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Construction General
Permit - Stormwater
Deadline: 5/4/07 5pm

COACHELLA VALLEY WATER DISTRICT

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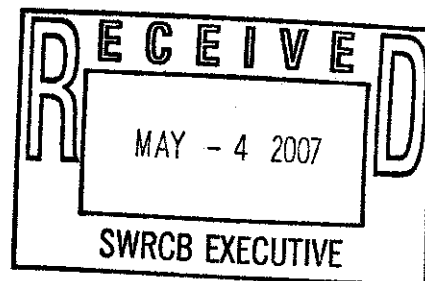
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File: 0552.11

May 3, 2007

Song Her
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Dear Ms. Her:

Subject: General Permit for Discharges of Stormwater
Associated with Construction Activities

The Coachella Valley Water District (CVWD) provides domestic water, wastewater, recycled water, irrigation/drainage and regional stormwater protection services to a population of 265,000 throughout the Coachella Valley in Southern California. We appreciate the opportunity to provide written comments regarding the re-issuance of the National Pollutant Discharge Elimination System (NPDES) general permit for discharges of stormwater associated with construction activities. (Draft Construction General Permit).

CVWD has reviewed the Draft Construction General Permit and its fact sheet and enclosed detailed comments on these documents for your consideration. These comments provide details supporting the following concerns:

1. It is inappropriate to use technology based numeric effluent limits to manage stormwater associated with construction activities.
2. The use of toxicity testing is strongly discouraged.
3. Action levels need to be defined as upset values and not used solely to determine if Best Management Practices (BMP) are ineffective.
4. A statewide stormwater policy is needed before changing the course of regulation with this permit. Until this policy is developed, the iterative BMP based approach needs to be used for managing stormwater.
5. Hydromodification requirements need to be removed from the permit requirements.

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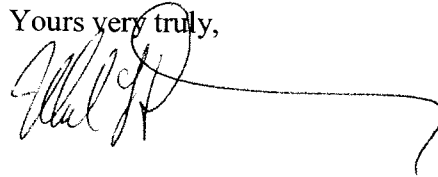
May 3, 2007

6. Total Petroleum Hydrocarbon (TPH) monitoring needs to be removed from the permit requirements.
7. The annual reporting period needs to be clearly defined and the annual report due date will need to be adjusted to 45 days from the end of the reporting period.

Your consideration of these comments is appreciated.

Please call Olivia Daniels, extension 2200, or Steve Bigley, extension 2286, if you have any questions.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Mark L. Johnson', with a long horizontal flourish extending to the right.

Mark L. Johnson
Director of Engineering

OD:md\eng\wr\07\may\her-ltr

Coachella Valley Water District Comments
Preliminary Draft --The General NPDES Permit for Construction Activities

1. CVWD agrees with CASQA's concerns with using technology based numeric effluent limits (TBELs) for pH and turbidity. CVWD discourages the use of TBELs, referred to in the permit as numeric effluent limits (NELs). The following are concerns that CASQA has voiced regarding the use of TBELs:

“Although CASQA concurs with the State Water Board's efforts to develop a Construction General Permit that improves accountability and ensures that water quality will be improved in a reasonable time frame, CASQA strongly disagrees with the incorporation of TBELs since it is premature and raises significant concerns.

While some of these issues are discussed in more detail below, the significant concerns that CASQA has with the incorporation of TBELs includes:

- Given the fact that the construction program is being enhanced by incorporating Action Levels, it has not been demonstrated that TBELs are necessary.
- The proposed TBELs were not developed using standardized or rigorous protocols similar to what EPA uses when developing TBELs and did not appear to consider important factors such as cost, feasibility, and effectiveness.
- The proposed TBELs did not consider many of the Blue Ribbon Panel concerns.
- If TBELs are necessary they should be developed with a robust dataset and this permit term should be used to collect the necessary data and/or conduct the necessary special studies.
- The use of TBELs that have not been well developed and are in the process of being tested may result in unintended consequences such as antibacksliding conflicts should the TBEL need to be revised in the future.
- The use of TBELs in this experimental fashion puts the dischargers at significant risk for third party action.

While CASQA supports the concept and incorporation of Action Levels (with some qualifications as discussed below), we strongly recommend that the TBELs be deleted from the Preliminary Draft Permit and that the State Water Board use this permit-term to develop the appropriate protocols and data to support TBELs in the next permit, should they be deemed necessary.”

2. CVWD objects to any toxicity testing requirements used for compliance determinations. Acute toxicity can be an effective screening tool to trigger

Coachella Valley Water District Comments
Preliminary Draft --The General NPDES Permit for Construction Activities

additional assessments. Chronic toxicity testing is inaccurate and is subject to considerable variability and should not be used.

3. CVWD believes that action levels are defined as upset values not as an indication that BMPs are ineffective. CVWD agrees with the following statements expressed by CASQA:

“The Preliminary Draft Permit proposes Action Levels (ALs) for pH, turbidity, and TPH. CASQA supports the use of ALs where they are scientifically defensible and where adequate data is available to appropriately establish them. Consistent with the Blue Ribbon Panel Report, CASQA supports the use of ALs that are designed and selected to identify upset conditions that would allow “bad actors” to receive additional attention and use of a monitoring strategy that provides immediate feedback.

CASQA’s concerns include:

- The definition for ALs within the Preliminary Draft Permit needs to be consistent with the Blue Ribbon Panel definition.
- Appropriate statistics should be used to identify “bad actors” and establish corresponding ALs.
- CASQA strongly recommends that for the AL concept to be effective, it must rely upon the use of field meters.”

4. Before changing the course of regulation with this General Construction permit, CVWD believes that it would be beneficial to implement a statewide stormwater policy. CVWD agrees with CASQA’s statements:

“The regulatory approach proposed in the Preliminary Draft Permit (i.e., use of numeric effluent limits and action levels) represents a significant departure from the current regulatory approach (i.e., use of iterative BMP based approach) and begins to define a new statewide policy for the regulation of stormwater discharges within the state. Although the proposed regulatory approach is defined as a part of a storm water program strategy, the fundamental shift from an iterative BMP based approach to a TBEL and action level based approach clearly represents a shift in policy in how the State Water Board is proposing to regulate stormwater discharges from construction sites.

Although it is called a strategy or solution approach, we believe that the discussion constitutes a framework for a statewide stormwater policy and begins to define when the regulatory approach should shift from:

Iterative Approach -> Iterative Approach with ALs -> TBELs

Coachella Valley Water District Comments
Preliminary Draft --The General NPDES Permit for Construction Activities

It appears that the State Water Board has gone to great length to craft terms that seem to imply a general discussion but in reality is the framework for a stormwater policy. This solution approach, although informative, lacks supporting documentation as to when and how one transitions from one element to another. Furthermore the “strategy” is missing discussion regarding the development of TBELs, the use of water quality based effluent limits, and TMDLs. And finally it is unclear how the performance based stormwater program discussed on page 21 of the Fact Sheet is integrated into the “solution approach”. Given the implications of this “solution approach” CASQA submits that this policy/framework needs to be developed outside the Preliminary Draft Permit so that it receives full public review and participation.

While CASQA agrees that the stormwater program can be improved and have suggestions for doing so, the regulatory approach utilized by the State must be carefully considered and developed within an overarching statewide policy so that there is clear direction instead of a permit by permit ad hoc approach.

Consistent with our previous comments, the State Water Board would be well served to use the development of a statewide stormwater policy as the vehicle to describe the process for having stormwater dischargers meet and protect water quality standards. Among other things, the policy could identify when it is appropriate to shift from an iterative BMP-based approach to technology-based effluent limits and/or water quality-based effluent limits as well as the process that should be followed in order to derive appropriate and scientifically sound numeric limits and how performance based metrics can be incorporated. The policy should also reflect the integration of TMDLs.”

5. CVWD recommends removing the hydromodification requirements from the reporting requirements. CVWD agrees with CASQA’s belief that:

“hydromodification requirements are inappropriate for the general construction activity permit and distracts focus from the water quality threats posed by construction activity. Other regulatory mechanisms through Phase I and Phase II MS4 permits, California Environmental Quality Act (CEQA), planning, local plan and development approvals are all more appropriate tools to regulate these impacts. Given the current emphasis on including region and watershed specific hydromodification controls in municipal stormwater permits the inclusion of these requirements in the construction permit is duplicative and confusing.”

6. Total Petroleum Hydrocarbon (TPH) needs to be removed from the permit requirements. CVWD supports CASQA’s statement:

Coachella Valley Water District Comments
Preliminary Draft --The General NPDES Permit for Construction Activities

“The use of TPH to assess construction site runoff does not appear to have the same universality applicability to construction operations, and may only be suitable for certain stages of the construction. Further TPH requires the use of an analytical laboratory. Certified results are available at best several days and at worst more than 30 days after sample submission. This parameter, therefore does not allow for the type of timely feedback into the construction process that is achieved by pH and turbidity measurements. CASQA recommends that the AL for TPH be deleted.”

7. It is unclear when the annual reporting period begins and ends. Annual reports may include data from January 1st to December 31st or June 1st to May 31st depending on the permit. Please clarify by stating, “All sites are required to submit annual reports, which contain various types of information, depending on the site characteristics and events beginning, for example, June 1st through May 31st.”

CVWD requests that the annual report be due 45 days after the reporting period ends (i.e. the report would be due on February 15th, if the annual reporting period is from January 1st through December 31st). A storm event could occur on December 31st which may require that samples be collected. The results for these samples would not be received from the laboratory for a couple of weeks. It is infeasible to expect all monitoring results the day after the annual period has ended.