

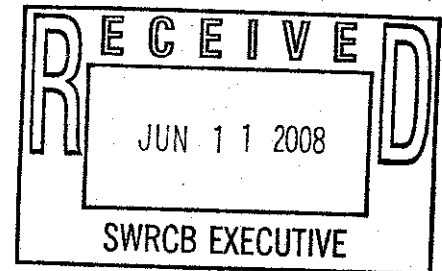


**Santa Clara Valley
Urban Runoff
Pollution Prevention Program**

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June 11, 2008

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



Submitted via email commentletters@waterboards.ca.gov
Original sent via U.S. Mail

Subject: Comments on the March 2008 Preliminary Draft Construction Stormwater Permit

This letter presents comments on the March 2008 Draft Construction General Permit ("draft permit") from the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP). SCVURPPP is an association of 13 cities, Santa Clara County and the Santa Clara Valley Water District ("Co-permittees") that share a joint NPDES municipal stormwater discharge permit in the San Francisco Bay region. Our Co-permittee cities range in population from nearly one million (San Jose) to less than 5,000.

SCVURPPP appreciates this opportunity to comment on this draft permit as it contains significant changes from the current permit in its approach to regulating stormwater discharges from construction sites. Our Co-permittees will be affected by the changes in the Construction General Permit because they will need to obtain coverage under the General Permit for construction of public projects greater than 1 acre of disturbed area.

SCVURPPP is a member of the California Stormwater Quality Association (CASQA) and SCVURPPP representatives participate in the CASQA Board of Directors and the Construction Subcommittee. **SCVURPPP strongly supports the comments submitted by CASQA in both its letter and attachments.** We also echo the comments and concerns submitted by the City of San Jose and other Co-permittees.

SCVURPPP has particular concerns about several elements of the March 2008 draft permit. These concerns include:

1. The draft permit incorporates a change in the regulatory approach for construction site stormwater discharges from the iterative BMP-based approach to a numeric effluent limit (NEL)-based approach. While action levels for pH and turbidity may be a reasonable approach to measuring effectiveness of construction site BMPs and triggering actions to correct BMP failures, NELs are imperfect tools for measuring compliance due to the lack of

accuracy of field measurements, the variability of runoff quality, and the nonpoint nature of stormwater. SCVURPPP agrees with CASQA that there are insufficient data, both receiving water and construction site runoff quality data, to establish a statewide NEL for turbidity or pH. The NELs in the draft permit were not established using a scientifically sound methodology or USEPA protocols, and concerns about the use of these limits expressed in the Blue Ribbon Panel Report¹ were not addressed². Also, there are many outstanding questions about the representativeness of grab samples and what penalties would be applied if the NEL is exceeded. We recommend that the use of NELs be eliminated, that the draft permit continue to emphasize the iterative BMP approach, and that this draft permit be used as the opportunity to develop and test the use of action levels to help site owners and operators achieve compliance.

2. The draft permit contains a risk-based, tiered set of requirements that seems weighted towards the higher risk categories. A risk-based approach to construction controls makes sense; however, when sample calculations of risk were performed for different types of construction sites, many ended up in the Risk 3 category (which contains the most monitoring requirements). Furthermore, the risk analysis doesn't allow much opportunity to reduce the risk category by implementing proper site planning, protection of vegetated or sensitive areas, etc. These types of incentives should be built into the risk analysis.
3. The monitoring requirements are excessive, particularly for Risk Level 3 sites. While we support the inclusion of construction site discharge monitoring using two representative field measurements (pH and turbidity) to provide information on BMP implementation and effectiveness, we believe the requirements for receiving water monitoring and bioassessment are excessive and do not bear a direct relationship with the discharges from a particular construction site. These types of monitoring are also expensive, require trained personnel, and may require permits to access a stream channel which could delay a project.
4. Capital improvement projects seem to be defined as "common plans of development" in the Fact Sheet. In the discussion of the routine maintenance exemption, the Fact Sheet appears to suggest that projects of any size that are part of Capital Improvement Plans are subject to permit requirements. We oppose the use of CIPs or other planning documents to define the extent of actual projects that require coverage. We support the CASQA definition of a common plan of development as a contiguous area where multiple, distinct construction activities may be taking place at different times as part of one project plan.
5. The draft permit does not contain a "grandfather clause" for projects that began construction before permit adoption. It would be extremely difficult and costly for projects currently underway with coverage under the existing Construction General Permit to adapt to the significant new requirements proposed. It would be particularly difficult for cities and counties that may have multiple public projects under construction to modify their procedures, adjust budgets, update SWPPPs and qualify staff to meet the new requirements. In addition, public projects that are already funded would also find it difficult to manage the increased workload and costs and should be considered for grandfathering. SCVURPPP recommends that projects that filed NOIs under the current permit, Order 99-08, retain coverage under that permit, and that public projects funded within the next two years of the adopted capital budget be grandfathered as well.

¹ Currier et al., 2007. Blue Ribbon Panel (BRP) Report on the Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities.

² See the CASQA comment letter, Attachment 1, for more detailed discussion of this topic.

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We appreciate the amount of time and effort expended by State Board staff in the development of the draft permit, and the open communication about the requirements with various stakeholders during the development process. As the permit is finalized, we request that State Board staff consider the burden of these new requirements on municipalities around the State, many of which are dealing with increased new requirements in their municipal stormwater permits as well. Municipalities will need time and additional resources to: 1) train staff to become qualified SWPPP preparers and practitioners, prepare SWPPPs and REAPs, calculate risk and turbidity action levels, and conduct monitoring and reporting; 2) incorporate new requirements into their internal procedures; 3) implement the new requirements on their public project construction sites, including developing SWPPPs and conducting self-inspections and monitoring; and 4) respond to public comment on web-posted documents. We request that ample implementation time is provided following the adoption of the permit.

We thank you again for the opportunity to provide comments on the March 2008 Draft Construction General Permit.

Very truly yours,

[Original signed by]

Jill C. Bicknell, P.E., EOA, Inc.
Assistant Program Manager

cc: SCVURPPP Management Committee

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