

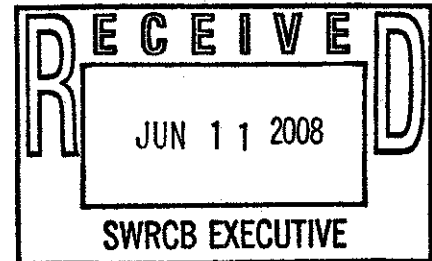


CHAIR – DAVID FINIGAN, DEL NORTE COUNTY  
FIRST VICE CHAIR – HARRY OVITT, SAN LUIS OBISPO COUNTY  
SECOND VICE CHAIR – LARRY MUNGER, SUTTER COUNTY  
PAST CHAIR – SUE HORNE, NEVADA COUNTY

PRESIDENT AND CEO – GREG NORTON  
EXECUTIVE VICE PRESIDENT – PATRICIA J. MEGASON  
VICE PRESIDENT OF HOUSING – JEANETTE KOPICO

June 11, 2008

Tam Doduc, Chair  
State Water Resources Control Board  
1001 I Street  
P.O. Box 100  
Sacramento, CA 95814



RE: Draft NPDES General Permit for Storm Water Discharges Associated with Construction Activity

Dear Chair Doduc:

On behalf of its thirty-one member counties, the Regional Council of Rural Counties (RCRC) appreciates this opportunity to offer comments on the draft NPDES General Permit for Storm Water Discharges Associated with Construction Activity (Permit) issued on March 18, 2008. RCRC appreciates the Water Board staff's efforts to incorporate stakeholder concerns and recommendations on the March 2007 version of the General Permit into the current draft.

As a representative of local governments, RCRC is in the precarious position of viewing state general NPDES permits from several perspectives: as enforcers of local water quality objectives, as regulated dischargers, and as land use and development planners. The draft Permit contains significant changes from the current permit which will drastically increase the workload and costs of construction projects statewide, and which may not be technologically or economically feasible. RCRC is concerned that the Permit, as proposed, would significantly increase the responsibilities and costs for small rural counties, especially in those areas not already subject to the MS4 General Permit. The draft Permit will have larger economic impacts on certain projects based on their size and geographical location, and in light of this, RCRC offers the following comments and recommendations:

1. Some requirements in the proposed draft Permit are technologically infeasible and should be supported by scientific data before inclusion in the Permit.

RCRC is concerned that requirements in the Permit for receiving water monitoring and numeric effluent limits (NELs) are technologically infeasible and should be removed from this proposed draft until further scientific study is done. The variation in run-on and background levels makes it extremely difficult to hold a site accountable for increases in pollutants in receiving waters. Existing data on background levels vary widely

depending on the study, and we feel it is premature to mandate monitoring of receiving waters until the state can collect additional information.

Similarly, we feel it is premature to include NELs in the Permit. In its 2006 report to the Board, the Scientific Review Panel asserted that NELs are not feasible for construction projects without active treatment systems because there is insufficient data to support such a policy. RCRC would concur, and would support the suggestion by the California Building Industry Association (CBIA) that this Permit be used as a "bridge" to NELs so that adequate data collection can be performed during this cycle.

2. Regional Water Board review and public comments should be limited to a specified time frame to avoid stalling constructions projects that have already gone through extensive local agency planning and review.

On page 26, the Permit allows Regional Water Boards to review and act on public comments on new Permit applications with no time limits or restrictions. Construction projects are subject to extensive public review through CEQA and local permitting processes, most of which take place before a project is required to apply for coverage under the Permit. Planning can often take five to ten years before a construction project is begun, which entails countless hours of staff time at the local agency level. If the Regional Water Board review provision is adopted, projects that have already been through public review during the CEQA process could be stalled or halted completely at the discretion of the Regional Board. RCRC asks that the provision be removed from the Permit, or it at least be modified to include a time limit and specific instances in which the Regional Boards can halt a construction project.

3. The enforcement and maintenance requirements for municipalities are ambiguous and could drastically increase costs for local governments.

RCRC is concerned that the increased enforcement responsibilities for local governments covered under the MS4 General Permit will drastically raise costs for counties statewide. It will be especially onerous in rural areas due to the disproportionately high per capita costs that inevitably result from such increased enforcement requirements. While Water Board staff maintained at the May 21, 2008 workshop in Sacramento that the Permit is "self-regulating" and that MS4 permittees will not be responsible for enforcement, staff also indicated that there are only 80 Water Board employees dedicated to enforcing all permits statewide. Since there are currently 20,000 construction permittees statewide, we anticipate that your agency will be looking to outside help beyond the regional boards to enforce the requirements of the Permit. If the Permit is adopted as is, we are concerned that future MS4 updates will include enforcement requirements beyond those that are already in the MS4 permit, as well as anticipate the possibility of additional regulations on non-MS4 agencies. RCRC anticipates that additional staff will be necessary if rural counties are expected to aid in

enforcement, which would constitute an unfunded mandate due to the increased costs to local agencies.

RCRC is particularly apprehensive about the additional cost and enforcement of the proposed post-construction requirements contained in the draft. According to the map in Figure 1 on page 15 of the Draft Fact Sheet, very few currently permitted construction projects located in RCRC member counties are covered under SUSMP post construction requirements, and therefore most projects in our counties will be subject to the requirements in the Permit. The Permit is very ambiguous as to who will be expected to maintain the structural and non-structural post-construction mechanisms used to comply with the Permit, and we would oppose any efforts to require non-MS4 municipalities to be responsible for ensuring that post-construction requirements are maintained once a construction project is complete. If local governments are to oversee post-construction requirements at any time, we feel the Permit is not the appropriate vehicle to establish such a directive, but should be handled through CEQA revisions. This would allow local governments to oversee post-construction mechanisms from the beginning of the planning process.

4. The Permit as proposed will trigger Regional Boards to mandate MS4 coverage for many small municipalities due to the complicated nature of the Permit.

RCRC is concerned that current non-MS4 municipalities will be forced into coverage solely due to a greater number of violations of the new Permit. In 2007, Calaveras County was informed by the Central Valley Regional Water Quality Control Board (Region 5S) that they would be brought under the Phase II MS4 permit, specifically stating that one of the main reasons was the large number of violations of the Construction General Permit in the county. Calaveras County estimates that it cost \$10,000 to simply implement the initial MS4 mandates. Due to the exhaustive, burdensome nature of the requirements in the draft Permit, we expect violations to greatly increase once it's adopted, and anticipate that Region 5S and other Regional Boards around the state will require more small municipalities to apply for coverage under the MS4 permit as a result.

5. Projects already engaged in the CEQA process when the Permit is adopted should be grandfathered in and allowed to comply with the previous permit.

Due to the sheer number of additional responsibilities placed on construction project managers in the proposed draft, projects that are already engaged in the CEQA process when the new draft is adopted should be grandfathered in and allowed to continue under the old permit. As you know, construction projects take months of planning, permitting, and approval from various agencies, including consideration in county General Plans and CEQA review. It will be extremely costly for an ongoing project to comply with a much more complex and restrictive permit within 100 days of its adoption,

Chair Doduc  
June 11, 2008  
Page Four

and could potentially stall projects and restart the entire CEQA process while they work to meet the new standards.

6. A complete economic analysis should be performed by staff before a final draft Permit is released.

Finally, RCRC requests that a complete economic analysis of the draft Permit be performed to evaluate the increased cost of construction projects if this version Permit is adopted. The proposed Permit will greatly increase costs to local governments on their own construction projects, which are already costly due to the difficulty of procuring contractors in rural areas. The current draft contains almost no economic analysis, and only briefly addresses the cost of measuring NELs on pages 51 and 52 of the Draft Fact Sheet. We feel this is grossly inadequate, and request that Board direct staff to perform a detailed cost analysis in conjunction with the building industry to determine the true economic feasibility of the Permit before a final draft is released.

Ultimately, RCRC feels the draft Permit calls for additional analysis and clarification, and must be modified before it will be feasible to implement in rural areas. We thank you for your consideration of our input in this matter, and would be happy to offer any information the Board or staff may need to better analyze the costs and implications of implementing the Permit in rural counties. Please feel free to contact me if you have any questions or would like to discuss these recommendations further.

Sincerely,



Staci Heaton  
RCRC Director of Regulatory Affairs

CC: Linda Adams, CalEPA Secretary  
Members of the State Water Resources Control Board  
RCRC Board of Directors