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

City of Villa Park

17855 Santiago Boulevard, Villa Park, California 92861-4187
(714) 998-1500 • Fax: (714) 998-1508

www.villapark.org

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

Subject: Draft General Construction Storm Water Permit

Dear Ms. Townsend:

The City of Villa Park appreciates the opportunity to comment on the revised draft General Construction Permit for Storm Water Discharges Associated with Construction Activity (General Permit). The City supports the draft permit's goal of minimizing sediment laden and contaminated discharges from construction sites. Because the proposed General Permit regulates large municipal projects, the City's comments are focused on those elements it believes do not achieve the goal of water quality improvement while imposing further significant compliance costs. The City also supports by reference the broader comments submitted by the California Stormwater Quality Association (CASQA) and those of the County of Orange.

Of particular concern to the City is the regulation of small capital projects less than an acre under the General Permit simply because they are part of the Capital Improvement Program (CIP); receiving water monitoring requirements; the proposed Risk levels and other permit requirements. These issues and concerns are fully disclosed in the attachment to this letter.

We hope these comments and concerns are considered by the State before formally adopting the General Construction Permit.

Sincerely,

Kenneth A. Domer
City Manager

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c: Joe O'Neil, City Engineer

Attachment: Comments on the General Construction Permit

Attachment

Comments on General Construction Permit

Capital Projects

Page 21 of the Fact Sheet states that projects part of an agency's larger CIP Plan are subject to the requirements of the General Construction Permit.

The logic to require projects less than one acre to comply with the General Permit simply because they are in an agency's CIP is unclear. 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 Construction Permit. This has been the practice in previous years and one that the City Supports.

Within its CIP program, the City annually includes street overlay projects that do not expose underlying soil. These are considered maintenance activities specifically exempted by the General Permit, but because they are in the CIP they could potentially be required to develop Storm Water Pollution Prevention Plans (SWPPPs) and meet other requirements of the General Permit. The two separate statements in the General Permit are also in conflict with each other and should be clarified.

Recommendation: It is recommended that only projects that result in the disturbance of soil equal to or greater than one acre be subject to the requirements of the General Construction Permit.

Risk Factors

As indicated in its previous comments, the City supports a risk based system that makes sense. One that includes implementation measures commensurate with the risk level. We believe the previous version of the General Permit did not provide measurable risk differentiation between projects and that most projects would end up being categorized as Medium and High (Level 2 or 3 in the proposed General Permit). It was suggested that additional parameters be included in the revised General Permit to add meaningful differentiation between various risk levels.

The new risk levels are based on a combined score of sediment discharges from the site and an evaluation of the receiving waters. Project sediment risk levels are ranked Low, Medium or High based on the projected annual sediment discharges using the Revised Universal Soil Loss Equation (RUSLE). Receiving water risk scores are based on watershed and site characteristics.

From the examples provided in Attachment A, it is not clear if a project can ever be designated a Level 1 (the lowest category with the least monitoring requirements). Using RUSLE to determine sediment impacts will result in very few projects achieving a Low designation. This designation can only be achieved if grading does not occur during the rainy season or if the project is fairly flat (1%) and the pad slope length does not exceed 100 feet and has a top soil erosivity index less than 40. These restrictions will allow very few projects, if any, to achieve a Low designation since most projects will grade during the rainy season and exceed a 1% pad slope since pad grading is required to be a minimum of 2%.

The minimum score a project can achieve under the receiving water category is a Medium designation based on an assigned base score of 10 provided in the spreadsheet example in Attachment A. this means that even a project that achieves a Low designation under the sediment risk analysis (very few to begin with) will still be designated a Level 2 (Combined Risk Level Matrix Attachment A) when combined with the receiving water analysis.

Omitting the base score provided in the Attachment A spreadsheet will improve the chances of achieving a Low designation in the receiving water analysis but only if the project does not discharge into a sediment impaired water body or one that is designated COLD or SPAWN regardless of project size.

We also believe that the channel stability assessment (Question B.2 in Attachment A) is particularly complex and difficult to answer. The question requires an analysis of channel geomorphology and the flood plain. Answering these questions will be difficult for most engineers and individuals working on construction projects and will require specially trained individuals for this type of analysis. This will add cost and time delays to conduct the required research.

These costs and delays are of particular concern because the channel stability analysis does not seem to make much difference in the receiving water assessment. Points assigned to other factors such as discharging to an impaired water body or to a water body designated COLD or SPAWN have a disproportionate value that outweighs the entire channel analysis and are assessments that can be made without additional costs.

Recommendations

1. Consideration should be given to increasing the sediment allowed under the Low category to something greater than one ton; such as 10 tons or one that will include a greater number of projects.
2. The score based in the receiving water analysis should be deleted. Using a base score of 10 means the minimum designation a project can achieve is Medium and this combined with a Low designation in the sediment risk analysis means the project is automatically a Level 2 project potentially subject to receiving water monitoring.
3. The risk analysis should consider project size in the receiving water analysis. Small or infill projects that have been previously graded are not sources of significant soil discharges and should be given special consideration.
4. Reconsider the use of the channel stability analysis. Even with state training, this is not an analysis that can be performed by most individuals. Assessing the stage of a channel and whether it is degrading or aggrading is extremely difficult and can be performed only if there is a significant historical record of the channel that includes cross-sections and characteristics over time. This is a very costly effort to undertake.
5. The "receiving waters" referenced in the attachments should be clarified. A project that discharges to a tributary that then discharges to an impaired, COLD or SPAWN water body should not be categorized as discharging directly or indirectly to these water bodies.
6. Clarification should also be provided in the General Permit that considers the effect of erosion control measures. The sediment risk analysis assumes that the entire site is disturbed and this may not be the case over time. How the permit may alter its risk category should be provided in the General Permit.

Monitoring

Most City projects are located within urban areas where construction site discharges first enter the storm drain system before they discharge into nearby creek and flood control channels. In some instances the storm drain system carries the runoff several miles before entering the flood control conveyance facilities.

The permit requires receiving water monitoring for pH and turbidity for project designated Risk Level 3 and for projects designated Risk Level 2 when the Numeric Effluent Limitation (NEL) for turbidity has been exceeded. We believe this sampling is not likely to provide any useful information since discharges from the construction will commingle with other urban runoff in the storm drain system. Assessing compliance will of the construction site with the General Permit will be almost impossible and this General Permit requirement will simply result in unnecessary costs and additional monitoring resources.

Recommendation

1. Revise the General Permit to require sampling only on those projects that discharge directly to receiving waters. That is, the site is next to the receiving water where the discharge can accurately be traced to the discharge point and monitoring can be done safely.
2. Revise the General Permit to require sampling only during daylight hours when it is safe to do on normal working days. Sampling during the first hour of a storm event may not be practical.

Active Treatment System (ATS)

The use of active treatment systems (ATS) is new to California and trying to implement a new technology with which there is little experience could lead to unintended consequences. Specifically, there could be a loss of sediment to downstream natural water bodies and beaches that depend on this sediment to replenish its losses.

Requiring a site that utilizes an ATS to meet the 10 NTU requirements by capturing the large soil particles and particles 20ug and smaller may not be wise. Meeting the 10 NTU requirement means the discharged water is practically devoid of sediment. While this is good for recreation, it could potentially deprive downstream natural streams and beaches of their sediment source. The previous General Permit only required that sites not exceed the pre-existing sediment discharge level.

It is also highly unlikely that discharges will be able to account for the loss of downstream sediment by discharging other sediment downstream to balance the lost sediment. This will put dischargers in violation of the General Permit.

Recommendation

ATS systems should be used with caution and the permit should consider the downstream consequences of using these systems.

Runon and Runoff Controls

Managing runon should be left to the discharger. As long as appropriate measures have been implemented to deal with the runon, directing runon from disturbed areas should not be a permit requirement since it is not always possible. It may be easier and more cost effective to allow runon through the project as opposed to diverting it around the project.

Recommendation

Allow runon onto the construction site as long a measures are implemented to effectively deal with runon onto the site.

Sediment Control

Paragraph VIII.D.3 requires erosion and sediment controls on active areas of the construction site. The paragraph as written may be misinterpreted since it implies that erosion controls must be applied to areas undergoing soil disturbance. This paragraph is in conflict with paragraph VIII.B.2, which only requires erosion control measures on inactive areas as defined in the footnotes.

Paragraph VIII.B.2 appears to be the correct approach. It does not make sense to apply erosion controls such as mats or soil binders on areas that will be disturbed in less than 14 days.

In addition, Table 2 regarding the use of slope lengths includes slope designations of 0-25%. Generally, gradients less than 10% are not considered slopes.

Recommendation

1. Revise paragraph VIII.D.3 to read that "an effective combination of erosion and sediment control practices shall be applied to the project site". This will maintain the same language that is in the current General Permit.
2. Revise the designation of a slope. 20% is suggested as the limit for the use of Table 2 and slope lengths.

Soil Particle Size Analysis

Paragraph VII.B.1 requires all dischargers to conduct a soil particle size analysis of the site to determine the percentage of the soil particles less than 0.02 mm (20UM). This requirement appears to be left over from the previous draft of the General Permit where all sites containing medium sized silt particles of 20 um or less and constituted at least 10% by weight of all site soils where required to employ an ATS. Since this previous requirement has been clarified, it appears that soil particle analysis is now only used to size sediment basins. Therefore, requiring a soil particle analysis for all sites is unnecessary.

Recommendation

Require soil particle analysis only on projects that use sediment basins.