

Cherne, Curtis

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R16 E006

From: Cherne, Curtis
Sent: Monday, October 22, 2018 11:25 AM
To: 'mbalaskovits@bhinc.com'
Subject: FW: Does a site need CGP coverage if it doesn't drain to a Waters of the US? NMED opinion and my interpretation
Attachments: south_overflows.JPG

Michael,

See opinion below.

Seems the state has regs for discharges to playas including fine sediment and wastes (toxic pollutants).

So... seems we are looking at dealing with the two south overflows, windblown and the downhill edges of the site. The two south overflows(see pic) need to be sized to accommodate a 1" storm for the construction site program (should already be adequately sized) and any storm for post construction. From what I read you should have treatment for fine sediment in your south overflows as part of your g and d, for windblown you will need to water and stabilize and for downhill edges you will need silt fence.

Based upon Sarah's opinion, It does not seem that you need to file an eNOI. But to deal with windblown and downhill edges you will need BMPs. So I'm thinking Erosion and Sediment Control Plan and Stormwater Control Permit.

I see you are on the agenda for this Wednesday, so it is important for us to figure this out soon.

Please let me know what your thoughts are on this.



CURTIS CHERNE, PE, QCIS

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From: Holcomb, Sarah, NMENV [mailto:sarah.holcomb@state.nm.us]
Sent: Monday, October 22, 2018 9:00 AM
To: Cherne, Curtis
Cc: Foote, Jennifer, NMENV; Lemon, Shelly, NMENV
Subject: RE: Does a site need CGP coverage if it doesn't drain to a Waters of the US?

Hi Curtis:

Good morning.

I believe there was a determination in the past that sites developing in the Mesa del Sol area didn't require NPDES coverage for this reason. Without more information on the drainage pathways, etc., if there is a significant event and there is a discharge to WOTUS, then EPA would consider that a discharge without a permit and would conduct enforcement. However, I do also want to mention that the playa lake is still considered surface waters of the state and NMED reserves the right to directly enforce our water quality standards if an issue arises. The pertinent sections of our water quality standards in this case would be:

20.6.4.7.S.5 NMAC: **"Surface water(s) of the state"** means all surface waters situated wholly or partly within or bordering upon the state, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, reservoirs or natural ponds. Surface waters of the state also means all tributaries of such waters, including adjacent wetlands, any manmade bodies of water that were originally created in surface waters of the state or resulted in the impoundment of surface waters of the state, and any "waters of the United States" as defined under the Clean Water Act that are not included in the preceding description. Surface waters of the state does not include private waters that do not combine with other surface or subsurface water or any water under tribal regulatory jurisdiction pursuant to Section 518 of the Clean Water Act. Waste treatment systems, including treatment ponds or lagoons designed and actively used to meet requirements of the Clean Water Act (other than cooling ponds as defined in 40 CFR Part 423.11(m) that also meet the criteria of this definition), are not surface waters of the state, unless they were originally created in surface waters of the state or resulted in the impoundment of surface waters of the state.

20.6.4.13.A NMAC: **Bottom deposits and suspended or settleable solids:**

- (1) Surface waters of the state shall be free of water contaminants including fine sediment particles (less than two millimeters in diameter), precipitates or organic or inorganic solids from other than natural causes that have settled to form layers on or fill the interstices of the natural or dominant substrate in quantities that damage or impair the normal growth, function or reproduction of aquatic life or significantly alter the physical or chemical properties of the bottom.
- (2) Suspended or settleable solids from other than natural causes shall not be present in surface waters of the state in quantities that damage or impair the normal growth, function or reproduction of aquatic life or adversely affect other designated uses.

20.6.4.13.E NMAC: **Plant nutrients:** Plant nutrients from other than natural causes shall not be present in concentrations that will produce undesirable aquatic life or result in a dominance of nuisance species in surface waters of the state.

20.6.4.13.F NMAC: **Toxic pollutants:**

- (1) Except as provided in 20.6.4.16 NMAC, surface waters of the state shall be free of toxic pollutants from other than natural causes in amounts, concentrations or combinations that affect the propagation of fish or that are toxic to humans, livestock or other animals, fish or other aquatic organisms, wildlife using aquatic environments for habitation or aquatic organisms for food, or that will or can reasonably be expected to bioaccumulate in tissues of fish, shellfish and other aquatic organisms to levels that will impair the health of aquatic organisms or wildlife or result in unacceptable tastes, odors or health risks to human consumers of aquatic organisms.

20.6.4.13.J NMAC: **Turbidity:** Turbidity attributable to other than natural causes shall not reduce light transmission to the point that the normal growth, function or reproduction of aquatic life is impaired or that will cause substantial visible contrast with the natural appearance of the water. Activities or discharges shall not cause turbidity to increase more than 10 NTU over background turbidity when the background turbidity, measured at a point immediately upstream of the activity, is 50 NTU or less, nor to increase more than twenty percent when the background turbidity is more than 50 NTU. However, limited-duration turbidity increases caused by dredging, construction or other similar activities may be allowed provided all practicable turbidity control techniques have been applied and all appropriate permits, certifications and approvals have been obtained.

20.6.4.13.K NMAC: **Total dissolved solids (TDS):** TDS attributable to other than natural causes shall not damage or impair the normal growth, function or reproduction of animal, plant or aquatic life. TDS shall be measured by either the

"calculation method" (sum of constituents) or the filterable residue method. Approved test procedures for these determinations are set forth in 20.6.4.14 NMAC.

Additionally, a playa would be held (at least) to the standard in either 20.6.4.98 NMAC (intermittent waterbodies).

If you have any questions, please let us know.



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From: Cherne, Curtis <CCherne@cabq.gov>
Sent: Monday, October 22, 2018 8:36 AM
To: Holcomb, Sarah, NMENV <sarah.holcomb@state.nm.us>
Subject: [EXT] Does a site need CGP coverage if it doesn't drain to a Waters of the US?

Sarah,
Good morning.
Mesa Del Sol is beginning to develop again.
The project is located at the very south end of University Blvd about 2 miles south of the Tijeras Arroyo.

The site drains to the east/southeast to a playa out in the grasslands. There it ponds and does not drain anywhere. I do not know if they own this playa area. They have a waiver from the state engineer that they can pond all their drainage, because their drainage cannot make it to the Rio Grande.

It seems logical that they would not need CGP coverage as they do not drain to a waters of the US.

I would appreciate your input.
Thanks and have a good day.



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