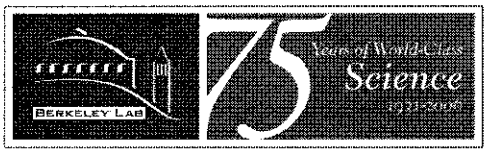
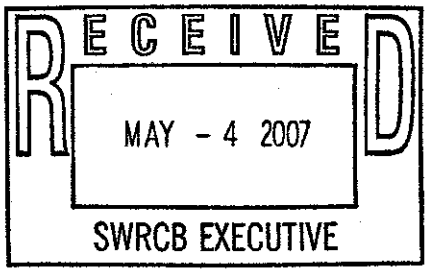


Construction General Permit – Stormwater
Deadline: 5/4/07 5pm



Environment, Health & Safety Division
Environmental Services Group

May 4, 2007
ES-07-020 (submitted via e-mail)

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

SUBJECT: Comments on Preliminary Draft NPDES General Permit for Storm Water Discharges Associated With Construction Activities

Dear Clerk Her:

Lawrence Berkeley National Laboratory (Berkeley Lab) is pleased to have the opportunity to comment on the State Water Resources Control Board's (Water Board) *Preliminary Draft NPDES General Permit for Storm Water Discharges Associated with Construction Activities*.

Berkeley Lab is a Department of Energy (DOE) multi-program national research laboratory operated by the University of California (UC) pursuant to a contract between the UC Regents and DOE. It conducts fundamental research into such diverse fields as accelerator physics and engineering, computer science, energy conservation technology, fundamental physics, genomics, life sciences, materials science, nanoscience, and physical biosciences.

Berkeley Lab serves as a special research campus operated by UC employees, but is owned and financed by DOE. As such, it is distinct from the UC-owned Berkeley campus. It is located in Berkeley and Oakland, just east of the UC Berkeley campus, nestled in the East Bay hills. Our site has been regulated under the *NPDES General Permit for Discharge of Storm Water from Industrial Activities* since 1991. Construction activities at the Berkeley Lab site are conducted in compliance with the existing General Construction Permit where applicable.

Berkeley Lab appreciates the effort put forth by the Water Board to develop a comprehensive permitting program for managing stormwater discharges from an activity that has great potential for adverse effects on vital water resources. Furthermore, considering the extensive modifications being proposed, we greatly appreciate the Water Board's efforts to involve the regulated community at such an early stage of the rulemaking process. The following are suggestions to the preliminary draft permit that we ask the Water Board to consider.

APPLICABILITY
Several places of the Findings section state that the permit will apply to "*construction projects that disturb one or more acres or are part of a common plan of development or sale that disturbs more than one acre*". As a special research campus operated by the University of California, Berkeley Lab periodically prepares a *Long Range Development Plan* for approval by the UC Regents. An LRDP is a land use plan that guides overall development of a site over a fairly long period of time (e.g., twenty years). At a truly diverse institution such as Berkeley Lab, the projects envisioned are often unrelated, serving entirely different research or operational needs. When a specific construction project is envisioned, which may include several phases of construction, a very detailed planning process takes place. Berkeley Lab agrees that this latter

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case, projects individually smaller than one acre in size should be subject to the "*common plan of development*" clause, but believes that the permit should exclude projects of this type that are implemented under such programmatic planning documents as city or county General Plans or university Long Range Development Plans.

Recommendation: Make it clear in the definition that "*a common plan of development*" does not necessarily projects less than one acre in size that are identified in such programmatic planning documents as city or county General Plans or university-related Long Range Development Plans.

PROJECT IMPLEMENTATION REQUIREMENTS

Berkeley Lab understands that there is some controversy over including numeric effluent limitations in the permit for three parameters. At this time, we are not qualified to offer an opinion on the scientific validity of the values of the proposed standards. However, it seems prudent that if these limitations remain in the permit, an acceptable field test method be included for each parameter (as opposed to an analytical test method). This would provide important immediate feedback to the responsible personnel at the construction site, as well as reduce the cost of compliance while achieving the desired objective.

Recommendation: Include field testing methods for any parameter subject to numeric effluent limitations

The Development and Redevelopment Performance Standards section states that "*the discharger shall, through the use of non-structural and structural measures, ensure that the post-development runoff volume approximates the pre-project runoff volume for areas covered with impervious surfaces.*" It was mentioned during the recent workshop in Sacramento that a primary objective with this requirement is to ensure that peak runoff not increase by the project. Berkeley Lab agrees with this objective as a sound stormwater management objective, but seeks to ensure that flexibility be included in the permit to address additional challenges that some sites may face. We believe that the runoff objective can be achieved in two ways;

- recognize that infiltration-only measures may not work at some sites, such as those on hillsides subject to landslides, and
- allow facilities to manage runoff within the subwatershed of a project.

The former should also allow for incorporating measures that temporarily retard flow, while the latter would model the offsets policies effectively used by regulatory agencies in managing air quality. This is perhaps our most important comment on the permit.

Recommendation: Allow for design measures that control peak runoff through means that go beyond infiltration-only methods, and allow for managing stormwater runoff on a subwatershed basis.

The concept of regulating post-development runoff during the construction phase does raise an interesting question. Aren't such requirements better suited in other regulatory mechanisms? For Berkeley Lab, that would be the General Industrial Permit. We recognize the challenge of creating consistent and seamless regulations when one regulation is only looking at a subset of the other as is the case with the temporal aspect of a construction project relative to ongoing permitted activities for an entire site. But absent this link, it appears that the effectiveness, and therefore, the value of these added control measures is greatly weakened when a Notice of Termination for a construction project is approved by the Water Board.

Recommendation: Consider placing post-construction requirements in the regulatory mechanism that most effectively ensures their long-term effectiveness.

CERTIFICATION REQUIREMENTS

The concept of setting minimum requirements for Storm Water Pollution Prevention Plan (SWPPP) writers and implementation staff is bound to increase the quality and credibility of workers in these critical roles. The concern is that the current list for registrations and certifications is too limiting. Developing a list like this without some means of including the seasoned professional who has worked in this field for some length of time or number of projects will likely exclude some very qualified individuals.

Recommendation: Ensure that the certification requirements are not overly-restrictive as to eliminate highly qualified individuals.

DOCUMENT REQUIREMENTS

Berkeley Lab agrees with the Water Board that the greatest attention to runoff from construction activities needs to occur during rain events. As such, the Water Board is proposing that a Rain Event Action Plan be developed to ensure that active construction sites have implemented adequate erosion and sediment controls. To us, this new plan seems redundant to elements that already are found, or that already should be found, in the SWPPP. A more effective approach would be to strengthen or reorganize the SWPPP where appropriate to incorporate the desired elements of the Rain Event Action Plan. The benefit of this approach is that it keeps all stormwater elements within one document, making it easier to track, less costly to maintain, and consistent with the role that the SWPPP is designed to serve.

Recommendation: Incorporate the features of the Rain Event Action Plan into a specific section of the SWPPP in a manner that allows it to be the dynamic document that it needs to be.

As for the Rain Event Action Plan as proposed, one feature is a readiness threshold level of a 30% chance of precipitation forecasted by NOAA. Personnel responsible for implementing protection and control measures at construction sites need to be aware of weather conditions each and every day, and ready to implement SWPPP measures throughout the course of a project, not at a numeric weather forecast value.

Recommendation: Eliminate a bright line threshold for implementing protection and control readiness.

Thank you again for considering Berkeley Lab's comments. We hope they are beneficial to the Water Board as it goes forward with rulemaking on the new General Construction Permit. If you have any questions, please contact me at 510-486-5852 or pathorson@lbl.gov.

Sincerely,

Patrick A. Thorson

Patrick A. Thorson
Environmental Services Group

cc:
S. Blair
J. Ohearn
R. Pauer
N. Ware