

Georgia Department of Natural Resources

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Chris Clark, Commissioner

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Environmental Protection Division

404/656-4713

August 12, 2009

MEMORANDUM

TO: Erosion and Sedimentation Control Local Issuing Authorities
Other Interested Parties

FROM: Carol A. Couch, Director 
Environmental Protection Division

RE: BMP Defense for Storm Water Discharges from Construction Activity

The purpose of this memo is to establish EPD's position on the continued discharge of highly turbid water from sites where Best Management Practices (BMPs) are in place and the site is in compliance with the approved Erosion Sedimentation and Pollution Control Plan.

The purpose of the General Permits is to minimize impacts to waters of the state from storm water discharges associated with construction activity. Under each of the three National Pollutant Discharge Elimination System (NPDES) General Permits for Construction Activity, Part III.D states that it is a violation of the Permit to discharge water that does not meet turbidity limitations. However, Part III.D.1 states that "Proper design, installation and maintenance of best management practices shall constitute a complete defense to any action by the Director or to any other allegation of noncompliance with Part III.D.3 and Part III.D.4."

While properly designing, installing and maintaining BMPs does provide a defense against actions alleging violation of the turbidity standard it **DOES NOT** relieve the Permittee of their responsibility to protect the quality of the state waters into which they are discharging. This is reflected by language in Part IV of the Permit, which requires that the Erosion Sedimentation and Pollution Control Plan must be amended "if the Plan proves to be ineffective in eliminating or significantly minimizing pollutants". Discharge of highly turbid water, which would violate the in-stream water quality standards, clearly indicates that the Plan is not effective in eliminating or significantly minimizing pollutants.

Proper design is defined in the three NPDES General Permits under Part IV - Erosion, Sedimentation and Pollution Control Plan. Many details of proper design are described on pages 14 through 26 for the Stand Alone Permit, pages 14 through 27 of the Infrastructure Permit, and pages 17 through 32 of the Common Development Permit. For the purposes of this memorandum, key elements include:

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- Utilizing best management practices which are consistent with and no less stringent than those practices contained in the "Manual of Erosion and Sediment Control in Georgia" published by the State Soil and Water Conservation Commission as of January 1 of the year in which the land disturbing activity was permitted.
- BMPs with a hydraulic component are designed for a 25-year, 24-hour storm event, and sediment basins are based on 67 cubic yards of storage per acre drained.
- Including additional BMPs for discharges into impaired streams, per Part III.C.
- Keeping Plans current, per Part IV.C.
- The Plan shall include a description of procedures to ensure the timely maintenance of vegetation, erosion and sediment control measures and other protective measures, per Part IV.D.5.
- Monitoring of nephelometric turbidity in receiving waters or outfalls in accordance with Part IV.D.6.

Proper installation is verified by the initial inspection requirement described in Part IV.A.5., including correcting deficiencies as required in the same paragraph.

In order to utilize the BMP Defense, proper maintenance must be implemented, including the following:

- Removal of sediment as described in Part IV.D.3.a.(3).
- Inspections in accordance with Part IV.D.4.a.(1) through (3)
- Plan revisions and implementation in accordance with Part IV.D.4.a.(4).
- Implementing timely maintenance in accordance with Part IV.D.5.
- Monitoring in accordance with Part IV.D.6.
- Define and implement corrective action as described in Part IV.D.6.d.(3).(c).
- Maintain and/or submit records per Part IV.D.4.a.(5), Part IV.E.1, and Part IV.F.

Therefore, a Permittee who has designed, installed and maintained all BMPs in accordance with an approved Erosion, Sedimentation and Pollution Control Plan but who continues to discharge storm water which exceeds the turbidity requirements of the Permit and the E&S Act is **NOT** in violation of Part III.D of the Permit or of the E&S Act. However, the Permittee must comply with the requirements of Part IV regarding inspection, plan revision, and sampling to address the failure to meet the standards.

The continued efforts by local Issuing Authorities to implement and enforce your erosion and sedimentation control ordinances and land disturbing permits in a manner consistent with the NPDES General Permits for Construction Activity are recognized and appreciated. Please contact your closest EPD District Office or the Watershed Protection Branch's NonPoint Source Program if you have questions concerning this memorandum.