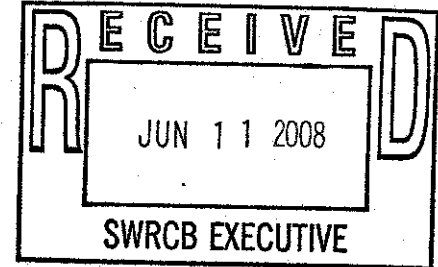




Advocacy Group
Susan Asmus
Staff Vice President

June 11, 2008

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



Re: National Pollutant Discharge Elimination System Proposed Draft General Permit For Discharge of Stormwater Associated with Construction Activities.

Dear Ms. Townsend:

On behalf of the 235,000 members of the National Association of Home Builders (NAHB), I respectfully submit these comments on the California *Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges* (draft CGP), issued by the California State Water Resource Control Board (SWRCB) on March 18, 2008.

NAHB is a federation of more than 800 state and local builders associations throughout the United States, including the California Building Industry Association and its regional affiliates, which have over 6,700 member companies. NAHB's members consist of individuals and firms who develop land and construct homes and apartments, as well as light commercial and industrial projects. Because storm water discharges associated with construction activities, including the development of subdivisions and new home construction, are required to obtain a Construction General Permit (CGP), the draft CGP is of interest and relevant. General permits are designed to simplify the application process for the industry, provide uniform requirements across covered sites, and reduce administrative workload for the permitting authorities. NAHB is concerned, however, that contrary to this goal, the proposed draft CGP is overly intricate, and imposes numerous requirements that will significantly burden the industry. Such complex permit requirements will be resource intensive and difficult to implement, yet not result in clear, or proven environmental benefits.

The outcome of the draft CGP has important and real consequences for homebuilders. CBIA is submitting comprehensive comments on the draft permit and NAHB urges SWRCB to review these comments thoroughly and address the issues and recommendations that are presented. From a national perspective, NAHB is concerned that the onerous regulatory scheme outlined in the draft permit is not practical or workable, yet it may be adopted, adapted, or considered by other localities, even though its foundation is questionable. The costs of the sampling and monitoring requirements alone will add considerably to the cost of housing throughout California and create economic dislocation. Nearly all construction and development companies will pass these added costs on to homebuyers. When passed on, as is normal practice, these added costs will have a significant affect on housing affordability.

There are several problematic issues raised in the draft CGP that have been addressed by CBIA's comments. NAHB is particularly concerned about the Numeric Effluent Limits and Active Treatment System requirements. In lieu of adopting these practices and the burdens that will accompany their implementation, NAHB urges the SWRCB to focus on implementation of erosion and sediment control Best Management Practices (BMPs) that are practical and consistent with existing permit requirements.

Numeric Effluent Limits

Several states have, or are in the process of reauthorizing their Construction General Permits. When these reissuances occur, NAHB reviews the proposals and tracks the types of requirements within the state permits. California's draft CGP is the most burdensome permit in the nation. While most states enhance their permits during the reauthorization process to make them more efficient and workable, the SWRCB has created a completely new and different regulatory scheme that imposes complex and costly requirements on permittees while garnering questionable environmental benefits. The draft CGP requires a numeric effluent limit for turbidity and pH. The numeric effluent limits and advanced treatment requirements are not technically supported for implementation on construction sites.

Effluent limits are often imposed on NPDES point source discharges of industrial wastewater. It is feasible to require such effluent limits for certain industrial discharges for a number of reasons. First, the influent of most industrial wastes is known to be, or can be engineered to be, relatively consistent through the use of equalization tanks, and known ratios of wastewater streams, so that a single treatment approach can be consistently effective through careful controls. Under this scenario, it doesn't matter where in the country the facility is located, as the influents and controls can be measured and metered to meet the requirements. Second, chemical treatment can be used in many industrial processes because it is relatively certain that the industrial pollutants known to be present are typically far more toxic than the treatment chemicals. Third, the daily volume of water to be treated is known and is relatively predictable, so that the treatment system, particularly chemical feeding systems, can be sized appropriately. The treatment technology can also reliably produce effluent within a known concentration range.

Contrary to the known and relatively controllable processes associated with most industrial discharges, the factors associated with stormwater are far more complex and unpredictable. Further, because most of the variables are beyond the discharger's control, compliance with a single numeric effluent limit is difficult and unreasonable. As the SWCRB recognizes, construction sites have highly erratic discharges due to differences in soil types; rain duration, intensity and volume; seasonal changes; and other uncontrollable parameters. Not only does this result in variable risks to the environment, but it also makes consistent, statistically acceptable compliance with a fixed regulatory limit extremely difficult. Despite this recognition, the SWCRB has proposed a program that largely ignores these realities and subjects nearly all permittees to the same, arbitrary standards. Given the variability and unpredictability of construction site stormwater discharge, the SWRCB is urged to remove any requirements to meet Numeric Effluent Limits for turbidity or pH. While several states and EPA have considering adopting similar approaches, in the end, they recognized the difficulty and

inherent limitations in setting numeric limits. Currently, there are no states that require effluent limits for construction site discharge.

Active Treatment Systems (ATS)

The draft CGP sets separate, aggressive numeric limits for discharge from construction sites that utilize ATS. ATS employs chemical coagulation, chemical flocculation, or electrocoagulation to aid in the reduction of turbidity caused by fine suspended sediment. NAHB is concerned that ATS technology is not a cost effective industry-wide pollutant control measure, particularly when compared to properly implemented, conventional erosion and sediment control BMPs. All chemical treatments must be built to size configurations appropriate for anticipated flows. Even a simple chemical treatment system for large volumes of water will require additional retention ponds and tanks on site. This rather extensive treatment plant must also be temporary and portable. At large sites, there might be a need for several such plants to operate simultaneously. The cost for these active treatment plants is enormous and some estimates for using ATS on a residential site are in the range of 25 – 50,000 dollars per acre. The cost per home assuming 2.5 homes per acre could be a minimum of 10,000 dollars. There are also additional costs associated with meeting the specific requirements as outlined in the draft CGP when using ATS. The principles of ATS also completely contradict the tenets of low impact development and sustainable design that many states and communities are now championing.

Furthermore, NAHB is troubled by the fact that chemical treatments for erosion control and pollutant removal from stormwater runoff have not been thoroughly evaluated. Although shown to be useful in some agricultural settings, more scientific data is required before chemical treatments should be considered for broad application on construction sites in California or anywhere, for that matter. Without underlying research on the effectiveness of a wide variety of chemical treatments, the types and amounts of pollutant removal, and the overall environmental effects of such treatment (including detrimental effects), the adoption of such a requirement would be premature and inappropriate. The SWRCB is urged to remove ATS from its regulatory scheme as a BMP for soil retention on site or as a treatment for removing sediment from collected stormwater runoff.

Risk Based Permitting

The risk calculation methodology being considered in California is very complicated, requires detailed site specific data that is not readily available, and yields limited benefits compared to simplified methods for calculating risk. While the idea of requiring advanced BMPs on sites that pose high risk to the environment is reasonable, the method for calculating such risk should not be difficult. Equally troubling is that the SWRCB has provided no data or information demonstrating that this approach has been tested in the field or calibrated to ensure it is practical and/or reliable. The methodology should be simplified to prevent significant delays and minimize the resources that are spent on determining the risk level. A checklist approach could effectively be used to minimize effort while reasonably determining risk level.

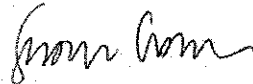
Best Management Practices

NAHB supports the use of erosion and sediment control Best Management Practice (BMPs) to control and maintain sediment onsite. BMPs have been proven effective in practice, are known to the regulated community, and thus, should continue to form the basis of the permit requirements. The SWRCB is urged to focus on the use of BMP controls and creating collaborative efforts with the regulated community to ensure proper guidance and education is provided on design, implementation, and maintenance of such controls.

Conclusion

NAHB is pleased to have the opportunity to review and provide comments on California's draft CGP. The proposal raises serious concerns regarding the requirements for numeric effluent limits, active treatment systems, and the complex risk based calculations. Because it imposes unrealistic, significantly burdensome, and economically devastating impacts on construction site operators, NAHB strongly urges the SWCRB to revise the permit as per the recommendations provided above and by the CBIA to ensure a final permit is economically achievable, effective in reducing pollution from storm water discharges, and workable on the ground. If you have any questions about these comments, or would like to discuss any of the issues raised in more detail, please feel free to contact me or Ty Asfaw at 202-266-8124 or eamfaw@nahb.com.

Sincerely,



Susan Asmus
Staff Vice-President