hearing. Frequently, it is possible to get the citing officer and the lawyer handling the matter for the county to agree to recast the citation in the name of the company at the hearing. The company would then agree to plead nolo contendere (or “no contest”) to the citation and to pay any fine. Commonly, the company will make the determination that it is best to try to be as cooperative as possible with the inspecting authority to try to make things run more smoothly for the development going forward.

Of course, if it appears that the citation was issued in violation of the governing ordinance, it is also possible to attend the citation hearing and to oppose the citation on its merits. The company may decide that it is important to take a stand if it believes that the inspector is overreaching his authority or not operating in good faith. This approach does carry somewhat more risk, as it opens the possibility that the employee could be found guilty of a violation of the ordinance and subjected to a fine or potentially even a jail sentence of some length. The potential penalties for violation of the ordinance would have to be evaluated carefully prior to making the decision to fight the citation and not to reach a plea agreement of some type.

While it is common for developers and builders to handle these citations on their own, without counsel, I strongly recommend that if a particular project or permitting authority is involved in multiple citations that you involve counsel going forward.  The implications of having a series of citations or even a stop work order go beyond just the immediate problem of a plea deal or fine.  These are always the first exhibits attached to a complaint filed by a downstream “victim” of excessive run off or sedimentation from your site.