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

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City of Irvine, One Civic Center Plaza, P.O. Box 19575, Irvine, California 92623-9575 (949) 724-6000

June 24, 2009

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

Subject: Comments on the 2009 Draft Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity, NPDES General Permit No. CAR000002 (General Construction Permit or General Permit)

Dear Ms. Townsend:

The City of Irvine (City) appreciates the opportunity to comment on the April 23, 2009 version of the proposed 2009 Draft Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity, NPDES General Permit No. CAR000002 (General Construction Permit or General Permit) and the accompanying Fact Sheet dated April 22, 2009 issued by the State Water Resources Control Board for public comment. The errata sheet issued on June 10, 2009 was also reviewed.

The following comments are provided to highlight some of the issues and challenges contained in the draft permit.

A. GENERAL COMMENTS

These comments apply to the April 2009 version of the General Construction Permit and the June 2009 Errata Sheet.

1. Permit and Fact Sheet Organization.

The permit has been simplified and streamlined with but much of the detail and requirements for implementation being moved to the fact sheet which needs additional simplification and better organization to allow the discharger to assess the requirements, determine compliance strategies for the project site, and implementation actions.

An issue of concern is the lack of correlation or references between the permit sections and the fact sheet. In numerous instances a permit section has several corresponding sections in the fact sheet that provide details on compliance. The additional information in the fact sheet can be either related to procedural items or requirements (how to),

definitions of terms, or simply expand the scope of the requirements. Although the clarification and expanded description of the requirements is valuable, the organization is complicated and since the fact sheet is not organized the same way as the permit, the additional information relevant to a specific section in many cases is found throughout the fact sheet. It is only after the discharger has intimate knowledge of the permit and the fact sheet that all the pieces come together and that's only accomplished after multiple markings and notations on a paper copy of the two documents.

The two documents, if they remain separate, must be completely cross-referenced to allow the user to have access to all the applicable information and to avoid missing important compliance points or requirements.

2. Regional Water Board Authority

The permit is providing the Regional Water Boards with the authority to require additional documentation and assessment from the discharger without a clear delineation of the process or any defined limitations. Unless changed or clarified, the Regional Water Boards are likely to make their own interpretation of the authority and requirements which will lead to uneven application and implementation across the state. The purpose of the general permit is then lost due to more stringent interpretation and application by some Regional Water Boards over others.

The permit has not provided a defined period for the Regional Boards to provide comments on the initial submittal of the PRD's that may impact the construction project's plans, schedule, costs, etc. For example, Section VIII – Risk Determination indicates that "the Regional Water Boards may choose to break the project into separate levels of implementation" without providing a timeline or reasonable timeframe for the applicant to accommodate any such modifications which are not going to occur immediately if indeed a project is that large that it may span several watersheds. The permit does not provide the reasoning behind providing the Regional Water Boards such broad authority over this determination nor does it provide details or guidance to either the applicant or the Regional Boards with the criteria that would trigger the "break-up of the project." It stand to reason that if the applicant has identified several risk determinations for a large project then the project has been diligently evaluated and should not be subjected to last minute scrutiny and uncertainty that might change the projects design, plans, timeline and budget at the Regional Board's request for no apparent reason.

Also, the Regional Water Boards' authority to require risk determinations for projects covered under the existing order (No. 99-08-DWQ) which are automatically categorized as Risk Level 1 should have timeline and criteria set that defines requiring dischargers to assess the risk level for their projects. Dischargers should not be subjected to open ended and arbitrary requirements. We suggest that within 30 days of adoption of the order, the Regional Water Boards be allowed to request dischargers to review their risk level which allows 70 days for the discharger to adapt their PRDs to address the request. Once the discharger has submitted their PRDs they should only be subjected to limited revisions of their risk level determination, as to not create conditions that are unfair or arbitrary. Also see comment on Finding D.37 below for additional language.

The Regional Water Boards must receive guidance and direction that defines and limits their role and the timeline of their activities to: 1) reduce arbitrary and unfounded oversight; 2) implement uniform requirements across the state; 3) implement a comparable level of compliance and enforcement between regions.

B. SPECIFIC COMMENTS

Specific comments are listed by permit section and are provided with either a statement of the concern and a proposed solution or amendment to permit language or raise an issue for further clarification.

I. FINDINGS

Obtaining and Modifying General Permit Coverage

Finding D.37. Existing Project coverage as Risk Level 1.
Clarification is necessary on the definition for existing projects. As currently written the permit language does not provide the applicant with the necessary information to determine permit coverage since "beyond the design stage" is vague and subject to interpretation. Also, Regional Water Boards need to request changes in a timely manner after adoption of the permit. Wording changes are suggested as follows:

This General Permit grants an exception from the Risk Determination requirements for existing projects that have obtained a WDID under Water Quality Order No. 99-08-DWQ. For certain projects, adding additional requirements to these projects may not be cost effective. All Construction projects covered under Water Quality Order No. 99-08-DWQ that have obtained a WDID ~~are beyond the design stage have obtained final building permits~~ shall obtain permit coverage at the Risk Level 1. Within (30 days of approval of this order) ~~T~~ the Regional Water Boards have the authority to require Risk Determination to be performed on projects currently covered under Water Quality Order No. 99-08-DWQ where they deem it necessary.

Determining and Reducing Risk

Finding G.44. The finding states that the risk of accelerated erosion and sedimentation depends on various factors including the proximity to receiving water bodies. We don't believe that the risk of accelerate erosion and sedimentation has a correlation to the proximity of the receiving waters and that this is not appropriate and should be deleted. The other factors listed are relevant including climate, topography and soil type. We believe that the risk of impacting receiving waters is present and related to the proximity, but not to "accelerated erosion." Suggested change is to eliminate proximity too receiving water bodies as a risk factor.

Numeric Effluent Limitations

Finding H.52. The turbidity NEL of 500 NTU is not scientifically based and is significantly different from the 1,000 NTU level proposed in the previous draft which was already extremely conservative.

Sampling, Monitoring, Reporting and Record Keeping

Finding J.58. Should indicate the frequency here to make the requirements more complete or site the section of the fact sheet or relevant appendix or attachment. This is a good example of the earlier comment that the findings are not complete and do not provide the full requirements, and the requirement details are not cross-referenced with the remaining documents that make-up the permit, like the fact sheet.

Finding J.59. Needs to be re-worded. The requirement to keep records for three years is not feasible for projects that are completed (NOT filled) in less than three years (why would the new owner, per the "on-site" requirement, that was not involved in construction be held responsible for keeping files of the inspections performed during the construction of the project). End the sentence after "construction period".

Finding J.61. What is the basis for requiring bioassessment monitoring since there does not appear to be any way to correlate the data that will be collected with the ambient conditions? What is the basis for requiring projects greater than 30 acres to perform bioassessment?

Finding J.64. The wording in this finding needs to be corrected since permittees should not be put in a position to determine violations only exceedances of the standards in the permit.

The wording changes are suggested as follows:

"Compliance with the General Permit relies upon dischargers to electronically self-report any <u>recorded</u> discharge <u>exceedances of the NEL</u> ~~violations and to comply with any~~ Regional Water Board <u>initiated</u> enforcement actions".

II. CONDITIONS FOR PERMIT COVERAGE

II.B.3. PRDs.

Please revise the parenthesis entry to read "Section VIII" for the Risk Assessment.

II.B.4.b. Existing Project - Permitting

Please see above for the comment provide regarding Finding D.37 and apply the same modifications suggested there to the language in this section.

We support the risk assessment exemption for existing permittees for two years.

We have concerns, as noted above under Regional Water Board Authority, that Regional Water Boards can require risk assessment determinations at any time. See our comments above.

II.B.7. Small Construction Project Waiver Based on Rainfall Erosivity

The Rainfall Erosivity Waiver is listed as one of the significant changes in this permit. We are in favor of this change in the permit that makes it consistent with other national permits and the USEPA Phase II regulations.

II.C Revising Permit Coverage for Change of Acreage or New Ownership

In II.C.3 the permit introduces the concept of a parcel receiving coverage or ending coverage. This is confusing and not entirely clear. The errata sheet modifications are not helpful.

The permit also needs some changes to clarify that it is not the responsibility of the previous owner of a project property to terminate coverage until the new owner has filed the PRDs. The previous owner does not have any control over the new owner's responsibility to file the PRDs. The recommended language change is:

"Dischargers may terminate coverage for such a parcel when the parcel has either achieved "Final Stabilization" or when the parcel has been sold and the title to the property has been transferred. ~~new owner files PRDs~~.

III. DISCHARGE PROHIBITIONS

III.C.6. is written in a way that prohibits discharges above the NALs which is not appropriate given that they are not establishing a discharge limit or effluent limit.

The recommended changes are as follows:

Authorized non-storm water discharges may include those from dechlorinated potable water sources such as: fire hydrant flushing, irrigation of vegetative erosion control measures, pipe flushing and testing, water to control dust, uncontaminated ground water from dewatering, and other discharges not subject to a separate general NPDES permit adopted by a Regional Water Board. The discharge of non-storm water is authorized under the following conditions:

6. The discharge is monitored and meets the applicable NELs;

IV. SPECIAL PROVISIONS

IV.G. Duty to Maintain Records and Provide Information

The last sentence in permit section IV.G.1 should be re-worded as follows:

"These records shall be available at the construction site until an NOT is filed." ~~construction is completed.~~

IV.H. Inspection and Entry

IV.H.4 needs to be reworded since the discharger cannot ensure compliance through monitoring instead can only assess it. Suggested editing is as follows:

"Sample or monitor at reasonable times for the purpose of ~~ensuring~~ assessing General Permit compliance."

IV.I. Legally Responsible Party (LRP).

The errata sheet has address the original concerns with the definition of "duly authorized representative", etc.

IV.T. Continuation of Expired Permit.

"This General Permit continues in force and effect until a new General Permit is issued or the SWRCB rescinds this General Permit. Only those dischargers authorized to discharge under the expiring General Permit are covered by the continued General Permit."

V. EFFLUENT STANDARDS.

V.B. Numeric Effluent Limitation (NELs)

A significant improvement was made in the permit with the new Risk Level designations of 1 through 3. The elimination of the risk level 4 category is a beneficial modification that will reduce significant burden on the state and the dischargers. Also of benefit, is the decision to remove the NELs for the lowest risk level 1 dischargers which is a good step towards making the permit more reasonably balanced and fair without compromising erosion control practices. We support the inclusion of the pH and turbidity NALs for risk level 3 dischargers, and the exclusion of these NALs for risk level 1 dischargers.

By focusing resources and emphasizing compliance for risk level 3 dischargers the permit is now tailored to address the most important sources and dischargers and the highest risk sites.

We have concerns that the NEL for turbidity was modified from 1,000 NTU to 500 NTU and without any scientifically based arguments presented in the fact sheet. In fact, the explanation and method described in the fact sheet to derive the NEL does not have sound scientific backing. It is based on Best Professional Judgment (BPJ) and as such arbitrary. The SWRCB needs to document clearly and provide the scientific and statistical basis for the derivation of the NEL. It also needs to refer or apply the design storm event or as noted in the permit, the "compliance storm event", combined with the

required approach for developing technologically-based effluent limits (TBELs) to derive the NELs.

There is a secondary problem because turbidity and pH have been listed as a daily average in Section V.B.3. Daily average is not defined in the permit but is stated in way that it is likely applied as an instantaneous or daily maximum in Section V.B.4. The conflict between these sections has to be clarified and the NEL derivation has to be in line with the definition in Section V.B.3.

Daily Average pH Limits appear in the permit, but the calculation of daily average needs to be defined and other issues addressed as noted below. There is no practical application of daily average pH limits. Individual samples should not be averaged mathematically (because they are read in a log scale) and combining samples to take one pH reading is not technically correct either (since the lowest or highest pH sample is likely to affect the reading and be erroneously labeled to represent the entire site) and average pH does not provide any meaningful information to initiate corrective actions.

Furthermore, it is well know that pH levels in rainfall can be outside of the proposed NELs which may lead to compliance issues that are difficult to resolve and violations that the discharger has no possible means of correcting. The SWRCB needs to carefully evaluate the reasoning behind the selection of these pH limits and consider all the underlying issues with rainfall pH levels.

The following is suggested for revisions to Section V.B.4:

"If an analytical effluent sampling result is outside the range of pH NELs (i.e., is below the lower NEL for pH or exceeds the upper NEL for pH) or exceeds the turbidity NEL (as listed in Table 1), the discharger is in violation of this General Permit and shall electronically file the monitoring results <u>found to be in exceedance</u> ~~in violation~~ within 5 business days of obtaining the results."

V.B.5. Compliance Storm Event.

Need to clarify definition of design storm event versus compliance storm event (Appendix 2 – sediment basin sizing versus Fact Sheet page 17).

We are in favor of the Compliance Storm Event of 5yr and 24 hr established for Risk Level 3 Sites.

V.C. Numeric Action Levels (NALs)

The permit limits the investigation options of a pH NAL exceedance to run-on conditions, but it is well know that rainfall can have pH values outside this range and it is very likely that exceedances will be in these cases completely unrelated to run-on conditions (exposure of rainfall to low or high pH materials or conditions located upstream and outside of the project site) and simply due to the characteristics of rainfall.

The permit NALs and NELs for pH may not be as valuable as anticipated and it needs to be thoroughly examined since ambient pH conditions (rainfall, soils, groundwater, etc.) are likely to be outside the acceptable range currently being considered. What does the SWRCB anticipate the gains or benefits of regulating pH from construction sites be when the timeframe of risk (use of such materials) is very limited.

Minor rewording recommended as shown:

For Risk Level 2 and 3 dischargers, the lower pH NAL is 6.5 pH units and the upper pH NAL is 8.5 pH units. The discharger shall take actions as described below if the discharge is outside of this range of pH values.

VII. TRAINING QUALIFICATIONS AND CERTIFICATION REQUIREMENTS

The section is very confusing and combines training qualifications, certification requirements and technical responsibilities which should not be in the same section. The section is not well organized. This section also lists the discharger's responsibilities which do not belong here and will lead to further confusion.

Significant revisions are necessary in this section to distinguish the various requirements. For example, move VII.B.2 and VII.B.3 to VII.A since those two sections are addressing discharger responsibilities and not certification requirements. Also, sections VII.B.5, VII.B.6 and VII.B.7 should be moved to VII.A which describes the responsibilities of the discharger and not necessarily of the developer or practitioner. Section VII.A – General should include requirements general requirements of the discharger.

XIV. POST-CONSTRUCTION STANDARDS

The requirement for Post-Construction is not justified in a general construction permit and will not be effectively managed since projects that are not currently under the jurisdiction of a phase I or phase II municipal or other NPDES permit are unlikely to have the know-how to consider post-construction requirements during the planning and design phases when the project's post-construction BMPs need to be selected. The construction permit is usually the last regulatory requirement that a discharger/developer seeks and to have the post-construction requirement at this stage of the process will require that they alter the entire site design which is neither feasible nor practical.

Considering that the majority of urban projects have already outlined post-construction requirements it seems un-necessary to establish this requirements and to have it in a permit that is totally unrelated to the issue of post-construction BMPs. Post-construction BMPs are designed to manage pollutants originating from the use of the site and have no relationship to the construction at the site.

If the SWRCB wants to establish state-wide post-construction requirements for development found outside of the phase I or phase II permit areas, then it would be best

served by having a statewide permit for that specific purpose and not by appending it to a completely unrelated permit and regulation.

The SWRCB is imposing an unjustified and nearly impossible compliance requirement on the land owners or developers by establishing the post-construction requirements in this permit.

XIV. SWPPP REQUIREMENTS

XIV.A.5. The responsibilities for post-construction BMP maintenance cannot be assigned to the QSD since he/she does not have any responsibility once the NOT is filled. This comment is presented here, but as noted above, imposing post-construction BMPs as part of the general construction permit is out of place and above and beyond the scope of the regulation of construction related pollution. The permit will not be able to regulate for state requirements after the NOT is filed and the project is in its post-construction and use phase. This is one of the reasons that post-construction BMPs are out of place in this permit. Item XIV.A.5 needs to be deleted.

XIV.B. The QSD should be replaced with the discharger. The QSD is acting as an agent for the discharger and the permit needs to clearly distinguish what is considered the QSD's responsibility and what is the discharger's responsibility.

FACT SHEET

SECTION I – BACKGROUND

Section I.F. SUMMARY OF SIGNIFICANT CHANGES IN THIS GENERAL PERMIT

The rainfall erosivity waiver factor is stated here as less than or equal to 5. Elsewhere in the permit it is noted as having to be less than 5 and excludes the equal to. Please clarify.

The fact sheet indicates that the NELs and NALs are technology-based, but the data that was used for the derivation of these numeric targets has several problems and it is faulty in the application for the following reasons:

1. Total suspended sediment concentration data was used to derive a turbidity level. Turbidity data should be used to determine a turbidity limit.
2. The data used was from compliance cases and only limited to four samples from one region. This is not representative of the entire state or compliant BMP conditions.
3. The data was not from BMPs applied under normal operating conditions, instead from extreme cases.
4. Best Professional Judgment was applied, not BAT or BCT.
5. Technology-based numeric levels or limitations have not been correlated to the design or compliance storm event as defined in the permit.

Additional concerns and issues associated with the NELs and NALs is provided in Section II.F.1. of the Fact Sheet and included in our comments above.

SECTION II – RATIONALE

Section II.E. Discharge Prohibitions

The third paragraph is not clear. Reads as follows:

"Additionally, authorized non-storm water discharges must not used to clean up failed or inadequate construction or post-construction BMPs designed to keep materials onsite."

Section II.F.1.ii.a. Compliance Storm

The concept of including the compliance storm event and defining it is a good improvement and we support it.

Need to clarify definition of design storm event versus compliance storm event (Appendix 2 – sediment basin sizing versus Fact Sheet page 17).

Definition of compliance storm event is different between LUP and Non-LUP sites (see Attach. A page 14 may be preferred version of the two definitions (LUP) versus the Fact Sheet page 17 definition).

The Compliance Storm Event definition of 5-year 24-hour established for risk level 3 sites is acceptable and appropriate.

II.I. Sampling, Monitoring, Reporting and Record Keeping

The fact sheet is the first place where monitoring requirements and reporting is outlined in detail. There is no indication in the main permit body of the sampling and monitoring requirements. This should be considered as an important modification to make the permit's main body of text complete. Additional details should be linked to the fact sheet via a reference.

II.I.1.a. Monitoring Requirements – Visual

The requirements for visual inspections are confusing and inconsistent between the text in Section II.I.1.a and Table 4. The terminology is not consistent and uses non-storm event, pre-rain event, and post-rain event in the table while the text defines non-storm water inspections, storm-related inspections (defined as conducted within 1 business day after a qualifying event), and post-storm event (not defined, but would seem to be the same as storm-related inspections which occur after the qualifying rain event).

II.I.1.c. Water Quality - Effluent

Table 5 is extremely confusing and needs clarifications. The errata sheet did not address these concerns and raises new concerns.

1. Similar to the comment for Table 4, it does not make sense that effluent monitoring is triggered by an exceedance of the NEL if these are the basic monitoring requirements. Should Table 4 and 5 be combined? What is the difference which is not obvious between the two tables?
2. The Effluent Monitoring header reference to Section E is not clear (can't find Section E anywhere below).

II.I.1.d. Water Quality – Receiving Water

Monitoring of receiving waters under this general permit is unreasonable and infeasible.

II.I.1.d.i. Bioassessment Monitoring

The requirement is costly, unjustified, not fully developed or described in a manner that allows for reasonable implementation by dischargers, and provides no clear benefit for construction water quality control because it is not in any way required to be attained in a manner that would allow assessment of impacts on receiving waters due to construction site discharges . The requirement for bioassessment sampling is particularly unreasonable since there is only one time out of the year when this monitoring can be performed, and the program cannot be reasonably coordinated by all the independent permittees due to the complexity and expertise required. Since comprehensive bioassessment monitoring programs already exist throughout urbanized areas, there is no benefit to this monitoring. The conditions of benthic communities in the receiving waters are already known and documented, and are in place for the prescribed index period. Most of these programs are conducted by the SWRCB, MS4 Phase I permittees and other NPDES/WDR permittees under very stringent requirements. There is no technical basis in the General Permit for the bioassessment monitoring requirements and they need to be removed.

As further evidence of the problems that might be encountered with the program the SWRCB's confusion in the fact sheet in explaining the proposed options to pay into a fund in lieu of monitoring. The requirement is poorly explained in Appendix 5. The requirement is complicated and difficult to implement. Compliance with this requirement is unreasonable and extremely onerous.

The only possible and reasonable option for this program to be in place, as noted in comments submitted in 2008, is for the SWRCB to divert part of the permit fee to fund bioassessment statewide as part of the SWAMP and not make the discharger or permittee responsible for a statewide program, if the SWRCB intends to have a program that assesses construction discharges with macroinvertebrates it should have a defined program with measurable outcomes, not a requirement that will lead to over-sampling and testing of macroinvertebrates in the same areas and at the same time with no data

management or assessment in place to validate it. The program will be a waste of resources and may actually cause more harm than benefit to ecosystems.

II.I.3 Reporting Requirements

II.I.3.a. NEL Violation Report

This section states that risk level 3 dischargers must electronically submit all storm event sampling results and no later than 5 days after the conclusion of the storm event. We request a review and solution to the following issues:

1. This section and the report should not be titled "NEL Violation Report"; since exceedances are not violations until an NOV is issued by the SWRCB or Regional Water Board. The title needs to change to "NEL Exceedance Report".
2. The discharger should not be required to submit all results, but instead only the results that show exceedances.
3. The discharger will provide "all data" as required in the annual report, but should not be required to submit it twice.

II.I.3.b NAL Exceedance Report

This section requires that NAL exceedances by Risk Level 2 projects be reported within 10 days, as if they were violations. This requirement needs to be eliminated. The discharger should not be burdened with this requirement and should only be required to document any exceedances of the NALs and their corrective actions. A review of the documents can be performed on-site, as needed, by the SWRCB or Regional Water Board to verify that corrective actions were implemented.

Since NALs will not lead to exceedances that are the subject to being violations they should not be required to be reported under these time constraints. All water quality measurements will be reported as part of the annual report and at that time the RWQCB or SWRCB can assess any failure by the discharger to properly document any follow-up actions.

II.J. Risk Assessment
Appendix 1: Risk Determination Worksheet,

New Comment on Appendix 1 titled "Risk Determination worksheet":

a. Inconsistency between language in the Fact Sheet and the Risk Determination Worksheet

The language used in Page 28 of the Fact sheet indicates the following:

"Receiving water risk is based on whether a project drains to a sediment-sensitive waterbody. A sediment-sensitive waterbody is either on the most recent 303d list for waterbodies impaired for sediment; has a USEPA-approved Total Maximum Daily Load

implementation plan for sediment; ***or*** *has the beneficial uses of COLD, SPAWN, and MIGRATORY."*

It does not indicate if the project site drains **directly or indirectly** to the sediment sensitive water body.

The revised Risk Determination worksheet (version 061009), indicates the following:

"A.1. Does the disturbed area discharge (either directly or indirectly) to a 303(d)-listed waterbody impaired by sediment? For help with impaired waterbodies please check the attached worksheet or visit the link below:"

Please provide clarification. There needs to be a clear definition of "directly" and "indirectly." Does directly also mean that the discharge is not commingled with other discharges?

b. Criteria for Sediment Sensitive Water body

The language used on Page 28 of the Fact sheet indicates the following:

"Receiving water risk is based on whether a project drains to a sediment-sensitive waterbody. A sediment-sensitive waterbody is either on the most recent 303d list for waterbodies impaired for sediment; has a USEPA-approved Total Maximum Daily Load implementation plan for sediment; ***or*** *has the beneficial uses of COLD, SPAWN, and MIGRATORY."*

Please provide clarification if a waterbody can be termed "Sediment sensitive water body" if it is determined to satisfy one of the following 3 criteria:

Criteria 1: most recent 303d list for waterbodies impaired for sediment
Criteria 2: has a USEPA-approved Total Maximum Daily Load implementation plan for sediment
Criteria 3: has the beneficial uses of COLD, SPAWN, and MIGRATORY

The Risk Determination worksheet groups Criteria 1 & 2 together. Hence provide clarification if the Entry for the Receiving Water Risk Factor can be "Yes" if either Criteria 1 or 2 is satisfied or if it requires that both Criteria 1 and 2 to be satisfied.

Section II.J.1.i Rain Event Action Plan (REAP)

The only mention of the REAP requirements are in the fact sheet. The main body of the permit should make reference to the requirement to prepare and implement a REAP to ensure the discharger does not fail to meet compliance. The details may be found in the fact sheet with an appropriate reference in the main body of the permit.

Clarifying trigger language for preparation of the REAP is needed. The fact sheet provides the derivation of the rain event but does not clearly state what the qualifying rain event definition is.

The fact sheet states that: "This General Permit requires Risk Level 2 and 3 dischargers to develop and implement a REAP designed to protect all exposed portions of their sites within 48 hours prior to any likely precipitation event."

Per Table 8, a "likely precipitation event" would correspond to a 60-70% PoP which is the quantification of a "Likely" event with numerous showers for the aerial coverage (note that not all aerial coverage prediction of showers or rain actually reaches the ground due to other factors and is itself already conservative). Therefore, the REAP would be initiate upon determination that a forecast rain event has a 60-70% likelihood or certainty.

The text goes on to say that "(NOAA) defines a chance of precipitation as a probability of precipitation of 30% to 50% chance of producing precipitation in the project area." But this statement is irrelevant and confusing since the 30-50% PoP is for a "chance" of rain with has a much lower degree of certainty and typically applies to scattered showers. We recommend that this sentence be removed to reduce the confusion. Instead, it should state: "(NOAA) defines a likely probability if it has a 60% to 70% chance of producing precipitation in the project area. This event is likely to produce numerous showers in the aerial coverage which is a conservative estimate of the level of precipitation reaching the ground."

Finally, the REAP would be required and stated in the fact sheet if:

"There is a probability of precipitation of greater than 60% and the rainfall amount is predicted to be at least 1/10th of an inch."

The same clarification and change would apply to Attachments C, D and E in Section H – REAP.

II.L Post Construction Requirements

The permit includes language on post-construction requirements that apply in areas outside of the Phase I and Phase II Municipal permit areas that have SUSMP provisions, but it is important to note that the majority of California (maps on pages 37 and 38 of the Fact Sheet) are not covered by these types of permits. So, the GCP language would actually apply in most of California. As noted in earlier comments (see Section XIV above) this permit is not the appropriate regulatory vehicle to implement post-construction requirements and creates significant logistical problems for implementation and compliance. This requirement needs to be removed from the permit.

Apart from the objection to post-construction requirements, the following issues were found in the tool provided in Appendix 4.

II.M Storm Water Pollution Prevention Plans

Table 9. The fifth entry for Erosion, Sediment and Storm Water Inspector with certification from CPESC should apply to "Both" QSD and QSP.

Appendix 2 - Sediment Basin Sizing
In Appendix 2, the website link provided to obtain the rainfall depth for a 2-year 24-hour storm event is incomplete.

It should be revised to indicate http://www.wrcc.dri.edu/pcpnfreq.html

Appendix 4.1 - Post Construction BMPs. The instructions/comments provided for Steps 1a, and 1c, cannot be applied. For examples, Step 1c indicated to use "Location" and this option is unavailable in the drop-down menu.

In the "Rain Barrel" worksheet, the user is unable to input the response cells (for example the total number of rain barrels).

Appendix 5 – Bioassessment Monitoring Guidelines

General comments are provided since the Appendix needs significant revisions and the entire bioassessment monitoring strategy is flawed. Please see comments above for Section II.1.1.d.i. Bioassessment Monitoring.

1. It is unclear if the "exception" can be satisfied by completing one or all.
2. It is excessive to ask that $7,500 times the number of samples be requested as compensation to qualify for the bioassessment exception.
3. Exception No. 5 refers to Appendix 4 which is incorrect.

One additional argument against the discharger's implementation of bioassessment monitoring is the complexity of the quality control requirements which are part of this type of monitoring.

Appendix 7 - Glossary

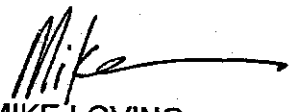
- Add daily average definition
- Add compliance storm event definitions (there are three: 1) for risk level 3 dischargers; 2) for ATS compliance as a design storm event; 3) for sedimentation basin design.
- Add qualifying storm event for REAP

Fact Sheet

On page 22 of the Fact Sheet, level 2 should be changed to level 3

We respect the tremendous work on this permit by State Board staff, and for the adoption of a sensibly progressive construction storm water permit. Thank you again for the opportunity to participate in this process.

Sincerely,



MIKE LOVING
Water Quality Administrator
City of Irvine

Emailed to: commentletters@waterboards.ca.gov
Original sent by mail