



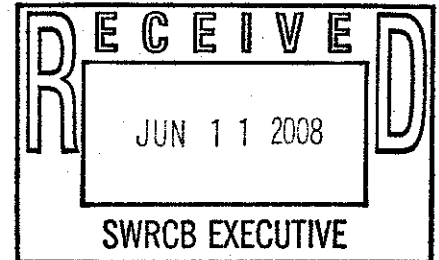
# CITY of CYPRESS

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June 10, 2008

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



Subject: Draft Construction Storm Water Permit

Dear Ms. Townsend:

The City of Cypress appreciates the opportunity to comment on the revised Draft General Permit for Storm Water Discharges Associated with Construction Activity (General Permit). The City understands the importance of preventing the discharge of contaminants from construction, especially those which can severely impair our local waterways.

There are various components of the draft permit which will impact both private and public construction projects which raise many concerns by both private industry and public agencies. The City of Cypress shares these concerns and has highlighted some of these areas in the attachment to this letter.

We agree with other cities who are concerned with the regulations impact upon small capital projects, especially those that are less than an acre but will be affected by the General Permit because they are part of the City's Capital Improvement Program. We are also concerned with the construction permit's impact upon large municipal projects receiving water monitoring requirements, the proposed risk levels, and other permit requirements. Our concerns are discussed in the attachment to this letter.

We request that these comments and concerns be incorporated with the comments submitted to the State by other public and private agencies and considered prior to formal adoption of the General Permit.

Sincerely,

Gonzalo M. Vazquez  
Water Quality Manager

Attachment

Todd W. Seymore, Mayor

Leroy Mills, Mayor Pro Tem  
Phil Luebben, Council Member

Doug Bailey, Council Member  
Prakash Narain, M.D., Council Member

## Attachment

### Comments on General Construction Permit

#### Capital Projects

It is noted that projects that are part of an agency's Capital Improvement Project (CIP) Plan are subject to the requirements of the proposed General Construction Permit. We are unclear on this requirement. This could have a significant impact on many of the City's projects, which would typically not be categorized as "capital projects" but are included in the plan due to the City's financial policies. Nevertheless, the City believes that projects that are not contiguously tied to other projects, and do not exceed the one acre threshold, should not be required to comply with the General Permit. As this has been the practice before, it is recommended that this present system not be modified by the new construction permit.

The City is also concerned with the possibility of street overlay projects being impacted by the General Permit. The City has always considered these projects as maintenance activities when underlying soil is not exposed. Since this type of project is included in the CIP, it would subject these projects to the new General Permit and, subsequently, require the preparation of a Storm Water Pollution Prevention Plan (SWPPP), as well as the other permit requirements. Greater clarification is needed to better define the applicability of this provision, and more importantly relieving street maintenance projects from the scrutiny of the General Permit.

The City is concerned with the impact that the General Permit may have upon small CIP projects where excavation may be minimal but projects may still result in disturbance of soil. Small scale CIP projects can undergo construction with the basic construction best management practices applied to them. However, the General Permit would require the preparation of a SWPPP that would be overwhelming, and more importantly result in unnecessary reporting of BMP implementation.

It is recommended that only projects that result in the disturbance of soil, equal or greater than one acre, be subject to the requirements of the General Permit. In addition, it is recommended that references to any project identified in the City's CIP Plan as being subject to the regulation be deleted so as to include those which result in the disturbance of greater than one acre of soil.

## **Impact on Land Use Decisions**

The City is concerned with the proposed electronic reporting system requirement contained in the General Permit and public review comment periods. The ambiguity of the acceptance of Project Review Documents electronically by the State and public review process of said documentation could result in delays, as well as interruptions of ongoing construction projects, including any public works projects. It is unclear why a private or public agency would submit Project Review Documents to the State for approval prior to beginning construction, when an open ended public comment period can make ongoing construction subject to interruption. Comments on ongoing construction activities, but more importantly acceptance of post construction comments on post design measures, can result in modifications to projects that have already incorporated stormwater treatment design into the development project. This will place a burden on projects and result in delays or additional treatment measures which were not foreseen, resulting in additional costs to projects. Modifications such as these could make municipalities subject to lawsuits from private developers for these unexpected design changes. Even general contractors retained by the City to complete public works projects could potentially sue for any loss of work due to the construction interruptions or project re-design. Finally, the threat of having a discharge permit revoked on an ongoing construction project by the State for permitting discharges from the construction site, including those that may occur prior to obtaining official approval from the State, can pose problems for construction projects. This is especially true if the project has already proceeded significantly.

It is recommended that the State clarify the Project Review Document electronic submittal process so as to eliminate any potential delays and provide a more refined public review process, which will still meet the intent of the General Permit but not provide for construction stoppages nor design changes after the project has already been approved.

## **Risk Based Approach**

It is our understanding that the Draft General Permit will include a four-tiered risk based system for permitting of construction stormwater discharges, with the projects falling within the various ranges. The complexity of the formula used to establish these ratings could have a significant impact on construction projects in southern California since it will put many of them at the high risk area, thereby subjecting these projects to more stringent monitoring requirements. The formulas will establish compliance requirements for both municipal and private construction projects. It could also result in the implementation of

Advanced Treatment Systems resulting in additional costs to projects as these treatment systems are difficult to design and construct. Also, the monitoring of these devices will further financially impact construction projects. Furthermore, cities can expect to perform their own assessment of construction sites located within their jurisdictions as they perform their compliance inspections and the pertinent activities at these sites. This will include assessment of the Advanced Treatment Systems that are installed at the construction site that are intended to capture and treat runoff from construction sites.

It is recommended that a formula that is more reflective of regional factors representative of southern California be considered, so that construction projects can be fairly categorized under the risk based approach.

#### **Numeric Effluent Limits, Numeric Action Levels and Monitoring and Inspection Requirements.**

The General Permit includes the imposition of numeric effluent limits (NELs), numeric action levels (NALs), and increased monitoring inspection requirements. These numeric effluent limits, if exceeded, can result in violation of the Draft Permit in its current format. Even with the BMPs that are required to be implemented under the NELs, there is no guarantee that the pollutants that are targeted by the BMPs will be reduced. Private, as well as public works projects, will be subject to these NELs and cities will have to assume the burden of performing stormwater compliance inspection and enforcement activities based upon the NEL program for Public Works projects.

In addition, NALs for pH and turbidity will further impact construction due to another complex formula which, in most cases, makes all construction projects exceed the maximum levels and, thereby, become subject to more frequent stormwater compliance inspections and enforcement actions. These enforcement and corrective actions will once again fall upon the municipalities to enforce, resulting in the need for additional staff resources.

Finally, the development and implementation of a Construction Site Monitoring Program (CSMP) for construction projects will require activities that are over and beyond what is typically included in a SWPPP. The increased monitoring requirements imposed on construction projects by the CSMP will focus on discharges and pollutants that are already addressed in the current MS4 permit stormwater monitoring programs. This appears as a duplication of effort and could easily be accomplished under the current program. If there is a need to sample numerous discharge sites on a construction site to measure pollutants, we can see

an increase in costs for projects, especially public works projects. The increased frequency of inspections and sampling will further burden municipalities staff resources and the magnitude of the project could result in higher costs overall.

It is recommended that the General Permit be modified so that the formulas used to establish NELs and NALs are more reflective of the existing conditions in southern California, especially taking into consideration the climate and soil conditions.