

Notes for Construction Activity Conditional Exclusion Stakeholder Meeting 2/18/04

Overview:

- This issue was discussed with the Storm Water Design Team in December; the packet of information sent prior to this meeting includes their comments.
- Currently, two types of projects are being considered for exclusion from construction stormwater permit application requirement:
 - Feedlots.
 - Conservation projects receiving financial assistance from NRCS or BWSR. PCA hasn't clearly identified what type of conservation projects so looking for comments and rationale.
- Interim policies have been in place since March 2003 when Phase II went into effect. Interim guidance includes:
 - Spec sheet for sediment and erosion control for NRCS/BWSR projects.
 - Fact sheet for construction activity at feedlots.
- A copy of the rule part that was referenced in Subpart 6.D. (7090.2070) was not included in the draft rule that was sent out. Part 7090.2070 contains additional requirements for special waters; these requirements are based entirely on Appendix A of the general stormwater permit for construction activity.

Feedlots:

- For feedlots, is the incentive for complying with these rule requirements to reduce administrative paperwork and avoid double permitting and double fees? Yes. Large CAFOs are covered under NPDES and address stormwater requirements. Small feedlots covered under the construction short-form permit and interim permit are addressed in this draft rule. Are stormwater requirements also in these permits in addition to rule? PCA does not have a specific date to address these requirements in these permits, but are sending out an addendum sheet with the permit.
- Why don't we not charge for the permit; facilities send in paperwork and are covered? PCA required by statute to charge for construction permit application. Paperwork burden would remain even without fee.
- Are facilities meeting legal requirements with this? USDA will be requiring NOI until rule. This will not protect facilities from lawsuit under the Clean Water Act. Facilities can abide by state law once the exclusion is in rule. State rule does not supersede federal rule, and therefore some may chose to get permit anyway.
- Are there post construction requirements for non-CAFO sites? – Feedlots are no discharge. The BMP fact sheet for feedlots does not address post construction; it addresses BMPs during construction only. Post construction is a different issue with feedlots than with urban construction. Post construction requirements in permit are for urban construction and development. Can build requirements into waste management plans, especially 399?
- Is the TMDL language in the construction permit (pg. 4, 7) for turbidity only? Does this mean that permits to build won't be issued for the MN River Valley? The TMDL must be approved. Don't know yet what will be in the TMDL implementation plan (follow permit or do extra BMPs?)

Conservation Projects:

- Main concern at NRCS - conservation projects are for erosion control purposes and having to pay for a permit would be a disincentive for landowners.
- Agricultural Exclusion - mixed messages from EPA, but fairly clear on grassed waterways and terraces too. Do we have written approval from EPA on these? PCA can decide which projects, with justification, and then present to EPA.
- NRCS standards and specs can be changed without notice to PCA, but don't think this is an issue. NRCS has a written policy on implementation of standard specs and BMPs; can include language that policy will not change or be revised without approval by PCA commissioner.
- NRCS is committed to work with PCA in order to give this exclusion. What assurances are needed to make this work? Is project oversight the big issue? What is coordination process that will make everyone comfortable? Looking for group to develop.

What other projects should be considered under the exclusion?

Projects funded by USDA, FSA that follow NRCS standards and specs.

- Currently only projects that are NRCS/BSWR financed are excluded. Concern expressed regarding fairness if other similar projects not funded by NRCS are not eligible for exclusion, such as projects funded through USDA, FSA where technical assistance is provided by NRCS.
- How to assure consistency? Who has oversight? Tie to funding and specs? Are NRCS, technical assistance providers trained and/or certified? Need to make sure that there is NRCS oversight - 98% are technical service providers.
- Can PCA get a paragraph describing this?

Streambank stabilization and wetland mitigation projects.

- Streambank restoration projects are far fewer and would have to be a sizable project (\$40-50,000), are already getting DNR permit. Do not duplicate permits (same as feedlot), DNR work in waters permit.
- Are there other standards and specs that could be used (DNR, MnDOT), but meet PCA requirements?
- Can PCA get information describing this – i.e. types of DNR projects, standards and specs, project oversight?

Projects under MS4 - local jurisdiction.

- Permitting at local level, same thing applies; common development issues that push into permit. Other permitting agencies with same requirements, applicable if you're getting another permit?
- Non-conservation practice projects – utilities. Utility conditional use permit, trigger one acre.

- Those projects where environmental review process occurs for project. EAW or EIS covered and not need permit - the protection measures that are required through these environmental assessments push over one acre. Not all in the group agree that those protection measures will be enough or implemented. Language is vague, BMPs need to be specific. Not “don’t let dirt run down hill.”

Summary:

- In order to expand the types of projects to include under the conditional exclusion, a coordination process is needed that all will commit to. Standards and specs and oversight are 2 key issues. Need a mechanism to periodically review standards and specs, etc. Agree upon project oversight.
- Add state and federal funded projects (USDA, FSA, others?) that use NRCS standards and specs, with NRCS oversight. PCA needs paragraph or so describing this and technical service providers. BWSR agreed to get draft language to PCA; include USDA, FSA projects not funded by NRCS.
- Add DNR wetland restoration projects. DNR public waters permit projects – for DNR permit coverage area only, not entire site. Provided that they are done under a standard set of specs and oversight beyond requirements in funding agreement. PCA needs supporting information for this.
- Look at post construction requirements for excluded projects and figure out what we need. May need to have a separate discussion regarding these requirements.
- Proposal to look at other projects that are not conservation projects per se, such as utility projects - no agreement on this issue. Further this discussion.
- Recommended that projects with federal and state oversight – take care of in rule. Projects at local permit level – address at storm water steering committee.
- Do we need definition of conservation practice project?
- Caution expressed that if we look to include too many types of projects under this exclusion, then third party (through public notice) will dismiss the entire idea. Don’t undo the work that’s been done on NRCS/BWSR projects; do not make exclusion so overly exclusive that we loose it all – ensure exclusion for conservation practice projects for erosion control.
- Not all are concerned that if too many types of projects are under the exclusion then could lose it all – each type of project must stand on its own merits.
- Exempted vs. excluded? Projects are to be excluded from applying for permit coverage, not exempted from requirements. Open to other language/comments on draft language.
- No decision made at this time if this group will meet again. Not sure if we can notice by May, want to keep this rulemaking effort moving forward.
- PCA needs additional information as discussed above. PCA will revise draft language and e-mail to group. May need to meet again, either separately by project types or all together.