



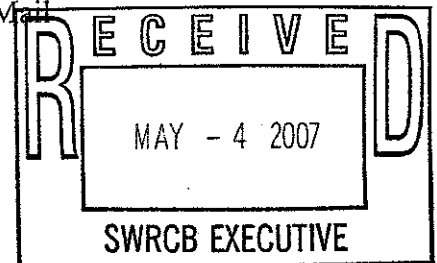
PORT OF OAKLAND

Construction General
Permit – Stormwater
Deadline: 5/4/07 5pm

May 4, 2007

Via E-Mail

Ms. Song Her, Clerk to the Board
State Water Resources Control Board
10011 I Street, 24th Floor
Sacramento, CA 95814



Re: Comments on the March 2007 Preliminary Draft Construction Storm Water Permit

Dear Ms. Her and Members of the Board:

The Port of Oakland appreciates this opportunity to review and consider a preliminary draft of the Construction General Storm Water Permit. Staff at the SWRCB have obviously worked hard to develop a new framework for storm water management and compliance at construction sites. The Port agrees there is room for improvement, but has some reservations about the wisdom of such a dramatic change in approach absent a coherent statewide policy containing a clear strategy based on sound science. As a general approach, the Port recommends expansion of the risk-based approach that provides incentives (reduced requirements) for demonstrated high performance. In other words, the better the performance, the fewer and less onerous the requirements.

The increased requirements contained in the Preliminary Draft Permit will substantially increase the cost of storm water management and permit compliance on construction sites. As a public entity with a responsibility for both environmental protection and the wise use of public funds, the Port is concerned that the increased effort and cost of many requirements will produce only marginal improvements in water quality, if any. The Port would like to see an analysis of the projected costs of compliance relative to the anticipated incremental improvements in water quality.

Agency Approvals

Under the Preliminary Draft Permit, numerous submittals would require agency approval.¹ Considering the number of permitted construction sites at any one time relative to agency staff available to review submittals, substantial delays are unavoidable. The enormous cost of project delays for Port and other municipal projects is an unnecessary waste of public funds. The Port thus strongly objects to requirements for agency review and approval without a time limitation. The Port urges the permit to provide that submittals be deemed approved automatically if agency staff do not act within a set time of no more than 30 or 45 days, and less where feasible. The permit should clarify that the permit coverage commences immediately upon submittal of all required documentation.

¹ Agency approval requirements are proposed for SWPPP, ATS, structural measures to comply with hydromodification requirements, NOT and TMDL/WLA.

Active Treatment System Monitoring

Another costly requirement that appears out of step with potential water quality benefit is ATS Monitoring. Acute and chronic toxicity testing is an onerous and costly requirement when the primary concern is sediment (in the absence of any information to suggest the presence of toxic pollutants), particularly when results may not be available in time to avoid discharges. If toxicity concerns relate to chemical additives, the numeric effluent limits for toxicity should be eliminated from the permit and those products should be tested in scientifically sound experiments prior to being endorsed for widespread use. If discharge limits are to be included in the permit, they must be established using appropriate protocols. Toxicity testing, if required, should be discontinued or reduced following results showing compliance.

Responsibilities of Property Owner and Contractors

As before, the property owner is ultimately responsible for permit compliance. This places the greatest responsibility on the party with the least control and sophistication, while relieving the party with the most control and sophistication of the sense of responsibility needed to motivate a high level of compliance. Despite its oversight efforts, the property owner is simply not in the legal or operational position to ensure that a tenant's contractor or a developer's contractor complies with the detailed requirements of the Construction General Permit. The owner is not, and has limited right to be, on such construction sites on a regular basis. Often the owner has no contractual relationship at all with the on-site contractor, and even if they do, the prospective nature of legal contracts makes them more effective at apportioning liability after an incident than preventing poor performance in the first place. Unless all property owners are required to become storm water professionals, they are not in any position to verify or certify compliance any more than they can attest to their tenants' OSHA compliance. Neither are they able, or necessarily qualified, to undertake routine inspections.

The Port anticipates the SWRCB may be reluctant, as in the past, to reconsider placing primary permit responsibility on the site developer, rather than on the owner as EPA does. Moving forward then, additional permit responsibilities should be borne by the entity in control of the construction activities rather than the property owner. Based on its experience, the Port would urge the SWRCB to allow property owners (particularly public entities that may be constrained from delegating these responsibilities to outside persons), the option of sharing permit coverage responsibility with contractors by jointly filing the NOI and NOT. In addition, with the inclusion of new certification (storm water qualification) requirements, the SWPPP should be signed by the Qualified SWPPP Preparer rather than the property owner (as currently proposed in the Preliminary Draft) and the Annual Report, certification of compliance, and other reports and documentation should be signed by the Qualified SWPPP Practitioner.

Action Levels and Numeric Effluent Limits

The Port has significant concerns about the process used to develop the action levels and numeric effluent limits. First, it is not clear that appropriate protocols were used in developing technology-based effluent limitations. Not even potable water can be assured of meeting the proposed pH limits. Second, by establishing action levels to "determine if BMPs are effective," the SWRCB appears to be establishing defacto technology-based effluent limits without establishing that properly implemented BMPs can achieve those levels.

Likewise, the turbidity action levels appear to function as technology-based effluent limits. Considering the wide range of turbidity off construction sites, and the natural turbidity of receiving waters during and following storm events, there would appear a significant likelihood that the turbidity limits virtually ensure frequent failure and may be pointless in the face of natural turbidity. At the very least, a statistically based sampling scheme should be allowed (but not required), so that a single outlier doesn't trigger unproductive follow-up.

The Port also questions the use of TPH as a routine evaluative tool. First, TPH is not a concern during all stages of construction, and sampling should be required only when storm runoff is at risk of containing petroleum products. Visible sheen or odor should trigger sampling. Second, sampling requirements would best be limited to pollutants that can be field-analyzed with handheld, direct-reading instruments or other rapid-assessment tools. Delayed results from lab analysis are of limited value.

Receiving water sampling

In some locations around San Francisco Bay, receiving water sampling is either futile or impossible. When sampling a bay or lake along the shoreline, there is no upstream and downstream to compare. At the Port of Oakland, it is commonly impossible to access receiving waters at the discharge point. There needs to be some accommodation of these situations so that dischargers are not in violation of the permit for failure to do the pointless or the impossible.

Hydromodification. The inclusion of hydromodification standards expands the scope of this permit beyond construction activities into the realm of local planning. Moreover, the hydromodification provisions will create confusion, if not outright conflict, with local requirements and limitations. The permit should provide that if any local requirements are in place (such as those required under municipal storm water permits), those local requirements must prevail and supersede those of the Construction General Permit. This should encompass local exemptions, such as for discharges directly into receiving waters under the Phase II General Municipal Permit.

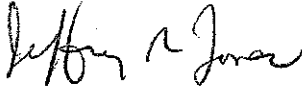
Documentation and reporting. Documentation and reporting requirements are increased substantially in the Preliminary Draft Permit. The Port believes the Rain Event Action Plan is a good idea, but its relationship with the SWPPP requires elaboration, and the requirement that it be "specific to each storm event" needs clarification. What revisions are envisioned that would tailor the REAP to a particular storm? In addition, the trigger requirements are too strident. The Port suggests a two-tiered approach, such as, 30-60% chance of rain prompts review of the REAP and stand-by facility status, and 60% triggers inspections and deployment of additional BMPs, if needed.

The Port believes it makes more sense to complete the Annual Report near the conclusion of the wet season rather than in the middle (January 1, as proposed). However, an extensive annual reporting obligation will be particularly difficult and costly for organizations such as the Port whose staff are already over-burdened at that time of year by preparing the Annual Reports for multiple industrial facilities under the Industrial General Permit, and the Group Monitoring and Evaluation Reports for its Industrial Group Monitoring Program. The Port recommends that reporting be streamlined as much as possible and an extension be available upon request.

Ms. Song Her
RWQCB
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The Port appreciates this opportunity to contribute to the development of an improved and effective permit, and looks forward to working with agency staff in the future to ensure construction activities have minimal impact on water quality.

Sincerely,



Jeffrey R. Jones, M.S., M.P.H.
Environmental Compliance Supervisor

cc: Roberta Reinstein, Manager, Environmental Programs and Safety
Michele Heffes, Deputy Port Attorney