

**Responses to questions/issues raised at the December Working Group Meeting
February 28, 2007**

1. The Working Group expressed concern about BMPs being impacted by utility installers and asked what could be done to address this issue, specifically if the City or State would require utility installers to be a responsible party on the SWPPP.

Response: The City has checked with both the EPA and NDEQ on the possibility of listing utility installers as operators on the SWPPP. EPA and NDEQ treat utility installers as subcontractors. The Federal Register dated Feb 17, 1998, pg 7877 states that utility companies do not meet the criteria required to be an operator and would not be listed on the SWPPP, unless the utility company causes a land disturbance greater than one acre. This issue cannot be addressed through the ordinance.

The City recommends that the utility installers and development community meet to discuss these issues. Because the Working Group expressed their concerns to the City regarding LES specifically, the City is willing to facilitate setting up a meeting to enable interested individuals to discuss this issue with LES. Please note that LES indicated that since 2001 it has had two documents in place that may already address this issue. These are the "Procedure for New Residential and Commercial Development" and an "Underground Electric Distribution System Installation Agreement." These documents were provided to Fred Hoke and could be made available to anyone interested. To help facilitate a conversation about the issues and problems it would be beneficial for those interested to provide examples, photos, or illustrations.

2. What is the threshold for closing out an NOI? Does it relate only to the last 10% of the entire construction site?

Response: Based upon guidance from NDEQ, an NOI on a larger common plan of development cannot be closed out until no more than 1 acre of land disturbance remains. All construction must be completed, and non-impervious areas must be stabilized by perennial vegetation, not temporary seeding.

If a permittee submitted a permit to do rough grading and return it to agricultural use when the rough grading was done then they could close the permit. If on the other hand a permittee submitted a permit for all phases of construction, rough grading, utility installation, and individual lot layouts, they could not close out the permit until the individual lot construction was completed to the 1 acre threshold or transferred to another party.

3. Could Building and Safety reassign staff to do E&SC inspections?

Response: The City has received a state grant which is expected to provide for hiring a person to do E&SC inspection and enforcement in the near term. Building and Safety supports this concept and will monitor the workload of this person to determine what level of support is needed to continue the program.

4. Will occupancy permits be held up if stabilization measures are not installed when the home is sold to the homeowner?

Response: for individual lots in residential construction, the builder could either a) complete final stabilization, or b) establish temporary stabilization (including perimeter controls) for an individual lot prior to occupation of the home by the homeowner and inform the homeowner of the need for final stabilization. If frozen ground conditions exist then the builder must inform the homeowner of the measures that will be required when conditions allow.

5. Federal EPA requirements for signage on construction sites.

Response: The City checked the federal regulations and with NDEQ to establish what regulatory options exist for signage on construction sites. The Federal Register dated Feb 17, 1998, pg 7867 requires signage at the entrance of a site. The federal register states that a notice must "be conspicuously posted near the main entrance," have the projects NPDES number, name and phone number of a local contact, brief project description, and the location of the SWPPP if not kept on the site. The City's updated draft ordinance reflects this requirement.

6. Legal questions regarding state and federal minimum standards.

*Response: The City Attorney's Office has issued a legal opinion on this matter and the City has discussed the question with both NDEQ and EPA. The City is required to regulate construction activity down to one acre, **including sites less than one acre** that are part of a larger common plan of development or sale.*