Storm Water Resources, LLC
NOI's • SWPPP's • TRAINING • INSPECTION• NOV's

June 10, 2008

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

Re: Comment Letter - Draft General Construction Permit

Thank you for the opportunity of comment on the Final Draft California General Construction Permit dated March 18, 2008. Storm Water Resources is a consulting company in Southern California that has provided stormwater consulting services to the development and building industry for over 6 years. Our experience is primarily in the development of SWPPPs and the field implementation and monitoring of BMPs and our comments are based on our experience implementing the State Construction General Permit (CGP).

Permit Registration Documents (PRDs)

The language included in Section VI Provisions, is unclear as to how PRDs are deemed "accepted" by the SWRCB. There is no time frame associated with the acceptance of PRDs. This uncertainty is difficult, at best, for a permittee to deal with. The potential for public review, a public hearing process, etc. is all possible, yet there are no time lines associated. It is recommended that a reasonable time frame be included to ensure prompt "acceptance", and if no action is taken, the PRD is automatically deemed accepted.

Regional Board Authorities

Along with the above comment, the authorities given to the Regional Boards is extensive. There is no time constraint for the Regional Boards to implement any of their authorities. It appears to be a subjective decision by a Regional Board as to whether additional requirements may be needed, or whether or not the risk assessment should be reevaluated. Each of these authorities could turn a Risk Level 3 project into a Risk Level 4 project at any time during the permit coverage, or could significantly alter the requirements of the project. The Regional Board could also put the project through a public hearing process, which again, could delay an ongoing project and ultimately alter the requirements. A time limit should be imposed on the ability of the Regional Board or the public to review PRDs.

Ongoing Project Coverage

There are no provisions for grandfathering of ongoing projects. This is problematic in many areas. First being, how will an ongoing project be assessed for risk? It is not feasible to conduct the risk assessment on a project that is beyond the approval process. It is virtually impossible to

25709 Rye Canyon Road, Suite 105 • Valencia, California 91355
tel 661.295.3013 • fax 661.295.5908

impose a post construction requirement on a project at the permit stages. Most projects go through years of planning and approvals from a multitude of agencies. It is not feasible to expect these ongoing projects to redesign their sites. Second, many large, complex projects will be under development for several years. What will happen if the risk assessment is conducted and a Level 4 is identified for an existing and ongoing construction site that may have been in process for several years. This could shut down and delay the project for an indefinite time.

Perhaps, language such as the following can be included for the grandfathering of ongoing projects.

- Existing projects that will be completed before (date of permit adoption) shall not be required to comply with the new permit.
- Existing projects that will continue beyond one year of permit adoption should be required to implement the permit at a later date, perhaps the next rainy season.
- Projects in the last two phases of development should be relieved of compliance with this permit.
- Projects that have already received local approval for post construction should be relieved of any requirements under that section.

Non-Jurisdictional Waters

This permit applies only to Waters of the U.S. and does not include Waters of the State. This poses several problems that are not addressed in this permit. First of all, many of the permittees with coverage under the 99-08 permit have coverage for discharges to US and State Waters. Those permittees whose project drain to State Waters will now need to obtain coverage from the Regional Boards. These permittees will be facing confusing and diverse requirements from each Regional Board, including the need for a small 6 acre subdivision to be faced with the potential of applying for a WDR. There are areas where projects will be covered under both the CGP and an individual WDR within the same city, depending on the drainage area.

I believe this is not what the SWRCB intended when it limited the coverage to US Waters as defined by US Army Corps of Engineers. The purpose of the SUSMP requirements was in response to the fact that many projects lie outside of a Phase I or Phase II city with SUSMP provisions, and are thus not required to address post construction impacts. Ironically enough, in Southern California, the areas of concern, with no SUSMP coverage is outside of the jurisdiction of this permit and as such will not be required to address post construction impacts unless it is done through a WDR or a General Permit issued by each Regional Board. The cost and time associated with applying for a WDR for a small construction project is not reasonable. What will happen to the existing projects in the time period it takes to obtain a WDR, which can be months?

It is recommended that projects that are outside of the definition of US Jurisdictional Waters be allowed to continue coverage under the existing permit until the project is complete. This recommendation could carry over to all ongoing projects as well, allowing all existing projects to continue coverage under the existing 99-08 permit.

Post Construction Requirements

Post construction requirements do not belong in a construction activities permit. Other regulatory mechanisms such as MS4 permits, CEQA, 401 Certifications and plan approvals are the appropriate means to regulate these potential impacts. Hydromodification controls are beyond the focus of this permit and the issues are regional in nature, not site-specific to a particular construction site. Construction is the final stage of development. Decisions associated with hydromodification impacts are not made during the construction phase, but during project planning and design.

Linear Projects

This draft permit does not appear to be written to address linear projects. It is recommended that the SWRCB revised the SLUP permit to include all linear projects, with requirements and regulations that are better suited for linear projects.

Annual Reporting

It is recommended that the Annual Report be due during the non-rainy season to allow permittees to focus on the important aspects of compliance during the rainy season and not be overburdened with the requirement to submit an annual report

Numeric Effluent Limits

It is difficult to understand the reasoning of the SWRCB in setting the NELs in this draft permit. Despite the fact that the SWRCB previously argued that sampling and analysis is not feasible, and is not required under the Federal Clean Water Act, the SWRCB is attempting to reverse its prior stand and implement NELs.

We have reservations about the implementation and actual benefit of setting NELs in this permit. This is a major step away from the BMP based permit we are currently working under, and it would seem reasonable to use a bridge approach to the implementation of NEL over the course of time. Additionally, it appears that while the SWRCB is attempting to collect valuable data, the exceedance of an NEL is violation of the permit and would require enforcement.

We understand the need for data that is useful in the construction stormwater industry. However, tying data collection to enforcement actions doesn't seem to be the most rational method of obtain the data. Perhaps it would be more beneficial for the SWRCB to conduct third party random regional monitoring to obtain the desired understanding of BMP effectiveness related to water quality in lieu of the monitoring requirements associated with NELs. We fully support the remaining inspection and observation requirements of this draft.

Mandatory Minimum Penalties

CWC section 13385(i)(1) states, "Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each violation ***whenever the person does any of the following four or more times in any period of six consecutive months,*** except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

A) ***Violates a waste discharge requirement effluent limitation.***
B) Fails to file a report pursuant to Section 13260.
C) Files an incomplete report pursuant to Section 13260.
D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant specific effluent limitations for toxic pollutants."

It appears that multiple MMPs could be issued to one site during one extended rain event. For example, a Risk Level 2 or 3 site must conduct sampling twice a day every day it rains. If a rain event lasts for 5 days, and there is an exceedance of an NEL, there is the potential for 10 violations to occur during that five day period, thus resulting in the potential for seven MMPs being issued for each exceedance after the 3rd exceedance. Is this the intent of the SWRCB? Or is the intent to address egregious dischargers who exceed the NEL over a course of time, and not over the course of one extended rain event? If the latter is the case, the language should clearly reflect when an MMP is warranted.

Receiving Water Sampling

We fully support effluent monitoring requirements that focus on providing important data to the permittee to use in the evaluation of BMP effectiveness. Receiving water monitoring is extremely difficult for a construction site to implement. Runoff is commingled with other municipal runoff and impossible in most cases to determine the source of questionable runoff. It would be more reasonable to allow the permittees to monitor the effluent from their sites at the points of discharge to assess the impact of these discharges to receiving waters, based on the Basin Plans or other regionally developed criteria. Potentially, the SWRCB could conduct third party receiving water sampling that could then be analyzed along with monitoring reports from the individual sites, as well as municipal sources.

The draft permit indicates that the SWRCB believes that the current program is not successful. This is not a correct assumption. The current regulatory program has been quite successful and has continuously improved since the early 1990s when the CGP and the MS4 programs were implemented. Over this time period, increasingly effective BMPs have been implemented. Contrary to the assumption that current program is failing; a BMP-based approach at a construction site does work. We believe that the current program does need modification and can be improved. However, a meaningful analysis of the cost and actual effectiveness is required before the Board moves forward with the assumption that the construction industry is a "group of bad apples" when in reality, there is a handful of "bad apples" and the majority of the permittees make a good faith effort to comply with the regulations. A permit that is more concise and clear as to the requirements is a definite advantage and is welcomed. A permit that is too costly to and too complex to adhere to is setting the program, and the permittees, up for failure.

The SWRCB is proposing to significantly increase the compliance requirements without adequate staff at both the State and Regional levels. As a result, significant delays in permit coverage are bound to happen, both at the State level with the need to process 20,000 permits and at the Regional level where individual WDRs may need to be obtained in a short time frame.

We fully support the CBIA's bridge approach as presented to the SWRCB at the May 21 workshop and feel that it is prudent to take time to make the vast changes the SWRCB is considering. We fully support a BMP-based program with additional monitoring requirements to ensure that compliance is transparent. We fully support the concept of third party random

monitoring to obtain the data necessary to effectively evaluate the program. We strongly recommend that another draft of the permit be issued for review to address the inconsistencies and problematic areas of this draft to ensure a successful implementation of a new permit.

Thank you again for the opportunity to provide comments and look forward to working with the SWRCB to ensure a successful program.

Sincerely,

STORM WATER RESOURCES

Jeanne Duarte, CPESC, CISEC
President