



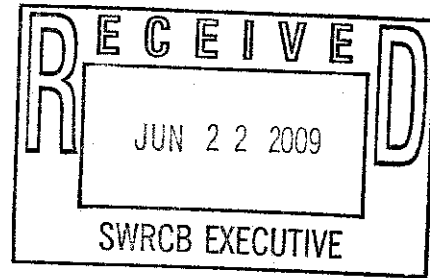
SAN MATEO COUNTYWIDE  
Water Pollution Prevention Program

Clean Water. Healthy Community.

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



June 22, 2009

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

**Subject: Comments on the 2009 Draft Construction General Permit**

Dear Ms. Townsend:

This letter provides the San Mateo Countywide Water Pollution Prevention Program's (SMCWPPP) comments on the 2009 Draft Construction General Permit. SMCWPPP consists of 21 member agencies: the 20 cities and towns in San Mateo County and unincorporated San Mateo County.

Our member agencies will need to comply with this permit following its adoption for any of their applicable construction projects. In addition, SMCWPPP's member agencies inspect privately-sponsored construction sites for compliance with local erosion control ordinances, and it is important for municipalities to understand the State requirements that private development projects must meet when they conduct local compliance inspections. This comment letter addresses issues that arise related to both these roles.

SMCWPPP is a member of the California Stormwater Quality Association (CASQA) and supports the comments submitted by CASQA regarding this draft permit.

We appreciate some of the modifications that have been made to the Draft Construction General Permit since the administrative draft was circulated in 2007. For example, we support the restriction of receiving water monitoring to the highest risk sites, and we support the use of numeric action levels as an appropriate next step in regulating construction site stormwater discharges. There are, however, a number of aspects of the draft permit that would benefit from additional consideration and modification, as described below.

- 1. Phase in implementation of draft permit's requirements.** The draft permit introduces significant new requirements and procedures. If it were to go into effect without allowing a reasonable phase in period, it could disrupt active and plans for shovel-ready construction sites and result in unplanned, additional costs. Municipalities will need time and additional resources to implement a wide range of new requirements, such as training staff to become qualified SWPPP developers and practitioners, preparing SWPPPs and REAPs, calculating project risk levels.

conducting monitoring and reporting, incorporating new requirements in internal procedures, and implementing the new requirements at public construction sites. We recommend setting an effective implementation date that would allow this to occur, which we estimate should be at least one-year or more, and the draft permit should avoid becoming effective during the middle of a wet season.

- 2. Provide additional flexibility for MS4 permits without Storm Water Management Plans and for non-SUSMP permittees.** Section XIII Post-Construction Standards has requirements that must be met unless the project is "located within an area subject to post-construction standards of an active Phase I or II municipal separate storm sewer system (MS4) permit that has an approved Storm Water Management Plan." The San Francisco Bay Regional Water Quality Control Board is developing a municipal regional stormwater permit that would replace the requirement for a Storm Water Management Plan. The draft permit should allow the exception from Section XIII's requirements if a Phase I or II permit is adopted that addresses hydromodification and post-construction BMPs.

Attachment B also lists under "H. Additional PRD Requirements Related to Construction Type" requirements for calculating post-construction water balance if a project is located in an unincorporated area of the state "not covered under an adopted Phase I or II SUSMP requirements." This exception should be broadened to cover non-SUSMP Phase I or II permits that have adopted hydromodification requirements.

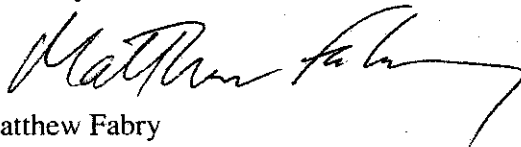
- 3. Further refine risk assessment procedures.** We appreciate the efforts the Water Board has made to simplify the risk assessment and make it easier to complete. Finding 44 of the draft permit identifies proximity to receiving water bodies as one of the factors affecting the risk of accelerated erosion and sedimentation. We recommend consideration of a distance from the receiving water for inclusion as a factor of the Risk Determination Worksheet (Appendix 1).
- 4. Base compliance with Numeric Action Levels (NALs) on daily average of samples.** To establish a more accurate assessment of site conditions, we recommend assessing compliance with NALs based on a daily average of a minimum of three samples, rather than a single sample (Section V.C and Attachments D and E of the Tentative Order).
- 5. Identify compliance event for NALs.** Runoff quality from large storm events should not be assessed using NALs. A compliance event should be identified for NALs, as has been included for Numeric Effluent Limits (Section V.B.5 of the Tentative Order).
- 6. Explain the relationship between the selected Numeric Effluent Limit (NEL) compliance event and the 1.5 year recurrence event.** Section F.1.ii of the Fact Sheet indicates a 1.5 year recurrence interval for data used to develop NELs for

turbidity. Please explain the relationship between this recurrence interval and the selected NEL 5-year, 24-hour compliance storm event.

7. **Defer implementation of NELs.** The 2009 Draft Construction General Permit continues to include NELs for turbidity and pH. In its comment letter on the 2008 Draft Construction General Permit, CASQA raised significant technical issues regarding the appropriateness of NELs in the Construction General Permit. CASQA questioned the validity of the three-to-one ratio used to interpolate suspended sediment concentration as turbidity, however, neither the Fact Sheet nor the Tentative Order address CASQA's questions regarding the data sets and their statistical evaluation that are being used to identify NELs. The use of NELs would subject projects to potential monetary liability under the Water Code provisions for mandatory minimum penalties. Given the limitations of the existing data sets on which the proposed NELs are based, such financial penalties are not justifiable. We urge the State Water Resources Control Board to eliminate NELs from the Construction General Permit and instead rely on Numeric Action Levels (NALs) or upset levels.
8. **Allow more time for Risk Level 3 submittals of sampling results.** Appendix E of the Tentative Order would require that Risk Level 3 discharges file all sampling results within 5 days of the storm event. However, data submitted for laboratory analysis may not be available within this time period. We suggest that a routine reporting time be developed, such as monthly or quarterly.
9. **Issue construction site monitoring requirements in a format that may be modified by the Executive Officer.** The new monitoring requirements are a significant departure from the requirements in the current Construction General Permit. There will necessarily be substantial learning on the part of both dischargers and regulators. For this reason, it is advisable that the Water Board issue monitoring requirements in a format that will allow the Executive Officer flexibility in modifying requirements to respond to new learning achieved by regulators and dischargers in the course of implementation.

Thank you for this opportunity to comment on the 2009 Draft Construction General Permit.

Sincerely,



Matthew Fabry  
Program Coordinator