



California Regional Water Quality Control Board

Santa Ana Region



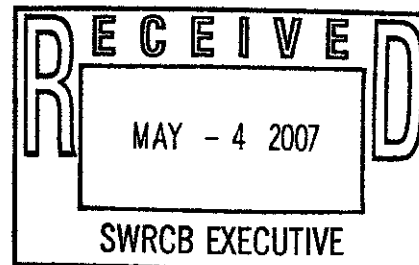
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Arnold Schwarzenegger
Governor

May 4, 2007

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



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

COMMENTS ON THE MARCH 2, 2007 DRAFT OF THE GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY

Dear State Board Staff:

Staff of the Santa Ana Regional Water Quality Control Board (staff) have made a preliminary review of primarily the permit itself. In general, staff are in agreement with the general format and processes that have been developed within this Permit. Beyond this general concurrence, staff have the following comments:

I. General Comments:

1. Resource Limitations and Resource Intensive Tasks:

Although this issue is actively being discussed in the stormwater roundtable, we strongly urge the State Board to come up with a reasonable solution to the resource limitation issue prior to the effective date of this permit. The draft permit includes resource intensive requirements for regional and State Board. When a significant amount of staff resources are redirected to activities such as document tracking, review, public notification and approval, resources available for site inspections are significantly impacted. Our experience indicates that the best option to bring the sites into compliance is site inspections and enforcement actions, where necessary. These two components of our regulatory program would suffer unless significant additional resources are allocated for the storm water program.

2. Streamlining Opportunities

We ask the State Board to examine opportunities to streamline the process for dischargers and water board staff.

- a) There may be a limited number of demonstrated active treatment systems that are found to be effective given certain parameters and site conditions.

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Compilation of those technologies and limitations will facilitate the selection process by the dischargers as well as provide guidance to Regional Board staff during their review. Alternatively, in lieu of the front end document review, consider onsite performance review or functionality test by Regional Board staff.

b) A process flow chart may help facilitate implementation.

II. Specific comments

1. Section VII.1.a states that new dischargers are to file their Permit Registration Documents no later than 14 days prior to construction commencement. Section XIII refers to a 90-day public review period. Is it the intent of the Permit to allow construction activities to take place prior to the conclusion of the 90-day public review period and the any outcome based on Regional Board staff review of public comments?
2. Section VII.8 discusses authorized non-storm water discharges, such as pipe flushing and uncontaminated ground water discharges. Please note within this initial part of this subsection (not only in VII.9) that these 'authorized' discharges may still require coverage under other Regional Board permits and that dischargers are required to check with Regional Board staff, prior to making non-storm water discharges.
3. Section VII.8 discusses authorized non-storm water discharges, such as pipe flushing and uncontaminated ground water discharges. Please note within this initial part of this subsection (not only in VII.9) that these 'authorized' discharges may still require coverage under other Regional Board permits and that dischargers are required to check with Regional Board staff, prior to making non-storm water discharges.
4. Section IX. C.2: The wording "...stabilize all active disturbed areas regardless of time of year from all erosive forces..." provides few options for developers to control sediment discharges from their site. Taken literally this could be interpreted to be equivalent to Section C.1. "soil cover" or worse totally prevent grading. The basic goal is that all sediment from the site be retained on site. Should we not allow the developer to use his resources to accomplish that in any manner he chooses? For example he could build a large retention basin during the summer months and be perfectly fine in grading more than 5 acres of some sites. In the event of an unexpected rain the sediment basin(s) could

retain all site sediments on-site. The way this section is worded would not allow that option.

Suggestion: Change "stabilize all active disturbed areas regardless of time of year from all erosive forces, including rainfall, non-stormwater runoff, and wind." to "control all active disturbed areas regardless of time of year on-site to prevent any off-site discharge of site sediment and other contaminants in stormwater runoff, non-stormwater runoff, or wind."

5. Section IX.C addresses Erosion Control and separates active and inactive areas of the site. As in the past, the definition of inactive areas as "not being scheduled to be re-disturbed for at least 14 days [emphasis added]," sets up situations where areas may be 'scheduled' for disturbances that are not actually performed or areas that are kept active specifically to keep from being called 'inactive.. If it is still necessary to treat active and inactive areas differently, a better definition or time frame must be found. However, it may be that differentiation is no longer needed. In comparing subsection 1 and 2, it is not clear how these two requirements differ, providing that the term 'stabilize' in subsection 2 is still referring to erosion controls, as the title suggests, and not sand bags and silt fence.
6. Section IX. G.1: The citation "...Section VIII.G." should be "...Section IX.H"
7. Some of the reporting deadlines listed in Section IX could lead to extended periods of noncompliance. For instance, the process for implementing changes resulting from an Action Level Exceedance Evaluation Report (ALEER) could take 5 weeks or longer, depending on the length of time it takes to get analytical results back from a laboratory. First, deadlines for reporting violations should be based on the date of violation, not the date the discharger gets reports back from a laboratory. Second, 14 days is more time than is needed to submit an ALEER. Third, when Regional Board staff require revisions to SWPPPs and/or Monitoring Plans, the mode of communication and compliance timeframe are often a case-by-case situation and should be left to the discretion of Regional Board staff.
8. Throughout the Permit and Fact Sheet, references are made regarding notification of Regional Board staff as the result of violations of Numeric Effluent Limitations, Action Levels and other violations of the Permit. As the science of storm water compliance enforcement has matured, it has become apparent that

close interaction between Regional Board staff and the municipal staff responsible for compliance with a city's or county's MS4 permit is imperative. Therefore, when notifications of violations are made to Regional Board staff, a requirement that the local municipality's NPDES coordinator be notified, should also be included.

9. Attachment B: Standard Provisions Section I.G.3. Prohibition of bypass

The discussion in this section on "Bypass" for purposes of this permit appears to be specific to advance treatment units and not to the construction site. Specifically, this section could be interpreted to prohibit diversion or bypass of upstream storm water around the site. This may not be the intention of this section. It may prevent future misinterpretations to define bypass as to the treatment unit or better yet exclude bypass of upstream storm water around or piped through the site to the downstream side of the site without treatment.

10. Attachment D.2.f(i): For purposes of the SWPPP "...show the location of any direct [or indirect] discharge from the construction site into a Section 303(d) listed water body..." The site should show the location of any discharge to "waters of the state" or any blue line stream and not just a 303(d) listed water body.

11. Attachment D.8.(e). SWPPP Sampling Protocol: The draft permit has a short list of constituents to be monitored. The list of constituents should include other potential pollutants at the site, identified through preliminary site assessments (e.g., land used as a citrus grove may have legacy pesticides or other potential pollutants in the soil).

12. Within several sections reference is made to Attachment E, which is supposed to contain methodology for estimating pollutant levels that a site would exhibit if naturally vegetated. It did not appear that Attachment E of the preliminary draft document contained this information.

13. It appears that Attachment E, subsection D.1 refers to observations made of multi-day storm events, otherwise the time frame of 'within one business day' would conflict with the requirement in subsection D.3 that observations be made 'at the time of discharge' during daylight hours.

14. Attachment E, Section C.2. states "One visual observation shall be conducted quarterly..." Visual observations are very inexpensive and should be made more frequently than quarterly. These observations are normally performed

during the course of daily activities at most construction sites. At a minimum these inspections should be recorded weekly and not quarterly.

15. Throughout the Permit, but primarily in Attachment E, reference is made to the sampling of receiving waters. Although some receiving water sampling procedures are provided, the Permit and Attachment E fail to describe receiving water sampling procedures for the case of urban development where site discharges enter an MS4, either within site boundaries or flow offsite to downstream catch basins. In these instances, up and down stream sampling may be impossible and/or the nature of the discharge measured may include a significant percentage of off-site flows.
16. Attachment E, Section L.1: The annual report is due on January 1 of each year. If the annual report is for the previous calendar year, we recommend that the due date be extended to January 31. However, it is more reasonable to keep the rain season in one report and therefore, the annual report should be due July 1st for the period between June 1 through May 31st of each year.
17. Attachment G: New and Re-development Performance Standard Worksheet – Please clarify how these requirements differ from the “SUSMP” requirements of treating or infiltrating stormwater runoff .

Thank you for the opportunity to provide these comments. If you have any questions regarding these comments, please contact Mark Smythe at (951) 782-4998 or Milasol Gaslan at (951) 782-4419.

Sincerely,

Mark E. Smythe, Chief
Coastal Storm Water Unit

Milasol C. Gaslan, Chief
Inland Storm Water Unit