

DEP Consulting Professionals Task Force News

October 23, 2009 Meeting

Third Party Inspections

In 2001, the Maine Department of Environmental Protection (DEP) began to require developers to hire third party inspectors for some projects as a special permit condition. Third party inspectors verify that erosion and sediment control BMPs are installed and functioning as designed, and that NRPA permit conditions are met. Third party inspectors are hired by the developer, but work for and report to the DEP. Due to potential conflicts of interest, third party inspectors must not be working for the developer on the project. The DEP will allow the developer to hire a third party inspector who had worked on the project as long as they are no longer working on the project.

There are several issues of concern with third party inspections as currently conceived and practiced. Not all projects are required to have third party inspections. Developers would like more clarity on when third party inspections are required, as third party inspections can be very expensive. Third party inspectors are hired by the developer, but work for the DEP, which could lead to a potential conflict of interest for third party inspectors in terms of future employment by the developer.

To address these concerns, the DEP is currently in the process of revisiting third party inspections, and is planning to present a third party inspection proposal to the Site Law Stakeholders Group in December. Possible changes include the following:

- 1) Clarify when third party inspections are required. Let the developer know early in the permitting process whether third party inspections will be required for their project and why.
- 2) Develop and maintain a list of certified third party inspectors based on minimum qualification criteria to be determined. Third party inspectors would be selected by the DEP for particular projects according to a methodology yet to be determined and paid for by the developer based on an established compensation schedule. Scope would be determined on a project-by-project basis in consultation with the DEP, the developer, and the third party inspector.

Issues to be discussed and resolved include setting clear criteria for when third party inspections are required, clear scope of services for third party inspectors, minimum qualifications for third party inspectors, compensation for third party inspectors, how often to update the DEP's list of qualified third party inspectors, criteria to remove third party inspectors from list, and the potential burden and expense for DEP to administer.

The DEP plans to prepare a draft of their proposal the next DEP Task Force meeting, which will be provided as an attachment to the next meeting's minutes.

Next Meeting

The next Task Force meeting is scheduled for Friday December 4, 2009 from 9:30 a.m. until 12:00 noon at the DEP Response Building on the AMHI campus in Augusta.

Feedback

Please contact John Kenney at the address below to discuss these or any other issues that you would like to bring to the attention of the Task Force.

John Kenney PE LEED^{AP}
WBRC Architects Engineers
44 Central Street
Bangor, Maine 04401
(207) 947-4511 extension 242
John.kenney@wbrcae.com