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CARROLL SOIL CONSERVATION DISTRICT

November 25, 2014

Mr. Charles E. Null, Jr., District Manager
Carroll SCD
1004 Littlestown Pike, Suite B-2
Westminster, MD 21157

Dear Mr. Null:

The purpose of this letter is to distribute the Maryland Department of the Environment's (MDE) "Erosion and Sediment Control, Stormwater Management, and NPDES (National Pollutant Discharge Elimination System) Permit Guidance" dated November 2014 for agricultural practices and agricultural structures. The attached policy includes several definitions (e.g., practices, structures, and farms), establishes which practices and structures should be required to implement sediment control and stormwater management, and provides suggestions for how these regulatory programs are to be applied. This document reflects input from many individuals and agencies statewide and MDE would like to thank you for your prior participation.

A prior draft was distributed at the beginning of 2014 to Maryland's Soil Conservation Districts (SCD), local government stormwater management agencies, and the agricultural community. Based on comments made back in the Spring from these and other organizations and input from MDE's Attorney General's Office, MDE has finalized the guidance that is being provided today. MDE believes a clear distinction needs to be made with regard to what constitutes agriculturally related activities and commercial or industrial operations. It is also important to make sure NPDES stormwater permit obligations are understood to ensure compliance with the federal Clean Water Act. This policy guidance addresses all of these issues and reflects MDE's interpretation of current erosion and sediment control and stormwater management laws.

I would like to thank you again for your prior involvement and for your patience throughout the last several months. If you have any questions, please do not hesitate to call me at 410-537-3554 or email brian.clevenger@maryland.gov .

Sincerely,

Brian Clevenger, Program Manager
Sediment, Stormwater, and Dam Safety Program

Cc: Robert M. Summers, MDE, Secretary

Attachment

Maryland Department of the Environment
Agricultural Practices and Agricultural Structures
Erosion and Sediment Control, Stormwater Management, and
NPDES Permit Guidance
November 2014

Agricultural Practices

Agricultural land management practices (also referred to as "conservation practices") properly implemented are valuable tools for protecting water quality as well as conserving related soil and water resources. To facilitate their use, the Maryland Department of the Environment (MDE) is providing guidance that meets the requirements of the State Erosion and Sediment Control Law, the State Stormwater Management Law, and the federal National Pollutant Discharge Elimination System (NPDES) General Discharge Permit for Stormwater Associated with Construction Activity (General Permit). This guidance will in time be replaced by formal regulation changes.

Agricultural land management practices (conservation practices) are defined in the Code of Maryland Regulations (COMAR 26.17.01.01 B.2) for the purposes of erosion and sediment control as follows:

> "Those methods and procedures used in the cultivation of land in order to further crop and livestock production, and the conservation of related soil and water resources."

For this guidance, agricultural land management and conservation practices are categorized as follows:

1. Traditional farming activities such as plowing, disking, cultivating, planting, and harvesting;
2. Natural Resources Conservation Service (NRCS) Agricultural Land Management Practices listed in the Field Office Technical Guide (FOTG); and
3. Non-cost Shared Best Management Practices described in the Verification Procedures Manual published by the Maryland Department of Agriculture (MDA).

NRCS and MDA will maintain and make available their respective lists of practices. While not clearly stated in the regulations, these conservation practices are intended for application on a farm or agricultural operation defined as:

> "...a business or activity where a person tills, crops, keeps, pastures, or produces an agricultural product, including but not limited to livestock, poultry, plants, trees, sod, food, feed, or fiber by in ground, out of ground, or other culture."

When these practices are implemented according to the following conditions, erosion and sediment control, stormwater management, and the requirements of the General Permit will be met:

1. Under direction of the appropriate Soil Conservation District (SCD) and/or NRCS, conservation practices listed under categories 2 and 3 above must be designed, constructed, and maintained in accordance with their respective standards and guidelines.
2. The conservation practices must be incorporated within an approved Soil Conservation and Water Quality Plan for the farm or portion of the farm where the installation occurs. The appropriate SCD will determine the adequacy of the conservation plan, review the proposed conservation practice and its consistency with the plan, and approve the practice installation.
3. Landowners intending to implement a conservation practice must meet all other statutory requirements listed in the Environment Article in the Maryland Annotated Code. Determination of other permits or approvals required shall precede any construction of an agricultural or conservation practice.

Agricultural Structures

Section 4-102 of the Environment Article, Maryland Annotated Code (Sediment Control) exempts agricultural structures from erosion and sediment control requirements. Section 4-204 of the Environment Article (Stormwater Management) states that "...unless exempted, a person may not develop any land for residential, commercial, industrial, or institutional use without submitting a stormwater management plan to the county or municipality that has jurisdiction, and obtaining approval of the plan..." While COMAR 26.17.02.01 B. states that Maryland's stormwater management regulations do not apply to agricultural land management practices, no exemption exists for agricultural structures. Further, construction (including parking areas and access roads not used for on-site agricultural operations) that creates a land disturbance of an acre or more must be covered by the General Permit as required by the federal Clean Water Act (CWA). These overlapping authorities have caused inconsistencies among SCDs and local government stormwater management agencies with the way agricultural structures are addressed. Therefore, MDE is providing its policy and guidance below for how agricultural structures are to be regulated for stormwater management. This policy will provide statewide consistency for determining appropriate runoff control requirements according to the above quoted law and regulations.

Definitions

For purposes of this guidance for erosion and sediment control and stormwater management, an agriculture structure is defined as:

"A building that is integral to the operation of the farm it is built on and is used for:

1. The storage of equipment or materials used on the farm;
2. The storage of the farm's products; or
3. The basic processing of farm products including cutting, drying, and packing necessary to store and market these products."

Examples of structures meeting this definition include barns for hay and equipment storage, livestock production and shelter buildings, milking operations, etc. These agricultural structures are considered integral to the operation of the farm and erosion and sediment control is not required.

However, the construction of structures disturbing land area of 5,000 square feet or more whose primary purpose is to support commercial or industrial activities is not exempt from either State erosion and sediment control or stormwater management requirements. Commercial and industrial activities include, but are not limited to: retail sales operations, processing operations that produce wastewater, and facilities with public parking areas and access roads.

Regulatory Requirements

Any structure disturbing land area less than 5,000 square feet is exempt from both erosion and sediment control and stormwater management requirements. Access roads and parking areas are included in the area of disturbance. However, access roads constructed under NRCS Practice 560 for implementing farm operations will meet erosion and sediment control and stormwater management requirements. Agricultural structures as defined previously are exempt from State erosion and sediment control plan requirements. The construction of all structures, regardless of use, disturbing a land area of 5,000 square feet or more is subject to State and local stormwater management requirements. Stormwater management requirements are administered primarily by local governments.

The construction of any structure, regardless of intended use, that will create an earth disturbance of one acre or more (including parking areas and access roads) is subject to the NPDES Notice of Intent (NOI) process for coverage under the General Permit. The General Permit requires both erosion and sediment control and stormwater plan approval and implementation. Because the General Permit is a federal CWA requirement, exemption from erosion and sediment control under State law for agricultural structures does not apply.

Coordination - Use of Standard Plans

The Stormwater Management Subtitle of the Environment Article requires that each Maryland county and municipality administer an acceptable stormwater management program according to COMAR. These localities therefore, are responsible for receiving, approving, and enforcing stormwater management plans for the purposes of this guidance. SCDs perform the majority of the erosion and sediment control review and approval work in the State and typically have good working relationships with the agricultural community. Because of these relationships, MDE has suggested that counties and SCDs work together to determine how agricultural structures can be implemented in an efficient manner. One tool for bringing about more efficient management is the use of standard plans addressing one or more of the regulatory requirements.

Standard sediment control plans for small land disturbing activities have been used in Maryland for decades. A model stormwater management standard plan was also developed when MDE implemented the 2000 Maryland Stormwater Design Manual and has served as the basis of numerous local versions. Moreover, MDE provided the SCD, local government stormwater, and

agricultural communities a standard plan for agricultural structures in 2013 to help the Lower Eastern Shore counties address poultry growing operations. MDE previously developed a standard stormwater management plan that could be used to address agricultural structures. The use of a standard plan is optional. However, all of the above examples can be used to develop a similar vehicle to satisfy the erosion and sediment, stormwater management, and NPDES permit obligations that are summarized in Table 1. SCDs and county stormwater management agencies are encouraged to consider the use of a standard plan.

Table 1.

Agricultural Practices and Agricultural Structures
Erosion and Sediment Control, Stormwater Management, and
NPDES Stormwater Permit Requirements

Activity*	Erosion and Sediment Control Required	Stormwater Management Required	NPDES General Permit for Construction Activity Required
Agriculture Practices**			
•<5000 square feet	No	No	No
•5000 sq. ft. to 1 acre	No	No	No
•>1 acre	No	No	No
Agricultural Structures			
•<5000 square feet	No	No	No
•5000 sq. ft. to 1 acre	No	Yes	No
•>1 acre	Yes	Yes	Yes***

*"Activity" refers to the area disturbed during construction and operation and may include access roads, staging areas, parking areas, etc. All small land disturbing activities need to be considered when determining appropriate controls.

**Provided that the practice is part of a farm's Soil Conservation and Water Quality Plan and the appropriate Soil Conservation District (SCD) has reviewed and approved the practice to be used.

***A Notice of Intent (NOI) is to be submitted to MDE for permit coverage.