June 10, 2008

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

Via E-Mail at
commentletters@waterboards.ca.gov

Subject: **Comment Letter – Draft Construction Permit**

Dear State Ms. Townsend,

Please find attached comments on the draft General Permit for Storm Water Discharges associated with Construction Activity. These comments are based on my experience as one who assembles compliance programs, implements SWPPPs, writes storm water plans and conducts inspections. This experience has provided many insights in helping me to understand what's effective and what isn't.

Sincerely,

Dan Duncan, CPESC/CPSWQ
Lancaster, CA
dhduncan@adelphia.net

Attachment: Comment Letter, draft Construction Permit

Opening comments and thoughts about stormwater programs in California.

Permit

As one who is employed to maintain regulatory compliance for regulated entities, I find myself frequently having to justify the logic, as well as, the implementation costs associated with complying with the current general stormwater permit for construction activities. I imagine many of the State's staff receives similar inquiries and I feel it's productive to share the perspective of one who, when all is said and done, has to make the requirements of this permit work. I appreciate the permit's attempt to seek balance along the fine line of technical requirements, political pressures and threats of litigation, but for those of us attempting to protect water quality at a project level the technical aspects is what we look to. A simple example is the expression "effective combination of erosion and sediment control", this is a great theme or mission statement, but when put before construction professionals, means little. The world of construction is precise and exact, everything constructed is done so in specific fractions of a meter, increments of angles, specific time periods, chemical formulas and detailed plans; those who operate in this industry are very capable of implementing effective BMPs when properly spec'd; begging the question why is construction still such a challenge? There's no one answer

and I'm sure many in construction will be the first to point to their own industry as failing to do all they should to be in compliance. Aside from this, I believe a significant issue comes from the permit itself. The lack of precision, ambiguity, inconsistency and even conflict, make the implementation of an effective program challenging. I recognize this permit's efforts to bring technical details to the program and encourage you to include more of these.

One area not addressed in this draft permit is the use of a design storm. It seems that designating a design storm has turned into a taboo and it's actively avoided. I don't understand how any practitioner can claim a SWPPP is anything more than a best guess since there's no guidance on what level the plan needs to be designed to. I find it odd that those who engineer flood control structures and deal with life safety issues can establish a standard needed for these objectives, but our industry can't seem to land on a foundation for the designing of BMPs. Municipalities with post-construction treatment controls even come up with a number for design criteria.

Program

We all recognize the permit is but one component of an effective program. Simply having a great permit is not enough if the other program elements are lacking. During one of the recent draft stormwater permit workshops we heard State Board staff indicate more than once that resources are either inadequate or simply not there to support some of the efforts necessary for the new permit. One example is the review of PRDs and that staffing levels are not adequate to evaluate them. To backstop this, we were told the public can choose to evaluate the PRDs. This is less than comforting and, as a taxpayer, I find it an unacceptable solution. Over the years many regional board staff has shared they are under-resourced, not just financially, but from a regulatory foundation necessary for them to work effectively. One example was an experienced inspector who said they (the Region) assessed turbidity compliance at 700 NTU. When asked about the source of this level I was told it was one they made up because they needed something. There are other examples such as this, however, the point is in the absence of the needed support, gaps or voids will be closed; hopefully, it's through a recognized and appropriate process.

This draft permit addresses stormwater impacts from post construction activities; an exceedingly important issue, one only needs to observe a big-box discount retailer's parking lot to appreciate why. However, this is not the appropriate mechanism to use for getting there. I encourage the State Board to pursue the path necessary to address post-construction runoff controls. This draft permit also touches upon its jurisdiction (or lack there of) because of the definitions contained within waters of the US. This issue is a fact of law and not one that can be overcome by public opinion (at least anytime soon). The State Board was quick to act following the perceived loss of jurisdiction through the CWA section 401 reductions due to the US Supreme Court's ruling in SWANCC. The Board should consider a similar action to backstop the perceived loss (you can't lose what you never had) of stormwater authority under the State's CWA. I encourage the

State Board to take on its new challenges in a clear and direct fashion; "jurisdictional-creep" is not uncommon for many resource protection agencies, however, they are a short-term solution and frequently end up causing issues to drag out longer, cost more money and lose support once they get to litigation.

This draft permit addresses the need for qualified individuals, which I fully support. One reason stormwater quality issues are under-appreciated is because of the damage done by unqualified individuals who use misinformation and scare tactics to manipulate their client base. Many of these individuals know little about the permit and the correct application of BMPs. I can not encourage you enough to pursue a set of rigid standards for those practicing in the stormwater field which they will be required to meet. The pay-to-play programs and certifications time has come and its time to make stormwater quality a legitimate and respected profession. Paramount to getting quality training; I recommend the State Water Board seriously consider establishing training classes. A number of state and local agencies provide regular training on the subjects associated with their area of regulation. The California Air Resources Board is one which has excellent classes as does many of the air pollution control districts. Most charge a fee for the courses which many of us are more than willing to pay for.

Responses to State Board Member Wolff's three questions.

1. This draft permit contains little if anything which is simplistic. Given the diverse universe of its application I don't see how it can. Complexity or possibly an alternative term "detail" is very helpful in technical descriptions but serves little purpose in dissecting the administrative bureaucracy. In this era of litigation where every syllable seems to contain significance, the Clean Water Act seems to simply say "if you don't discharge pollutants then you're in compliance", we have gotten away from this.

2. Solid data is paramount, first in determining if there is a problem, second understanding the extent of the problem and third identifying the causes for the problem; yes, we need to establish a database for all these parameters, and for consistency purposes it should be overseen by one entity. I'm not sure it's the best use of State Board's or the regulated community's resources to achieve this objective and I encourage you to explore assistance from State colleges.

3. Unfortunately, tiered-compliance seems to be the best approach in dealing with those who choose not to comply.

No. 1	Document	Page No.	Subject
1.	*Fact Sheet*	*3 of 63*	*Electronic filing*

Referenced Text:

2. *To obtain coverage under this General Permit, dischargers shall electronically file the Permit*
3. *Registration Documents (PRDs), which includes a Notice of Intent (NOI), Storm Water Pollution*
4. *Prevention Plan (SWPPP), and other compliance related documents required by this General*
5. *Permit and mail the appropriate permit fee to the State Water Board.*

Discussion:

6. Electronic filing is an efficient and cost effective use of resources assuming the State's hardware,
7. software and staff are up to the challenge. Utilizing this strategy creates a number of uncertainties
8. for the permittees which should be addressed up front in this permit:
9. • Clarify the system requirements for the users
10. • The system should be compatible with all popular operating systems
11. • When the system fails the permitee should not be penalized by delays or needing to re-
12. enter lost data
13. • Are regional board inspectors provided legal access and authority to copy files from the
14. permitee's job site computer?
15. • What is the estimated uploading time for all of the PRDs?

No. 2	Document	Page No.	Subject
1.	*Fact Sheet*	*4 of 63*	*Early Court Decisions*

Referenced Text:

2. Missing

Discussion:

3. A discussion about the US Supreme Court's rulings in Solid Waste Agency of Northern Cook
4. County (SWANCC) v US Army Corps of Engineers, 2001 and Rapanos v United States, 2006
5. will be pertinent in this area due to their impact on the jurisdictional determination on *waters of*
6. *the US*. Foundational to the States' proposed permit is it applicability granted by the CWA for
7. *waters of the US* and the insights provided through the opinions of the Supreme Court judges
8. when defining the extent of the jurisdiction. The Supreme Court opinions offered in these two
9. cases clearly reflect the Court's focus on the overall application of jurisdictional determination to
10. the entire Clean Water Act and not simply section 404 of it.

No. 3	Document	Page No.	Subject
1.	*Fact Sheet*	*5 of 63*	*Court Decisions on Public Participation*

Referenced Text:

2. On January 14, 2003, the Ninth Circuit issued a decision in *Environmental Defense Center v.*
3. *USEPA* (344 F.3d 832). This ruling found that certain aspects of USEPA's Phase II regulations

governing municipal separate storm sewer systems were deficient on three procedural grounds. The court determined that applications for general permit coverage (including the NOI and Storm Water Management Program [SWMP]) must be made available to the public, the applications must be reviewed and determined to meet the applicable standard by the permitting authority before coverage commences, and there must be a process to accommodate public hearings. The basis of the ruling was that the regulations did not require specific provisions and that it allowed dischargers, in essence, to write their own permit provisions.

Discussion:

This preamble appears to be addressing municipal separate storm sewer systems and not discharges from construction activities. In the previous permit, Order No. 99-08-DWQ, NPDES General Permit No. CAS000002, states: *The SWPPP shall be provided, upon request, to the RWQCB. The SWPPP is considered a report that shall be available to the public by the RWQCB under section 308(b) of the Clean Water Act.* Hence, the requirement to provide public access already exists.

Additionally, unlike the municipal separate storm sewer systems permits mentioned, the *general construction activity stormwater permit* applies to projects and though the adoption of an NPDES permit may be exempt from the requirements of CEQA (Ca Water Code Sec. 13389), most projects will be subject to the requirements of CEQA, which does include assessing water quality impacts both during construction and post construction.

As stated, in part, the CEQA regulations at 15002, *General Concepts*.

(a) Basic purposes of CEQA. The basic purposes of CEQA are to:
(1) Inform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities.
(2) Identify ways that environmental damage can be avoided or significantly reduced.

Because the CEQA process engages the project in its early stages, the project proponent can consider legitimate input from both the public and other parties while doing its design and engineering, providing for an efficient development process. Conversely, by engaging a public hearing process just prior to construction, there's an opportunity to create delays and the potential (on controversial projects) for pressure to significantly encumber the project.

If the State Board feels compelled to solicit more public involvement, they will be better served by educating the public about the CEQA process and not introduce a redundant program.

No. 4	Document	Page No.	Subject
1.	*Fact Sheet*	*6 of 63*	*Court Decisions on Public Participation*

Referenced Text:

Neither of these court cases are directly applicable to states implementing the USEPA regulations. Rather, they are directed at USEPA, which must revise its regulations. However, the State Water Board's Office of Chief Counsel has recommended that the new General Permit address the Court's rulings where possible. This General Permit includes many more specific requirements than the minimum requirements in USEPA's regulations and in the previous General Permit.

Discussion:

To clarify, the new direction and more rigorous requirements are based on "..the State Water

Board's Office of Chief Counsel has recommended..." and not a court directive. A more balanced approach utilizing the existing regulatory mechanisms can achieve this objective without creating an entirely new and redundant project review process.

No. 5

Document	Page No.	Subject
Fact Sheet	*10 of 63*	*Inadequate understanding of the situation*

Referenced Text:

This General Permit and the overall program does not fit the traditional NPDES model (i.e., discharger provides all this information to us) well because of various reasons, but mainly because (1) this community of dischargers is generally not accustomed to or adept at water quality sampling procedures, and (2) we have not developed a set of tried and tested procedures for obtaining high-quality representative samples of storm water effluent from construction sites.

Discussion:

There's a significant need to acquire additional information about construction activities' runoff impacts. The State contracted third-party sampling plan proposed in the fact sheet on this same page appears to be a good approach to addressing needed information.

No. 6

Document	Page No.	Subject
Fact Sheet	*13of 63*	*Post-Construction Control Requirements*

Referenced Text:

New Development and Re-development Storm Water Performance Standards (i.e., Runoff Reduction Requirements)

Discussion:

There's clearly a need to control and treat all aspects runoff, however, this permit is specifically for the activities associated with construction: "**GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY**". Utilizing this permit to address an unrelated objective is wrong and amounts to holding the permitees hostage for one issue by creating a barrier with another. If the State Board's intent is to direct post-construction runoff conditions then it should create another permitting process for this purpose. The Fact Sheet on page 3 of 63, last paragraph states *The General Permit accompanying this fact sheet regulates storm water runoff from construction sites.*(The first paragraph in the Order (No.1, page 1 of 27) states *This General Permit authorizes discharges of storm water associated with construction activity*....) There's no mention permitting post-construction discharges.
If there's an inadequate jurisdictional connection then understand that state policy makers have made the conscience decision to limit the State Board's authority here.

No. 7	Document	Page No.	Subject
1.	*Fact Sheet*	*16 of 63*	*Permit Waiting Period*

Referenced Text:

There was much concern over the "90-day waiting period" contained in the preliminary draft. This is no longer a significant issue, because this General Permit contains NELs for the primary pollutants and very specific, risk-based requirements for the dischargers to include their SWPPPs. As a result, the PRDs are less critical to the process, although there will still be an electronic application process. The specificity of the Permit provisions, together with the public availability of PRD filings, obviates the need for a separate public process to consider how these documents constitute compliance with the Permit itself. There will still be a process for comment submittal and, under some circumstances, an opportunity for a public hearing to be held prior to project approval. This General Permit will require all PRDs to be complete in order to obtain permit coverage.

Discussion:

This section suggests the concern over an extended waiting period, such as 90 days, is unfounded due to the permit provisions. If this is the case, please consider adopting a time period, such as 60 days, in which the applicant will automatically be granted permit coverage. This is much simpler and allows for project planning, this concept is not inconsistent with other permitting programs offered by the State.

Additionally and of equal importance are the references made about the Regional Boards' independent discretion to interpret and implement this permit language. The Regional Boards' need flexibility to adapt this general permit language to their specific challenges, however, unlike the State Board, who has provided workshops and has made itself available to address questions, the Regional Boards' have not engaged in a similar process leaving the regulated community and the public uncertain as to how the new GCP will be implemented and how they'll address the public input/hearing process. Assurances by the State Board in both these draft documents and at their public workshops indicating only minimal concerns about how the public input/hearing activities will impact the permitting process; provides little relief due to the uncertainty of the open-ended discretion provided to the Regional Boards.
Given the Regional Boards' role as "administering the provisions of this permit", it's only prudent to have them involved in its development and allow them to provide the regulated community and public their intentions as to how they'll implement the draft GCP's requirements and address public comments.

No. 8	Document	Page No.	Subject
1.	*Fact Sheet*	*16 of 63*	*Public Participation*

Referenced Text:

There will still be a process for comment submittal and, under some circumstances, an opportunity for a public hearing to be held prior to project approval.

Discussion:

Public participation can be valuable in bringing another perspective into the evaluation process

and to give the community a sense of ownership in the project. Unfortunately, we have seen the public participation process miss-used as well. To provide credibility for those submitting comments the State should include a "public participant registration process" which will need to be completed prior to comments being accepted.

No. 9	Document	Page No.	Subject
	Fact Sheet	*17 of 63*	*Effectiveness and consistency of inspections*

Referenced Text:

Overall Construction Program Support Efforts
In conjunction with the reissuance of this General Permit, State Water Board staff has been working to update some other, non-permit elements of the program. For example, staff is committed to improving the effectiveness and consistency (statewide) of the inspections conducted as part of this program. State Water Board staff is developing new standardized training and administrative procedures for all Water Board construction site inspectors.

Discussion:

I applaud the State's effort in addressing these challenges. It will improve water quality in the State if all State training was open and accessible to the public. All those concerned about compliance with the permit's conditions will only benefit from hearing the same instructions and being educated about the issues. Open and accessible training will help educate the public, who is now under this permit an active participant, allowing them to provide more informed input to the process. The regulated community will also benefit by sitting with their agency peers and receiving the same training. Additionally, this group training may help to foster a cooperative spirit between State and Regional staffs, the regulated community and the interested public.

No. 10	Document	Page No.	Subject
	Fact Sheet	*23 of 63*	*Activities not covered by this General Permit*

Referenced Text:

Discharges from construction activity disturbing less than one acre of land surface, unless part of a larger common plan of development or sale, do not need to apply for this General Permit.

Discussion:

As stated under Background, A. History : *In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act [CWA]) was amended to provide that the discharge of pollutants to waters of the United States from any point source is unlawful unless the discharge is in compliance with an NPDES permit.*
It seems that the less than 1 acre exclusion has no merit if the intent is to regulate discharges of pollutants to waters of the US. The State Board should consider including all construction activities with the potential to discharge pollutants to water of US under this permit.

No. 11	Document	Page No.	Subject

1. *Fact Sheet* *24 of 63* *Waters of the U.S. jurisdiction*

Referenced Text:

2. Discharges to non-jurisdictional waters (as determined by the US Army Corps of Engineers)

Discussion:

3. When discussed during the workshops State staff seemed surprised and unaware of this
4. determination. I believe it's in the best interest to get this before participants so they understand
5. this determination is not a choice but a simple fact of law. Additionally, the U.S. Supreme Court
6. has made significant rulings on what is and what is not a waters of the U.S. (which are applicable
7. to all CWA sections and not just to section 404) and all of this needs to be seriously considered by
8. the State, public and the regulated community. Ignoring this will only bring future litigation.

No. 12	Document	Page No.	Subject
1.	*Fact Sheet*	*24 of 63*	*Common Plan of Development or Sale*

Referenced Text:

2. Referring to the Local Permit helps define "common plan of development or sale". In cases such
3. as tract home development, a Local Permit will include all phases of the construction project
4. including rough grading, utility and road installation, and vertical construction. All construction
5. activities approved in the Local Permit are part of the common plan and must remain under the
6. General Permit until construction is completed.

Discussion:

7. This is good attempt at clarifying the area covered by the permit, however, there are many
8. different Local Permits associated with a project. One may be for mass grading while another
9. will be for underground utilities. It's not uncommon for each plan to have a different area
10. associated with it; for clarification purposes, consider utilizing a particular type of plan such as
11. the mass grading or rough grading plan.

No. 13	Document	Page No.	Subject
1.	*Fact Sheet*	*29 of 63*	*Record retention*
2.	*Order*	*6 of 27*	*Record retention*

Referenced Text:

3. The discharger is required to retain paper or electronic copies of all records required by this
4. General Permit for a period of at least three years from the date generated or the date submitted to
5. the State Water Board or Regional Water Boards. A discharger shall retain records for a period
6. beyond three years as directed by Regional Water Board.

Discussion:

7. Given:
8. *This General Permit requires all dischargers to electronically file all Permit Registration*

Documents (PRDs), Notices of Termination (NOT), change of information, annual reporting, and other compliance documents required by this General Permit through the State Water Board's website. (page 6 of 27 draft Order)
The permittees should no longer be required to perform document retention. All documents will be in possession of the State.

No. 14

Document	Page No.	Subject
Fact Sheet	*35 of 63*	*Collect samples*

Referenced Text:

All construction projects shall collect storm water samples from each drainage area after the initial ½ inch of measured precipitation from a storm event, and every one-inch thereafter. Dischargers shall collect samples of stored or contained storm water that is discharged subsequent to a storm event producing precipitation of ½ inch or more at the time of discharge.

Discussion:

Is the term "collecting" be used here to mean just collecting is it intended to mean collect and analyzed? All lab test methods have designated hold-times which may be exceeded if a sample simply taken and then stored.

No. 15

Document	Page No.	Subject
Fact Sheet	*38 of 63*	*Annual Report*

Referenced Text:

All dischargers shall prepare and electronically submit an annual report no later than February 1 of each year using the Storm Water Annual Report Module (SWARM). The Annual Report shall include a summary and evaluation of all sampling and analysis results, original laboratory reports, a summary of all corrective actions taken during the compliance year, and identification of any compliance activities or corrective actions that were not implemented.

Discussion:

There does not appear to be a discussion about the period this report will cover. Consider the period utilize by the General Industrial Stormwater Permit, July 1st through June 30th.

No. 16

Document	Page No.	Subject
Fact Sheet	*44 of 63*	*RUSLE*

Referenced Text:

The permit also requires dischargers to predict post-construction average annual soil loss using the RUSLE.

Discussion:

When requesting guidance on the use of the RUSLE equation from the NRCS, the response was that RUSLE is obsolete and no longer supported by NRCS. They have advanced to RUSLE-2. Shouldn't the State be taking the same direction?

No. 17	Document	Page No.	Subject
1.	*Fact Sheet*	*47 of 63*	*Rain forecast terminology*

Referenced Text:

This General Permit requires dischargers to develop and implement a REAP designed to protect all exposed portions of their site within 48 hours prior to any likely* precipitation event.

A REAP shall be developed when there is a 50% or greater* forecast of precipitation in the project area.

Table 5,

	Expression of Uncertainty	Areal Coverage
PoP		
60-70%*	Likely*	Numerous

*underlining added

Discussion:

The draft GCP permit documents associate the term *likely* with a 50% or great chance of precipitation (see Order, rain event action plan page 24 of 27) and the National Weather Service defines *likely* as a 60-70% chance. Consistency among terms is very helpful.

No. 18	Document	Page No.	Subject
1.	*Fact Sheet*	*59 of 63*	*ATS*

Referenced Text:

The use of an ATS may be appropriate when site constraints inhibit the ability to correctly size a sediment basin, when clayey and/or highly erosive soils are present, or when the site has very steep or long slope lengths.

Discussion:

Given its potential to harm the environment, it may be prudent to limit where ATS is utilized and permit it only for those conditions its intended for.

No. 19	Document	Page No.	Subject
1.	*Fact Sheet*	*62 of 63*	*Enforceability*

Referenced Text:

The requirements are specified in the permit so that dischargers understand the requirements and

3. the public can determine whether discharges are in compliance with permit requirements.

Discussion:

4. This statement is overly-simplistic. If compliance was this simple we would not need stormwater
5. inspectors. Consider re-stating it to say:
6. *The requirements are specified in the permit so that dischargers understand the requirements and*
7. *the public can appreciate the efforts by those at the State and Regional Boards as well as those in*
8. *construction to protect our valuable resources while providing for society needs.*

No. 20 | Document: *Order/Permit* | Page No.: *9 of 27* | Subject: *Notice of Termination*

Referenced Text:

2. 3.The discharger shall continue coverage under the General Permit for any parcel that has not
3. achieved "Final Stabilization" as defined in footnote 12 in Section XI. Dischargers may terminate
4. coverage for such a parcel when the parcel has either achieved "Final Stabilization" or when the
5. parcel has been sold and the new owner files PRDs.

Discussion:

6. By not approving a NOT after transfer of title, the State is requiring another party to enforce its
7. rules for them. A seller could overlook this in sale documents and become obligated for
8. compliance with little recourse from the State and Regional Water Boards. Consider revising this
9. condition to require the seller only to notify the State and/or Regional Board when the property is
10. changing title.

No. 21 | Document: *Order/Permit* | Page No.: *11 of 27* | Subject: *Turbidity for ATS discharges*

Referenced Text:

2. a. Turbidity of all ATS discharges shall be less than 10 NTU for daily flow-weighted average of
3. all samples and 20 NTU for any single sample.
4.
5. 4. Storm water discharges and authorized non-storm water discharges shall not disrupt the pre-
6. project equilibrium flow and sediment supply regime.

Discussion:

7. NELs for turbidity of ATS could be in conflict with pre-project equilibrium conditions. Shouldn't
8. these NELs recognize this?

No. 22 | Document | Page No. | Subject

1.	*Order/Permit*	*11 of 27*	*Groundwater*

Referenced Text:

2. 1. Storm water discharges and authorized non-storm water discharges shall not contain pollutants
3. in quantities that cause a public nuisance in groundwater or surface water.

Discussion:

4. Ground water is not included in the definition of water of the US.

No. 23	Document	Page No.	Subject
1.	*Order/Permit*	*12 of 27*	*Filing period*

Referenced Text:

2. New dischargers scheduled to begin construction activities on or after the adoption date of this
3. General Permit [insert effective date of permit] but prior to [insert 14 days after effective date of
4. permit] shall electronically file their PRDs prior to commencement of construction activities or
5. change of ownership, **and mail the appropriate permit fee** no later than seven days after submitting
6. their PRDs. Permit coverage is authorized on the date the PRDs are accepted by the State Water
7. Board pending receipt of the annual fee.

Discussion:

8. The State needs to establish an on-line process for paying fees. Possibly PayPal.

No. 24	Document	Page No.	Subject
1.	*Order/Permit*	*15 of 27*	*Runon*

Referenced Text:

2. A. Numeric Action Levels

Discussion:

3. The permit assumes runon will be commingled with on site runoff. This permit should recognize
4. when an off-site flow is conveyed through the site in a pass-through BMP such as a pipe or lined
5. channel, the permittee should not be responsible for the pass through other than to control its
6. energy as it leaves the conveyance BMP.

No. 25	Document	Page No.	Subject
1.	*Order/Permit*	*16 of 27*	*Active operations / erosion control*

Referenced Text:

2. For Risk Levels 2 and 3, the discharger shall implement appropriate erosion control BMPs (runoff

control and soil stabilization) in conjunction with sediment control BMPs for areas under active[1] construction.

Discussion:

Active construction and the requirements of erosion control should not include areas where equipment is working within a given work day.

No. 26	Document	Page No.	Subject
	Order/Permit	*17 of 27*	*Table 2-Critical Slope/Sheet Flow Length*

Referenced Text:

Slope Percentage	Sheet flow length not to exceed 20 feet
0-25%	

Discussion:

A 0% slope will not have runoff, rain will pond. The minimum slope for this BMP should be increased to something more reasonable, possibly 3-5%, depending in soil type.

No. 27	Document	Page No.	Subject
	Order/Permit	*17 of 27*	*Interior paved roads*

Referenced Text:

7. For Risk Levels 2 and 3, the discharger shall inspect all immediate access roads (i.e., public and private roads) daily and immediately remove by vacuuming or sweeping any sediment or other construction activity-related materials that are deposited on the roads. This does preclude the need to reduce sediment tracking in the first place.

Discussion:

Paved roads that are constructed as part of project which do not have public traffic, should be addressed in this section.

No. 28	Document	Page No.	Subject
	Order/Permit	*17 of 27*	*Missing word?*

Referenced Text:

7. For Risk Levels 2 and 3, the discharger shall inspect all immediate access roads (i.e., public and private roads) daily and immediately remove by vacuuming or sweeping any sediment or other construction activity-related materials that are deposited on the roads. This does preclude the need to reduce sediment tracking in the first place.

Discussion:

6. It would seem more consistent with the permit if it were written:
7. This does **not** preclude the need to reduce sediment tracking in the first place.

No. 29	Document	Page No.	Subject
1.	*Order/Permit*	*18 of 27*	*Disposal of rinse/wash water*

Referenced Text:

2. a. Preventing disposal of any rinse/wash waters or materials on impervious surfaces or into the
3. storm drain system.

Discussion:

4. Some will read this and assume disposal of any rinse/wash waters or materials on pervious
5. surfaces are allowed.

No. 30	Document	Page No.	Subject
1.	*Order/Permit*	*18 of 27*	*Subjective or imprecise language*

Referenced Text:

2. d. Minimizing contact of construction materials with precipitation, and
3. e. Implementing BMPs to **reduce** or prevent the offsite tracking
4. b. Berming sanitation facilities and avoiding a **direct connection** to the storm water
5. e. Berming and **securely protecting** stockpiled waste material from wind

Discussion:

6. Specific and exact language allows for compliance assessment to be made easier. These general
7. terms have no specific meaning and are difficult to enforce and subject to debate. They make it
8. difficult for those attempting to implement a plan and for those evaluating it. Please consider
9. replacing them.

No. 31	Document	Page No.	Subject
1.	*Order/Permit*	*19 of 27*	*Concrete washouts*

Referenced Text:

2. Lining and berming of concrete washout areas so there is no leakage or overflow into the
3. underlying soil and onto the surrounding areas. Washout areas shall be **positioned away** from
4. drain inlets or waterways and be clearly labeled.

Discussion:

5. How far away? Consider stating it: *Washouts areas shall be positioned a minimum of 100 feet*
6. *from drain inlets.*

No. 32 | Document: *Order/Permit* | Page No.: *21 of 27* | Subject: *Inspections*

Referenced Text:

The discharger shall perform inspections and observations **weekly**, and at least once each 24-hour period during extended storm events, to identify BMPs that need maintenance to operate effectively, that have failed or that could fail to operate as intended

Discussion:

Thank you

No. 33 | Document: *Order/Permit* | Page No.: *21 of 27* | Subject: *Repairs: time period*

Referenced Text:

Upon identifying failures or other shortcomings, the discharger shall implement repairs or design changes to BMPs as soon as possible.

Discussion:

As soon as possible carries different meanings to different people. Consider revising this language to say:

Upon identifying failures or other shortcomings, the discharger shall implement repairs or design changes to BMPs as soon as possible but longer than 48 hours.

No. 34 | Document: *Order/Permit* | Page No.: *22 of 27* | Subject: *Training*

Referenced Text:

All persons responsible for implementing requirements of this General Permit shall be appropriately trained. This includes those personnel responsible for installation, inspection, maintenance, and repair of BMPs. Training should be both formal and informal, occur on an ongoing basis, and should include training offered by recognized governmental agencies or professional organizations. Those responsible for preparing, amending and certifying SWPPPs and REAPs shall comply with the requirements in Section IX and X

Discussion:

The training requirements are excellent. I hope they apply to all inspectors from the state, counties and municipalities and any companies they contract with to perform inspection services.

No. 35 | Document: *Order/Permit* | Page No.: *22 of 27* | Subject: *Inconsistent terms*

Referenced Text:

2. For projects in Risk Levels 2 and 3, the discharger shall develop a REAP 48 hours prior to any
3. likely precipitation event. A **likely** precipitation event is any weather pattern that is forecasted to
4. have a **50%** or greater chance of producing precipitation in the project area. The discharger shall
5. obtain printed likely precipitation forecast information from the National Weather Service
6 Forecast Office (e.g., by entering the zip code of the project's location at
7 http://www.srh.noaa.gov/forecast).

Discussion:

8. See comment No. 17, the National Weather Service defines *likely* as a 60-70% chance.
9. Please consider consistent terms.

No. 36 | Document: *Order/Permit* | Page No.: *22 of 27* | Subject: *Typo*

Referenced Text:

2. 3. The discharger shall begin implementation and make the REAP available onsite no later than
3. 24 hours **priors** to the likely precipitation event.

Discussion:

4. None

No. 37 | Document: *Order/Permit* | Page No.: *26 of 27* | Subject: *Conditions for termination: stabilization*

Referenced Text:

2. Soil loss as predicted by RUSLE must be at or below pre-project levels.

Discussion:

3. The language seems to state regardless of the other control measures, the site must be at or below
4. pre-project levels as determined by RUSLE to be considered acceptably stabilized.

No. 38 | Document: *Attachment L* | Page No.: *2 of 7* | Subject: *Discharger*

Referenced Text:

2. **Discharger**
3. The discharger is the person or entity subject to this General Permit, as further clarified in the
4. provisions of this General Permit.

Discussion:

5. This appears to be circular logic.
6. *You're a discharge because you're subject to the permit and you're subject to this permit because*
7. *you're a discharger.*