

APPENDIX A-2

Joining the Equivalent BMP List: Application and Removal Process

BACKGROUND AND PURPOSE

Pursuant to the Clean Water Act, EPA established requirements for storm water discharges under the National Pollutant Discharge Elimination System (NPDES) permitting program. Georgia's Environmental Protection Division (EPD) administers three NPDES General Permits that authorize the discharge of storm water from sites where construction activities occur. Each of these permits requires BMPs to be implemented in accordance with the design specifications contained in the Manual for Erosion and Sediment Control (Manual) published by the Georgia Soil and Water Conservation Commission (GSWCC).

The allowance of the efficient addition of proven BMPs that are at least as stringent as the Manual for Erosion and Sediment Control recognizes the dynamic growth and technological advancements in the area of BMP development. Each of the NPDES General Permits authorizing the discharge of storm water also allows for Alternative BMPs – BMPs not listed in the Manual – to be used if they meet the following requirement:

The use of alternative BMPs whose performance has been documented to be equivalent or superior to conventional BMPs as certified by a Design Professional may be allowed (unless disapproved by EPD or the State Soil and Water Conservation Commission).

GSWCC and EPD have previously developed a guidance document for the use of Alternative BMPs. Specifically, the Design Professional preparing the Erosion, Sedimentation and Pollution Control Plan (ES&PC Plan) for a permittee must sign and certify the following documentation:

1. One page summary detailing why the alternative BMP is equivalent or superior to the conventional BMPs found in the Manual.

2. Documented side by side testing (alternative BMP vs. conventional BMP) using the appropriate design requirements and specifications contained in the Manual.
3. Proof that the alternative BMP was previously installed and worked under conditions comparable to the environmental conditions of the proposed site. This can be documented with photographs.
4. All specifications including the design requirements and the procedures for proper installation and maintenance.

In the year 2015, BMPs not in the Manual may be approved as part of the Alternative BMP process described above. Allowing a new mechanism for Alternative BMPs repeatedly used and approved under GSWCC Guidance to be placed on an Equivalent BMP List would increase efficiency for all the agencies involved and the development community. This would be similar to the 5th edition of the Manual's recognition of materials approved by the Georgia Department of Transportation (GDOT), which appear on GDOT's Qualified Products List (QPL). As of January 1, 2016, any product that seeks to be on the GDOT QPL List must first go through the Equivalent BMP process. GSWCC's approval of a BMP however does not ensure GDOT's adoption of that item into their QPL, design policies or procedures.

Therefore, the purpose of this document is to provide a process by which BMPs having demonstrated success in the field at least three times under the Alternative BMP process and having been bench tested may be placed on an Equivalent BMP List. The procedure also includes a mechanism for removing BMPs from the Equivalent BMP list. In addition, the GSWCC has the discretion to remove a BMP from the Equivalent BMP List at any time.

PROCEDURE FOR APPLYING FOR THE EQUIVALENT BMP LIST

For a BMP to be considered for inclusion on the Equivalent BMP List, a Design Professional must have successfully completed the current process for Alternative BMPs as outlined by GSWCC Guidance on at least three completed projects where EPD's Notice of Termination Form has been filed. Geographic dispersion of the

project sites is encouraged. The following steps are required:

1. Provide pre-notice to EPD and GSWCC of the intent to apply for an Alternative BMP to be included on the Equivalent BMP List as follows:

- A. Specify on the required checklist that accompanies the Notice of Intent Form that the project includes an Alternative BMP that will be included on an Application for the Equivalent BMP List.
- B. Inform GSWCC of the intent to apply by sending a digital copy of the approved ES&PC plan and a copy of the above to GSWCC when each NOI is filed with EPD.

2. Once the project involving the Alternative BMP has been completed and a Notice of Termination Form for the project has been filed, submit to GSWCC the following:

- A. An Application to be on the Equivalent BMP List and a sample of the BMP.
- B. Three sets -- one for each time the Alternative BMP was used in three separate projects -- of the required documentation to use the Alternative BMP, based on the current approval process as outlined by GSWCC Guidance. Evidence of repeatable bench and field testing must be included as part of this documentation. Only approved ASTM standards or Overview Council-approved standards will be accepted for repeatable bench testing; working test methods will not be accepted.
- C. Three sets -- one for each time the Alternative BMP was used in three separate projects -- of the Notice of Termination Form for each project involving the Alternative BMP.
- D. A Certification Form signed by two individuals -- a Level II certified Design Professional and a Level 1A or Level 1B Certified Personnel -- who evaluated the BMPs performance in the field stating that the Alternative BMP performed as expected throughout the life of each of the three projects.

- E. Three sets of installation photos -- one for each time the Alternative BMP was used -- of the Alternative BMP utilized in the three projects.
- F. Three sets of after-storm event photos -- one for each time the Alternative BMP was used -- of the Alternative BMP utilized in the three projects.
- G. Any post-storm event inspection records as well as inspection and enforcement records made by any federal, state, or local regulatory agency related to this specific BMP on this project.

The above materials should be submitted to GSWCC both electronically and with hard copies to P.O. Box 8024, Athens, Georgia 30603. GSWCC will provide copies of the materials submitted to EPD and GDOT upon receipt. GSWCC will receive and review the information submitted above. GSWCC has the discretion to approve the application, deny the application, request a resubmittal, or request additional information, with consultation from EPD and GDOT. Applicants will be informed of GSWCC's determination in writing. Applicants receiving approval for inclusion on the Equivalent BMP List will be notified within 90 days. Applicants with BMPs denied from inclusion on the Equivalent BMP List may seek review of the GSWCC's determination from the GSWCC State Board.

PROCEDURE FOR REMOVING A BMP FROM THE EQUIVALENT BMP LIST

Any individual, local government, or agency may submit to GSWCC a request that the BMP be removed from the Equivalent BMP List. The request should include a certified statement that the Alternative BMP failed to perform as expected and thus should be removed from the Equivalent BMP List, along with supporting documentation (picture, inspection forms, etc.). The request for removal is encouraged to focus on complaints independent of issues of ordinary installation and maintenance of the BMP. The request should be submitted to GSWCC both electronically and with hard copies to P.O. Box 8024, Athens, Georgia 30603.

GSWCC will provide copies of the request for removal to EPD and GDOT upon receipt. GSW-

CC will also provide a copy of the request to the individual who initially applied for the Alternative BMP to be included on the Equivalent BMP List. GSWCC has the discretion to approve the request, deny the request, request a resubmittal, or request additional information with consultation from EPD and GDOT.

An applicant with a BMP removed from the Equivalent BMP List may seek review of the GSWCC's determination from the GSWCC State Board.

An Alternative BMP removed from the Equivalent BMP List may be returned to the list if an applicant successfully completes the Procedure for Applying for the Equivalent BMP List again.

TRANSITION PERIOD

The Manual for Erosion and Sediment Control in Georgia has been revised and revisions will become effective January 1, 2016. The Equivalent BMP List will first be made available January

1, 2016. BMPs included in the 5th Edition of the Manual and GDOT's QPL list will be recognized by GSWCC and included on the Equivalent BMP List. Applications for BMPs to be included on the Equivalent BMP list will be based on NOI'S submitted on or after January 1, 2016. GSWCC's approval of a BMP however does not ensure GDOT's adoption of that item into their QPL, design policies or procedures. The first update to the Equivalent BMP list will occur on or after March 31, 2016.

ENDNOTES

¹ See NPDES General Permit No. GAR 10001, Authorization To Discharge Under the National Pollutant Discharge Elimination System Storm Water Discharges Associated with Construction Activity For Stand Alone Construction Projects; NPDES General Permit No. GAR 10002, Authorization To Discharge Under the National Pollutant Discharge Elimination System Storm Water Discharges Associated with Construction Activity for Infrastructure Construction Projects; NPDES General Permit No. GAR 10003, Authorization To Discharge Under the National Pollutant Discharge Elimination System Storm Water Discharges Associated with Construction Activity for Common Developments.

² See *Id.* at Permit No. GAR100003 (page 24), Permit No. GAR 100002 (page 21), and Permit No. GAR 10001 (page 21).

³ GSWCC Guidance Document for Alternative BMPs, available at https://epd.georgia.gov/sites/epd.georgia.gov/files/GSWCC_Alternative_BMP_Guidance_Document_Oct_2008.pdf.

⁴ Ga. Code Ann., § 12-7-3 (10.2) provides:

"Manual for Erosion and Sediment Control in Georgia" or "manual" means the published guidance of the commission governing the design and practices to be utilized in the protection of this state's natural resources from erosion and sedimentation which shall be based foremost upon sound engineering principles and repeatable bench and field testing of structural and vegetative best management practices and which shall have the annual approval of the Erosion and Sediment Control Overview Council established pursuant to Code Section 12-7-7.1.

⁵ See Notice of Termination, available at <https://gaswcc.georgia.gov/notice-termination-forms>.

⁶ State law requires that the design and practices utilized for erosion and sedimentation control must be based on "sound engineering principles and repeatable bench and field testing of structural and vegetative best management practices...." See *supra* note 5.

⁷ Ga. Code Ann., § 12-7-19, Education and training certification requirements, provides that:

(a){1} Persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements, dependent on his or her level of involvement with the process, as developed by the commission in accordance with this Code section and in consultation with the division and the Stakeholder Advisory Board created pursuant to Code Section 12-7-20.

(2) On or after May 14, 2007, for each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the commission present on site whenever land-disturbing activities are conducted on that site.....

⁸ The State Soil and Water Conservation Commission is established pursuant to Ga. Code Ann. § 2-6-23, and the Governor appoints one at-large member from each of the five soil and water conservation district regions to serve on the commission.

