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**BMP Defense Technical Clarification**

 The objective of this document is to clarify permit standards and requirements regarding the continued discharge of highly turbid water, that which exceeds the permitted limit, 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 (Plan). Information given in this document was provided from the 2023 NPDES General Permits. Requirement sections may change in subsequent permit cycle.

 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.4 states it is a violation of the Permit to discharge water that does not meet turbidity limitations. However, Part III.D.1 states “Proper design, installation and maintenance of best management practices shall constitute a complete defense to any action by the Director or to any other allegations of noncompliance with Part III.D.4 and Part III.D.5.”

 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 of the state waters into which they are discharging. Discharge of highly turbid water, which would violate the in-stream water quality standards, indicates that the Plan is not effective in eliminating or significantly minimizing pollutants. This is reflected by language in Part IV.C 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”.

Proper design is described in the three NPDES General Permits. For the purposes of this document key elements include:

* Including additional BMPs for discharges into impaired streams, per Part III.C.
* 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” (Manual) published by the State Soil and Water Conservation Commission as of January 1 of the year in which the land disturbing activity was permitted, per Part IV.
* Keeping Plans Current in accordance with Part IV.C.
* 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, Part IV.D.
* When discharging from sediment basins and impoundments, permittees are required to utilize outlet structures that withdraw water from the surface, per Part IV.D.3.a.(3)
* 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 following:

* Initial inspection requirement by the Design Professional within seven (7) days of installation as described in Part IV.A.5., including correcting deficiencies as required in the same paragraph.
* Initial sediment storage and perimeter control BMPs must be installed and implemented prior to conducting any other construction activities (e.g. clearing, grubbing and grading), per Part III.D.2.

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.
* Plan revisions and implementation in accordance with Part IV.D.4.a.(5).
* Implementing timely maintenance in accordance with Part IV.D.5 and the Manual.
* Sampling requirements in accordance with Part IV.D.6.
* Maintain and/or submit records per Part IV.D.4.a.(6), Part IV.E., and Part IV.F.

 Therefore, a Permittee who has designed, installed and maintained all BMPs in accordance with an approved Plan and the Manual, 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 the 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 designated EPD District Office or the Watershed Protection Branch’s NonPoint Source Program if you have questions concerning this clarification.