

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103



In the Matter of: :
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 Delaware Department of Transportation : **U.S. EPA Docket No. CWA-03-2024-0016DN**
 800 South Bay Road :
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 Dover, DE 19901 :
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 : **ADMINISTRATIVE ORDER ON CONSENT**
 Respondent. : **PURSUANT TO 33 U.S.C. § 1319(a)**
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I. STATUTORY AUTHORITY AND JURISDICTION

1. This Administrative Order on Consent (“AOC” or “Order”) is issued to the Delaware Department of Transportation (“Respondent” or “DelDOT”) under the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) (“CWA” or “Act”). The Administrator delegated this authority to the Regional Administrator of EPA Region III, who further delegated it to the Director of the Enforcement & Compliance Assurance Division, EPA Region III.
2. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever, on the basis of any information available to him or her, the Administrator finds that any person is in violation of any permit condition or limitation implementing certain sections of the CWA, in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, he shall issue an order requiring such person to comply with such section or requirement.
3. EPA has jurisdiction over the above-captioned matter, as described in Paragraphs 1 and 2, above.
4. EPA has consulted with the Delaware Department of Natural Resources and Environmental Control (“DNREC”) regarding this action and, subsequent to the Effective Date, EPA will mail a copy of this fully executed AOC to the appropriate DNREC representative.

II. GENERAL PROVISIONS

5. The provisions of this AOC shall apply to and be binding upon Respondent and the officers, directors, employees, contractors, agents, trustees, successors, and assigns of Respondent.

6. Respondent shall bear its own costs and attorney's fees in connection with this proceeding and associated with the implementation or enforcement of this AOC, including any costs related to resolution of any dispute arising regarding this AOC.
7. EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. EPA reserves all existing rights and remedies available to it under the CWA, 33 U.S.C. § 1311, *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, including enforcement of this AOC.
8. This AOC does not constitute a waiver or modification of the terms or conditions of any permit issued to Respondent. Nothing in this Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state, or local permit. This Order does not constitute a waiver, suspension, or modification of the requirements of the Act, 33 U.S.C. § 1251, *et seq.*, or any regulations promulgated thereunder.
9. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this AOC, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
10. Nothing contained within this AOC shall preclude Respondent from seeking to recover any amounts incurred or expended in investigating, defending or resolving the alleged violations from the contractors performing the work which resulted in this AOC being entered.
11. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
12. The undersigned representative of Respondent certifies that they are fully authorized by the Respondent to enter into the terms and conditions of this AOC and to execute and legally bind the Respondent.
13. By signing this AOC, Respondent acknowledges that this AOC may be available to the public and represents that, to the best of Respondent's knowledge and belief, this AOC does not contain any confidential business information or personally identifiable information from Respondent.
14. Respondent certifies that, to the best of its reasonable knowledge and belief, any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission, true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy, or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made

by Respondent to EPA regarding matters relevant to this AOC are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors, and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

15. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of Section V of this Order is restitution, remediation, or required to come into compliance with the law.

III. STATUTORY AND REGULATORY BACKGROUND

16. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”) program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), the State of Delaware, through DNREC, is authorized by EPA to administer the NPDES program in the State of Delaware.
18. The State of Delaware has incorporated the NPDES Permit program requirements of the CWA, 33 U.S.C. § 1342, into its Delaware State Law, 7 Del. Code, Chapter 60.
19. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the U.S. except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, and 1344.
20. “Pollutant” is defined as “dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” 40 C.F.R. § 122.2. *See also* 33 U.S.C. § 1362(6).
21. “Discharge of a pollutant” means “[a]ny addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source.’” 40 C.F.R. § 122.2. *See also* 33 U.S.C. § 1362(12).
22. “Storm water” is defined as “storm water runoff, snow melt runoff, and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

23. “Storm water discharge associated with industrial activity” means “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant” and “includes, but is not limited to, storm water discharges from...material handling sites; refuse sites; sites used for the application or disposal of process waste waters...; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products.” 40 C.F.R. § 122.26(b)(14).
24. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation at 40 C.F.R. § 122.26(a)(1)(ii), require facilities discharging stormwater associated with industrial activity to obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of stormwater associated with industrial activity must apply for an individual permit or seek coverage under a general permit.
25. Pursuant to the authority of the CWA, Delaware’s Regulations Governing the Control of Water Pollution, 7 DE Admin. Code 7201 § 9.2, provides for an NPDES General Permit for Stormwater Discharges from Construction Activity. The General Permit became effective on March 11, 2021 and expires March 10, 2026. In accordance with Section 402 of the CWA and Delaware’s regulations, DNREC granted coverage under the General Permit to DelDOT, NPDES Permit No. 0051268 (the “General Permit”).
26. The General Permit is issued for 5-year terms and requires facilities that discharge storm water to a surface water body of the State to comply with specific requirements governing storm water discharges associated with industrial activities.
27. The General Permit authorizes the discharge of stormwater associated with industrial activity in accordance with the provisions of the State’s General Permit.
28. A violation of the General Permit is also a violation of the CWA and may be subject to penalties established under that statute.
29. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), EPA retains its authority to take enforcement action within Delaware for NPDES permit violations.

IV. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW

30. DelDOT is a State Agency created pursuant to 29 *Del. C.* §8401 organized and existing under the laws of the State of Delaware and is thus a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
31. At all times relevant to this AOC, DelDOT was, the owner of the Elkton Road Site, Elkton Road, MD State Line to Casho Mill Rd (hereinafter “Elkton Facility”) (Site-specific Permit No. DEC006054). DelDOT as the owner contracted with Diamond Materials, LLC to perform the construction activity at the Elkton Facility pursuant to contract number T201504401. Diamond Materials, LLC was in control of the Elkton Facility at the time of

- the violations alleged herein. The 38-acre project reconstructs and expands sections of the roadway along Elkton Road. Site activity included approximately two miles of roadwork.
32. At all times relevant to this AOC, DeIDOT was the owner of the Mulberry Knoll Site, T200411209 SR 24 Mulberry Knoll to SR 1 (hereinafter “Mulberry Facility”) (Site-specific Permit No. DEC006064). DeIDOT as the owner contracted with Mumford and Miller Concrete, Inc. to perform the construction activity at the Mulberry Facility pursuant to contract number T200411209. Mumford and Miller Concrete, Inc. was in control of the Mulberry Facility at the time of the violations alleged herein. The 12-acre project expanded SR 24 to a four-lane road and is active along the shoulder of SR24 from Mulberry Knoll Road to Lexus Way.
 33. At all times relevant to this AOC, DeIDOT was the owner of the T2018040301 Georgetown East Gateway Improvements site (hereinafter, “the Georgetown Facility”) (Site-specific Permit No. DEC006156). DeIDOT as the owner contracted with Allan Myers MD, Inc. to perform the construction activity at the Georgetown Facility pursuant to contract number T201804301. Allan Myers MD, Inc. was in control of the Georgetown Facility at the time of the violations alleged herein. The 22.8-acre project involves construction/improvements along Market St. and Airport Rd. in Georgetown, DE.
 34. At all times relevant to this AOC, DeIDOT was the owner of T201651201 Claymont Regional Transportation Center, 4544 Philadelphia Pike, Claymont, DE 19703 (hereinafter “the Claymont Facility”) (Site-specific Permit No. DEC006007). DeIDOT as the owner contracted with Wagman Heavy Civil, Inc. to perform the construction activity at the Claymont Facility pursuant to contract number T201651201. Wagman Heavy Civil, Inc. was in control of the Claymont Facility at the time of the violations alleged herein. Claymont is a train station that is being rebuilt on a total of 3.8 acres.
 35. Respondent, through the contracted entities identified in paragraphs 31 through 34 above, is, and at all times relevant to this AOC was, engaging in “construction activity” at the Facilities, within the meaning of 40 C.F.R. § 122.26(a)(1)(ii); 122.26(b)(14)(x); and 122.26(b)(15).
 36. Respondent had applied for and was granted coverage under the General Permit, NPDES Permit No. 0051268, to discharge stormwater associated with industrial activity from these four Facilities. DeIDOT is the Respondent in this matter as DeIDOT was the only entity listed on the permits/applications. DeIDOT obtained the permits at issue even though DeIDOT at all times intended to contract with third parties, as identified herein, for the performance of the work at the respective sites.
 37. The Facilities discharge, and at all times relevant to this AOC discharged, stormwater identified in the respective Permits into the following waters of the United States:
 - a. Georgetown Facility – flows to an unnamed tributary to Ingram Branch which flows to the Broadkill River which flows to the Delaware Bay, a navigable-in-fact water;

- b. Claymont Facility – flows to Naamans Creek which flows to the Delaware River, a navigable-in-fact river;
- c. Mulberry Facility– flows to Love Creek which flows to Rehoboth Bay, a navigable-in-fact water; and
- d. Elkton Facility – flows to the Christina River which flows to the Delaware River, a navigable-in-fact river.

All of the above are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

- 38. On May 26, 2021 (Elkton Facility), May 24, 2021 (Mulberry Facility), May 27, 2021 (Georgetown Facility), and May 26, 2021 (Claymont Facility), an EPA compliance inspection team conducted inspections of the Facilities (“Inspections”), pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.
- 39. The Facilities’ representative Nathan Zimmerman has received copies of all Inspection reports and Shante Hastings has provided responses to all reports.
- 40. Based on the Inspections and review of Respondent’s responses to the Facility Inspection reports, EPA has identified the following violations of the General Permit, and Section 301 of the CWA, 33 U.S.C. § 1311, described below.
- 41. Respondent neither admits nor denies the findings of fact incorporated herein.

Count 1
Failure to Maintain the Elkton Facility

- 42. The allegations in the preceding paragraphs are incorporated herein by reference.
- 43. Section E.1 of the General Permit requires Respondent to “develop, fully implement, and maintain at the site, the approved Plan. The Plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with the Delaware [Erosion and Sediment Control (“ESC”)] Handbook standard and specifications for Construction Site Waste Management and Spill Control, shall be incorporated into the Plan for construction activity....”
- 44. Section E.1 of the General Permit requires Respondent to, “keep the Plan current and revise the Plan whenever: a) There is a change in the design, construction, operation or maintenance of erosion and sediment control or stormwater management measures on the site; or b) The Plan proves to be ineffective in eliminating or significantly minimizing the discharge of pollutants, or in otherwise achieving the general objectives of controlling pollutants in stormwater discharges from construction activity; or c) To address any sources or potential sources of pollution identified as a result of a site inspection pursuant to Part 1.E.2 of this [Construction General Permit]....”

45. On or about June 4, 2021, in response to EPA’s records request, DelDOT provided a copy of their Sediment and Stormwater Management Plan (hereafter “Stormwater Plan” or “Plan”).
46. At the Inspection of the Elkton Site on May 26, 2021, the EPA Inspection Team observed various areas of the Facility where Erosion and Sediment (“E&S”) controls did not appear to be installed as required by DelDOT’s Plan, including, but not limited to:
 - a. Sheets 228 and 229 show silt fencing installed along an infiltration trench along Elkton Road which was not there at the time of the Inspection. A revision of the Plan dated 3/11/21 notes that this silt fence is to be reinstalled after work was completed in this area.
 - b. A revision of the Plan dated 02/02/21 for Sheet 229 shows a compost filter log (CFL) installed at the intersection of Elkton Road and McIntire Road which was not there at the time of Inspection.
 - c. Sheet 237 shows a rock channel at an outlet east of the intersection of Elkton Road and Otts Chapel Road that was not installed at this outlet at the time of the Inspection.
 - d. Sheet 246 shows a swale with a rock channel installed that was not there at the time of the Inspection.
 - e. Sheet 255 shows a BMP [best management practice] with a rock channel at the T-intersection of Elkton Road and Millstone Drive that was not there at the time of the Inspection.
 - f. Sheets 254 and 255 show a continuous section of silt fence in proximity to the T-intersection of Elkton Road and Hamlet Way. However, a section of silt fence was observed to be missing at the time of the Inspection.
 - g. Sheet 251 appears to show silt fence connected to a rock channel at the west side of the intersection of Elkton Road and SR 4 Christina Parkway. A section of silt fence did not appear to be connected to the rock channel at the time of the Inspection.
 - h. Sheet 250 appears to show a rock channel at an outlet west of SR 4 Christina Parkway. This rock channel did not appear to be fully constructed at the time of the Inspection.
47. At the Inspection on May 26, 2021, the EPA Inspection Team also observed various areas of the Facility where controls were installed, but DelDOT’s Plan did not appear to be revised to incorporate these controls, including, but not limited to:
 - a. Sheet 257 does not appear to show Compost Filter Logs (“CFL”) along the Gravenor Lane roadway. A CFL was observed to be installed in this location at the time of the Inspection.
 - b. Sheet 257 does not appear to show a rock channel. A rock channel was observed along the southwest bank of the Christina River at the time of the Inspection.
48. Section D.1 (Erosion and Sediment Control Requirements) of the General Permit requires Respondent to “Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants....”

49. Section D.1.3 of the General Permit requires Respondent to “Install sediment controls along any perimeter areas of the site that will receive pollutant discharges, and b) Remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control.”
50. Section D.1.9 of the General Permit requires Respondent to “Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Examples of control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of a stormwater conveyance and at the outfall to slow down runoff.”
51. At the Inspection on May 26, 2021, the EPA Inspection Team observed CFL that appeared to be ripped and/or overtaken by sediment, including:
 - a. A CFL east of Otts Chapel Road appeared to be torn and covered in sediment.
 - b. A CFL west of Gravenor Lane appeared to have rips and appeared partially buried. See Sheet 257 for the CFL.
 - c. CFLs west of SR 4 Christina Parkway were observed to be sediment laden. See Sheet 250 for the location of the CFLs.
52. At the Inspection on May 26, 2021, the EPA Inspection Team observed BMPs (consisting of rock channels surrounded by CFL) that appeared to be sediment laden, overtaken by sediment, and/or had compromised CFL, including:
 - a. A BMP (noted as BMP 975 on Sheet 177 of DeIDOT’s Plan) at the east side of Otts Chapel Road appeared to be sediment laden. The BMP’s CFLs appeared to be ripped and overtaken by sediment. The EPA Inspection Team also noted that this BMP was directly downstream of an area where a separate rock channel had not been installed. See Sheet 238 for the location of the BMP.
 - b. A BMP at the southeast side of Otts Chapel Road that was in proximity to an unnamed tributary. The CFL and silt fence surrounding the rock channel of this BMP appeared to be overtaken. See Sheet 243 for the location of the BMP.
 - c. A BMP west of the Christina River had a CFL installed which appeared to have rips. See Sheet 257 for the location of the BMP.
 - d. A BMP at an unnamed tributary in proximity to a T-intersection at Elkton Road and Millstone Drive appeared to have CFL installed that was overtaken with sediment. See Sheet 255 for the location of the BMP.
53. At the Inspection on May 26, 2021, the EPA Inspection Team observed silt fence that appeared to be downed and/or overtaken by sediment, including:
 - a. A section of silt fence in proximity to the T-intersection of Elkton Road and Christina Mill Drive appeared to be overtaken by sediment and to have a partial gap. See Sheet 256 for the location of the silt fence.

- b. A section of silt fence along the east side of the intersection at Elkton Road and SR 4 Christina Parkway appeared to be downed. See Sheet 251 for the location of the silt fence.
 - c. An area west of SR 4 Christina Parkway with a drainage outlet that did not appear to have controls installed. This area was in direct proximity to an unnamed tributary. DelDOT's Plan did not clearly identify this drainage outlet or any associated controls for it. See Sheet 250 for the general location of the outlet.
- 54. Section D.1.8 (Protect storm drain inlets) of the General Permit requires Respondent to "a. Install inlet protection measures that remove sediment from discharges prior to entry into any storm drain inlet that carries stormwater flow from the site; and b. Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible."
- 55. At the Inspection on May 26, 2021, the EPA Inspection Team observed inlets that appeared to have debris stored within the controls and/or were being overtaken by sediment, including:
 - a. An inlet west of McIntire Road appeared to have sediment at half the height of the fence. There also appeared to be trash and other debris within the inlet control. See Sheet 229 for the location of the inlet.
 - b. An inlet east of McIntire Road appeared to have debris stored within the inlet control. See Sheet 229 for the location of the inlet.
 - c. An inlet east of West Branch Christina River appeared to have debris stored within the inlet control. See Sheet 234 for the location of the inlet.
- 56. Section D.1.4 (Minimize sediment track-out) of the General Permit requires Respondent to "a. Restrict vehicle use to properly designated exit points; b. Use appropriate stabilization techniques at all points that exit onto paved roads, sidewalks, or other paved areas that is consistent with the standard and specifications for stabilized construction entrances in the most recent version of the Delaware ESC Handbook; c. Implement additional track-out controls (e.g., use of wheel washing, rumble strips, and rattle plates) as necessary to ensure that sediment removal occurs prior to vehicle exit..." Standard No. E-14 (2014) of DelDOT's Standard Construction Details has specifications for stabilized construction entrances, which includes the required dimensions, the use of DE. #3 Stone, and the use of a drainage pipe.
- 57. At the Inspection on May 26, 2021, the EPA Inspection Team observed various stabilized construction entrances ("SCEs") on DelDOT's Plan that did not appear to have been constructed. Several areas of the Facility appeared to be active with the potential for sediment track-out, including:
 - a. Sheet 229 shows SCEs on the west side and east side of the intersection of Elkton Road and McIntire Road. There did not appear to be SCEs installed at the time of

- the Inspection. On the Facility’s weekly inspection report on 4/15/21 the SCE was noted as not having been constructed.
- b. Sheet 235 shows SCEs on the west side and east side of the intersection of Elkton Road and Otts Chapel Road. There did not appear to be SCEs installed at the time of the Inspection.
 - c. Sheet 235 was marked with a revision on 4/21/21 to install an SCE at the service road west of Otts Chapel Road. There did not appear to be an SCE installed at the time of the Inspection, and there was visible track-out on the roadway. On the Facility’s 5/13/21 weekly inspection report, this item was noted as needing a correction for over 49 days.
 - d. Sheet 246 shows an SCE at the west side of the intersection of Elkton Road and Interchange Blvd Driveway 1. Sheet 246 was marked with a revision on 4/21/21 that required the SCE to be moved slightly south down Interchange Blvd Driveway 1. The EPA Inspection Team observed this area and noted that there did not appear to be an SCE constructed, and there was visible track-out on the roadway.
 - e. Sheet 250 shows an SCE on the east side of the intersection of Elkton Road and SR4 Christina Parkway. There did not appear to be an SCE installed at the time of the Inspection.
58. Section D.1 (Erosion and Sediment Control Requirements) of the General Permit requires Respondent to “Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants....” Standard No. E-1 (2020) of DelDOT’s Standard Construction Details has specifications for concrete washout with polyurethane liner, sign, and berm dimensions.
59. At the Inspection on May 26, 2021, the EPA Inspection Team observed an area that appeared to be utilized as a concrete washout. This area had cement staining on the ground. A polyurethane liner appeared to be present in the area but not being utilized. This area is also not designated as a concrete washout area on DelDOT’s Plan. See Sheet 250 for the location of the concrete washout.
60. Based upon the assertions and allegations above, EPA concludes Respondent’s failure to maintain the Elkton Road Facility in compliance with Parts D and E of the General Permit under which Respondent has been granted coverage has resulted in violations of Parts D and E of the General Permit and of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Count 2

Failure to Maintain the Mulberry Facility

61. The allegations in the preceding paragraphs are incorporated by reference.
62. Section E.1 of the General Permit requires Respondent to, “develop, fully implement, and maintain at the site, the approved Plan. The Plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution

prevention measures, in accordance with the Delaware ESC Handbook standard and specifications for Construction Site Waste Management and Spill Control, shall be incorporated into the Plan for construction activity....”

63. Section E.1 of the General Permit requires Respondent to, “keep the Plan current and revise the Plan whenever: a) There is a change in the design, construction, operation or maintenance of erosion and sediment control or stormwater management measures on the site; or b) The Plan proves to be ineffective in eliminating or significantly minimizing the discharge of pollutants, or in otherwise achieving the general objectives of controlling pollutants in stormwater discharges from construction activity; or c) To address any sources or potential sources of pollution identified as a result of a site inspection pursuant to Part 1.E.2 of this [Construction General Permit]....”
64. Section D.1 (Erosion and Sediment Control Requirements) of the General Permit requires Respondent to “Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants....”
65. Section D.1.5 of the General Permit requires Respondent to “Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil.” Section D.1.5.b requires Respondent to “Install a sediment barrier (e.g., berms, dikes, fiber rolls, compost logs, silt fences, or sandbags) along all down gradient perimeter areas.”
66. At the Inspection of the Mulberry Site on May 24, 2021, the EPA Inspection Team observed a stockpile in the staging area. This stockpile was not on DelDOT’s Plan and did not appear to have controls enclosing it.
67. Section D.1.4 (Minimize sediment track-out) of the General Permit requires Respondent to “a. Restrict vehicle use to properly designated exit points; b. Use appropriate stabilization techniques at all points that exit onto paved roads, sidewalks, or other paved areas that is consistent with the standard and specifications for stabilized construction entrances in the most recent version of the Delaware ESC Handbook; c. Implement additional track-out controls (e.g., use of wheel washing, rumble strips, and rattle plates) as necessary to ensure that sediment removal occurs prior to vehicle exit....”
68. At the Inspection on May 24, 2021, the EPA Inspection Team observed a construction entrance in the staging area. This construction entrance was not on DelDOT’s Plan. The construction entrance appeared to be sediment laden.
69. Section D.4.5 (For spill prevention) of the General Permit states, “k. Leaks and drips; k.ii. Do not allow oil, grease, fuel or chemicals to drip on the ground...; k.iv. Repair leaky equipment promptly or remove problem vehicles and equipment from the site. Clean up contaminated soil immediately...; k.vi. Clean up all leaks. Promptly dispose of waste and spent clean up materials.”
70. At the Inspection on May 24, 2021, the EPA Inspection Team observed oil staining on the ground in proximity to vehicles working in proximity to the Infiltration Trench between Mulberry Road and Warrington Road.

71. Based upon the assertions and allegations above, EPA concludes Respondent's failure to maintain the Mulberry Facility in compliance with Parts D and E of the General Permit under which Respondent has been granted coverage has resulted in violations of Parts D and E of the General Permit and of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Count 3
Failure to Maintain the Georgetown Facility

72. The allegations in the preceding paragraphs are incorporated by reference.
73. Section D.1.8 (For protection of storm drain inlets) of the General Permit requires Respondent to "a. Install inlet protection measures that remove sediment from discharges prior to entry into any storm drain inlet that carries stormwater flow from the site, and b. Clean, or remove and replace, the protection measure as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible."
74. At the Inspection of the Georgetown Facility on May 27, 2021, the EPA Inspection Team observed two inlets and the associated inlet protection covered in what appeared to be sediment or micro seed.
75. Section D.4.b of the General Permit requires Respondent to "Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present of the site to precipitation and stormwater...."
76. Section D.4.3 (For waste management) requires that "a. All waste materials shall be collected and stored in securely lidded dumpsters in a location that does not drain to a waterbody; b. Waste materials shall be salvaged and/or recycled whenever possible; c. The dumpsters shall be emptied a minimum of twice per week, or more if necessary. The licensed trash hauler is responsible for cleaning out dumpsters; d. Trash shall be disposed of in accordance with all applicable Delaware laws...."
77. At the Inspection of the Georgetown Facility on May 27, 2021, at the south end of the Cheer Community Center parking lot northwest corner of Sand Hill Rd and Route 9 intersection, the EPA Inspection Team observed construction materials including uncovered opened bags labeled mortar mix, an unidentified waste pile, an uncovered pile of what appeared to be asphalt. Construction materials and waste were on the ground at the southwest corner of Route 9 and Airport Rd intersection.
78. Section D.4.4. a, b, and e (For equipment maintenance) states "a. If possible, equipment should be taken to off-site commercial facilities for washing and maintenance; b. If performed on-site, vehicles shall be washed with high-pressure water spray without

- detergents in an area contained by an impervious berm...; e. Washout from concrete trucks shall be disposed of in a designated concrete washout area for hardening and proper disposal....”
79. Section D.4.5.j. (For spill clean ups) states “i. If it is safe to do so, immediately contain and clean up any chemical and/or hazardous material spills. ii. Properly dispose of used oil, fluids, lubricants and spill clean-up materials. iii. Do not bury spills or wash down with water.”
80. At the Inspection on May 27, 2021, the EPA Inspection Team did not observe any concrete washout areas onsite. At the Inspection on May 27, 2021, the EPA Inspection Team observed that there was evidence of concrete spills that had not been cleaned up in areas where concrete had been poured.
81. Section D.1.5 of the General Permit states: “Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil.... b. Install a sediment barrier (e.g., berms, dikes, fiber rolls, compost logs, silt fences, or sandbags) along all downgradient perimeter areas.... d. Soil stockpiles must be temporarily or permanently stabilized within 14 calendar days in accordance with the standard and specifications for temporary or permanent stabilization in the most recent version of the Delaware ESC Handbook if the stockpiles are not part of active construction processes....”
82. At the Inspection on May 27, 2021, the EPA Inspection Team observed that the stockpiles onsite did not have perimeter controls and were not stabilized. In addition, the stockpile locations were not identified in the Approved Plans.
83. Section D of the General Permit requires Respondent to “Stabilize exposed portions of the site. Implement and maintain stabilization measures (e.g. seeding protected by erosion controls until vegetation is established, sodding, mulching, erosion control blanket, hydromulch) that minimize erosion from exposed portion of the site. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days....”
84. At the Inspection on May 27, 2021, the EPA Inspection Team observed that there were areas that had not been fully stabilized with evidence of erosion northeast corner of Sand Hill Rd and Route 9 intersection. There were unstabilized areas along the banks of sediment basin 1-3. There was a partially unstabilized area north of the Cheer Community Center east side of Sand Hill Rd with evidence of sedimentation in the riprap and some erosion above the flared end section of the pipe.
85. Section D.1.10.e (Installation of a sediment basin or similar impoundment) of the General Permit requires Respondent to “Use erosion controls and velocity dissipation devices to prevent erosion at inlets and outlets.” Delaware ESC Handbook Detail No. DE-ESC-3.1.4 Sheet 11 states, “8. Maintenance. a. Repair all damages caused by soil erosion and construction equipment at or before the end of each working day....”

86. At the Inspection on May 27, 2021, the EPA Inspection Team observed erosion and riling along the banks of sediment basin on the south side of Route 9 east of Airport Road Best Management Practice (“BMP”) No. 1032. BMP 1031 Forebay No. 2. showed evidence of erosion above the flared end section of pipe; this location was also noted in weekly self-inspection reports for having an insufficiently sized compost filter log first identified on March 11, 2021 and not identified as resolved/closed until April 8, 2021. BMP 1033 Permanent Pool flared end section of pipe did not have riprap installed and there was evidence of erosion around it.
87. Section E.1 of the General Permit requires Respondent to “develop, fully implement, and maintain at the site, the approved Plan. The Plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with the Delaware [Erosion and Sediment Control (“ESC”)] Handbook standard and specifications for Construction Site Waste Management and Spill Control, shall be incorporated into the Plan for construction activity....”
88. Section E.1 of the General Permit requires Respondent to, “keep the Plan current and revise the Plan whenever: a) There is a change in the design, construction, operation or maintenance of erosion and sediment control or stormwater management measures on the site; or b) The Plan proves to be ineffective in eliminating or significantly minimizing the discharge of pollutants, or in otherwise achieving the general objectives of controlling pollutants in stormwater discharges from construction activity; or c) To address any sources or potential sources of pollution identified as a result of a site inspection pursuant to Part 1.E.2 of this [Construction General Permit]....”
89. At the Inspection on May 27, 2021, the EPA Inspection Team observed many locations where riprap was specified in the Approved Plans, but no riprap was present at the time of the Inspection particularly locations of flared end sections of pipes.
90. Based on the above assertions and allegations, EPA concludes Respondent’s failure to maintain the Georgetown Facility in compliance with Parts D and E of the General Permit under which Respondent has been granted coverage has resulted in violations of Parts D and E of the General Permit and of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Count 4

Failure to Maintain the Claymont Facility

91. The allegations in the preceding paragraphs are incorporated by reference.
92. Section D.1 of the General Permit requires Respondent to “[d]esign, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants.”

93. Section D.1.8 of the General Permit requires Respondent to “[i]ninstall inlet protection measures that remove sediment from discharges prior to entry into any storm drain inlet that carries stormwater flow from the site” and requires Respondent to “[c]lean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised.” If there is evidence of sediment accumulation adjacent to the inlet protection measure, Respondent must “remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible.”
94. Section E.1 of the General Permit requires Respondent to “develop, fully implement, and maintain at the site, the approved Plan” which must cover “all site activities from the date of initiation of construction activity to the date of project completion.” In this Plan, Respondent must incorporate “[p]ollution prevention measures, in accordance with the Delaware ESC Handbook standard and specifications for Construction Site Waste Management and Spill Control...for construction activity.”
95. At the Inspection of the Claymont Facility on May 26, 2021, the EPA Inspection Team observed a control measure on the northwest perimeter of the Claymont Facility in proximity to Philadelphia Pike filled with gravel. The EPA Inspection Team also observed a sediment laden inlet without adequate protection.
96. Based on the above assertions and allegations, EPA concludes Respondent’s failure to maintain the Claymont Facility in compliance with Parts D and E of the General Permit under which Respondent has been granted coverage has resulted in violations of Parts D and E of the General Permit and of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

V. ORDER FOR COMPLIANCE

THEREFORE, based on the foregoing, Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to conduct, and consents to conduct, the following activities:

97. Respondent shall take all actions necessary to comply with the General Permit (or subsequent permits or permit modifications, including permit compliance schedules, issued by DNREC) at all the Facilities as well as comply with the Clean Water Act.
98. Pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), Respondent is hereby, ORDERED to complete the compliance tasks and reporting requirements set forth below within the time frames set forth below.
 - a. Respondent shall develop and implement a Compliance Management Plan (“CMP”) as specified in Attachment 1, the provisions of which are incorporated into this Order for Compliance.
 - b. Respondent shall implement the CMP at construction sites identified in the CMP which meet the following criteria: a) the property is owned and/or operated by Respondent and Respondent conducts or oversees

- construction activities on such property (“Construction Site”), and b) Respondent is required to obtain an NPDES permit pursuant to Section 402 of the Act, 33 U.S. C. § 1342, for stormwater discharges resulting from the construction activities at such site. Each such Construction Site is an “Applicable Site” for purposes of this Order.
- c. Respondent shall submit Annual Reports to EPA in accordance with Attachment 1 – Compliance Management Plan
 - d. Respondent shall take all actions necessary to comply with the requirements of any applicable NPDES permit for discharges associated with construction activities at all Sites subject to an NPDES permit.
99. When the Respondent knows of an event that might delay completion, by Respondent or any contractor working for Respondent, of any requirement set forth in Attachment 1 of this Order, Respondent shall notify EPA via email within 14 calendar days after Respondent or Respondent’s contractor first learned of such event (Notification of Delay). Each such Notification of Delay shall indicate whether Respondent claims that an extension of time is appropriate due to a force majeure event and the basis for any such claim that a force majeure event occurred. For each requirement of this Order for which an extension of time is being requested, each such Notification of Delay shall describe in detail: a) the anticipated length of each delay, b) the precise cause or causes of each delay, c) the measures taken or to be taken to prevent or minimize each delay, d) the timetable by which such measures will be implemented and e) the affected portions of the CMP subject to the extension request. Respondent shall adopt all reasonable measures to avoid or minimize any delays. Respondent’s submission of a Notification of Delay, by itself, shall not excuse any failure to comply with the terms of this Order.
100. If EPA agrees that an extension of time for any requirement set forth in Attachment 1 is appropriate due to a force majeure event, EPA will notify Respondent via email of its approval in whole or in part of Respondents’ request for any extension of time. In the event that EPA grants, in writing, an extension of time for any requirement set forth in Attachments 1, such approval of an extension of time shall be deemed a modification of this Order. EPA will notify the Respondent promptly whether or not the extension is granted.
101. For purposes of this Order, a “force majeure event” is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent’s contractors, that delays or prevents the performance of any requirement set forth in Attachment 1, despite Respondent’s best efforts to fulfill such requirement. For purposes of this Order, any increase in costs or expenses associated with the implementation of this Order, or a change in the Respondent’s economic circumstances will not constitute a force majeure event.

VI. PROCEDURES FOR SUBMISSIONS

- 102. All documents required to be submitted by this Order and any Request for Termination shall be accompanied by a certification signed by a responsible officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

- 103. Unless otherwise directed in writing, Respondent shall submit any submission or written communication, including any accompanying data, relating to this AOC via email to:

Chuck Schadel
schadel.chuck@epa.gov
 NPDES Enforcement
 Enforcement and Compliance Assurance Division
 U.S. EPA, Region III

Any information submitted electronically shall be submitted in a widely recognized electronic format.

- 104. Respondent may assert a business confidentiality claim covering part or all the information which this AOC requires it to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. If, at the time any information is submitted to EPA, the Respondent submitting such information does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to Respondent.

VII. CERTIFICATION OF COMPLIANCE AND REQUEST FOR TERMINATION OF AOC

105. Upon completion of all items required by this AOC, and a determination of completeness of each item, and after at least one year of implementation, the Respondent shall submit to EPA a Certification of Compliance and Request for Termination of this AOC. Such certification and request shall include:
- a. a certification that Respondent has maintained compliance with this AOC for the term of this AOC; and
 - b. all necessary documentation, including photo documentation as appropriate, to support a finding that Respondent has complied with Section V (Order for Compliance) of this AOC.
106. If, following review of any Certification of Compliance and Request for Termination of this AOC, EPA agrees that Respondent has adequately complied with all requirements of this AOC, then EPA will provide written notification of termination of this AOC.

VIII. AOC MODIFICATIONS

107. Any request to modify the terms of, or parties to, this AOC shall be submitted, in writing, by Respondent to EPA and shall be subject to review and approval by EPA, in its sole and unreviewable discretion.

IX. CHANGE OF OWNERSHIP OR OPERATION OF THE FACILITY

108. Until or unless this AOC is modified or terminated, in accordance with the terms of this AOC, Respondent shall remain responsible for compliance with the terms of this AOC following any transfer of ownership or operation of the Facility.
109. At least 90 days prior to any transfer of ownership or operation of the Sites, Respondent shall submit a written notification to EPA of any such anticipated change in ownership or operation which shall include, at a minimum, a detailed summary of the anticipated change in ownership or operation, contact information for the proposed new owner or operator of the Facility, and a schedule for such anticipated change.
110. Respondent shall condition any sale or transfer of ownership or operation of the Facility, in whole or in part, upon the execution by such Prospective Third-Party Purchaser, or Transferee, of an agreement, which creates an obligation that shall survive the closing of such sale or transfer of the Facility, whereby such Prospective Third-Party Purchaser or Transferee agrees to comply with and be bound by the terms of this AOC.

X. EFFECTIVE DATE

111. This AOC shall become effective upon Respondent's receipt of a fully executed copy of this AOC ("Effective Date").

FOR RESPONDENT DELAWARE DEPARTMENT OF TRANSPORTATION

Date: 10/23/2023

By:



Mark Luszc
Deputy Director, Operations & Support
Delaware Department of Transportation

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

By:

[*Digital Signature and Date*]

Karen Melvin, Director

Enforcement & Compliance Assurance Division

U.S. EPA, Region III

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of: :
:
Delaware Department of Transportation : **U.S. EPA Docket No.** CWA-03-2024-0016DN
800 South Bay Road :
Dover, DE 19901 :
: **ADMINISTRATIVE ORDER ON CONSENT**
Respondent. : **PURSUANT TO 33 U.S.C. § 1319(a)**
:
:

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order on Consent was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the Administrative Order on Consent. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing Administrative Order on Consent to each of the following persons, in the manner specified below, at the following addresses:

Copies served via UPS and email to:

Nathan Zimmerman
Delaware Department of Transportation
800 South Bay Road
Dover, DE 19901
Nathan.Zimmerman@delaware.gov

Copies served via email to:

Pamela J. Lazos
Sr. Assistant Regional Counsel
U.S. EPA, Region III
lazos.pamela@epa.gov

Chuck Schadel
Life Scientist
U.S. EPA, Region III
schadel.chuck@epa.gov

By: _____
[Digital Signature and Date]
Regional Hearing Clerk
U.S. EPA, Region III

ATTACHMENT 1
COMPLIANCE MANAGEMENT PLAN

Outline

The purpose of the Compliance Management Plan (“CMP”) is to ensure that construction activities at each Applicable Site meets the requirements of applicable National Pollutant Discharge Elimination System (“NPDES”) permits for the discharge of stormwater associated with construction activities. The Delaware Department of Transportation (DelDOT) shall develop a CMP in accordance with the following requirements and implement such CMP at each Applicable Site:

1. Designation of Compliance Management Plan Administrator.
2. Erosion and Sediment Compliance Reviews (Compliance Reviews).
 - a. Compliance Reviews Focus
 - b. Compliance Reviews Procedures
 - c. Compliance Reviews Report and Related Documentation
3. Compliance Reviews Data Tracking System
4. Stormwater Public Information Web Page
5. Contractors working at DelDOT Land Disturbing Activities

CMP Requirements

The CMP shall consist of the following:

1. **Designation of a Compliance Management Plan Administrator.**
The Erosion and Sediment Control Engineer for DelDOT shall serve as the Compliance Management Plan Administrator (“CMP Administrator”). The CMP Administrator shall be responsible for compliance with the requirements set forth in this Attachment for the CMP.
2. **Compliance Reviews.**
 - a. **Compliance Reviews Focus**
 - 1) DelDOT shall conduct an annual Compliance Review between April and October of each year for each and every DelDOT Land Disturbing Activity site of at least 5 acres in size, between April and October of each year, starting with calendar year 2023 and continuing through calendar year 2025.
 - 2) Compliance Reviews will take place at DelDOT Land Disturbing Activities only after Land Disturbing Activity has occurred for at least three months.
 - 3) DelDOT shall maintain a list of the Substantive Deficiencies identified by the Compliance Review for each DelDOT Land Disturbing Activity site reviewed and track the date when each of the Substantive Deficiencies are corrected. This information will be included with the Annual Compliance Review Report.
 - b. **Compliance Reviews Components**
 - 1) DelDOT shall create/utilize a listing of all DelDOT Land Disturbing Activities, including an identification code for each such Land Disturbing Activity, the county, general information of the location and corresponding NPDES permit numbers.
 - 2) The Compliance Review will include:
 - a) A list of self-inspections that were either not conducted, incomplete or inaccurate for that year;
 - b) A list of Certified Construction Reviewer (“CCR”) reports that identify Substantive Deficiencies. Substantive Deficiencies include, but are not limited to: an instance of the Land Disturbing Activity being out of construction sequence; an instance when a control (e.g., a swale, 10 feet or more of silt fence, more than 2 inlet controls, a sediment pond/basin, a sediment trap) is missing and/or more than 2 controls not being maintained or installed properly, visual site inspection reports not completed, not accurately reflecting site conditions. and/or surpassing the Limit of

Disturbance. Substantive Deficiencies also include controls not corrected in a timely manner, for that year in review.

- c) The number of Substantive Deficiencies identified for each site reviewed; and
 - d) The date and a brief description of any compliance action initiated against DelDOT by DNREC (e.g., Notice of Noncompliance, Notice of Violation, Compliance Order, etc.), including the instances when a contractor has been issued a stop work or removed from operating at a DelDOT Land Disturbing Activity, due to non-compliance with the approved Sediment & Stormwater Management Plan (SSMP) for the Land Disturbing Activity.
- 3) Compliance Review Documentation and Annual Report
- a) The format documenting each Compliance Review shall address each of the elements listed in paragraph 2.b.2).
 - b) All Compliance Reviews reports shall be compiled into a Compliance Review Annual Report that shall be submitted to the DelDOT CMP Administrator, to DNREC and to EPA Region 3 by January 5th of the subsequent year, for years 2023, 2024 and 2025. The Annual Compliance Review Report shall include all information described in Paragraph 2 above.
3. Compliance Reviews Data Tracking System
DelDOT shall track all Compliance Review information using an electronic format.
4. Stormwater Public Information Web Page
- a. Withing six (6) months of the Effective Date of this Order, DelDOT shall develop and maintain a public information web page, publicly accessible through DelDOT's internet website. DelDOT shall review and, as necessary update, all information on the Public Information (PI) Web Page at least every six (6) months.
 - b. The PI Web Page shall include a listing of all DelDOT Land Disturbing Activities, including the identification code for each such Land Disturbing Activity, the county, general information of the location, and corresponding NPDES permit numbers.
 - c. The PI Web Page shall also include copies of any and all compliance actions against DelDOT by Regulatory Agencies (e.g., NOVs, Compliance Orders, etc.) during at least calendar years 2023, 2024, and 2025.
5. Contractors working at DelDOT Land Disturbing Activities

Contractors operating staging areas/laydown areas at DeIDOT Land Disturbing Activities shall be required by DeIDOT to obtain co-permittee status.