

MEMORANDUM OF UNDERSTANDING

for Land Disturbing Activities

Between

Division of Land Resources – Land Quality Section

And

Division of Water Quality – Surface Water Protection Section

November 2011

Purpose:

There is a need for the Land Quality Section of the Division of Land Resources (DLR) and the Surface Water Protection Section of the Division of Water Quality (DWQ) to closely coordinate their respective regulatory programs in order to meet public needs by fulfilling the intent of the regulations. This Memorandum of Understanding (MOU) will be reviewed annually and revised when necessary.

The purpose of this MOU is to establish formal understanding and recognition of the relationships described within this document.

David L. Matthews II *12/15/2011*
David L. Matthews II, Surface Water Protection Section Chief, DWQ DATE

Francis M. Nevils, Jr. *12/15/11*
Francis M. Nevils, Jr., Land Quality Section Chief, DLR DATE

The Division of Water Quality– Surface Water Protection Section (DWQ) and The Division of Land Resources – Land Quality Section (DLR) agree to the following:

Plan Reviews – Land Disturbing Activities

1. During the review of the Erosion and Sedimentation Control (E&SC) Plan, DLR will determine if the requirements listed below are included:
 - a. Designs of basins with surface withdrawal as per Section II (B) (4) of the NPDES Construction Stormwater General Permit NCG010000 (Construction Stormwater Permit);
 - b. Designations on the plans where the specific ground stabilization requirements apply as per Section II (B) (2) of the Construction Stormwater Permit.
2. If either of the items listed above are not included in the E&SC Plan submittal, information on plan revisions necessary to qualify for coverage under the Construction Stormwater Permit will be included with the Letter of Receipt from DLR. If the plan meets the requirements of the Sediment Pollution Control Act but not the Construction Stormwater Permit, then DLR's approval of the E&SC Plan will not include coverage under the NPDES Construction Stormwater Permit. DLR's approval letter will include language regarding no coverage under the Construction Stormwater Permit and will attach the form document developed by DWQ regarding *NO COVERAGE UNDER NPDES CONSTRUCTION STORMWATER GENERAL PERMIT NCG010000*.
3. Approval Letters for E&SC Plans will include language that explains that the site DOES or DOES NOT have coverage under the Construction Stormwater Permit. DWQ will review and approve the language DLR is to use regarding the construction stormwater permit. DWQ and DLR will update this language as needed.
4. DLR will send a paper or electronic copy of all Financial Responsibility/Ownership Forms to the local DWQ Regional Office.
5. DLR will send a paper or electronic copy of all approval letters that are not covered under the Construction Stormwater Permit to the local DWQ Regional Office.
6. DWQ will provide the document to DLR regarding "*NO COVERAGE under NPDES Construction Stormwater General Permit NCG010000*".
7. DWQ will be the lead agency reviewing the application when an individual NPDES Construction Stormwater Permit is required; however, DWQ will seek assistance from DLR.
8. DWQ will send a paper or electronic copy of all approval letters for individual NPDES Construction Stormwater Permits to the local DLR Regional Office.
9. During the review of the E&SC Plan, DLR can provide exemptions to the Ground Stabilization requirements as required by the Construction Stormwater Permit where site specific conditions allow.

Inspections – Land Disturbing Activities

10. DLR or DWQ can provide exemptions to the Ground Stabilization requirements as required by the Construction Stormwater Permit where site specific conditions allow. DLR or DWQ will document any onsite exemptions on their inspection reports.
11. DLR will note any potential Construction Stormwater Permit violations on their inspection reports including:

- a. deficiencies of basins not dewatering from the surface;
 - b. areas where 7-day or 14-day ground stabilization requirements are not being met;
 - c. offsite sedimentation, sedimentation to waters, failure to follow plan, failure to maintain measures, or any potential Construction Stormwater permit violation.
12. DLR will send a paper or electronic copy of any inspection report to the local DWQ Regional Office that notes any potential Construction Stormwater permit violations. As an alternative, DLR may provide the local DWQ Regional Office access to their electronic database. Each Regional Office will come to an agreement as to whether DWQ wants paper/electronic copies, access to the electronic database, or both.
 13. DLR will notify the local DWQ Regional Office of any site with severe offsite sediment deposition or any noticeable sediment deposition in streams or wetlands within 24 hours of the inspection or as soon as practicable. Upon notification from DLR, DWQ staff will evaluate and/or inspect the site within 5 business days.
 14. DWQ will assist in cooperative actions by notifying DLR of any site where DWQ staff suspects that the site may be in non-compliance with the proper design, installation, operation or maintenance requirements of the onsite Best Management Practices ("BMPs") recommended by DLR.
 15. DWQ will notify the local DLR Regional Office of any site with potential non-compliance with the E&SC Plan, with severe offsite sediment deposition or any noticeable sediment deposition in streams or wetlands within 24 hours of the inspection or as soon as practicable. Upon notification from DWQ, DLR staff will evaluate and/or inspect the site within 5 business days.

Compliance and Enforcement – Land Disturbing Activities

16. DLR will enforce statutes and rules over which they have jurisdiction, including but not limited to failure to follow the approved E&SC Plan and failure to properly maintain the E&SC measures.
(Please note that "enforce" does not exclusively mean a civil penalty assessment.)
17. DLR will send a paper or electronic copy to the local DWQ Regional Office of all Notice of Violations (NOV) related to any land disturbing activity regulated by the Sedimentation Pollution Control Act.
18. DLR will send a paper or electronic copy to the local DWQ Regional Office of all civil penalty assessments related to any land disturbing activity regulated by the Sedimentation Pollution Control Act.
19. DLR will send a paper or electronic copy of any request for Injunctive Relief or Stop Work Orders to the local DWQ Regional Office and DWQ Central Office.
20. DLR will assist in cooperative actions with DWQ by notifying the local DWQ Regional Office of suspected or potential riparian buffer violations observed during inspections. Protected riparian buffer areas include: Neuse River Basin, Tar-Pamlico River Basin, Catawba River Basin, Randleman Lake Watershed, Jordan Lake Watershed and Goose Creek Watershed.
21. DWQ will enforce water quality standards, rules, regulations, certifications and permits issued by DWQ. DWQ will enforce conditions of the Construction Stormwater Permit including but not limited to:
 - a. deficiencies of basins not dewatering from the surface;
 - b. areas where 7-day or 14-day ground stabilization requirements are not being met;

- c. location of building materials and waste handling areas;
 - d. location of earthen stockpiles;
 - e. location and methods of concrete handling areas;
- (Please note that "enforce" does not exclusively mean a civil penalty assessment.)*

- 22. DWQ will send a paper or electronic copy to the local DLR Regional Office of all Notice of Violations (NOV) related to land disturbing activity that may be regulated by the Sedimentation Pollution Control Act.
- 23. DWQ will send a paper or electronic copy of all civil penalty assessments related to land disturbing activity to the DLR Central Office.
- 24. DWQ will send a paper or electronic copy of any request for Injunctive Relief to the DLR Central Office.

General

- 25. DLR and DWQ Central Office staff will continue to schedule monthly meetings in order to coordinate actions when both agencies have compliance issues on the same site.
- 26. DLR and DWQ Regional Office staff will coordinate on a case-by-case basis and when both agencies have compliance issues on the same site.
- 27. DLR and DWQ will continue to work to provide database downloads and copies of appropriate reports to EPA.
- 28. DLR and DWQ will continue to work to develop a data management tracking system for NPDES Construction Stormwater Permits and Erosion and Sedimentation Control Plans.

Training, Education and Outreach

- 29. DLR will provide regional training to local governments with delegated erosion and sedimentation control programs. Training will address determining if plans qualify for coverage under the Construction Stormwater Permit, enclosures to accompany letters of plan approval, and communication to DWQ.
- 30. DLR will continue to invite DWQ to participate in DLR seminars for the regulated community to address water quality issues and requirements. DWQ will continue to participate when requested.
- 31. DLR will continue to invite DWQ to participate in the DLR Annual Meeting with locally delegated E&SC programs. DWQ will continue to participate when requested.
- 32. DWQ will continue to train and assist DLR staff in methods of evaluating potential stream turbidity standard violations, stream identification methods, and other relevant trainings as time and space in training courses allow. DLR will try to participate in training provided by DWQ as staffing levels allow.