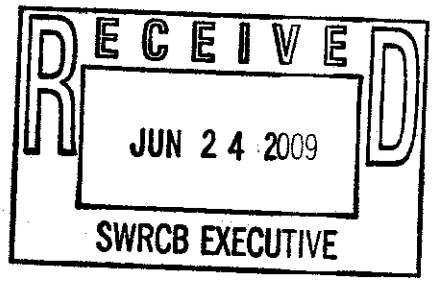
Public Comment
Dft. Construction Gen. Permit
Deadline: 6/24/09 by 5:00 p.m.

June 24, 2009



Charles R. Hoppin, Chair
State Water Resources Control Board
1001 I Street
P.O. Box 100
Sacramento, CA 95814

RE: Draft NPDES General Permit for Storm Water Discharges Associated with Construction Activity

Dear Chair Hoppin:

On behalf of its thirty member counties, the Regional Council of Rural Counties (RCRC) offers the following comments on the draft NPDES General Permit for Storm Water Discharges Associated with Construction Activity (Permit) issued on April 29, 2009. While RCRC appreciates Water Board staff's efforts to incorporate stakeholder concerns and recommendations on the March 2008 version of the General Permit into the current draft, RCRC still has concerns with the Permit as written. These concerns are particularly surrounding the cost impacts of the proposed Permit and RCRC believes that the economic consequences of the Permit have still not been adequately addressed by Water Board staff. We also have concerns with several technical aspects of the Permit, and are endorsing the technical and policy comments being submitted by the California Building Industry Association (CBIA).

The current draft of the Permit poses significant financial consequences to local governments and our constituents, who are already facing the possibility of losing billions of dollars in funding due to the state's budget shortfall. Our members are disappointed and frustrated that, despite requests from stakeholders including RCRC during the comment period for the draft released in 2008, a detailed economic analysis of the Permit did not accompany this draft and has yet to be conducted by Water Board staff.

RCRC is concerned that the increased enforcement responsibilities for local governments covered under the MS4 General Permit will drastically raise costs for counties statewide. It will be especially onerous in rural areas due to the

disproportionately high per capita costs that inevitably result from such increased enforcement requirements. If the Permit is adopted as currently proposed, we are concerned that future MS4 updates will include enforcement requirements beyond those that are already in the MS4 permit, as well as anticipate the possibility of additional regulations on non-MS4 agencies. RCRC anticipates that additional staff will be necessary if rural counties are expected to aid in enforcement, which would constitute an unfunded mandate due to the increased costs to local agencies.

RCRC is particularly apprehensive about the additional cost and enforcement of the proposed post-construction requirements contained in the draft. We oppose any efforts to require non-MS4 municipalities to be responsible for ensuring that post-construction requirements are maintained once a construction project is complete. If local governments are to oversee post-construction requirements at any time, we feel the Permit is not the appropriate vehicle to establish such a directive, but should be handled through CEQA revisions. This would allow local governments to oversee post-construction mechanisms from the beginning of the planning process.

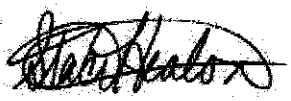
The arduous technical requirements contained in the Permit will also compel Regional Boards to mandate MS4 coverage for many small municipalities solely due to a greater number of violations of the new Permit. In 2007, Calaveras County was informed by the Central Valley Regional Water Quality Control Board (Region 5S) that they would need to seek coverage under the Phase II MS4 permit, specifically stating that one of the main reasons was an increased number of violations of the Construction General Permit in the county. Calaveras County estimates that it cost $10,000 to simply implement the initial MS4 mandates, which is an unreasonable cost considering our counties' current economic struggles. Due to the exhaustive, burdensome nature of the requirements in the draft Permit, we expect violations to greatly increase once it is adopted, and anticipate that Regional Boards around the state will require more small municipalities to apply for coverage under the MS4 permit as a result.

Beyond the costs of enforcement, Water Board staff also has not adequately addressed the financial implications the Permit has on construction projects themselves. Both private and public entities will struggle with the incremental costs of complying with the current draft of the Permit, especially if the Board chooses to impose such requirements as numeric effluent limits (NELs) and receiving water monitoring. Imposing NELs and other such onerous requirements will lead to both increased labor and additional structural best management practices that could pose significant costs to complete a construction project. These costs will be particularly magnified in rural areas, where equipment and labor is often harder and more expensive to procure, and have the potential to delay or completely halt vital construction projects statewide.

RCRC must again request that the Board direct staff to conduct a comprehensive economic impact analysis of the draft Permit before any Board action is taken. As with AB 885 and other Water Board rulemakings, RCRC would be happy to facilitate a

dialogue between staff and our member counties so that the potential costs of the Permit can be accurately assessed. We thank you for your consideration of our input in this matter, and would be happy to offer any information the Board or staff may need to better analyze the costs and implications of implementing the Permit in rural counties. Please feel free to contact me if you have any questions or would like to discuss our comments.

Sincerely,



Staci Heaton
Regulatory Affairs Advocate

CC: Linda Adams, CalEPA Secretary
Members of the State Water Resources Control Board
RCRC Board of Directors