



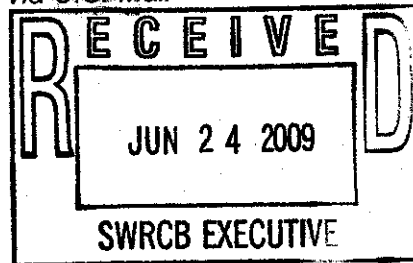
**Santa Clara Valley
Urban Runoff
Pollution Prevention Program**

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Submitted via email commentletters@waterboards.ca.gov
Original sent via U.S. Mail

June 24, 2009

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



Subject: Comments on the April 2009 Draft Construction General Permit

This letter presents comments on the April 2009 Draft Construction General Permit ("draft permit") from the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP). SCVURPPP is an association of 13 cities, Santa Clara County and the Santa Clara Valley Water District ("Co-permittees") that share a joint NPDES municipal stormwater discharge permit in the San Francisco Bay region. Our Co-permittee cities range in population from nearly one million (San Jose) to less than 5,000.

SCVURPPP appreciates this opportunity to comment on this draft permit as it contains significant changes from the current permit in its approach to regulating stormwater discharges from construction sites. Our Co-permittees will be affected by the changes in the Construction General Permit because they will need to obtain coverage under the General Permit for construction of public projects, as well as conduct inspections at construction sites that need to comply with the new requirements.

SCVURPPP is a member of the California Stormwater Quality Association (CASQA) and SCVURPPP representatives participate in the CASQA Board of Directors and the Construction Subcommittee. **SCVURPPP strongly supports the comments submitted by CASQA in both its letter and attachments.** We also echo the comments and concerns submitted by the City of San Jose and other Co-permittees.

We appreciate State Board staff's consideration of the comments made on the previous March 2008 preliminary draft permit and the positive changes incorporated into the April 2009 version. However, we continue to have concerns about several elements of the April 2009 draft permit. These concerns include the following:

1. **Numeric Effluent Limits** -- The draft permit incorporates a major change in the regulatory approach for construction site stormwater discharges from the iterative BMP-based approach to a numeric effluent limit (NEL)-based approach. While action levels for pH and turbidity may be a reasonable approach to measuring effectiveness of construction site

BMPs and triggering actions to correct BMP failures, NELs are imperfect tools for measuring compliance due to the lack of accuracy of field measurements, the variability of runoff quality, and the nonpoint nature of stormwater. Although the draft permit now limits the use of NELs to the high risk construction sites, the draft permit does not address the technical questions about the NELs that were raised in previous comments.

SCVURPPP agrees with CASQA that there are insufficient data, both receiving water and construction site runoff quality data, to establish a statewide NEL for turbidity or pH. The NELs in the draft permit were not established using a scientifically sound methodology or USEPA protocols, and concerns about the use of these limits expressed in the Blue Ribbon Panel Report¹ were not addressed². Also, there are many outstanding questions about the representativeness of grab samples and what penalties would be applied if the NEL is exceeded. We recommend that the use of NELs be eliminated, that the draft permit continue to emphasize the iterative BMP approach, and that this draft permit be used as the opportunity to develop and test the use of action levels to help site owners and operators achieve compliance.

2. **Monitoring Requirements** – The monitoring requirements in this draft permit continue to be onerous and burdensome, particularly for Risk Level 3 sites, and will not produce water quality benefits or useful data commensurate with cost. While we support the inclusion of construction site discharge monitoring using two representative field measurements (pH and turbidity) to provide information on BMP implementation and effectiveness, we believe the requirements for receiving water monitoring and bioassessment are excessive and do not bear a direct relationship with the discharges from a particular construction site. These types of monitoring are also expensive, require trained personnel, and may require permits to access a stream channel which could delay a project. SCVURPPP requests that any monitoring requirements be restricted to construction site discharges at representative discharge points.
3. **Maintenance Exemption** – Routine maintenance projects exempt from receiving coverage under the General Permit should not be limited to a set of pre-defined types of projects. In the discussion of the routine maintenance exemption, the draft permit specifies it applies only to road shoulder work, dirt or gravel road re-grading, or ditch clean-outs, and repaving of asphalt roads if no associated grading or excavation work is conducted. There may be other routine maintenance activities such as parks or athletic fields maintenance that should be exempt as well, but are excluded because they are not specifically stated in the Permit. SCVURPPP requests that the State Board retain the original language from the current permit (99-08-DWQ) regarding maintenance exemptions that was developed based on federal regulations: "Construction activity does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility".
4. **Linear Utility Projects** – SCVURPPP is concerned that the requirements for LUPs, which will apply to municipal pipeline projects, are very similar to those of traditional construction projects. We request that the requirements for LUPs reflect the site-specific challenges and

¹ Currier et al., 2007. Blue Ribbon Panel (BRP) Report on the Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.

² The Blue Ribbon Panel's concerns included: 1) NELs may only be feasible for large sites (that use active treatment systems); and 2) non-active controls produce more highly variable effluent quality, making the establishment of NELs for smaller sites not using ATS difficult, if not impossible. See the CASQA comment letter, Attachment 1, for more detailed discussion of this topic.

characteristics of these types of projects. For example, monitoring discharge points from all drainage areas along the length of long pipeline project or monitoring receiving waters of multiple watersheds would be infeasible and costly. Sampling (for Risk Level 2 and 3 projects) should be limited to representative discharge points in active portions of the LUP. Also, Appendix A refers to sampling of Risk Level 1 LUPs which is not consistent with other Risk Level 1 projects.

5. **Qualifications and Training Requirements** – SCVURPPP supports the inclusion of qualifications for individuals preparing and implementing construction SWPPPs. However, our Co-permittees are concerned about meeting these requirements within the prescribed timeframes and need more information on the specifics of the training program. Many of our Co-permittees have attended construction site management workshops provided by our Regional Water Board (SCVURPPP sponsors such a workshop every year), and it would be helpful if the training requirements could give credit for workshops that have been attended within the past two years. Also, there are still inconsistencies and confusing language in the draft permit regarding the role and responsibilities of the QSDs and QSPs. We recommend that Board staff consider the replacement language provided by CASQA in Attachment 1 of its comment letter.
6. **Implementation Effective Date** – For ongoing projects covered under the existing permit, the limited “grandfather” provisions in the draft permit do not provide a practical timeframe for projects to comply, especially if the permit is adopted in the fall of 2009. Board staff have stated that the permit will not apply to the 2009-2010 rainy season, but according to the draft permit, ongoing projects have only 100 days to submit revised or newly required documents. In addition, public projects have the added challenge that construction budgets are approved years in advance and cannot absorb the increased cost of compliance with the new permit. SCVURPPP requests that: 1) the deadline for ongoing projects to submit Permit Registration Documents be extended to **July 1**; and 2) capital improvement projects funded within the next two years of adopted capital budgets be grandfathered, i.e., allowed to obtain permit coverage at Risk Level 1.

We appreciate the amount of time and effort expended by State Board staff in the development of the draft permit, and the open communication about the requirements with various stakeholders during the development process. We hope that continued progress can be made toward achieving a permit that is technically sound, practical, implementable, and protective of water quality.

We thank you again for the opportunity to provide comments on the April 2009 Draft Construction General Permit.

Very truly yours,

[Original signed by]

Jill C. Bicknell, P.E., EOA, Inc.
Assistant Program Manager

cc: SCVURPPP Management Committee