

Guidance Document for the Tertiary Permittee

In recent years, many common development projects (subdivisions) 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.

It is important for individuals to understand the applicable laws and requirements associated with land disturbing activities, especially when purchasing and developing lot(s) within an existing common development.

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 the Erosion, Sedimentation and Pollution Control (ES&PC) Plan will require a technical review by the appropriate Soil and Water Conservation District. **Exemptions** - Constructions of a single family residences, when such construction disturbs less than one acre and is not part of larger common plan of development or sale with a planned disturbance of equal to or greater than one acre (O.C.G.A. 12-7-17(4) **or** any project less than one acre of disturbed area; provided however, that this exemption shall not apply to land disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than once acre or within 200 feet of the bank of any state waters O.C.G.A. 12-7-17(8).
- 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. To verify an NOT has been filed, please contact the local EPD District Office for the County in which the project is located. For the list of contact numbers visit www.gaepd.org, click EPD Offices. If the Primary Permittee cannot be determined, then the owner of the individual lot(s) will be a Tertiary Permittee.

Applicable Laws and Permits

Georgia Erosion and Sedimentation Act of 1975 (GESA)

- State law, enforced by the Local Issuing Authority (LIA) (City or County)
- Requires a Land Disturbing Activity (LDA) Permit – issued only by an LIA
- Requires certified individuals to be on site while land disturbing activity is taking place
- Requires an Erosion, Sedimentation and Pollution Control (ES&PC) Plan, developed by a Certified Design Professional
- ES&PC Plans must be submitted to LIA along with LDA permit application. The LIA will forward the Plan to the Soil and Water Conservation District (SWCD) for review and approval. Once

approved the LIA may issue a LDA permit. If the LIA has a memorandum of agreement (MOA) with SWCD to review plans, the LIA will conduct the review and if approved will issue the LDA permit.

A copy of the state law may be downloaded at www.gaswcc.georgia.gov. Go to Documents, under O, listed as O.C.G.A Erosion and Sedimentation Control Act.

National Pollutant Discharge Elimination Systems (NPDES) Permit

- Written based on the Federal Clean Water Act, enforced by the Georgia Environmental Protection Division (EPD)
- Requires a submittal of a Notice of Intent (NOI) when starting a project and submittal of a Notice of Termination (NOT) when project ends
- Requires certified individuals to be on site while land disturbing activity is taking place
- Requires an ES&PC Plan, developed by a Certified Design Professional

Copies of the NPDES Permits and forms may be downloaded at www.gaswcc.georgia.gov. Go to Documents, under N.

Steps to follow:

1. Read and understand the requirements of GESA and NPDES Permit.

It is essential for the Tertiary Permittee to understand the rules and regulations. Questions can be directed to the Georgia Soil and Water Conservation Commission or EPD. For local contact information, please visit www.gaswcc.georgia.gov or www.gaepd.org.

2. Education and Certification Requirements

State law requires each entity or person acting as either a primary, secondary or tertiary permittee, to have at least one certified person who is in charge of the erosion and sedimentation control activities acting on behalf of entity or permittee to be on site while all land disturbing activities are taking place. The required level of certification is a Level IA Certified Person. For a list of course dates and locations please visit www.gaswcc.georgia.gov, go to Choose from Popular Pages, Upcoming Course Dates, Level IA (Initial).

3. Obtain an Erosion, Sedimentation and Pollution Control Plan.

State law and the NPDES permit require an ES&PC plan to be developed by a Certified Design Professional and for that Design Professional to visit the site before designing the plan.

4. Determine the regulatory entity. Is there an LIA?

If there is an LIA, an LDA permit must be obtained and Tertiary NOI must be filed. If there is not an LIA, EPD is the regulatory entity and only a Tertiary NOI must be filed.

If there is an LIA:

- An LDA application and an ES&PC plan must be submitted to the LIA.
- The LIA will forward the ES&PC plan to the local Soil and Water Conservation District (SWCD) for review and approval. Once the SWCD receives the ES&PC plan, they have 35 days to approve or deny it. The overall process should take no more than 45 days. However if the ES&PC plan is denied, the plan must be revised and resubmitted until it meets all requirements. Each time the plan is resubmitted the SWCD has 35 days to review the plan.
- Once a plan is approved by the SWCD the LIA will issue an LDA permit.

- A Tertiary NOI must be submitted to the local EPD office and a copy to the LIA. The Tertiary NOI must be sent certified receipt and post marked 14 days before construction begins.

If there is no LIA:

- No LDA permit is required.
- A Tertiary NOI and ES&PC plan must be submitted to the appropriate GA EPD District Office.
- The Tertiary NOI must be sent certified receipt and post marked 14 days before construction begins.

5. Know the Tertiary Permittee responsibilities.

A. Inspections -Daily, Weekly and Monthly

All inspections must be conducted by a Certified Person provided by the Tertiary Permittee until a valid NOT is submitted to EPD.

Daily - for each day a construction activity takes place at the site:

- All areas where petroleum products are stored, used, or handled for spills and leaks from vehicles and equipment
- All areas where vehicles enter or exit site for evidence of off-site tracking
- Daily rainfall information collected in accordance with permit

Weekly - once every seven calendar days and within 24 hrs of a storm that is 0.5 inches rainfall or greater (unless such storm ends after 5:00 PM on any Friday or non-working Saturday, non-working Sunday or any non-working Federal holiday in which case the inspection shall be completed by the end of the next business day/and or working day):

- Disturbed areas of the construction site that have not undergone final stabilization
- Areas used for storage of materials that are exposed to precipitation that have not undergone final stabilization
- Structural control measures

Monthly – at least once per month during the term of the permit the areas of the site that have undergone final stabilization:

- These areas shall be inspected for evidence of, or potential for, pollutants entering the drainage system and the receiving water(s).
- Erosion and Sediment control measures identified in the Plan shall be observed to ensure that they are operating correctly.

Deficiencies must be corrected as soon as possible and corrective actions documented. If corrective action requires revisions to the ES&PC plan, the plan must be revised within 7 calendar days of the inspection and revisions must be implemented within 7 calendar days of the inspection.

B. Sampling

Sampling requirements are only applicable to lot(s) with a planned disturbance equal to or greater than 5 acres.

C. Retention of Records

The Tertiary Permittee must retain the following records at the construction site or readily available at a designated location from the beginning of the project until a valid NOT has been filed:

- A copy of Tertiary NOI(s) submitted to EPD
- A copy of the ES&PC plan

- The design professional's report of the results of the inspection conducted in accordance with the permit.
- A copy of all monitoring information, results and reports required by the permit (if applicable)
- A copy of all inspection reports generated in accordance with the permit
- A copy of all violation summaries and violation summary reports generated in accordance with permit.
- Daily rainfall information collected in accordance with the permit

D. Filing the Notice of Termination (NOT)

Once the project has been completed, the Tertiary Permittee is required to notify EPD by submitting a valid NOT via certified receipt mail to the local EPD District Office. A copy of the NOT should be submitted to the LIA, if there is one. In order to file an NOT the following conditions have to be met:

- All planned construction activities have ceased and final stabilization of the site has been implemented.
- All storm water discharges associated with the construction activities has ceased.
- The site is in compliance with the permit.

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).

TERTIARY PERMITTEE: NOI(S), ES&PC PLAN(S), & NOT(S)

A tertiary permittee may file the required NOI for lot(s) in a common development using the following options:

1. A single lot will be developed by the permittee - requires an NOI and ES&PC Plan, if disturbing five (5) acres or more the monitoring requirements of the permit will apply as well as the inspections and retention of records requirements. If disturbing less than five (5) acres the monitoring requirements will not apply, but inspection and retention of records are still required. A valid NOT must be submitted when final stabilization has been achieved for the individual lot.
2. More than one (1) lot will be developed by the permittee :
 - A. A separate NOI and ES&PC Plan may be submitted for each lot as shown in option 1.
 - B. A single NOI and ES&PC Plan may be submitted for the entire project by the permittee. If the total disturbed area is five (5) acres or more monitoring requirements of the permit apply as well as the inspections and retention of records requirements. A valid NOT must be submitted when final stabilization has been achieved on all lots of the entire project.

Inspections require at least once per month (until a valid NOT is received by EPD) all areas of the sites that have undergone final stabilization. These inspections are the responsibility of the permittee on completed lots even after a CO has been given and/or the house or building has been sold and is occupied by the new owner(s). The permittee will also be responsible for completing the required report of each inspection until the entire project has been completed and a valid NOT received by EPD (see page 27 of the NPDES Permit GAR 100003, Tertiary Permittee Inspection Requirements).

When monitoring is required sampling by the permittee shall occur for the following events: each area of the site that discharges to a receiving stream for the first qualifying rain event after all clearing and grubbing operations have been completed in the drainage area of the sampling location, and for the first qualifying rain event after all mass grading operations have been completed in the drainage area of the sampling location. A summary of each monitoring result must be sent to EPD each month for the reporting periods. Multiple samples and reports may be required throughout the length of the project, depending on construction scheduling and discharge points (see pages 28-30 of the NPDES Permit GAR 100003, Sampling Requirements).

When the project is located within the jurisdiction of a Local Issuing Authority the ES&PC Plan must be submitted to the LIA, who will then forward the plan to the SWCD District for review and approval. The District shall have thirty-five (35) days to approve or deny the ES&PC Plan; with each re-submittal of revised plan to address comments the 35 day period starts over. If the LIA has entered into an MOA with the District, the plan will be reviewed and approved by the LIA. The LIA shall have forty-five (45) days to approve or deny the ES&PC Plan; with each re-submittal to address comments the LIA shall have 35 days to approve or deny the plan. All ES&PC Plans must be prepared by a certified design professional.

The permittee must complete a tertiary Notice of Intent (NOI) and submit it to the appropriate District Office of the EPD by return receipt mail (or similar service) at least fourteen (14) days prior to starting the land disturbing activity. A copy of the NOI submitted to EPD must also be submitted to the LIA, the LIA may not issue a Land Disturbance Permit without having received the copy of the NOI. The tertiary permittee does not pay any fees for the NPDES coverage; all fees were paid by the primary permittee.

The tertiary permittee must complete and submit to the appropriate EPD District Office by return receipt mail (or similar service) a valid Notice of Termination (NOT) when final stabilization has been achieved on an individual lot(s). A copy of the valid NOT submitted to EPD must also be submitted to the LIA.

When the project is located in a jurisdiction where there is no certified LIA regulating the project, a single copy of the ES&PC Plan must be submitted to the EPD Watershed Protection Branch and a second copy must be submitted to the appropriate EPD District Office. These submittals must be prior to or concurrent with the NOI submittal. A valid NOT must be submitted when final stabilization has been achieved on an individual lot(s).

Regardless of whether the project is or is not within the jurisdiction of a certified LIA it is the responsibility of the tertiary permittee to comply with all requirements of the NPDES Permit GAR 100003. It is recommended that the permittee read the permit and understands all the requirements to be in compliance with the permit.

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