

To: Local Issuing Authorities

FILE COPY

From: GSWCC

Date: November 9, 2010

Re: Tertiary Permittees and Erosion, Sedimentation and Pollution Control Plans

In recent years, many common development projects have been started and never completed. Many times the owner was unable to sell lots or ran out of financing to complete the project. Even though construction had ceased, the project's owner was still responsible for the requirements of the NPDES permit. In 2008, the NPDES permits were revised and provisions were added to GAR 100003 to address this issue.

The NPDES Permit GAR 100003 allows the Primary Permittee to file a Notice of Termination (NOT) for a common development when all of the following conditions have been met:

- The entire common development has undergone final stabilization.
- All storm water discharges associated with construction activity authorized by this permit (GAR 100003) have ceased.
- Construction has ceased for a minimum of 90 days.

For construction activities where the Primary Permittee has elected to submit Notice of Intents (NOIs) for separate phases of the common development:

- The phase or phases of the common development on the NOT shall correspond with the phase or phases of the NOI.
- The phase has undergone final stabilization and all storm water discharges associated with construction activity authorized under the permit has ceased.
- Construction has ceased for a minimum of 90 days.

In both instances, all Secondary Permittees must file an NOT in accordance with Part V.G. of this permit.

Becoming a Tertiary Permittee

It is important to understand that an individual will become a Tertiary Permittee, if the Primary Permittee has filed an NOT or the Primary Permittee cannot be determined. The Primary Permittee is required to submit the NOT to the local EPD District Office AND A COPY TO THE LOCAL ISSUING AUTHORITY. To verify an NOT has been filed, please contact the local EPD District Office for the County in which the project is located.

When the remaining lots (this includes lots that are less than 1 acre) within a common development are developed, after an NOT has been filed, the owner/operator of that lot(s) becomes the Tertiary Permittee and must adhere to the tertiary requirements of the permit.

GAR 100003 requires the Tertiary Permittee to:

- **Submit a Tertiary Notice of Intent for the lot(s) that are being developed.** The Tertiary Permittee may file a separate Tertiary NOI for each lot or one Tertiary NOI for the entire project.
- **An Erosion, Sedimentation and Pollution Control Plan must be developed** by a certified Design Professional and submitted to the local soil and water conservation district for approval in accordance with O.C.G.A. 12-7-9 for each NOI submitted.

Please note:

- Tertiary Permittees do not pay the State General Permit fees, those fees have already been paid by the Primary Permittee.
- The inspection requirements of the permit are applicable to all Tertiary Permittees (including lots that are less than 1 acre), however sampling requirements are only applicable to lot(s) with a planned disturbance equal to or greater than 5 acres.
- The remaining lots within a common development permitted as a Tertiary Permittee would not afford the exemptions listed in O.C.G.A. 12-7-17(4) or O.C.G.A. 12-7-17(8) and will require a technical review by the appropriate Soil and Water Conservation District.

Definitions

1. Common Development means a contiguous area where multiple, separate, and distinct construction activities will be taking place at different times on different schedules under one plan development.
2. Final Stabilization means that all soil disturbing activities at the site have been completed, and that for unpaved areas and areas not covered by permanent structures and areas located outside the waste disposal limits of a landfill cell that has been certified by EPD for waste disposal, 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater, or equivalent permanent stabilization measures (such as the use of rip rap, gabions, permanent mulches or geotextiles) have been used. Permanent vegetation shall consist of: planted trees, shrubs, perennial vines; a crop of perennial vegetation appropriate for the time of year and region; or a crop of annual vegetation and a seeding of target crop perennials appropriate for the region. Final stabilization applies to each phase of construction.
3. Primary Permittee means the Owner or the Operator or both of a tract of land for a construction project subject to this permit.
4. Secondary Permittee means an owner, individual builder, utility company, or utility contractor that conducts a construction activity within a common development.
5. Tertiary Permittee means either the Owner or Operator of a remaining lot(s) within a common development conducting a construction activity where the primary permittee and all secondary permittees have submitted a Notice of Termination in accordance with Part VI.A.2. of this permit (excluding utility companies and/or utility contractors working under a Blanket NOI).

For more information please contact the Georgia Soil and Water Conservation Commission at 706-552-4474 or by email at certification@gaswcc.org.