

**Memorandum of Agreement  
Between  
North Dakota Department of Transportation (NDDOT)  
And  
North Dakota Department of Health (NDDoH)**

**I. Preface**

The NDDOT and NDDoH 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 NDDoH with respect to the requirements of the North Dakota Pollutant Discharge Elimination System (NDPDES) stormwater discharge general permit associated with construction activities, NDR10-0000; or the construction general permit. 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 construction general permit by all parties involved with highway construction.

Storm water discharges from construction activities are regulated as a point source of pollutants under the national pollutant discharge elimination system (Sec. 402 CWA). The NDDoH uses a statewide construction general permit for storm water discharges from construction activity to fulfill the regulatory requirements. The construction general 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) 24-03-02. Regulatory authority includes reporting, operational procedures and appropriate corrective action requirements in cases of environmental damage. The NDDOT is responsible for the design and construction oversight, contract administration, 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 NDDoH has been delegated authority to administer the national pollutant discharge elimination system within the state of North Dakota except for Tribal Lands. The state program rules are outlined in NDAC 33-16-01, North Dakota Pollutant Discharge Elimination System. This article incorporates the federal storm water discharge regulations by reference (40 CFR 122.26). The U.S. Environmental Protection Agency (EPA) maintains the national pollutant discharge elimination system within Tribal Lands.

#### **V. Guidelines and Actions**

To promote interagency cooperation, efficient use of state funding and protection of the resources of the state, the NDDOT and NDDoH 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 relating to the construction general permit for projects within its authority. For purposes of the construction general 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 general permit.
- b. The contractor secured by the NDDOT has day to day operational control of construction activities and is thus an operator of the project under the construction general permit. Each operator, including subcontractors, is required by the construction general permit to adhere to the conditions of the construction general 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. Each operator will be required to complete and sign a construction general permit application as it pertains to an operator.

- c. Any project considered as construction activity in the construction general permit (clearing, grading, filling and excavation) that disturbs  $\geq 1$  acre is required to obtain coverage under the construction general permit. Projects that have multiple individual sites of activity will require a construction general permit if any one of the individual sites has an area of disturbance  $\geq 1$  acre, or if the sum of the combined individual sites totals an area of  $\geq 1$  acre. The NDDOT contract documents will make the Contractor aware of its responsibility to obtain a construction general permit from the NDDoH or the EPA or both. For all projects that require a construction general permit, the contractor is required to create a Storm Water Pollution Prevention Plan (SWPPP) for the project in accordance with the construction general permit. If a project does not require a construction general permit, a SWPPP is not required, but is recommended. Projects that do not require a construction general permit must be performed in a manner that does not affect the standards of quality for waters of the state.

For project areas that are not included in the contract, but are obtained and solely controlled by the Contractor on the project (e.g., concrete or asphalt batch plants, concrete washout areas, equipment staging yards, material storage areas, excavated material disposal areas, Contractor furnished borrow areas, etc.), the Contractor will be required to obtain appropriate permit coverage for the actions conducted on these areas. A permit will be required for these areas regardless of their size. The NDDOT will have no responsibility for these areas.

- 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 offsite impacts. The NDDOT has design criteria (specification/guidelines) relating to erosion control to meet the intent of the NDDoH storm water program. The NDDoH 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 NDDOT will take measures to ensure continued compliance with construction general permit requirements. The NDDOT shall:
  - 1. Administer the NDDOT's National Pollution Discharge Elimination System (NPDES), NDPDES and Municipal Separate Storm Sewer System programs. Duties of administering these programs shall include:
    - i. Periodically review SWPPPs prepared by the NDDOT,
    - ii. Review at least ten percent (10%) of the total number of SWPPPs prepared by NDDOT Contractors,

- iii. Oversee storm water management requirements for NDDOT construction activities,
    - iv. Conduct on site reviews on a representative sample of projects on a yearly basis to ensure NDDOT and its Contractors are complying with the Clean Water Act, its implementing regulations and applicable construction general permit(s).
  - 2. Develop and maintain a webpage that specifically focuses on storm water management.
  - 3. Conduct training for NDDOT construction oversight staff, outside engineering consultants, and contractors on proper erosion and sediment control, construction general permit requirements and other relative storm water topics.
    - i. Formal training will be conducted on an annual basis.
    - ii. Informal training will be conducted during on site reviews detailed in Section V(e)(1)(iv). This informal training will be focused towards educating on site NDDOT, consultant and contractor staff of the regulations as well as issues that are apparent on each particular site.
    - iii. The NDDOT will continue to develop further training avenues to better convey information to all parties.
  - 4. Work with contractors to foster a better understanding of and ensure compliance with storm water and other provisions of the Clean Water Act.
  - 5. Periodically review the NDDOT Standard Drawings to make sure they reflect the proper installation of Best Management Practices for erosion and sediment control as well as other storm water requirements under the construction general permit.
  - 6. Partner with the NDDoH on training related to the Clean Water Act including requirements related to storm water.
- f. The applicability of the construction general permit will end upon achieving final stabilization as described in the construction general 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 construction general permit for meeting final stabilization. If final stabilization is achieved using a method other than by establishing 70% of preexisting vegetative cover and an erosion control failure occurs within 3 years of final stabilization, then the NDDOT will have 45 days from observing the failure to take corrective action. Erosion control failure is defined as any failure of the erosion controls on a site that would prohibit the establishment of 70% preexisting vegetative cover within 3 years. The NDDoH will have the discretion to reactivate the construction general 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.

- g. The Contractor of each new project will be required to obtain coverage under the construction general permit by completing the notice of intent. When the project meets the criteria for final stabilization, the NDDOT will file a Notice of Termination (NOT) with the NDDoH indicating the project meets the criteria for final stabilization.
- h. The NDDOT may release a Contractor from a contract without terminating the construction general permit. By releasing a Contractor from the contract before the construction general permit is terminated, the NDDOT is agreeing to become the sole permittee until the project meets the criteria for final stabilization. If a subsequent contract is entered into with a new contractor for completing the project, the new contractor will be considered the operator. The NDDOT project records will serve as documentation of the transfer of control on a project.

**VI. Termination of Agreement**

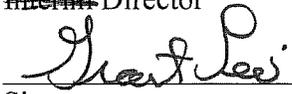
This agreement shall remain in effect until canceled and terminated by mutual consent, or by conditions beyond the control of either party. The party desiring to terminate or cancel must give written notice of its intention ninety (90) days prior to the date of the cancellation setting forth the reasons 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 North Dakota  
Department of Transportation:

Grant Levi, P.E.  
~~Interim~~ Director

  
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Signature

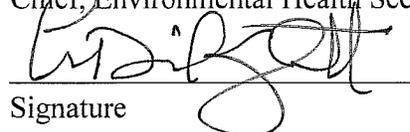
8/19/13  
Date

Approved as to substance

 8/12/13  
Mark S Gaydos, ETS Division

For the North Dakota  
Department of Health:

L. David Glatt,  
Chief, Environmental Health Section

  
\_\_\_\_\_  
Signature

7/12/13  
Date

