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September 10, 2013

To: MS4 Colleagues

From: Ann R. Clark, Director
Division of Stormwater,
Construction, Agricultural and Dams Permitting

Re: Stormwater Permitting for Homebuilders

I enjoyed seeing several of you at the Informational Sessions for the Homebuilders on the NPDES Construction General Permit (CGP). There was a great deal of discussion on the implementation and interpretation of Section 2.2 covering Categories of Operators. As a follow up, I have been asked to share with all MS4s the information presented at those Forums.

As everyone knows, the 2006 CGP specified a co-permittee process for homebuilders under the coverage of the permittee (normally the developer.) With the current permit, which became effective on January 1, 2013, the Department worked with home builders to provide a range of options to cover the stormwater discharges from their sites. Within a subdivision (larger common plan of development), stormwater discharges resulting from land disturbing activity are required to be covered under the CGP. There are two avenues outlined below that homebuilders may use to cover their discharges. While we recognize that MS4s may have their own additional requirements for builders, the outline below is what is required under the CGP.

A. Work under the Primary Permittee's Coverage.

In this scenario, the developer obtains permit coverage as the Primary Permittee. If the developer allows, the homebuilder can work under the Primary's (developer) permit. This approach is similar to the old co-permittee agreement. The permit does not specify the manner in which this has to be done. Documentation of this arrangement should be maintained as part of the On-Site SWPPP (OS-SWPPP). In selecting this avenue of permitting:

- a. Primary would be responsible for inspections on all areas of the site and responsible for installation and maintenance of common Best Management Practices (BMPs).
- b. Co-permittee agreements under the 2006 CGP permit are still valid; and, no action is required by the homebuilder. (Primary needs to update SWPPP per section 3.1.1.F of the CGP).
- c. Considerations: If the primary terminates or goes bankrupt, or if an NOT (notice of termination) is filed, the home builder no longer has permit coverage.

B. Obtain Independent Coverage

The second option for builders is to obtain their own independent coverage. This may be the preference of the homebuilder; or, they may be required to obtain independent coverage by the primary (developer). Within this permitting option the level of coverage (Primary vs. Secondary) is dictated by the subdivision's level of completion:

- 1. Coverage as a Secondary Permittee.** If ALL infrastructure is installed or in the process of being installed, then home builders can file for coverage as a secondary permittee. This coverage includes ALL basins, swales, stormwater conveyance pipes, roads, and other infrastructure. Lots can be cleared and building pads prepped, or remain in an undisturbed condition. With this permitting scenario:
 - a. Coverage must be filed with the Department. This can be done with a simplified NOI (Form D-0432). This requires an application fee of \$125. Multiple lots can be covered under a single NOI.
 - b. Secondary Permittee would utilize individual lot control plan specified in the SWPPP.
 - c. Secondary Permittee is responsible for inspections on their portion of the site.
 - d. Secondary Permittees must maintain or coordinate the maintenance of any common stormwater BMPs accepting stormwater discharges from any area associated with their work with the Primary Permittee and/ or others working at the site.
 - e. Builder's coverage remains active even if the primary terminates coverage (files NOT or goes bankrupt.)
 - f. A builder can file as a secondary permittee if the primary has filed an NOI or is bankrupt as long as the infrastructure is in place.

- 2. Coverage as a Primary Permittee.** If no or partial infrastructure has been installed, then the activity is still considered development; and, the builder would need to apply for coverage as a primary permittee in order to complete installation of infrastructure. This situation would most often apply to homebuilders in a subdivision where the primary has gone bankrupt prior to installing the stormwater infrastructure. With this permitting scenario:
 - a. Builder would need to file a full NOI (Form D-2617) for review. They can utilize previously approved plans but the plans have to be signed off by a P.E. (required by CGP). The fee would include \$125 and review fee if applicable.
 - b. Builder is responsible for inspections.

Notes for Other Types of Operators

Under the CGP there is also a category for **Contractors**. Contractors are defined as: a person, group or company hired by the developer to commence and complete construction activities covered by these regulations. Section 2.2.3 states: Contractors employed by the Primary or Secondary Permittee, whose work at a construction site may disturb soil or whose work may otherwise be necessary to implement the approved On-Site SWPPP (OS-SWPPP), must complete a project-specific Contractor Certification Form (Form D-0437) meeting the requirements set forth in Section 2.3.2.

The CGP also presents an alternate process for **utility providers** in section 2.2.3.A in the form of an Annual Blanket Notice of Intent (AB-NOI). With this option for coverage, utility providers and utility contractors that are responsible, either directly or indirectly, for the construction, installation, and maintenance of conduits, pipes, pipelines, cables, wires, trenches, vaults, manholes, and similar structures or devices for the conveyance of natural gas (or other types of gas), liquid petroleum products, electricity, telecommunications (telephone, data, television, etc.), water or sewage may submit an Annual Blanket Notice of Intent (AB-NOI) to the Department. This option is only applicable for the work utility providers do within a permitted development. Stand-alone extensions to their service areas must be permitted individually. If the utility provider has not submitted an AB_NOI, then they are required to complete a project-specific Contractor Certification Form.