

# 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 require 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 Georgia 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 detail three different approaches that would allow consideration for items to be added to the Equivalent BMP listing. 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.

### PATHS AND PROCEDURES FOR APPLYING FOR THE EQUIVALENT BMP LIST

#### **PATH A**

For an Alternative 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.

If determined by GSWCC, a geographical dispersion of sites representing the mountain,

coastal, piedmont, and plains of Georgia may be necessary.

The following steps are required:

1. Provide Pre-Notice Form 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 which accompanies the Notice of Intent Form that the project includes an Alternative BMP to be included on an Application for the Equivalent BMP List.

B. The applicant is responsible to solicit and gain approval from site Owners and/or Operators for the installation, maintenance, and removal of Alternative BMPs upon their site. Written approval from Owners and/or Operators shall be provided to GSWCC for site selection.

C. 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 the following to GSWCC:

A. A complete Equivalent BMP Application Form 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 (see above). 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.

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. A waiver of this requirement can be requested from GSWCC if the BMP has completed a minimum 6-month duration of exposure and qualifying event exposure.

D. An Equivalent BMP 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 after-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 hard copies to 4310 Lexington Rd, Athens, Georgia 30605. 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. Applicants will be informed of GSWCC's determination in writing. Applicants receiving approval or denial for inclusion on the Equivalent BMP List will be notified within 90 days once all required information has been submitted. Applicants with BMPs denied from inclusion on the Equivalent BMP List may seek review of the GSWCC's determination from the GSWCC State Board.

[CLICK HERE FOR APPLICATION FORM](#)

## **PATH B**

Third party professional services may be used to perform field inspection and documentation to assess equal or better performance of Alternative BMPs for inclusion on the Equivalent BMP List. Path B will follow all the steps required from Path A. GSWCC will make a preliminary assessment of fit for this path and favorable consideration will advance the application. Unfavorable consideration is not a final determination, but will eliminate PATH B from the options. All costs associated with these services will be paid by the applicant. [CLICK HERE FOR APPLICATION FORM](#)

## **PATH C**

**PROCEDURE FOR JOINING THE EQUIVALENT BMP LIST FOR NEW MANUFACTURER OF PRODUCTS WITH ESTABLISHED SPECIFICATIONS**

For existing BMPs contained in the Manual which will be produced by a manufacturer who currently is not recognized as approved for the item, the following shall occur for GSWCC to consider direct adoption of the BMP:

1. Submit an application to GSWCC identifying the existing BMP for which the submission is equivalent to. (e.g., type A silt fence currently produced by another manufacturer.

A. The application shall be accompanied by third party documentation demonstrating all material(s) and performance criteria are equal or better than the item(s) referenced. Such documentation shall include, but is not limited to, any and all standards set forth in the Manual for said BMP.

GSWCC will review a complete submission for acceptance and advise the applicant of its determination within 90 days.

**CLICK [HERE](#) FOR APPLICATION FORM**

## 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 4310 Lexington Rd, Athens, Georgia 30605.

GSWCC will provide copies of the request for removal to EPD and GDOT upon receipt. GSWCC 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 GDOTs 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 NOIs submitted on or after January 1, 2016. GSWCC's approval of a BMP, however does not ensure GDOTs 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

<sup>1</sup> 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.

<sup>2</sup> See Id. at Permit No. GAR100003 (page 24), Permit No. GAR 100002 (page 21), and Permit No. GAR 10001 (page 21).

<sup>3</sup> 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](https://epd.georgia.gov/sites/epd.georgia.gov/files/GSWCC_Alternative_BMP_Guidance_Document_Oct_2008.pdf).

<sup>4</sup> 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.

<sup>5</sup> See Notice of Termination, available at <https://gaswcc.georgia.gov/Documents>

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> The Georgia 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.