

MEMORANDUM

State of Alaska

Department of Transportation & Public Facilities
Statewide Design & Engineering Services Division

TO: Distribution

DATE: August 18, 2010

Some elements have been superseded by subsequent documents and/or the issuance of the 2011 Construction General Permit. The changes are noted throughout the Directive.

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FROM: Roger Healy, P.E. *MOW*
Chief Engineer *For RKH*

SUBJECT: Chief Engineer Directive -
Consent Decree Requirements

This directive provides procedures and requirements for compliance with the US/DOT&PF Consent Decree.

Unless noted otherwise in this directive, the following requirements are effective immediately for all construction projects that require storm water permitting issued under the Construction General Permit (CGP):

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Definitions for this Directive

- **Project Engineer**: DOT&PF or consultant employee in primary charge of administering a DOT&PF construction project, and with signature authority delegated according to the requirements of the CGP
- **Regional Stormwater Specialist**: DOT&PF employee who provides regional guidance and support for stormwater compliance issues, and who coordinates or performs quality assurance reviews for CGP permitting and USA/DOT&PF Consent Decree requirements
- **Stormwater Inspector**: DOT&PF or consultant employee assigned by the Project Engineer to conduct the stormwater inspections (The Project Engineer may also assume the responsibility of the Stormwater Inspector)
- **Superintendent**: The Contractor's authorized representative in responsible charge of the work, who is duly authorized by the Contractor, according to the requirements of the CGP. The Superintendent has responsibility and authority for the overall operation of the Project and for Contractor furnished sites and facilities directly related to the Project
- **SWPPP Manager**: The Contractor's qualified representative responsible for CGP compliance, implementing the SWPPP, updating the SWPPP, supervising erosion and sediment control, monitoring construction activities, and with authority to suspend work and implement corrective actions
- **SWPPP Preparer**: Contractor's qualified employee, subcontractor, or consultant tasked to prepare the SWPPP and perform the Preconstruction Inspection

AK-CESCL certification

Throughout this directive, the term AK-CESCL includes current AK-CESCL certification issued under the AK-CESCL Memorandum of Understanding, and current certification under one of the following three Acceptable Equivalent Certifications:

- CPESC, Certified Professional in Erosion and Sediment Control
- CISEC, Certified Inspector in Sediment and Erosion Control
- ~~CESCL, Washington Department of Ecology Certified Erosion and Sediment Control Lead~~

2011 CGP does not allow for WA-CESCL; no longer a valid equivalent certification.

DOT&PF and consultant employees that are already in the three positions listed below must have current AK-CESCL certification prior to assignment on any construction project that requires a CGP Notice of Intent (NOI):

- Project Engineer
- Regional Stormwater Specialist
- Stormwater Inspector

Before assigning DOT&PF or consultant personnel to these positions, assure their name, certification type, certification number, and certification expiration date are recorded on the Decree Compliance Reporting Database.

Deadlines for AK-CESCL certification for New, Transferred, and Reassigned DOT&PF and Consultant Employees

Project Engineer and Regional Stormwater Specialist positions;

- A new, transferred, or reassigned employee or consultant must not perform any duties related to the CGP or the Consent Decree until they are AK-CESCL certified or have completed DOT&PF's online Stormwater Training (Online Stormwater Training is not currently available. An announcement will be made when it is available)
- New, transferred, and reassigned employees or consultants who are not currently certified must be AK-CESCL certified within six months of hire, transfer, or reassignment
- A new, transferred, or reassigned employee or consultant who is unable to become AK-CESCL certified within the first three months of hire must complete DOT&PF's online Stormwater Training as interim training prior to their 90th calendar day in that position

Stormwater Inspector positions;

- An employee or consultant must not conduct stormwater inspections or any other duties related to the CGP or Consent Decree without current AK-CESCL certification.

Preconstruction Inspections

Preconstruction Inspection requirements are applicable for all projects awarded after November 15, 2010.

A Preconstruction Inspection must be conducted on all projects meeting the following region specific conditions;

- Northern and Southeast Regions – All projects with ground disturbance greater than or equal to 5 acres
- Central Region (accessible by the contiguous road system) – All projects with ground disturbance greater than or equal to 1 acre
- Central Region (not accessible by the contiguous road system) – All projects with ground disturbance greater than or equal to 5 acres

Conduct the Preconstruction Inspection according to contract requirements, before ground disturbing activities begin. The Preconstruction Inspection must be conducted by the SWPPP preparer and an employee of the Contractor. If the SWPPP Preparer is an employee of the Contractor, no additional persons from the Contractor are required to attend. Project staff will be invited, but their attendance is not mandatory.

The Preconstruction Inspection must identify or verify opportunities for phased construction activities, appropriate BMPs and their sequencing, and sediment controls to install at the site prior to commencing construction activities. Use Form 25D-106 for the

SWPPP Preparer to document the inspection, the inspection findings, and the persons attending the inspection.

If the Preconstruction Inspection is conducted after the SWPPP has been prepared, the SWPPP must be amended before ground disturbing activities begin and must include necessary changes identified during the inspection.

CGP Inspections

Unless impracticable, all required SWPPP inspections (except the Preconstruction Inspection) must be jointly performed by the SWPPP Manager and the Stormwater Inspector. When joint inspection is impracticable, the party completing the inspection must submit the Inspection Report to the absent party, within three calendar days if the report contains Action Items, or as soon as possible if there are no Action Items noted.

Deadline superseded by Form 25D-100 Instructions, Sect. 1.6, dated 5/19/2011.

Inspection Reports

The SWPPP Manager must review the Inspection Report with the Stormwater Inspector to check for and correct any errors or omissions. The Superintendent should check for errors or omissions prior to signing/certifying the report.

The Superintendent and the Project Engineer must both sign/certify the Inspection Reports. This authority cannot be delegated. ~~The Superintendent must sign/certify the report on the day the inspection is completed. The Project Engineer must sign/certify the report within three days of completing the inspection.~~

Superseded by Form 25D-100 Instructions, Sect. 6.3, dated 5/19/2011.

~~After the Superintendent signs/certifies the Inspection Report, the Project Engineer may coordinate with the Superintendent to review and correct any errors or omissions before the Project Engineer signs/certifies the report.~~ Corrections are limited to adding missing information or correcting entries to match field notes and conditions present at the time the inspection was performed. Inspection findings that identify BMP problems, required maintenance, or required corrective action must be reported as observed during the inspection, and may not be changed or revised later in the Inspection Report. If inspectors did not review an area required to be inspected, a BMP, or any other element of the SWPPP on inspection day, the information cannot be added to the report later. Changes made to an Inspection Report must be initialed and dated by the Superintendent, at each location on the Inspection report where a change was made, before the Project Engineer signs/certifies the report.

If errors or omissions in the Inspection Report are discovered after both the Superintendent and Project Engineer have signed/certified the report, it must be reported on the Decree Compliance Reporting Database and an explanation provided. If the error or omission is identified before the next scheduled inspection, complete a supplement to the Inspection Report that addresses only the omitted or erroneous portions of the original report. The Superintendent and Project Engineer must both sign/certify the supplement.

List the supplement, in the Decree Compliance Reporting Database, as the corrective action for the non-compliance issue.

If the error or omission is identified during the next regular scheduled inspection, it must be reported on the Decree Compliance Reporting Database and an explanation provided. Ensure the current report is correct and complete, and note the current report as the corrective action for the original non-compliance issue.

This section superseded by 2011 CGP. Scope of Inspection must include those areas listed in the 2011 CGP Part 6.4

Scope of Inspection

~~The inspection must include all BMPs and the following locations:~~

- ~~• areas disturbed by construction activity~~
- ~~• areas used for storage of exposed materials~~
- ~~• areas where pollutants may enter stormwater conveyance system (i.e. discharge points)~~
- ~~• locations where vehicles enter or exit the site~~

SWPPP Reviews

Promote best practices and project phasing to limit or reduce total area of disturbed land. Promote successive clearing that requires stabilization of specific areas or phases before additional areas may be cleared or otherwise worked to expose erodible soils. Specifically consider stabilization requirements included in revised Section 641 specifications. Consider stabilization before freeze-up if construction is not planned to continue after freezing conditions are expected.

SWPPP Amendments

All SWPPP amendments must be reviewed, dated, and approved in writing by AK-CESCL Certified ADOT&PF staff, consultant, or Contractor.

The Contractor must document the amendment and amendment approval by:

- SWPPP Plan or Narrative Sheet;
 - Mark-up the plan sheets or narrative, or insert additional page(s)
 - Label the amendment number and the date it is approved.
- SWPPP Amendment Log (Form 25D-114);
 - Record the amendment number, date, and page number of the revised or inserted narrative or plan sheet
 - Sign the entry with full name of the approving person

- Added or Revised BMP;
 - Include the BMP source manual or publication citation including title, author, publisher, date (example: Appendix F Alaska SWPPP Guide, Alaska DOT&PF, October 2001)
 - If the BMP was designed specifically for the project (and does not have a source manual or publication that can be cited), include the following statement in the amendment: “No published BMP manual was used for this design.” In this case, the BMP description must be thorough, including the design (text and/or drawings) and requirements for placement.
- If the amendment is associated with a corrective action;
 - Reference the corrective action number on the amendment and on the Amendment Log (Form 25D-114), and include the amendment number on the Corrective Action Log (Form 25D-112).

Seasonal Stabilization

All disturbed land within the project limits must be temporarily or permanently stabilized before seasonal thaw (annual thaw) occurs (unless the unstabilized area is being actively worked).

When reviewing the SWPPP, ensure the SWPPP explains in detail how the project will be stabilized prior to freeze-up. If land disturbing construction is planned to continue into the winter (past freeze-up), ensure the SWPPP explains how stabilization will be accomplished prior to seasonal thaw.

Projects awarded without the specification requirement for stabilization before seasonal thaw will require contract modification to satisfy this requirement.

Complete-By-Date for Corrective Actions

The Contractor must designate a “Complete by Date” for all Action Items noted in an Inspection Report (Form 25D-100). This includes BMP maintenance, repair, replacement, addition or a change of practices (called an “Action Item”).

The Contractor, in coordination with project staff, must set the “Complete-by-Date” so that water quality standards are not exceeded and ~~the action is completed before the next storm event. If water quality is not threatened and a storm is not forecast, the Contractor should set the date as six days after the inspection so the next weekly inspection can confirm action was completed.~~ the conditions in 2011 CGP Part 8.2 are met.

In cases where the Contractor knows ahead of time that it will take longer to complete a Corrective Action (for example, if a supply must be ordered and shipped), a completion date more than six days after the inspection may be approved by the Project Engineer if both of the following conditions are met:

- Water quality standards will not be exceeded, and
- The corrective action will be completed before the next forecasted storm event

If an Action Item is not completed in time to meet the completion date or the two deadline requirements above, an incident of non-compliance must be entered in the Decree Compliance Reporting Database. Coordinate with the Regional Stormwater Specialist to enter the non-compliance report.

Delayed Action Item Reports

Complete a Delayed Action Item Report if an Action Item is not completed before the Complete-by-Date and the delay was reasonably justified.

A Delayed Action Item Report should not be completed every time a contractor misses a Complete-by-Date but is appropriate when the cause is out of Contractor's and DOT&PF's control. Examples include:

- weather is so severe that it would be dangerous to implement the Action Item,
- delivery of a necessary material is delayed due to independent freight transporters not meeting schedules, or
- a specific equipment is needed to complete the Action Item and the weather prohibits delivery of that equipment

DOT&PF staff per Form 25D-113 Instructions, dated 5/19/2011.

When a Delayed Action Item Report is warranted, the ~~Project Engineer~~ must complete it after consultation with a Regional Stormwater Specialist. In addition, the Project Engineer must provide a copy of the report for the Contractor to include in the SWPPP, and advise the Contractor to retain records that document the justification for the delay (such as purchase orders, weather reports).

Endangerment Reports

If there is an instance of non-compliance with the CGP which might endanger health or the environment, the incident must be reported to the ADEC and the EPA by telephone within 24 hours of discovery. A follow-up written report is also due within five days.

The Project Engineer and Regional Stormwater Specialist should coordinate to determine if a CGP non-compliance event might endanger health or the environment. If there was a discharge to surface water that exceeded, or may have exceeded, applicable water quality standards, the event must be reported. Examples of reportable incidents include:

- any amount of discharge of petroleum product to surface water
- most discharges of sediment to surface water (if you can see it, it likely exceeds the water quality standard)
- slope failure (mudslide, landslide) that reaches surface water
- a sediment trap overflows with untreated (turbid) water

The Contractor must notify the Project Engineer immediately and the Project Engineer then notifies a Regional Stormwater Specialist. The Stormwater Specialist will make the oral and written reports on behalf of the Department. The Superintendent and Regional Stormwater Specialist must (electronically) co-sign the written report. The Contractor is required under their own permit conditions to make their own reports to regulatory agencies.

Notices of Intent

Within seven days of filing CGP Notice of Intent (NOI) with the Alaska Department of Environmental Conservation (ADEC), send copies of DOT&PF's NOI to:

- U.S. Environmental Protection Agency (EPA), and
- Statewide Environmental Office.

If an NOI is filed with ADEC and DOT&PF does not submit a copy to EPA, or submits later than seven days, a Decree non-compliance event must be filed in the Decree Compliance Reporting Database.

Submission of copies to EPA and the Statewide Environmental Office are not required for NOI's filed with ADEC before August 18, 2010.

The addresses for submittals are:

1. Kristine Karlson
NPDES Compliance Officer
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, (OCE-133)
Seattle, WA 98101
OR via email: karlson.kristine@epa.gov OR via fax: 206-553-1280
2. Statewide Environmental Manager
Department of Transportation & Public Facilities
P.O. Box 112500
3132 Channel Drive
Juneau, AK 99811-2500
OR via email: amy.sumner@alaska.gov OR via fax: 907-465-2460

eDocs and Citrix Decree Compliance Reporting Database

eDocs SWPPP Documents Electronic Storage;

Enter SWPPP documents (including reports, logs, forms, and other related CGP documents) into the eDocs system within one week of completing (approving, signing, or certifying) the documents. Refer to the online instructions for eDocs SWPPP documents data storage for a comprehensive list of documents to upload.

Citrix Decree Compliance Reporting Database;

Enter required project and personnel information into the database within one week of filing an NOI and within one week of any personnel changes on a project. Enter incidences of non-compliance within one week of identifying the incidence.

Guidance for eDocs is available online on the Statewide Environmental website.

Quality Assurance Reviews

Perform Quality Assurance reviews of the SWPPP documents at the region office. Review a reasonable sampling of the documents and expand the reviews as necessary to address any reoccurring issues. Issues of Consent Decree non-compliance identified during QA review must be entered into the Citrix Decree Compliance Reporting Database.

Updated SWPPP Forms

Use the attached revised forms for SWPPP documentation. The Amendment and Corrective Action logs are revised to cross reference the corrective action and amendment. The training form is modified to remove the attendees' initials, and to added check boxes for "SWPPP Provisions or Conditions" and "Conducting Inspections" or "Inspections Reports".

The following forms are attached:

- SWPPP Amendment Log (Form 25D-114)
- SWPPP Corrective Action Log (Form 25D-112)
- SWPPP Training Log (Form 25D-125)

Distribution:

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