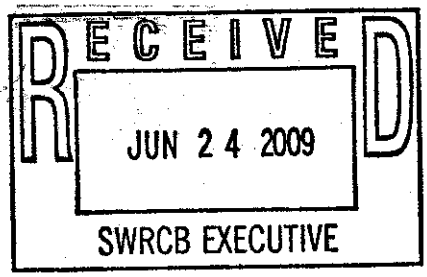
Department of Water and Power the City of Los Angeles

Public Comment
Dft. Construction Gen. Permit
Deadline: 6/24/09 by 5:00 p.m.



June 24, 2009

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

Dear Ms. Townsend:

Subject: Comment Letter – Draft Construction General Permit (CGP)

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to comment on the State Water Resources Control Board's (State Board) proposed Draft General Permit for Discharges of Storm Water Associated with Construction Activities (CGP), and commends the efforts of the State Board in protecting the beneficial uses of the State's receiving waters during rain events from construction project impacts.

LADWP acknowledges the effort the State Board invested to develop a separate section of the draft CGP for linear projects greater than one acre. Furthermore, LADWP is pleased that the State Board has granted an exception from the Risk Determination requirements for existing projects under WQ Order No. 99-08-DWQ, allowing those beyond the design stage to be covered at the Risk Level 1, and though not explicitly stated, LADWP requests that the exemption also applies to existing Linear Underground/Overhead Projects (LUPs) to be covered as LUP Type 1 projects, which for LADWP are numerous. Issues and suggested recommendations associated with the draft CGP are as follows:

General

Numeric Effluent Limitations

LUP Type 3 and Traditional Risk Level 3 construction projects are required to meet Numeric Effluent Limitations (NELs) for pH and turbidity. LADWP believes that the use of NELs is premature due to the limited data available. Storm water runoff associated with construction sites is unique in that there is a lot of variation in the amount of rainfall runoff and associated characteristics. The Blue Ribbon Panel recognized this noting, "site-to-site variability in runoff turbidity from undeveloped sites can also be quite large in many areas of California, particularly in more arid regions with less natural vegetative cover and steep slopes." NELs do not account for these variations. For example, regardless of whether rain causes runoff down a natural slope or down the same slope where an access road was built at some point above the toe of that slope, the ephemeral water course that drains the vicinity contributes natural sediment from the land that is upgradient toward the constructed area with similar turbidity, which redeposits naturally downstream as it always has done.

Therefore, LADWP believes that the construction activity does not have an adverse impact on water quality and that assigning an NEL does not achieve the stated purpose of protected water quality. For example, if you have a construction project in a zone with naturally high potential erosion resulting in high sediment rates, applying an NEL may not allow for the natural background sediment thereby imposing a penalty on the project.

LADWP suggests that Numeric Action Levels (NALs) based on native geological/soil conditions are more appropriate for storm water permits, which will be useful in evaluating the effectiveness of Best Management Practices (BMPs) in reducing or minimizing the pollutant. Should an NAL be exceeded, LADWP recommends reevaluating the BMP(s), and a run-on characterization be performed. If elevated pH values are not due to run-on, or from background pH levels of the rain, then construction activities should be evaluated by isolating each construction activity so that the problem can be identified and the appropriate BMP applied. NALs and BMPs are the best and practical solution, at this time.

Attachment A – Linear Underground / Overhead Projects

1. On-site vs. Nearby Governmental Rain Gauges [section F.2.c, p.14 and section L.4.a.vii]

   The draft CGP requires that compliance storm events are verified by reporting both on-site and nearby governmental rain gauge readings. Some urban/suburban areas are well covered by governmental rain gauges. In these areas, LADWP believes the use of on-site rain gauges to verify the Compliance Storm Event is duplicative, and asks that the State Board reconsider the need for installing gauges on-site, or make

their installation optional if a governmental gauge is located within a certain radial distance from the construction site.

2. LUP Type 1 Inspection Requirements [section L.3.a.iii, p.43]

   The draft CGP states that photographs of the site are submitted through the State Water Board's SMARTS website "once every three rain events". Conceivably, three rain events may occur in as short a span as one week, or perhaps over the course of several months. In order to prevent the reporting process from getting unduly confusing, LADWP suggests submitting the photographs along with the normal quarterly reports. This will keep the reporting frequency uniform with no loss of information, or impact.

3. LUP Type 2 Storm Water Effluent Monitoring Requirements [section L.4.b.i, and Table 4, p.47]

   The draft CGP Errata Sheet, which was posted on the State Board website June 10, 2009, deletes the requirement that "Risk Level 2 dischargers shall take grab samples beginning the first hour of any new discharge and during the first and last hour of every day of normal operations for the duration of the discharge event." This requirement is also contained in Attachment A (LUP Type 2 Storm Water Effluent Monitoring Requirements and Table 4, section L.4.b.i, p.47), which applies to LUP projects. If this was not an oversight, then LADWP asks that this requirement be deleted for LUP projects as well. In certain undeveloped areas, such as the desert, the entire project area consists of soils with sparse groundcover where the upstream discharge naturally carries sediment load. If the project is in an area that lacks a receiving water body, and where ephemeral flows naturally carry sediment, redepositing the material downstream depending on rainfall intensity and duration, the background will be similar to that of the construction area.

4. LUP Type 3 Storm Water Effluent Monitoring Requirements and Table 6 [section L.5.b.i, p.55]

   The draft CGP states dischargers "shall collect storm water grab samples from sampling locations characterizing discharges associated with construction activity from the entire (emphasis added) LUP disturbed area beginning the first hour of any new discharge and during the first and last hour of every day of normal operations for the duration of the discharge event." In certain undeveloped areas, such as the desert, the entire project area consists of soils with sparse groundcover where the upstream discharge naturally carries sediment load. Also, if the project is in an area that lacks a receiving water body, e.g., where ephemeral flows naturally carry sediment, and redeposit that material downstream depending on rainfall intensity and rainfall duration, the background will be similar to that of the construction area.

Similarly, the need to sample a minimum of three times a day as detailed above is over-simplified, e.g., where a discharge begins mid-day or late in the day, two or even one sample may be all that can be collected; where a discharge event continues into the next day, a sample during the first and last hour are all that are needed. Then there are instances were the discharge ends shortly after it commences. There are numerous situations were the minimum of three samples a day would be impractical or infeasible.

LADWP suggests that this requirement be deleted for projects lacking a receiving water body, and applies only to those construction segments that discharge directly to a receiving water body. In addition, LADWP asks that the State Board reconsider the minimum of three samples required daily. A sample can be collected when a discharge is noted and perhaps again, if needed, at the end of the day, assuming the discharge continues, otherwise a single sample may be all that can be collected.

5. LUP Type 3 Receiving Water Monitoring Requirements and Table 7 [section L.5.d.i, p.56]

The draft CGP applies receiving water monitoring to Type 3 projects only. This assumes that the project runoff discharges to a receiving water body and does not simply dissipate by infiltration/percolation in undeveloped, desert-like environments. These types of areas which are naturally high in erosion and sedimentation, such as ephemeral desert like areas effect many of the LADWP construction projects. The permit does not adequately address these unique conditions and may unnecessarily burden or unduly tax the project without accomplishing a true water quality objective. LADWP believes that discharges to ephemeral areas should allow for the background factors to be taken into account to adjust the requirements.

6. NEL Violation Report [section L.5.n.i, p.63]

The draft CGP requires that all storm event sampling results be submitted no later than five days after the conclusion of the storm event. The discharger may not be able to submit sample results to the State Board within five days, depending on when the samples are collected in relation to weekends and holidays. LADWP believes that extending the submittal time to 10 days will solve this problem however there is the added burden of submitting routine results (those without violations) with such frequency. LADWP recommends that routine results be submitted along with the quarterly report, simplifying a time and labor intensive process without compromising data collection, or having an adverse impact on the environment.

7. NEL Violation Report [section L.5.n.ii, p.63]

The CGP states that an NEL Violation Report must be submitted no later than five days after an NEL exceedance has been identified. The logistics of collecting samples, delivering them to a laboratory, performing analyses and reporting in such a short time span will be problematic. If the State Board intends to take some sort of

immediate action necessitating a quick turn around time, then LADWP suggests telephoning the State Board within five business days of knowledge of the violation, followed by a written report in 14 days, as required in other general permits. However, if there is no specific intent to use these results for an immediate enforcement action, LADWP suggests that the results be submitted to the State Board along with the quarterly report.

8. Miscellaneous Attachment A Comments:

- Requirements Subject to Type 1 LUP Projects, section v(2), p.22 – reference is made to Attachment I, which does not exist. The requirements subject is discussed in Attachment C, Risk Level 1 Requirements for "traditional construction projects", which references Appendix 2, Sediment Basin Sizing. LADWP suggests the State Board either: (1) include Attachment I, or (2) clarify whether or not the State Board meant to use the criteria in Appendix 2.

- LUP Type 3 Analytical Methods, section L.5.j.iv, p.62 – reference is made to Attachment K, which does not exist. If this was an oversight, then LADWP suggests adding Attachment K, specific to LUPs. If this was not an oversight, then delete the reference, and provide clarification as to whether Appendix 5, Bioassessment Monitoring Guidelines, is applicable to LUPs.

Fact Sheet / Order – Traditional Construction Projects

9. Rain Event Action Plan (REAP) [section I.G.47, p.8]

The Fact Sheet states per the General Permit that, Risk Level 2 and 3 dischargers must develop and implement a REAP within 48 hours prior to any "likely" precipitation event, and then goes on to state a REAP must be developed when there is a forecast of 50 percent or greater chance of precipitation in the project area. The draft CGP requires the discharger to obtain forecast information from the NOAA website, which defines "likely" as precipitation as 60 – 70 percent. For consistency, the State Board should define this trigger using the likely chance as 60 percent or greater. Also, preparing a REAP for every storm event with a "likely" probability is labor intensive. Many storm events occur that lack the intensity to result in a discharge.

LADWP suggests that the State Board link the probability of discharge to a minimum expected rainfall. Also, for linear projects, the State Board might consider allowing for a generic plan since the type of work is repetitive along the length of the project. A generic plan may be prepared in advance and issued at the appropriate time, with minor updates, where warranted.

Again, LADWP appreciates the opportunity to comment and looks forward to working with the State Board on the development of this permit. If you have any questions, please contact Mr. Bob Krivak of the Wastewater Quality and Compliance Group at (213) 367-1339.

Sincerely,

Katherine Rubin
Manager of Wastewater Quality and Compliance

BK:rp
Enclosures
c/enc: Mr. Bob Krivak