




Michael F. Easley, Governor

William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources

Alan W. Klimek, P.E. Director
Division of Water Quality

Memorandum

TO: Interested Parties

FROM: Alan Klimek 

RE: Guidance Interpreting Phase II Stormwater Requirements

DATE: July 24, 2006

This is offered in response to questions about the requirement that Phase II communities apply the post-construction stormwater standards to any project that "disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale".

Our existing stormwater programs have used this same approach for a number of years to identify projects that require state stormwater permits. The Division of Water Quality (DWQ) has interpreted "common plan of development" to mean an area where construction activities may be taking place at different times, but under a single over-arching development plan. The best example is a residential development project where the developer subdivides a tract of land, installs utilities and builds access roads and other common facilities with the intention of selling undeveloped lots in the subdivision as homesites. Based on this common plan of development, DWQ requires the developer to obtain a stormwater permit for the entire project even though actual construction may occur incrementally over a period of time. The stormwater permit addresses all of the activities that will be covered under the common plan of development – including future development of the homesites. In practical effect, this means that the developer designs a stormwater system capable of managing stormwater runoff from the entire project as it will be built out.

DWQ does not interpret the "common plan of development" language to require an individual lot owner to obtain a stormwater permit. The intent is to insure that stormwater control is addressed comprehensively at the planning stage of a development project; it operates as a requirement on the developer rather than on the individual lot owner. For this reason, our existing stormwater programs -- like the proposed Phase II legislation -- provide exceptions for development under site plans (including subdivision plats) approved prior to the effective date of new stormwater standards. DWQ also recognizes that there may not be a "common plan of development" in instances where a subdivision was platted decades ago and there has been no further development activity on the part of the subdivider or a subsequent developer. DWQ has never interpreted the "common plan of development" language to require a stormwater permit for disturbance of less than one acre based simply on the fact that the activity will take place on a platted lot.

DWQ understands the "common plan of development and sale" language in the proposed Phase II legislation to have the same meaning as similar language in existing state stormwater rules and I will direct DWQ staff to interpret the requirement in the same way. I also believe that DWQ's interpretation is consistent with stormwater guidance from the United States Environmental Protection Agency.

If you have any questions or would like further information, please do not hesitate to contact Tom Reeder at 733-5083, ext. 528.

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