

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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November 19, 2010

Perry Lindquist, Land Resources Manager  
Waukesha County Dept. of Parks & Land Use  
515 W. Moreland Blvd.  
Room 260 - Administration Center  
Waukesha, WI 53188

Subject: Revised Approval of Waukesha County Authorized Local Program for Construction  
Site Erosion Control and Post-Construction Storm Water Management

Dear Mr. Lindquist:

On September 27, 2010, the Wisconsin Department of Natural Resources (the DNR) conditionally approved Waukesha County (the County) as an Authorized Local Program (ALP) for regulating construction site erosion control and storm water management, effective January 1, 2011, in accordance with s. NR 216.415, Wis. Adm. Code. However, recent communication with the County's Corporation Counsel regarding the terms of the Natural Heritage Inventory (NHI) data license, along with DNR's continuing review of the conditional approval, indicated that revisions were appropriate. Accordingly, DNR's September 27, 2010 conditional approval is hereby superseded by the following revised conditional approval:

This approval is effective **January 1, 2011**, and is only applicable in areas where the County has jurisdiction to regulate construction site erosion control and storm water management. Under the terms of this ALP, all erosion control and storm water permits issued by the County will meet the WPDES permit requirements under subchapter III of chapter NR 216, Wis. Adm. Code, and will confer coverage under the WPDES storm water discharge general permit WI-S067831-3 (general permit). The conditions of this ALP include the following:

1. Ordinances. As of the date of this approval, the Waukesha County Storm Water Management and Erosion Control Ordinance meets the ALP requirements of s. NR 216.415, Wis. Adm. Code. Any modifications to the County's ordinance shall be submitted to the DNR to determine continued ALP compliance.
2. Staff and Program Resources. The County shall maintain the level of staffing and other program resources needed to effectively operate this ALP. The County shall notify the DNR when there is a reduction in staff or other program resources that may affect the implementation of this ALP.
3. Program Implementation. Within 30 calendar days after the date of this approval, the County and the DNR shall meet to identify any outstanding implementation issues for administering this ALP. The implementation issues may include the procedures used to process permit applications, the process for screening sites for potential resource impacts and providing follow-up regarding any potential impacts, site inspections and compliance and enforcement activities, and project close-out. The County and the DNR agree that any identified outstanding implementation issues shall be resolved by the effective date of the ALP. Resulting policies and procedures mutually agreed upon by the County and the DNR shall become part of the approved ALP program.

4. Public Communication and Outreach. The County shall inform the public of this ALP and perform outreach to the regulated community so that landowners affected by this ALP are aware of the program and how to apply for permit coverage.
5. County Highways and County-owned Lands. This ALP shall apply to all county-owned lands, including county road rights-of-way within incorporated areas. Administration of permits on county projects shall be in accordance with an interdepartmental agreement executed between Waukesha County Parks and Land Use and Public Works Departments. This agreement shall be executed and a copy provided to DNR by the effective date of this ALP.
6. DNR Office of Energy Projects and Other Excluded Projects. (a) This ALP does not apply to storm water permitting of utility projects under the authority of the DNR Office of Energy. DNR Office of Energy utility projects include power plants, electric transmission and distribution lines, natural gas and petroleum pipelines, telecommunication lines, wind power projects, and water utility projects. This exclusion from the ALP does not affect the applicability of the County's Storm Water Management and Erosion Control Ordinance to a utility project.

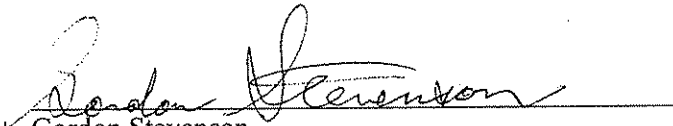
(b) This ALP does not apply to storm water permitting of any building, structure or facility identified under s. 13.48 (13), Stats., that is constructed for the benefit of or use of the state, any state agency, board, commission or department, the University of Wisconsin Hospitals and Clinics Authority, the Fox River Navigational System Authority, the Wisconsin Quality Home Care Authority, or any local professional baseball park district created under subch. III of ch. 229, Stats., if the construction is undertaken by the department of administration on behalf of the district. This exclusion from the ALP does not affect the applicability of the County's Storm Water Management and Erosion Control Ordinance to such projects.

(c) This ALP does not apply to storm water permitting of any DNR building, structure or facility whose purpose is to assure the general public access to outdoor recreational areas, rather than to facilitate the internal operations of DNR as a state agency, in accordance with OAG 9-93.
7. Construction Site Screening. All storm water permit applications submitted to the County under this ALP where an acre or more of land is proposed to be disturbed shall be screened by the County in accordance with the implementation program for the following:
  - Potential wetland water quality impacts to ensure compliance with ch. NR 103 , Wis. Adm. Code, or a County ordinance that is at least as stringent
  - The presence of endangered or threatened resources protected under s. 29.604, Wis. Stats., and ch. NR 27, Wis. Adm. Code
  - Impacts on historic properties that are listed properties or on the list of locally designated historic places under s. 44.45, Wis. Stats.

The County shall subscribe to all available state databases to complete the impact screening and shall keep these subscriptions up-to-date. If the County discovers a potential impact during the screening process, the County shall notify the appropriate DNR contact person, as provided by the DNR, and the subject project is **not** eligible for coverage under the general storm water permit until all impact issues are resolved to the DNR's satisfaction. The applicant shall confirm the potential impact with the appropriate agencies/authorities and adjust the permit applicant's plan to avoid the impact or obtain the proper permits/approvals. Once the County confirms with DNR that the impact is avoided and/or the proper permits/approvals have been obtained, the County may then issue a storm water permit and allow land disturbing construction activities to commence.

- Regardless of whether or not the County identifies potential impacts under this ALP, DNR acknowledges that it is ultimately the landowner's responsibility to meet the requirements for protection of the wetland water quality standards in ch. NR 103, Wis. Adm. Code, requirements for endangered and threatened species protection under s. 29.604, Stats., and ch. NR 27, Wis. Adm. Code, and requirements relating to historic property on the inventory or on the list of locally designated historic places under s. 44.45, Stats.
8. Other Permits. The County is not responsible for enforcing other state or federal permit requirements that may apply to a site covered under this ALP, including but not limited to chapter 30, Wis. Stats., wetland dredge or fill, endangered resources or historical property regulations.
  9. Complaints. If the DNR receives an erosion control complaint relating to an activity regulated under this ALP, the DNR regional staff will contact the County to initiate the assessment of the site conditions. The County shall work cooperatively with the DNR to determine permit jurisdiction and the means for resolving the complaint.
  10. Enforcement. The County shall take the lead on ch. NR 216, Wis. Adm. Code, related erosion control and storm water management enforcement actions on construction sites within its jurisdiction. The DNR retains its authority to enforce the general permit, ch. NR 216, Wis. Adm. Code, ch. 283, Wis. Stats., and county highway projects subject to the Cooperative Liaison Agreement between the Wisconsin Department of Transportation and the DNR. However, the County and the DNR will cooperate to the maximum extent necessary to resolve violations and compliance issues arising within the context of this ALP.
  11. Records and Reports. The County shall maintain records and prepare an annual report in accordance with s. NR 216.415(8)(a) and (b), Wis. Adm. Code. The annual ALP report will be included in the County's MS4 Permit annual report due by March 31<sup>st</sup> of each year.
  12. Permit Data. The County shall provide the DNR with access to records and sufficient information for the DNR to track projects administered under this ALP. To accommodate the DNR's tracking of projects covered under this ALP, the County shall provide the DNR with a copy of a permit application within two (2) business days of receiving a complete application.
  13. Audit. The DNR may perform an audit of the ALP in accordance with s. NR 216.415(9), Wis. Adm. Code. The County shall cooperate with the DNR in providing information necessary to complete the audit, including providing access to inspection records and information pertaining to program administration.
  14. Communication. At a minimum, the County shall meet quarterly with the DNR to maintain good communication, discuss implementation of the ALP, and resolve any outstanding issues.
  15. ALP Termination. The ALP may be terminated by either the DNR or the County at any time upon 30 days prior written notice.
  16. Law Changes. After the date of this approval, if any statute or administrative rule changes should occur that affect this ALP, the DNR shall notify the County of any changes that may be required to maintain ALP status and will give the County reasonable time to complete the necessary changes.
  17. Fees. For construction sites disturbing one or more acre of land and administered under this ALP, the County shall submit an annual fee to the DNR by March 31<sup>st</sup>. The fee shall be based on the number of permit applications received by the County in the previous calendar year of operation as an ALP. The

annual fee shall be based on \$75.00 for each construction site application that the County receives during the previous calendar year, provided however that the annual fee shall be at least \$500 but not more than \$3,500.

  
Gordon Stevenson  
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Bureau of Watershed Management

cc: Dale Shaver, Director, Waukesha Co. Dept. of Parks and Land Use  
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