

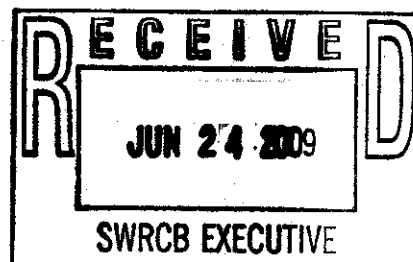


**Unified Port
of San Diego**

Public Comment
Dft. Construction Gen. Permit
Deadline: 6/24/09 by 5:00 p.m.

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June 22, 2009



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

Subject: Comment Letter – Draft Construction General Permit

Dear Ms. Townsend:

The Port of San Diego (Port) appreciates the opportunity to comment on the Draft General Construction Activities Permit (Draft Permit). The Port administers the public lands along San Diego Bay and as landowner takes on responsibility for Permit compliance. The Port ensures that Permit coverage is obtained and compliance is achieved for every construction project subject to Permit requirements on Port tidelands. As environmental stewards of San Diego Bay, the Port is interested in helping direct regulation that could protect the quality of bay water. We hope that the openness of the State Board to stakeholder input will be maintained throughout the development of this and other permits. Below are the comments and questions raised by the Draft Permit.

- The Draft Permit is not clear on the differences and responsibilities of the Discharger and the Legally Responsible Person (LRP). Although it appears that the Permit uses these terms interchangeably, certain requirements appear specific to each party. The issue of who must or is allowed to apply for permit coverage and who is authorized to enter data into SMARTS should be clarified. A table of responsibilities for the Discharger and LRP is recommended. If the Discharger and the LRP are the same party, the Permit should be revised to use one term consistently.
- It is recommended that Section IV.I include a table listing all of the potential documents that may be required by this permit, the identity of the corresponding qualified individual who must prepare and certify the documents, and the date or timeline by which the documents must be uploaded to SMARTS.
- Rainfall Erosivity Waiver, Section II.B.7. The Port supports the addition of this waiver to the permit; to allow sites, as determined by the US EPA to have minimal risk, to stay out of the permitting program.
- Section III.C.6 states that the authorized non-storm water must be monitored and meet applicable NALs and NELs. It is unclear whether this provision applies to Risk Level 1 sites. Please clarify whether this provision is or is not applicable to the Risk Level 1 sites.

- Section I.G.46 states that the General Permit gives credit to setbacks in the risk determination and post-construction storm water performance standards. However, the Risk Determination in Appendix 1 of the Draft Permit does not include any such credit. To be consistent with the text of the Draft Permit, it is recommended that the sediment risk determination include an element that considers a site's distance from the receiving water.
- Attachment A.1 provides definitions for a Sediment Sensitive Receiving Water Body, Sediment Sensitive Watershed, and Tributary to Sediment Sensitive Receiving Water Body. It is recommended that these definitions be included in the Glossary of Terms and be references in other areas of the Draft Permit (e.g., Risk Determination Appendix).
- Some of the information contained in the REAP checklists appears irrelevant. For example, Fines and Penalties, Educational Mailings, etc. The checklist should only include those items that are necessary to prepare for the forthcoming storm event.
- The Draft Permit requires the Discharger to provide documentation of training in the annual report. Clarification is requested on what type of training (topics, activities) is acceptable and what training records are required for construction workers in the field, installing, maintaining, and repairing BMPs.
- We oppose the inclusion of Numeric Effluent Limitations (NELs) in the Permit. The Draft Permit proposes to include NELs for turbidity and pH. The applicability of the NELs is limited to traditional Risk Level 3 and linear Type 3 projects. The Draft Permit and Fact Sheet do not respond to the technical questions and issues raised in the comments of the previous permit draft and the State has not addressed the questions regarding the data sets and statistical evaluation of these numbers to establish the NELs.

As described in the Fact Sheet, the NELs are likely to lead to significant confusion and provide a potentially false assessment of compliance by Dischargers. The Fact Sheet states that the NEL represents the minimal level of control and does not necessarily represent compliance with the narrative effluent limitations or the receiving water language in areas with more protective water quality objectives. As such the NELs are more appropriately action or upset levels and should not be considered a compliance based limitation. Including both NELs and NALs creates confusion and potential monetary liability under the Water Code provisions for mandatory minimum penalties.

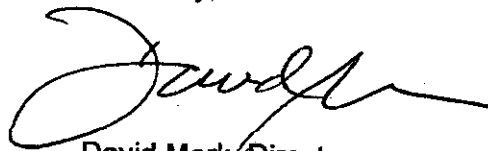
The use of numeric action levels (NALs) appears an appropriate next step from the current Permit in the assessment and regulation of construction stormwater discharges. Action levels provide a quantitative measure of performance and hard trigger for improving site practices for construction site operators. It is the Port's recommendation that the NEL's be removed and the Permit rely on NAL.

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- The permit requires that sites divert run-on to prevent it from contacting disturbed areas. If the run-on is diverted prior to contacting the project, the Permit should clearly state that the project is not liable for the quality of the diverted water.
- The permit requires that Risk Level 3 discharges file all sampling results within 5 days of the storm event. In most cases, a normal laboratory time turn-around is 14 days unless the results are requested on an expedited turn-around and at an extra cost. The Permit should remain consistent with standard laboratory practices including reporting times. Requiring an expedited turn-around would result in an unnecessary increase in sampling costs. It is suggested that a routine reporting time period be developed, such as monthly or quarterly.
- Section 1.J.59 requires all visual monitoring inspections to remain onsite during the construction period and for a minimum of three years. At the Port, records are stored at the Port administration building following the completion of construction. It is recommended that the provision be revised to allow records to be stored offsite with the LRP upon completion of construction.
- The Port requests that the SWRCB delay the implementation of the new Permit requirements for existing projects until the end of the rainy season. If implementation is required during the rainy season, this will cause disruptions and additional costs to re-design SWPPPs and to develop Rain Event Action Plans (REAPs), and to obtain the services of appropriately qualified SWPPP Practitioner (QSPs) and Qualified SWPPP Developer (QSDs). Setting the effective implementation date for existing projects during the dry season will allow projects to plan and modify documents and site controls when it will be easier and less costly to make changes.

Thank you for this opportunity to provide comments. If you have any questions, please contact Allison Gutierrez at (619) 686-6434.

Sincerely,



David Merk, Director
Environmental Services Department

APG:rv

File: Construction General Permit

cc: Allison Gutierrez

SDUPD Docs No. 369676