

Memorandum of Agreement
between
North Dakota Department of Transportation (NDDOT)
and
North Dakota Department of Health (NDDH)

I. Preface

The NDDOT and NDDH share a common interest in providing for the health, safety and welfare of the residents of the state of North Dakota. Both agencies recognize that it is in the best interest of the state that highway projects be designed, constructed and operated according to standards that will minimize erosion and sediment damage to the highway and adjacent properties as well as preventing pollution of surface and groundwater resources. This agreement is entered into by each agency to promote interagency cooperation and to define the duties of each agency as they relate to the efficient implementation of erosion and sediment control on highway construction projects in North Dakota.

II. Purpose

The purpose of this agreement is to identify the responsibilities and coordination of efforts between the NDDOT and the NDDH with respect to the construction storm water discharge permit requirements. The framework described herein is intended to improve communication and the transfer of information, avoid duplication of effort, promote the efficient use of personnel, and to assure compliance with the intent of the storm water permit by all parties involved with highway construction.

Storm water discharges from construction activity are regulated as a point source of pollutants under national pollutant discharge elimination system (Sec. 402 CWA). The NDDH uses a statewide general permit for storm water discharges from construction activity to fulfill the regulatory requirements. The permit identifies responsibilities that apply to the NDDOT as the owner of construction projects and responsibilities of general contractors as operators of construction activities.

III. Effective Date

This agreement is made and entered into upon the date both parties indicate acceptance by affixing the appropriate signatures and shall remain in effect until terminated pursuant to article VI of this agreement.

IV. Authority

The North Dakota Department of Transportation regulates the construction of roads pursuant to the authority identified in the North Dakota Century Code (NDCC). Regulatory authority includes reporting, operational procedures and appropriate corrective action requirements in cases of environmental damage. The NDDOT is responsible for the design, contract administration, construction oversight and maintenance of the state highway system.

The North Dakota Department of Health is tasked with protecting the environmental resources of the state through several state statutes including the statutory authority defined in NDCC 61.28 Control, Prevention and Abatement of Pollution of Surface Waters. Regulatory authority includes the promotion of non-degradation policy for surface and ground water resources. The NDDH has been delegated authority to administer the national permitting program within the state of North Dakota. The state program rules are outlined in NDAC 33-16-01, North Dakota Pollutant Discharge Elimination System (NDPDES).

V. Guidelines and Actions

To promote interagency cooperation, efficient use of state funding and protection of the resources of the state, the NDDOT and NDDH agree to manage storm water control issues as they relate to State Highway Projects in the following manner:

- a. The NDDOT is aware of and accepts the responsibilities and liabilities as it relates to the construction permit for projects within its authority. For purposes of the construction permit the NDDOT is understood to be the project owner. This agreement serves as the signature of the NDDOT, as owner, where required by the construction storm water permit.
- b. The contractor secured by the NDDOT has day to day operational control of construction and activities and is thus an operator of the project under the permit. The operator is required by the permit to adhere to the conditions of the storm water permit and storm water pollution prevention plan as it relates to controlling erosion and sedimentation during contracted activities, maintaining erosion control devices, conducting inspections and maintaining appropriate records. The operator (or selected contractor) will be required to complete and sign a permit application as it pertains to an operator.
- c. Any project with a contiguous area of disturbance > 1 acre requires a NDPDES permit. Projects that have multiple individual sites of activity will require a permit if any one of the individual sites has an area of disturbance > 1 acre. If all the individual sites within a project have an area of disturbance < 1 acre, then a permit is not required even if the sum of all the disturbed areas is > 1 acre. When a permit is required, NDDOT will include a Special Provision (SP) in the contract documents. The SP will make the Contractor aware of his responsibility to obtain a permit package that will detail all necessary steps to complete the permit application process, all the necessary forms and requirements that the Contractor will need to meet in order to satisfy the permit. A separate SP will be used in lieu of the above stated SP for projects located in Indian Reservations. This SP will direct the Contractor to the Environmental Protection Agency (EPA) to obtain a national pollutant discharge elimination system permit. If the limits of a project include areas both on and off an Indian Reservation both Special Provisions will be included in the bid documents.
- d. Erosion and sediment control provisions will continue to be incorporated into the design plans for projects. The plans should take into account the complexity of the project, erosion potential and potential for off site impacts. The NDDOT's current design criteria (specification / guidelines) relating to erosion control meet the intent of the NDDH storm water program, as of the signed date of this agreement. The NDDH and NDDOT will interchange information on sediment and erosion control techniques or standards to assure designs continue to contain sound engineering principals and up to date methods.

- e. The applicability of the permit will end upon achieving final stabilization as described in the permit. For the purpose of statewide planning and coordination of projects, average annual rainfall will not be used as criteria for limiting the options listed in the permit for meeting final stabilization. If final stabilization is achieved using a method other than achieving 70 % of preexisting vegetative cover and an erosion failure occurs within 3 years of final stabilization, NDDOT will have 45 days after NDDH notification, to take corrective action. The NDDH will have the discretion to reactivate the permit for the project (in whole or in part) if corrective action is not taken within 45 days or based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the state.
- f. When the Contractor's project is finalized by the NDDOT, the Contractor will be released from the storm water permit. If at the time of project finalization, the project meets the criteria for final stabilization, the NDDOT will file a Notice of Termination (NOT) with the NDDH. If at the time of project finalization, the project does not meet the criteria for final stabilization, the NDDOT is considered the sole permittee for the project until such time the project meets the criteria for final stabilization or a subsequent contract is finalized for completing the project and final stabilization criteria is met. The NDDOT project records may serve as documentation for reporting the transfer of control for projects in lieu of the procedures outlined for permit transfer/modification.
- g. The Contractor of each new project will be required to open the permit by completing the permit application process. After a construction project is completed, the NDDOT will submit, or direct the contractor to submit, a NOT to the NDDH indicating the project has been finalized and meets the criteria for final stabilization.

VI. Termination of Agreement


This agreement shall remain in effect until canceled and terminated by mutual consent, or by conditions beyond the control of either party. The party desiring to terminate or cancel must give written notice of its intention ninety (90) days prior to the date of the cancellation setting forth the reasons and conditions of said termination. In case of termination, both parties shall develop a schedule of actions and timeliness for providing the services of this agreement.

VII. Acceptance of Agreement

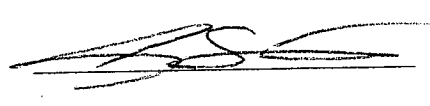
The parties of this agreement are aware of all conditions herein and do hereby agree to maintain their responsibilities under this agreement.

For the NDDOT:

For the NDDH:

 4-21-06
Date

David A. Sprynczynatyk, P.E.
Director, NDDOT


 4/4/06
Date

Terry Dwelle, M.D., M.P.H., T.M.
State Health Officer

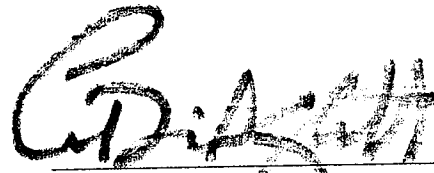
Arvy Smith
Deputy State Health Officer

APPROVED AS TO SUBSTANCE BY:

APPROVED AS TO SUBSTANCE BY:

 4/20/06
Date

Mark S. Gaydos P.E.
Design Engineer, Design Division

 3/18/06
Date

L. David Glatt, P.E.
Chief, Environmental Health Section

APPROVED as to execution this
21st day of April 2006
ATTORNEY GENERAL
By Drew Kautmann
SPECIAL ASST. ATTORNEY GENERAL