

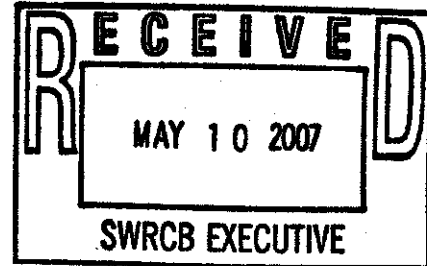


**Unified Port
of San Diego**

Construction Permit
Deadline: 5/4/07 5pm

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P.O. Box 120488, San Diego, CA 92112-0488
619.686.6200 www.portofsandiego.org

May 4, 2007



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

Subject: Comments to Preliminary Draft General Construction Activities Permit

Dear Ms. Her,

The letter is to provide comments to the Preliminary Draft Construction Activities Permit. The Port of San Diego would like to thank you for your consideration of our comments and for the State Water Board's efforts to resolve the issues addressed during the preliminary draft comment period. The Port understands that a formal draft permit will be released subsequent to the informal workshop period during which stakeholders will have another opportunity to provide comment.

Our comments are as listed:

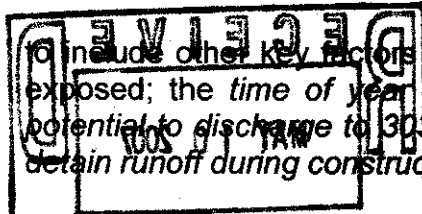
1) Risk Based Approach

The Port supports a risk-based approach that assigns permit requirements based on the true water quality risk posed by specific construction projects and recognizes that this is a good way to make a one-size fits all permit better suited to the diversity of construction activities requiring permit coverage.

An effective risk assessment should consider both uncontrollable (e.g., site location, soil type) and controllable (e.g., slope length, period of disturbance, season of exposure) risk factors. Assessing controllable risk factors is critical to encourage/reward sites that voluntarily control risk.

The preliminary draft permit proposes a risk-based worksheet that yields highly generalized results, which does not provide adequate risk gradation. More significantly, the preliminary draft permit does not provide for much distinction between medium- and high-risk projects (except in the response to single exceedances of action levels). Nor does the preliminary draft permit (PDP) appear to allow for the re-assessment of risk along the different stages of a construction project as the risk factors are changing.

The Port supports a modification of the worksheet point scheme be modified to reflect the fact that soil type, site slope and proximity to potential receiving waters are not yes or no values; these vary continuously from nearly zero risk contribution to completely dominating a site's risk/discharge potential. Further, the matrix needs



to include other key factors such as; the *length of construction period* where soil is exposed; the *time of year* construction will take place; whether the site has any *potential to discharge to 303(d) impaired waters*; whether the project is *designed to detain runoff during construction*.

2) Numerical Effluent Limits (NELs)

The Port supports technology-based NELs based on scientifically developed protocols and data gathering program. Additionally the NELs must be developed and selected in accordance with the process required by EPA regulations. The preliminary draft permit and fact sheet do not provide the foundation or reference the work completed to justify the NELs for general pH (general) or those set for the ATS.

Although the Port understands that the SWRCB is attempting to address the recommendations of the Blue Ribbon Panel Report (here after Panel Report) within the preliminary draft permit, the use of numeric limits at this time appears premature and does not address concerns regarding the use of numeric limits identified.

The Port strongly recommends that the numeric limits be removed from the preliminary draft permit and that this permit-term be used develop the appropriate protocols and data to support technology-based NELs in the next permit should the augmented controls in this permit not demonstrate improved water quality from construction sites.

3) Action Levels (ALs)

The Port supports ALs where they are scientifically defensible and where adequate data is available to appropriately establish the action levels. Consistent with the Panel Report, the Port supports the use of ALs that are designed and selected to identify upset conditions and use of a monitoring strategy that provides immediate feedback to discharges on BMP performance. For construction ALs should be selected that represent situations where BMPs are systematically failing. Additionally, for construction activities, the Port strongly recommends ALs that rely upon the use of field meters (see comments under Effluent and Receiving Water Sampling).

Similar to the NEL discussion above, it appears that the SWRCB is attempting to address the recommendations of the Panel Report within the preliminary draft permit, however the concerns identified in the Panel Report regarding design storm, compliance determination from individual sample results rather than average of results, consideration of background concentrations have not be addressed. Additionally, the draft permit appears to be defining action levels differently than the Panel Report.

4) Hydromodification

The Port believes that hydromodification requirements are inappropriate for the general construction activity permit and distracts focus from the water quality threats posed by construction activity.

Other regulatory mechanisms through Phase I and Phase II MS4 permits, CEQA planning, local plan and development approvals are all more appropriate tools to regulate these impacts. Given the current emphasis on including region and watershed specific hydromodification controls in municipal stormwater permits the inclusion of these requirement in the construction permit is duplicative and confusing.

If the hydromodification requirements are remain in the permit in some form, it will be critical to establish a phase in schedule for these requirements as suggested in the Fact Sheet. Projects already in construction, those that have completed their land development approval processes with local agencies, and those projects funded by public entities will not be able to redesign to meet the new requirements.

5) Certification Requirements

Specifying minimum requirements for SWPPP writers and implementation staff is appropriate and needed element of the program. The preliminary draft permit specifies two levels of qualifications that for qualified SWPPP developers (QSD) and qualified SWPPP Practitioners (QSP).

The Port is concerned that the limitation of the QSD to certain professions/degrees will limit the pool of qualified SWPPP developers and include in the pool those with the right professional certificate or degree but who otherwise may not be experienced with SWPPP development and California requirements.

The intended content and expected length of the QSD and QSP courses should be discussed in the fact sheet to give dischargers and idea of the resource commitment that will be expected. It will be important that these courses be offered concurrent with the release of the permit and numerous times across the State, as there will be many professionals seeking the training.

6) Permit Registration Documentation and Public Review

The process for obtaining permit coverage and achieving public review is not clear in the preliminary draft permit. Specifically, it is unclear whether construction may proceed once a discharger has submitted the permit registration documents and fee or if the discharger must wait until the end of the public review permit.

The Port recommends that the language be clarified to allow construction to proceed once all the required documentation is submitted, with the condition similar to the Order 99-08-DWQ that an adequate SWPPP has been developed, certified, and implemented.

Submission of full SWPPP as part of the public registration document (PRD) will be very difficult to achieve, without significant delays in the construction process. Some elements of the SWPPP can be developed long in advance of the actual construction project on traditional design projects, other elements such as the specific construction contractor or subcontractors will not be known until just before construction starts, at which point a 90-day delay may mean missing the summer grading season and may also have significant financial impacts. For design-build projects, SWPPP elements might not be known until just before they are constructed.

The preliminary draft permit alludes to submitting the permit fee within seven days of submitting the PRD, and indicates a fee statement will be generated automatically. The Port recommends that fee calculations be available independently from the permit registration process to allow public agencies and organizations to meet the internal time lines of accounting processes, which can take two weeks or more to authorize the issuance of a check.

The Port recommends an alternate of developing an expanded NOI that would contain some of the key SWPPP elements that would be submitted for the public review process and that the public review process be limited to no more than 60 days (Phase II SWMP review period) but preferably 30 or 45 days, which is consistent with other State review time frames.

7) Annual Report

The Port supports the inclusion of the annual reporting requirement in the preliminary draft permit. More clarity from the current vague annual certification requirement will improve annual assessment by dischargers. We request that the detailed requirements of the Annual Report and format be included in the formal tentative draft to allow for review.

The Port recommends that new permit retain the current annual reporting cycle with the annual report due in the Summer, July 1, and report on the previous rain year (October through April). Setting the report date in the winter will take resources away from implementation. Summer is the best time to plan for coming season based on assessment of previous year. The July report provides adequate time to assess the previous year and plan alterations for the coming rainy season.

8) Qualifying Event

The Port recommends that the interceding dry period defined consistent with the General Industrial Permit (3 days – 72 hours). Also recommend that days with less than 0.1-inch of rain be defined as "dry". (Rain gauges can measure to 0.01-inch, which for the practical purpose of assessing runoff, is equivalent to dry.)

9) Sampling Safety Factors

The Port supports the inclusion of the noted safety factors for sample collection.

10) Regional Board Approvals

The preliminary draft permit identifies numerous approvals of SWPPP elements by the Regional Board or other authority. Given the number of permitted construction projects (more than 24,000 per CIWQS), The Port has significant concerns about the ability of the agencies involved to provide timely approvals for those elements that the preliminary draft permit specifies Regional Board approval. The Port recommends that the formal draft permit define and streamline the process and time line of these approvals to allow projects the ability to anticipate these review/approval cycles in their planning.

11) SWPPP and REAP

The Port is concerned that the relationship between the SWPPP and REAP are not clearly expressed in the preliminary draft permit and that phases of construction (defined in the findings) are not reflected in the SWPPP and REAP requirements, minimum BMPs, and re-evaluation of the project risk factors.

12) Emergency Construction and Maintenance Projects

Two allowances contained in Order 99-08-DWQ are missing from the preliminary draft permit, exemptions for emergency construction and the permit exemption for maintenance projects. The Port recommends that these allowances be carried into the new permit and that all exemptions and discussions of applicability of the permit be contained within the findings of the permit rather than only in the fact sheet or application instructions.

13) Weather Forecast Triggers

The Port believes that the specified threshold of a 30% prediction of precipitation is too low of a trigger. Alternatively, the Port supports a two-level trigger:

Level 1 - Alert trigger, when there is a 30% chance of precipitation in 72 hours at which point the SWPPP is reviewed by the QSP and deployment is planned.

Level 2 - Deployment trigger, when there is a 70% chance of precipitation in 48 hours the QSP and site staff deploy additional sediment and erosion controls.

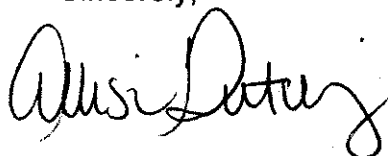
14) Active Treatment Systems (ATS) and Advanced Source Control

The Port agrees with the concept that discharges from ATS need to be operated carefully to prevent unintended negative impacts in receiving waters and support specific provisions in the permit to control such discharges. However, the Port has reservations with the permit requirements that appear to encourage the use of ATS for projects based on the soil particle size percentage called out in the PDP as it occurs in most soils throughout California.

The Port strongly recommends that the use of ATS be limited to high risk projects that that have large areas of soil exposed in the rainy season, i.e., 10 or more acres exposed (based on the EPA CGP trigger for sediment basins).

Thank you again for this opportunity to comment. If you have any questions regarding these comments please feel free to contact me at 619-686-6254.

Sincerely,



Allison Gutierrez
Associate Environmental Specialist
Environmental Services