

Georgia Department of Natural Resources

2 Martin Luther King, Jr. Drive, S.E., Suite 1152 East Tower, Atlanta, Georgia 30334-9000

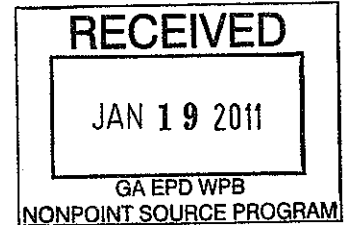
Chris Clark, Commissioner

F. Allen Barnes, Director

Environmental Protection Division

404/656-4713

September 27, 2010



MEMORANDUM

TO: Program Coordination Branch and Watershed Protection Branch

FROM: Jim Ussery, P.E., Assistant Director
Environmental Protection Division *JK*

SUBJECT: Enforcement Protocol – Notice of Intent / Notice of Termination

The intent of the attached guidance document dated September 2010 is to clarify the enforcement protocol applicable to the Notice of Intent (NOI) and Notice of Termination (NOT) requirements delineated in the *NPDES General Permits for Storm Water Discharges Associated with Construction Activity*.

Please implement this enforcement protocol for all applicable construction sites immediately. If additional information is required, please contact Frank Carubba with the Watershed Protection Branch at (404) 675-1634.

JU:fmc
Attachment

cc: Linda MacGregor
Jim Sommerville

Copy

BERT

LINDA

LARRY HEDGES

NOTICE OF INTENT / NOTICE OF TERMINATION RECOMMENDED ENFORCEMENT PROTOCOL

SCENARIO (1)

Original owner (permittee) of an active construction site with coverage under the 2003 NPDES General Permits for Storm Water Discharges Associated with Construction Activity (August 13, 2003 - July 31, 2008):

Whereas, the original owner did not submit a valid **Notice of Termination (NOT)** prior to August 1, 2008 OR the original owner did not submit a **Notice of Intent (NOI) – Re-Issuance Notification** for continued coverage under the 2008 NPDES General Permits for Storm Water Discharges Associated with Construction Activity (August 1, 2008 – July 31, 2013) prior to October 29, 2008.

EPD will issue a Consent Order with penalties and require that the original owner submit a **NOI – Re-Issuance Notification** for continued coverage and compliance under the applicable 2008 NPDES General Permit. However, as per this Consent Order, the requirements of Part III. C. of the 2008 NPDES General Permit would not be applicable.

SCENARIO (2)

New owner (permittee) of an active construction site with coverage under the 2003 NPDES General Permits for Storm Water Discharges Associated with Construction Activity (August 13, 2003 - July 31, 2008):

Whereas, the new owner did not submit a **NOI – Change of Information** when ownership was transferred AND/OR did not submit a **NOI – Re-Issuance Notification** prior to October 29, 2008 for continued coverage under the applicable 2008 NPDES General Permit.

EPD will issue a Consent Order with penalties and require that the new owner submit a **NOI – Change of Information AND/OR NOI – Re-Issuance Notification** for continued coverage and compliance under the applicable 2008 NPDES General Permit. However, as per this Consent Order, the requirements of Part III.C. of the 2008 NPDES General Permit would not be applicable.

SCENARIO (3)

Original owner (permittee) of an inactive construction site with coverage under the 2003 NPDES General Permits for Storm Water Discharges Associated with Construction Activity (August 13, 2003 - July 31, 2008):

Whereas, the original owner did not submit a valid **Notice of Termination (NOT)** prior to August 1, 2008 OR the original owner did not submit a **Notice of Intent (NOI) – Re-Issuance Notification** for continued coverage under the 2008 NPDES General Permits for Storm Water Discharges Associated with Construction Activity (August 1, 2008 – July 31, 2013) prior to October 29, 2008.

EPD will first issue a Notice of Violation that requires the original owner to submit a **NOI – Re-Issuance Notification** for continued coverage and compliance under the applicable 2008 NPDES General Permit (requirements of Part III. C. of the 2008 NPDES General Permit would not be applicable). After the original owner submits a **NOI – Re-Issuance Notification**, and all construction activities have ceased and the entire construction site has undergone final stabilization, the original owner must then submit a **Notice of Termination**.

If the original owner does not comply with the Notice of Violation, EPD will then issue a Consent Order that requires the original owner to ensure that the entire permitted construction site would be stabilized (i.e., 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater) but would not require the original owner to submit a **NOI – Re-Issuance Notification**. This Consent Order would document that the original owner was unable to comply with the provisions of the NPDES General Permits and/or Water Quality Rules and Regulations; therefore, it would be in the best interests of the State that the construction site is stabilized as soon as possible. These owners will not initiate any construction activities, other than those necessary to obtain final stabilization, without submitting a Notice of Intent for coverage and compliance under the applicable 2008 and subsequent NPDES General Permits.

SCENARIO (4)

New owner (permittee) of an inactive construction site with coverage under the 2003 NPDES General Permits for Storm Water Discharges Associated with Construction Activity (August 13, 2003 - July 31, 2008):

Whereas, the new owner did not submit a **NOI – Change of Information** when ownership was transferred AND/OR did not submit a **NOI – Re-Issuance Notification** prior to October 29, 2008 for continued coverage under the applicable 2008 NPDES General Permit. New owners may include, but are not

limited to, owners of **foreclosed** properties such as lending institutions, secured creditors and the FDIC.

EPD will first issue a Notice of Violation that requires the new owner to submit a **NOI – Change of Information AND/OR NOI – Re-Issuance Notification** for continued coverage and compliance under the applicable *2008 NPDES General Permit* (requirements of Part III. C. of the *2008 NPDES General Permit* would not be applicable). After the new owner submits a **NOI – Re-Issuance Notification**, and all construction activities have ceased and the entire construction site has undergone final stabilization, the new owner must then submit a **Notice of Termination**. Please note that the FDIC must comply with this Notice of Violation.

If the new owner does not comply with the Notice of Violation, EPD will then issue a Consent Order that requires the new owner to ensure that the entire permitted construction site would be stabilized (i.e., 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater) but would not require the new owner to submit a **NOI – Re-Issuance Notification**. This Consent Order would document that the new owner was unable to comply with the provisions of the *NPDES General Permits* and/or *Water Quality Rules and Regulations*; therefore, it would be in the best interests of the State that the construction site is stabilized as soon as possible. These owners will not initiate any construction activities, other than those necessary to obtain final stabilization, without submitting a Notice of Intent for coverage and compliance under the applicable 2008 and subsequent NPDES General Permits.

Please note that EPD has issued Consent Orders to BB&T, Regions Financial Corporation and Synovus Bank addressing foreclosed properties. The terms and conditions of these Consent Orders will remain in effect.

SCENARIO (5)

Owners (Tertiary Permittees) of lots that have undergone final stabilization within an existing Common Development with active construction and without a designated Primary Permittee:

If the construction site is within a Common Development without a designated Primary Permittee, the owners of the lots that have undergone final stabilization must submit a **NOI – Tertiary Permittee** at least 14 days prior to commencement of construction activities for coverage and compliance under the *2008 NPDES General Permit*. Please note that the Tertiary Permittees must provide an ES&PC Plan to control storm water from the individual lots prepared and implemented by certified personnel.

Please note that owners (Tertiary Permittees) may include, but are not limited to, individual builders, lending institutions, secured creditors and the FDIC.

SCENARIO (6)

Owners (Tertiary Permittees) of disturbed lots with active construction within an existing Common Development - but not owners of the entire Common Development. The Common Development does not have a designated Primary Permittee; therefore, Secondary Permittees are not authorized under the 2008 NPDES General Permit:

If the construction site is within a Common Development without a designated Primary Permittee, the **new owners** of the disturbed lots must submit a ***NOI – Tertiary Permittee*** by the earlier to occur of (a) seven (7) days before beginning any work at the construction site or (b) thirty (30) days from acquiring legal title to the construction site for coverage and compliance under the ***2008 NPDES General Permit*** OR the **original owners** of the disturbed lots that submitted Notices of Intent as ***Secondary Permittees*** must submit Notices of Intent as ***Tertiary Permittees*** at least 14 days prior to commencement of construction activities for coverage and compliance under the ***2008 NPDES General Permit***. Please note that the Tertiary Permittees must provide an ES&PC Plan to control storm water from the individual lots prepared and implemented by certified personnel.

Please note that owners (Tertiary Permittees) may include, but are not limited to, individual builders, lending institutions, secured creditors and the FDIC.

SCENARIO (7)

Owners (Tertiary Permittees) of disturbed lots with no construction activity within an existing Common Development - but not owners of the entire Common Development. The Common Development does not have a designated Primary Permittee; therefore, Secondary Permittees are not authorized under the 2008 NPDES General Permit:

Whereas, the **new owner** did not submit a ***NOI – Change of Information*** when ownership was transferred AND/OR did not submit a ***NOI – Re-Issuance Notification*** prior to October 29, 2008 for continued coverage under the applicable ***2008 NPDES General Permit*** OR the **original owner** did not submit a

valid **Notice of Termination**. Owners may include, but are not limited to, individual builders, lending institutions, secured creditors and the FDIC.

If the disturbed lots are within an existing Common Development without a designated Primary Permittee, EPD will first issue a Notice of Violation that requires the owner to submit a **NOI – Tertiary Permittee** for continued coverage and compliance under the applicable *2008 NPDES General Permit*. After the owner submits a **NOI – Tertiary Permittee**, and all construction activities have ceased and the disturbed lots have undergone final stabilization, the owner must then submit a **Notice of Termination**. Please note that the FDIC must comply with this Notice of Violation.

If the owner does not comply with the Notice of Violation, EPD will then issue a Consent Order that requires the owner to ensure that the disturbed lots would be stabilized (i.e., 100% of the soil surface is uniformly covered in permanent vegetation with a density of 70% or greater) but would not require the owner to submit a **NOI – Tertiary Permittee**. This Consent Order would document that the owner was unable to comply with the provisions of the *NPDES General Permits and/or Water Quality Rules and Regulations*; therefore, it would be in the best interests of the State that the disturbed lots are stabilized as soon as possible. These owners will not initiate any construction activities, other than those necessary to obtain final stabilization, without submitting a Notice of Intent for coverage and compliance under the applicable 2008 and subsequent NPDES General Permits.

SCENARIO (8)

Original owner of a construction site, such as a Limited Liability Company (LLC), has been dissolved AND the new legal owner has not be identified:

Until the new legal owner has been identified and located, EPD could not issue a Consent Order to ensure compliance with the NPDES General Permits.

NOTES: Primary Permittees cannot be charged additional NPDES General Permit fees (\$80 per acre disturbed) for failure to submit a **Notice of Intent (NOI) – Re-Issuance Notification**.

Only the Primary Permittee is responsible for paying the NPDES General Permit fees – Secondary and Tertiary Permittees do not pay NPDES General Permit fees.