

## MEMORANDUM OF AGREEMENT

The Maine Department of Environmental Protection (hereinafter DEP), the Maine Department of Transportation (hereinafter MDOT), and the Maine Turnpike Authority (hereinafter MTA) (collectively referred to as the Parties) agree as follows.

WHEREAS, projects involving roads, railroads and associated facilities developed by or under the supervision of the Maine Department of Transportation or the Maine Turnpike Authority must meet the storm water requirements set forth in a Memorandum of Agreement between the DEP, MDOT and MTA; and

WHEREAS, 40 CFR 122.44(s) allows the DEP to recognize qualifying state or local programs;

WHEREAS, DEP, MDOT and MTA recognize the unique characteristics, benefits and impacts of transportation facilities such as roads and railroads; and

WHEREAS, DEP, MDOT and MTA agree that the intent of this Memorandum of Agreement is to achieve stormwater quantity and quality controls reasonably consistent with the standards set out by the DEP in Chapter 500 - Stormwater Management Rules, and the requirements of the Maine Pollutant Discharge Elimination System (MEPDES) General Permit for Construction Activity issued pursuant to 06-096 CMR 529 (2)(a)(2)(i) and Part IV(D)(6) and (7) of the General Permit for the Discharge of Stormwater from MDOT and MTA Municipal Separate Storm Sewer Systems (MS4s).

WHEREAS, those objectives will be achieved by a comprehensive erosion and sedimentation control program that applies to projects which would have required a stormwater permit otherwise but for the exemption in 38 M.R.S.A. §420-D(7)(G), and that would have required the filing of NOIs and associated materials with the DEP but for recognition as qualifying programs, and that applies to all other MDOT and MTA projects located in the organized territory which would not have required a storm water permit; and

WHEREAS, the application of the standards to MDOT and MTA projects in the organized territory will result in substantial environmental benefits for all watersheds and in particular those watersheds which are most at risk from development or threatened and sensitive; and

WHEREAS, the Parties have reviewed and agreed upon the MDOT's Best Management Practices for Erosion and Sedimentation control as the most feasible measures to control storm water for transportation projects;

NOW, THEREFORE, the Parties will adopt the following requirements for stormwater,

#### 1. Applicability

This Memorandum of Agreement reflects the specific technical concerns associated with linear transportation projects undertaken by or under the supervision of MDOT and MTA, and specifies the storm water quantity and quality standards which will apply to those projects, MDOT, MTA and DEP have agreed to adopt the standards set out in the current version of MDOT's Best Management Practices for Erosion and Sedimentation Control (hereinafter the MDOT BMP Manual), MDOT and MTA have agreed to apply the MDOT BMP Manual standards to all projects which would have required a stormwater permit but for the exemption in 38 M.R.S.A, §420-D(7)(G), and to all other projects located in the organized territory. DEP, MDOT and MTA have concluded that the application of the MDOT BMP Manual standards to all other projects which would not otherwise require review will result in substantial environmental benefits in the watersheds most at risk from development, the threatened and sensitive watersheds and all the other watersheds in the organized territory.

In addition, this Memorandum of Agreement addresses the standards and practices that MDOT and MTA utilize to comply with the requirements of the General Permit for Construction Activity in areas of the State of Maine for which DEP has jurisdiction under the NPDES program.

All MDOT and MTA roads, railroads and associated facilities constructed pursuant to the requirements of this Memorandum of Agreement shall not be required to get a permit or DEP approval pursuant to DEP's Chapter 500, or file a Notice of Intent for a NPDES General Permit for Construction Activity.

## 2. Definitions

A. Roads means all roads, highways, bridges, bike paths, interchanges and intersections.

B. Associated facilities means facilities directly associated with roads and railroads such as weigh stations, toll plazas, picnic areas, scenic turnouts, rest areas, park and rides, piers, tourist information centers and intermodal facilities. Associated facilities do not include airports, office buildings, maintenance lots, ferry terminals, service plazas, train stations and bus stations.

C. Construction site operator means the contractor's designated on-site supervisor or MDOT's or MTA's designated on-site supervisor if there is no outside contractor.

## 3. Standards

### A. Stormwater Quality

i. All MDOT and MTA road and railroad transportation projects shall comply with the requirements for Stormwater Management Plan and Erosion and Sedimentation Control Plan as set out in Sections II C and D respectively of the MDOT, BMP Manual. Part C requires construction site operators to implement appropriate erosion and sediment control best management practices; part D requires construction site operators to develop and implement a storm water pollution prevention plan. In addition, all MDOT and MTA projects will have design plans that incorporate consideration of potential water quality impacts that are reviewed by MDOT and MTA staff or their designee who are knowledgeable on the design and implementation of Best Management Practices. MDOT and MTA shall require construction site operators to control waste that may cause adverse impacts to water quality. Projects located in the watersheds of sensitive waterbodies, in addition, shall comply with the Guidelines for Sensitive Water Bodies as set out in Section II B of the MDOT, BMP Manual. The MDOT, BMP Manual is incorporated herein by reference.

ii. All MDOT and MTA associated facilities shall comply with the requirements for Erosion and Sedimentation Control Plan and Stormwater Management Plan as set out in Sections II D and C respectively of the MDOT, BMP Manual. Construction site operators

shall be certified by DEP's NPS Training Center or shall have equivalent training and shall follow plans that are reviewed and approved by MDOT or MTA as specified in paragraph i above. Projects located in the watersheds of sensitive waterbodies, including those waterbodies listed as "most at risk" or "sensitive or threatened" under DEP's Stormwater Rules, Chapter 502, or listed on the Impaired (C) list under the MEPDES Construction General Permit, in addition, shall comply with the Guidelines for Sensitive Water Bodies as set out in Section II B of the MDOT, BMP Manual. The MDOT, BMP Manual is incorporated herein by reference. Practicable project locations shall be evaluated and the file shall demonstrate the basis for site selection. Stormwater shall be one of the criteria addressed in the site selection process.

iii. MDOT ferry service piers shall comply with the applicable provisions of 33 CFR Part 156 (Oil and Hazardous Material Transfer), as amended, and DEP oil spill contingency plans.

iv. Bridge surfaces are subject only to MDOT's bridge maintenance best management practice standards.

#### B. Stormwater Quantity

MDOT and MTA will calculate the peak flow from the site of a project if the project: 1) combines two or more subwatershed areas, and 2) includes 20,000 sq. ft. or more of new impervious area or five acres or more of disturbed area in the direct watershed of a waterbody most at risk from new development (as defined in DEP's Chapters 500 and 502), or one acre or more of new impervious area or five acres or more of disturbed area elsewhere. MDOT and MTA will design project ditches, culverts and outlet areas to be stable and will minimize any increase in peak flow from the project site. In those instances in which a peak flow increase will result, MDOT and MTA shall take engineering measures to avoid adverse impacts to offsite property as a result of drainage increases resulting from the project.

#### 4. Consistency with Standards Set Out by DEP in Chapter 500

The MDOT Report on Statewide and Watershed Specific Stormwater Mitigation and Pollutant Exports dated November 4, 1997 incorporated herein, demonstrates that application

of the water quality standards in paragraph 3, Standards of this Memorandum of Agreement to all MDOT and MTA projects in the organized area of the State removes as much or more phosphorus and total suspended solids (TSS) as would be removed by application of Chapter 500. This result occurs because the cumulative effects of all MDOT projects in a watershed exceeds the phosphorous or TSS removal from any single project in a watershed which must apply either the phosphorous, 80% TSS or sliding scale TSS standard set out in Chapter 500, and because of the size of MTA 's right-of-way, the Chapter 500 methodology for calculating impervious area, and the Turnpike's location, the stormwater quality standards applicable to the Turnpike under Chapter 500 are less than or equal to those required in paragraph 3 of the Memorandum of Agreement.

#### 5. Compliance with Standards in the MEPDES General Permit for Construction Activity

DEP is satisfied that the requirements of the MDOT BMP Manual meet or exceed the standards set out in the MEPDES General Permit for Construction Activity and that the plans are reviewed by MDOT, MTA or their designees who have been certified through DEP's NPS Training Center, or equivalent training or are Maine licensed professional engineers experienced with stormwater requirements. Therefore, it is not necessary for DEP to review each plan or receive a NOI for each MDOT or MTA project. MDOT and MTA will keep copies of all plans required by the BMP Manual and this MOA at their offices and as part of the annual Interagency Review will provide DEP with a list of all projects started in the 12 months since the last Interagency Review meeting and a list of projects anticipated for the next 12 months.

#### 6. Maintenance and Compliance with Post-Construction Minimum Control Measure in the MEPDES General Permit for MDOT and MTA Municipal Separate Storm Sewer Systems (MS4s)

MDOT and MTA agree to carry out inspections of BMPs that may require maintenance. BMPs located within regulated MS4s will be inspected by MDOT and MTA pursuant to their respective Stormwater Program Management Plan. Long-term sedimentation control measures shall be maintained as required by the MDOT BMP Manual.

#### 7. Interagency Review

The DEP, MDOT and MTA shall hold interagency meetings to identify, discuss and resolve any issues which may have arisen regarding interpretation and implementation of the Memorandum of Agreement. Meetings shall be held as necessary to identify, discuss and resolve any issues which

may arise regarding interpretation, implementation of and compliance with the Memorandum of Agreement. These meetings shall be held at least annually. MDOT and MTA each shall keep records of their projects that would otherwise trigger the stormwater rules or the MEPDES Construction General Permit, including the project location, as well as a description of other work done in the watershed and a list of staff or designees who provided oversight with respect to erosion and sedimentation control and stormwater control. As part of this annual review MDOT and MTA shall provide DEP with a report on maintenance surveys and activities.

Maine Department of Environmental Protection

Dated: May 19, 2003

By: *Dawn Gallagher*  
Dawn Gallagher, Commissioner

Maine Department of Transportation

Dated: May 21, 2003

By: *David Cole*  
David Cole, Commissioner

Maine Turnpike Authority

Dated: 5/30/03

By: *Samuel M. Zaitlin*  
Samuel M. Zaitlin, Chairman