Storm Water Resources, LLC

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June 24, 2009

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

Re: Comment Letter – 3rd Draft General Construction Permit

Thank you for the opportunity of comment on the 3rd Draft California General Construction Permit dated April 22, 2009. Storm Water Resources is a consulting company in Southern California that has provided stormwater consulting services to the development and building industry for over 7 years. Our experience is primarily in the development of SWPPPs and the field implementation and monitoring of BMPs and our comments are based on our experience implementing the State Construction General Permit (CGP).

Grandfathering

The Board has added a grandfathering clause into this draft permit allowing existing projects under Order No. 99-08-DWQ that are beyond the design stage shall obtain permit coverage at the Risk Level 1. I suggest that the Board consider defining "design stage" to ensure a complete understanding of what that actually means. Our understanding of design stage would include any project that has received tentative tract/parcel map approvals.

Additionally, although a project may have completed the design stage, it may not be ready for construction and thus may not have obtained coverage under the 99-08 permit. It seems reasonable to include a grandfathering provision for projects that are currently permitted, OR for which the design phase is approved. As stated in the draft, adding additional requirements to these projects may not be cost effective. That statement remains true regardless of whether or not the project has obtained a WDID number or not. The current economic situation also leads to a postponement of construction starts. Projects should not be held to new requirements solely based on the fact that the project design is completed, but no WDID has been issued. It could me a matter of several years before we will see construction activities again in California.

Non-Jurisdictional Waters

This permit in an NPDES permit and applies only to Waters of the U.S. Based on recent decisions related to jurisdictional determinations, I recommend that the Board consider supplying a list of those water bodies that are considered US Waters under this definition to eliminate confusion. Additionally, this listing should be available at each Regional Board website to assist in making the determination prior to applying for coverage.

Current permittees who have coverage under 99-08 that do not discharge into a basin that is hydrologically connected to waters of the US, will be required to obtain regional permits from the individual Regional Boards through either Regional Construction Permits, or WDRs. It appears at this time, that if a Regional Board does not have Regional Construction Permit, then the permittee will not be required to obtain coverage at all for the project. If this is not the intent, how will the Regional Boards prepare themselves to address the many projects that will fall into

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this category – primarily in the Southern California desert regions where there are no US Water determinations or connections.

As I stated in my comment letter to the second draft permit, many of these areas have been identified by the SWRCB as areas of concern in the fact sheet related to the implementation of post-construction requirements, yet are not within the jurisdictional determination of a US Water. It is recommended that the SWRCB require that each Regional Board adopt a Regional Construction Permit prior to the adoption of this permit to accommodate those sites outside the boundaries of US Waters.

Post Construction Requirements

Although there are changes to the language in the 3rd draft regarding post construction, I still believe that post construction requirements do not belong in a construction activities permit. Other regulatory mechanisms such as MS4 permits, CEQA, 401 Certifications and plan approvals are the appropriate means to regulate these potential impacts. Hydromodification controls are beyond the focus of this permit and the issues are regional in nature, not site-specific to a particular construction site. Construction is the final stage of development. Decisions associated with hydromodification impacts are not made during the construction phase, but during project planning and design. However, if a runoff reduction or hydromodification requirement is included in the permit, I support that it is based on the change in the hydrograph. This approach is similar to the LID approach that attempts to replicate pre-development hydrologic conditions.

The draft permit allows publicly-funded projects to apply to the Regional Board for a waiver of the post construction standards. Why is this limited to public-funded projects. Clarification is needed of what constitutes a "public-funded project". Is it waiver an option for projects funded with public money that is being constructed by a private developer (i.e., a joint project for freeway interchange improvements that is funded in part by private monies and in part by public monies)? What is the process for requesting a waiver. What types of information would be necessary to submit to the Regional Boards?

Implementation Date

I recommend that the Board delay the implementation of the permit requirements until after the rainy season. It is likely that the Board will adopt this permit during the summer. Changing the requirements during the rainy season will cause disruptions and additional costs. Setting the effective implementation date after the rainy season will allow for planning and adjustments during the dry season.

Annual Reporting

Thank you for changing the due date of the Annual Report to September. Allowing permittees to focus on the important aspects of compliance during the rainy season is the goal.

Qualifications

The qualification requirements have changed, including a certification/title allowing only 5 years experience developing SWPPPs to be a Qualified Developer and Practitioner. This is problematic in many ways. The new requirements of the permit are based on science and engineering, requiring the use of the RUSLE and MUSLE calculations to determine risk levels, etc. It is not

reasonable to expect someone with 5, 10 or even 20 years of experience writing SWPPPs to be qualified to run engineering calculations such as RUSLE or MUSLE. The addition of this "qualification" does not ensure that a person is qualified or able to perform the tasks at hand.

A minimum of 5 years developing SWPPPs does not prepare a person to perform site inspections and assess BMP effectiveness. Typically a SWPPP designer has not performed worked in the field and is not qualified to perform site inspections.

Additionally, certification criteria for all the other certifications requires an approval process, adherence to a code of ethics, has accountability for their actions and designs, and must receiving continuing education. The experience category requires only that the person be accountable. The requirements of this proposed permit require that those tasked with design and implementation of a SWPPP be certified at a much higher level than merely "5 years of experience developing SWPPPs." I recommend that this category be removed from the Qualified SWPPP Developer/Practitioner list.

Qualified Personnel

This permit refers to qualified personnel other than QSD and QSPs in several areas of the permit. A definition of qualified personnel is needed. This includes tasks such as installing, maintaining and repairing BMPs. Please provide guidance on what the Board considers "qualified" in this instance.

Monitoring

I support the requirement of receiving water monitoring to only the highest risk sites. However, I do suggest that you add additional restrictions be added so projects that have an indirect discharge not be required to conduct receiving water monitoring.

Effluent Limits

The draft includes numeric effluent limits for turbidity and pH, applicable to Risk Level 3 jobs. There are still significant technical questions that need to be answered before NELs can be effectively implemented. There are still questions related to the validity of the 3:1 rational used to interpolate SSC concentrations as turbidity. Nor has the state addressed the questions regarding the data sets and statistical evaluation of these to establish the NELs.

NELs are likely to lead to significant confusion and provide a potentially false assessment of compliance by the permittee. The permit states that the NEL represents the minimal level of control and does not necessarily represent compliance with a narrative effluent limit or the receiving water language in areas with more protective water quality objectives. NELs seem to be appropriate be NALs or upset levels and should be called such, and not create confusion and potential monetary penalties under the water code.

Mandatory Minimum Penalties

CWC section 13385(i)(1) states, "Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each violation ***whenever the person does any of the following four or more times in any period of six consecutive months,*** except that the

requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

A) ***Violates a waste discharge requirement effluent limitation.***
B) Fails to file a report pursuant to Section 13260.
C) Files an incomplete report pursuant to Section 13260.
D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant specific effluent limitations for toxic pollutants."

It appears that multiple MMPs could be issued to one site during one extended rain event. For example, a Risk Level 2 or 3 site must conduct sampling twice a day every day it rains. If a rain event lasts for 5 days, and there is an exceedance of an NEL, there is the potential for 10 violations to occur during that five day period, thus resulting in the potential for seven MMPs being issued for each exceedance after the 3rd exceedance. Is this the intent of the SWRCB? Or is the intent to address egregious dischargers who exceed the NEL over a course of time, and not over the course of one extended rain event? If the latter is the case, the language should clearly reflect when an MMP is warranted.

The draft permit indicates that the SWRCB believes that the current program is not successful. This is not a correct assumption. The current regulatory program has been quite successful and has continuously improved since the early 1990s when the CGP and the MS4 programs were implemented. Over this time period, increasingly effective BMPs have been implemented. Contrary to the assumption that current program is failing; a BMP-based approach at a construction site does work. We believe that the current program does need modification and can be improved. However, a meaningful analysis of the cost and actual effectiveness is required before the Board moves forward with the assumption that the construction industry is a "group of bad apples" when in reality, there is a handful of "bad apples" and the majority of the permittees make a good faith effort to comply with the regulations. A permit that is too costly to and too complex to adhere to is setting the program, and the permittees, up for failure.

According to the EPA, technology exists that allows discharges to treat runoff to what they deem an acceptable limit (13 NTUs for Federal CGP). There is an old adage that I believe rings true here – just because you can, doesn't mean you should. The fact alone that the technology exists does not prove that it will effective at improving water quality from construction sites.

Thank you again for the opportunity to provide comments and look forward to working with the SWRCB to ensure a successful program.

Sincerely,

STORM WATER RESOURCES

Jeanne Duarte, CPESC, CISEC
President