

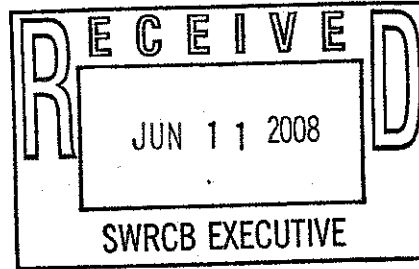


Public Comment
Draft Construction Permit
Deadline: 6/11/08 by 12 p.m.

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June 11, 2008

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



RE: Comment Submittal on the Draft Version of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities

Tri-TAC appreciates the opportunity to provide comments on the State Water Resources Control Board (SWRCB) Draft NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Draft Permit). Tri-TAC is a technical advisory group jointly sponsored by the California Association of Sanitation Agencies (CASA), the California Water Environment Association (CWEA), and the League of California Cities. CASA is a statewide association of cities and special districts providing wastewater collection, treatment, management, and water recycling services to millions of Californians, while CWEA is a not-for-profit association of wastewater professionals who are committed to keeping California's water clean. The constituent agencies of Tri-TAC serve most of the sewered population in California.

Tri-TAC supports the SWRCB's efforts to improve water quality within the state by improving the management of stormwater runoff from construction activities. Further, it commends the SWRCB's efforts in significantly revamping the Draft Permit from its previous form in the Preliminary Draft stage in response to comments submitted last year. Nevertheless, Tri-TAC still has some concerns with several key areas within the Draft Permit that we hope you will consider revising before permit adoption, to better strengthen the Draft Permit relative to water quality concerns. We include comments in the areas below for your consideration.

Numeric Effluent Limits

Section IV.B.1. of the Draft Permit mandates specific Numeric Effluent Limits (NELs) for the parameters of pH and turbidity. By establishing effluent limitations in this Draft Permit, the SWRCB has effectively made applicable minimum mandatory penalties under California Water Code Section 13385 (i)(1)(A), which requires the assessment of, at a minimum, \$3,000 for each violation of a waste discharge requirement effluent limitation, under specific circumstances.

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When the mandatory minimum penalty provisions were adopted into the California Water Code, the application of NELs in the general stormwater permit for construction activities was neither anticipated nor expected. There was no consideration that the penalty provisions would apply to stormwater pollutants from construction activities. To the extent that mandatory minimum penalties were not intended to apply to stormwater discharges, the SWRCB should re-evaluate the imposition of NELs here. Tri-TAC believes it is not appropriate to impose NELs at this time. The Draft Permit properly includes Numeric Action Levels (NALs), which are designed to require further action, and are the appropriate level of regulation in the Draft Permit.

Scope of Capital Improvement Project Plan Definition

Section II.B. of the accompanying Fact Sheet to the Draft Permit provides that construction activity involving a land surface disturbance of less than one acre is subject to coverage under the Draft Permit if the construction activity is part of a larger common plan of development. It further requires coverage of the activity if a part of a municipal Capital Improvement Project Plan.

Tri-TAC is very concerned with this Fact Sheet reference that considers multiple projects of less than one acre, which is part of a municipal Capital Improvement Project Plan as being subject to the terms and conditions of the Draft Permit. In particular, we are concerned that the Fact Sheet does not further define or explain the SWRCB's intent as to what constitutes a Capital Improvement Project Plan. Many of our constituent agencies are "specialty districts" that typically create a 5-year Master Plan, the end result of which is a capital improvement plan to rehabilitate existing facilities and construct new facilities. Tri-TAC believes that this type of planning process, which consolidates all infrastructure improvement projects into one Master Plan, should not warrant designation as a "common plan" subject to the requirements of the Draft Permit.

To avoid any ambiguity or questions of applicability to the above-referenced planning process utilizing Master Plans, Tri-TAC recommends that the language of the Draft Permit, in addition to the Fact Sheet, be revised to clearly state that projects less than one acre developed under a municipal Capital Plan or a Capital Improvement Project Plan are not subject to the terms and conditions of the Draft Permit.

Date of Permit Effectiveness (Applicability)

Section I.5 of the Draft Permit finds that "this Permit, as an NPDES permit in compliance with Clean Water Act Section 402, shall take effect 100 days following the SWRCB's adoption of the Permit." In other words, there are no exceptions in terms of compliance and enforcement for projects approved or starting construction prior to the adoption date of the Draft Permit. This is problematic because many projects are subject to finite budgets that would have difficulty absorbing the expected cost increase for complying with the new Draft Permit standards, as currently proposed. Therefore, such projects would likely remain out of compliance or may be forced to delay construction until more funds are appropriated.

Due to the dramatic shift in the approach and requirements of this Draft Permit, Tri-TAC respectfully suggests that the SWRCB include a "grandfather" clause in the Draft Permit that would apply the standards of the current general stormwater permit for construction activities to

those projects approved under it. Alternatively, the SWRCB should consider granting a longer time period to either complete a project or meet the new requirements, such as one year.

Training Requirements

Section IX.A. of the Draft Permit sets forth the qualifications that all pertinent staff must have in order to prepare, implement and assure compliance oversight with SWPPP requirements under the Permit. These include the Qualified SWPPP Developer (Developer) and the Qualified SWPPP Practitioner (Practitioner). Although Tri-TAC is encouraged by the State Board's attempt to ensure that the appropriate level of staff expertise is present in the creation and implementation of SWPPP requirements, we have some concerns with the Draft Permit language related to the training requirements that Tri-TAC would like to see remedied.

First, the only certifications listed in the Draft Permit as suitable to meet the qualification requirements are through Certified Professional in Erosion and Sediment Control, Inc. Tri-TAC believes that the language of the Draft Permit should be amended to allow for more flexibility, rather than limiting certifications to one company, by referencing the certification requirement through a SWRCB "approved list." This would help provide flexibility and prevent the burden on only one certification company and the potential for overly costly training and an inability to meet demand. At the very least, Tri-TAC believes there to be at least one other certification program appropriate for inclusion in the permit, which is the Certified Stormwater Inspector (CSI) Course offered by the National Stormwater Center. This course is highly comprehensive and provides a sufficient skill level appropriate for Draft Permit inclusion as a means to achieve the Qualified SWPPP Practitioner status.

Second, the proposed permit language effectively eliminates the previous requirement of "Qualified Personnel" in favor of the aforementioned two new designations. Although Tri-TAC does not object to the new designations in terms of requiring qualified staff for SWPPP development and implementation, it does believe that the absence of a blanket "Qualified Personnel" requirement, as mandated in the current general construction permit, is a deficiency where there is a 2-year grace period allowed before full compliance with the Developer and Practitioner requirements. Essentially, this section could be read to allow unqualified personnel to prepare, implement and assure compliance oversight with SWPPP requirements for the 2-year grace period following the proposed permit adoption. Tri-TAC believes this language should be clarified and recommends simply retaining the qualified personnel designation during this grace period.

Rain Event Action Plan (REAP)

Section X.2-3. of the Draft Permit would require permittees to develop a REAP 48-hours prior to any *likely* precipitation event, which is defined as >50% chance of precipitation, and ensure its implementation and availability onsite no later than 24-hours prior to the precipitation event. The Draft Permit provides a REAP in its Attachment G that requires information on site conditions, the characteristics of the predicted rain event, and the subsequent actions needed; however, these are all requirements already mandated in a SWPPP.

Tri-TAC appreciates the key revision made by the SWRCB from the previous Preliminary Draft Permit version in increasing the proposed threshold percentage for the probability of precipitation, which would trigger compliance with the REAP. Yet we question whether the REAP itself is redundant. We believe that the SWPPP and the Monitoring Program, when effectively implemented, are already appropriate and effective tools to achieve the goal of adequate preparation for a predicted rain event. SWPPPs require BMPs and the Monitoring Program requires site inspections prior to anticipated storm events and after actual storm events. Further, inspections are to be made during each 24-hour period with the goals of identifying areas contributing to a stormwater discharge; evaluating whether measures to reduce pollutant loadings identified in the SWPPP are adequate and properly installed/functioning; and determining whether additional control practices or corrective maintenance activities are needed. It further mandates that all equipment, materials, and workers must be available for "rapid response to failures and emergencies."

To require the use of a REAP in addition to what is already covered in the SWPPP is duplicative and excessive, requiring a greater cost expenditure without any greater protection of water quality. Tri-TAC recommends that the REAP be eliminated from the Draft Permit in favor of appropriate requirements in the SWPPPs.

Public Comments on New Permit Applications

Section XIII.2. of the Draft Permit provides that the Regional Water Quality Control Boards (Regional Board) shall have the authority to receive and review public comments on new construction permit applications, while also allowing for certain actions to proceed, such as rescinding permit coverage, requiring a public hearing, or requiring formal Regional Board permit approvals, based on such public comments. This section is problematic because it lacks specificity in how Regional Board "action-taking" is triggered. There are no details listed as to the threshold of public comments that must be met for further Regional Board action. In this situation, a controversial project unrelated to stormwater compliance issues could be subjected to much greater scrutiny and possible further Regional Board action simply due to the controversial nature of the project. As a result, projects could be severely delayed, with high monetary consequences. Tri-TAC does not support this methodology for public comment simply because the process is lacking in specificity. It is suggested that a clear set of criteria, which directly relates to stormwater issues, be included in the revised permit. Meeting such criteria would only then trigger further Regional Board review.

This section is further problematic due to the indefinite time period proposed for the public review. Without any specific timelines or limitations, public commenting on projects could potentially continue indefinitely. As the Draft Permit is currently written, it could be inferred that comments can be received at any point in time, up until termination of coverage. Tri-TAC recommends that the public comment period on new construction permit applications be limited in duration.

At most, a 30-day time period for receiving public comment would be a reasonable addition to the Draft Permit. This is consistent with federal regulations that govern public review periods for the issuance of NPDES permits (See 40 C.F.R. § 124.10). It is inappropriate for the Draft Permit to suggest that new construction permit applications are subject to indefinite public review.

Jeanine Townsend, Clerk to the Board
Page 5 of 5
June 11, 2008

Cost-Benefit Analysis

The SWRCB did not conduct a cost benefit analysis for implementation of this Permit. Tri-TAC believes the SWRCB should consider the economic benefits compared to the desired outcome of these new Draft Permit provisions. Permittees will incur numerous additional costs associated with complying with new documentation and reporting requirements, proposed NELs, and monitoring requirements which will not necessarily translate into improved water quality. We request that the SWRCB conduct a basic cost-benefit analysis on the financial ramifications of implementing the Draft Permit.

Board Member Wolff's Focus Questions

Tri-TAC would like to respond to some of Board Member Wolff's "Focus Questions" included in a list-serve distribution email dated May 20, 2008. First, Tri-TAC would be supportive of a proposal to create "a scientifically valid database on management practice performance via rigorous third-party random monitoring in lieu of self-monitoring and at least partially paid for by permittees." Provided that such a database would not be used as an enforcement tool, we believe this would be beneficial in improving Best Management Practices (BMPs). Second, Tri-TAC finds that the tiered compliance structure is only desirable insofar as the implementation of NALs prompts action-taking on the part of the permittee. Having the NALs "backstopped" by NELs is not supported by Tri-TAC since it is not believed that NELs are necessary at this time.

Thank you for your consideration of our comments. Tri-TAC is willing to provide further details on our comments and assist the SWRCB in refining this Draft Permit. If you have any questions or concerns, please contact me at (714) 593-7458.

Sincerely,



Jim Colston
Chair, Tri-TAC

JC:JQ/wh

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