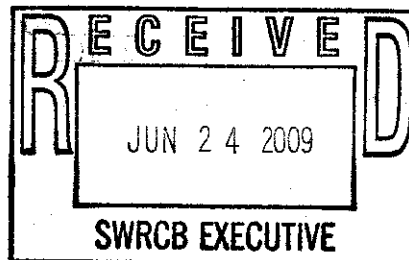


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June 24, 2009

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

RE: Comment Letter – 2009 Draft NPDES Construction General Permit

Dear Ms. Townsend:

The California Department of Transportation (Caltrans) appreciates the changes made to the proposed Draft General Permit for Discharges of Storm Water Associated with Construction Activities (CGP). It is clear that State Water Board staff made substantial efforts to address many of our (and other stakeholders') previous comments. Caltrans has been analyzing the draft permit to better understand the water quality benefits that would be derived, and gain an understanding of the steps necessary to change our project delivery activities in order to comply with the new order. The CGP will require significant changes in Caltrans' standard processes, procedures and practices, which already include measures to insure proper treatment of stormwater. We offer comments in five key areas of concern. Attached are additional comments on issues which require clarification, to ensure clear interpretation of the permit.

General Comments

1. Magnitude and Uniqueness

Caltrans initiates over 600 construction projects per year (1,100 ongoing at any given time). The enrollment process alone will be a significant effort to both our agencies (Caltrans and the Water Boards). Caltrans suggests the State Board maintain the process in the Caltrans statewide NPDES Permit (99-06-DWQ) for filing of Notices of Construction.

Transportation projects are linear in nature and generally have numerous outfalls, crossing multiple streams and watersheds. We have constrained right of way, no enforcement authority outside of the right of way, and no ability to charge utility fees or generate tax revenue to address stormwater issues as do traditional municipal dischargers. Our commitment to the safety of the traveling public and our workers is paramount and presents a unique element to our stormwater activities. The CGP should make allowances for linear projects crossing two or more watersheds (or Hydrologic Sub Unit) boundaries, for more than 1 risk level within the project.

The "one size fits all" permit has raised concerns from our internal staff, our contractors, and our partners in transportation construction. We suggest the CGP provide a focused section for linear transportation projects, similar to that of the Linear Underground Projects. USEPA concurs that linear transportation systems face unique stormwater challenges in ways that differ from traditional MS4s programs.
(<http://cfpub.epa.gov/npdes/stormwater/municroads/home.cfm>)

Caltrans has serious concerns about the applicability of the post-construction BMPs required under this permit. Section F4 of the Caltrans NPDES MS4 permit requires Caltrans to "seek opportunities to retrofit the Storm Water Drainage System for water quality improvement whenever a section of the right-of-way undergoes significant construction or reconstruction. Permanent control measures shall be implemented, both to control erosion and to control runoff of pollutants resulting from normal use of Caltrans facilities such as highways." Section F4 of the current Caltrans NPDES MS4 permit only applies in areas subject to an urban MS4 permit. The relationship of installing post-construction requirements under this permit to meeting the "maximum extent practicable" requirement under an NPDES MS4 permit is not discussed and is not clear "for projects not located within an area subject to post-construction standards of an active Phase I or Phase II MS4". Caltrans suggests removing post-construction BMP requirements, as these types of BMPs are more effectively and efficiently implemented under the MS4 permit process.

Caltrans' limited rights of way are generally insufficient to implement the BMPs necessary to meet the NAL/NELs for the compliance storm event. Additional rights of way and easements will be required for Active Treatment Systems and other redundant temporary BMPs, which will trigger additional CEQA impact evaluation and likely mitigation for these temporary impacts. Caltrans suggests selection of a compliance storm event based on the 2-year storm and linked to permit compliance objectives (NALs).

Caltrans, like many public agencies, is frequently not the "land owner" and in many cases does not hold title to the underlying property. Caltrans operates much of the state's conventional highway system under various property rights, e.g., prescriptive rights and easements. This prevents Caltrans from assuming the duties for the Legally Responsible Person. Caltrans suggests including a provision for public agencies similar to that of the Linear Underground Projects, whereby the LRP does not need to be the "land owner".

As a result of Caltrans linearity, there is a multitude of adjacent properties with run-on, including non-point source run-on, e.g., agricultural properties. The permit language creates unlimited and excessive permittee liability. Caltrans suggests a provision clearly permitting the temporary diversion of run-on around the project site.

2. Resources

Our mission is to provide mobility across California, and one of our five goals is stewardship, where we strive to be good stewards of the environment. Our current workload is being funded primarily by Bond, Recovery Act, or Local Sales Tax Measure funds. These funds are fixed allocations with strong fiscal accountability requirements that restrict cost changes. The state no longer has fund reserves for project changes of the magnitude required

to implement this permit. Projects adding long-term water quality benefits may be delayed simply due to the magnitude of the additional costs required for the short-term construction impacts.

A large portion of the state's economic recovery projects are transportation projects, and many have begun construction, or are on track to begin construction soon. The Governor and the Director of Caltrans have been tasked to ensure these transportation projects are on schedule and within budget. Although there appears to be a transition period mentioned in the permit, many of our construction projects span several years, and reassessment and adding new requirements on projects already scoped, scheduled, and budgeted will cause delays to or jeopardize economic recovery projects.

Many of our construction projects will likely be Risk Level 2 or 3 sites requiring a significant amount of public resources (approximately three or more times the current effort) and will likely cause delays on construction projects. This will greatly impact the movement of goods and services.

Caltrans suggests a remedy allowing projects that are "grandfathered" into the Level 1 risk, to continue at that risk level until completion of the project, rather than for the limited two-year period.

3. Caltrans Materials

Caltrans has made, and will continue to make available to the public many of the studies, training materials and construction compliance tools we have developed and implemented. However, we are concerned that the permit references Caltrans materials, and specifically the "Caltrans" RUSLE2 program. The RUSLE2 program was developed for Caltrans projects and it is not appropriate for a Caltrans design tool to be the reference for all stakeholders subject to this permit. Additionally, this program has not yet been finalized internally, making it premature even for internal use. Caltrans requests the Board eliminate the reference to "Caltrans" RUSLE2.

4. Water Board Authority

Caltrans holds the only statewide individual MS4 permit, which allows for consistency in our practices throughout the state. A new addition to the tentative order is a section that allows the Regional Water Boards to require reassessment of risk and impose additional requirements during the enrollment process. This undermines the concept of a statewide permit and is of particular concern to Caltrans, as we have construction projects in 12 districts spanning all nine Regional Board jurisdictions. Caltrans cannot be forced into 34 different ways of doing business and still be consistent. We request clarification on how this may affect our construction projects, as any additional resources in construction change orders would cause delays to publicly funded construction projects. Caltrans recommends removal of the language conferring discretionary authority to the Regional Boards. If Regional Board discretion is granted, it should be based upon quantitative trigger(s) within a fixed timeframe to avoid an open-ended process.

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5. Practicality

The Blue Ribbon Panel concluded that it was not feasible to establish NELs; yet dischargers are being asked to do what the industry experts said could not be done. Caltrans suggests that NELs be removed from the permit.

pH and turbidity measurements will represent permit compliance, as such there will be a heavy burden placed on the quality of these measurements, e.g., accuracy, precision and representativeness. The industry needs an opportunity to become comfortable with the standard protocols, and the quality control and assurance practices. Unlike laboratory staff, the proposed permit does not have certification requirements for field personnel engaged in making these measurements. As a first step, NALs could be implemented to allow time for the industry to work out the practical aspects of this quantitative compliance approach.

We welcome the opportunity to discuss our comments and challenges with staff, and discuss opportunities on how we can streamline the administrative process for Caltrans construction projects in order to comply with the proposed permit and how we can avoid roadblocks for economic stimulus projects. If you have any questions, please call me at (916) 653-4446.

Original Signed By:
G. SCOTT MCGOWEN

G. SCOTT MCGOWEN
Chief Environmental Engineer
Division of Environmental Analysis

Enclosure

ATTACHMENT
2009 Draft NPDES Construction General Permit

#	Location	Issue	Discussion/Comments
1.	Order, Section I C, p.5	"Routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility. Routine maintenance only applies to ..."	<p>For Caltrans and other municipal operators, repaving of asphalt roads is routine maintenance and does include repair or replacement of unsuitable underlying roadway base material to preserve the facility. The permit should provide for the unfettered routine maintenance of public facilities.</p> <p>Many routine maintenance overlays and paving projects involve the grading of existing shoulders to match the new pavement surface/elevation. At times, minor vegetation has grown at the margins of the shoulders and must be cleared and graded. This activity should be exempt.</p>
2.	Order, Section I, D 46, p.8	Set-Back Credit	<p>What is the minimum distance to qualify for the setback and what is the credit, specifically?</p> <p>What will the basis be for a local agency or a Regional Water Board in establishing a setback?</p>
3.	Order, Section I.E.38, p.6; and Section I.E.42, p.7	<p>Permit prohibits discharge of non-stormwater pollutants; discharge of any debris prohibited</p> <p>Zero thresholds cannot be complied with</p> <p>Minor non-stormwater discharges, it is imperative to identify any and all of these types of "discharges"</p>	<p>The permit prohibits the discharge of plastic. All erosion control blankets that contain plastic will be prohibited; this would also include any sod that contains plastic netting. This could mean that any BMP that is left in place will not be able to contain plastic, clarification is needed.</p> <p>For example, a piece of sand from a sand blasting operation, dust due to excavation, hauling, and public traffic on gravel surfaces, and trash from the public. There must be acceptable discharges for minor dust, sand, and non-stormwater.</p> <p>Caltrans suggests a variance in the permit for these and that they be in the permit application.</p>
4.	Order, Section I.E.41, p.7	Discharges to ASBS prohibited; logistics of monitoring and sampling.	The discharge from the site is authorized by the permit, but when it reaches the ASBS, it is no longer in compliance. The only way to determine if entrained sediment reaches the ASBS would be to monitor at the ocean interface, which would be very dangerous and expensive.
5.	Order, Section I, J, p.10	Record of visual inspections must remain on-site during the construction period and for a minimum of three years.	The wording of this implies that the records will be kept at the construction site during the construction period and for an additional three years after that. Caltrans suggests the following: "...during the construction period, and for records maintained in the project files for a minimum of three years..."

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6.	Order, Section I.K.70, p.11	Permit establishes a 10-year, 24-hour Compliance Storm Event for ATS discharge exemption.	ATS's require large areas to treat stormwater. The larger the event that must be caught, the greater retention volume required. Most locations in the North Coast region do not have space for ATS. A more likely compliance event might make this a possible solution in tight locations.
7.	Order, Section I.M. Order, Finding 72, p.12	"The SWPPP must include any and all information needed to demonstrate compliance with all requirements of this General Permit."	Unclear; "any and all" is overly broad and should be defined so dischargers understand what is required of them.
8.	Order, Section II, B.4.b, p. 14	Permit implementation period is inadequate to change policies and practices, which will ensure compliance with this permit.	Though staff has discussed likely implementation scenarios, one hundred (100) days is an inadequate amount of time to issue new specifications, change orders, and policies that will ensure compliance with this permit.
9.	Order, Section II.D, p.17	Notice of Termination (NOT) requirements and NOT submittal language need flexibility for unusual geologic and hydraulic conditions.	NOT language should include language to address unusual geological conditions, such as rock cuts, areas of active landslide, or places where, for hydraulic or geologic reasons, the area cannot support vegetative cover. Clarification is needed on the duration for which permittees will be required to pay annual fees for post-construction BMPs.
10.	Order, Section VI, D	Dischargers located within the watershed of a CWA § 303(d) impaired water body, for which a TMDL has been approved by the USEPA, shall comply with the approved TMDL if it identifies "construction activity" or land disturbance as a source of the pollution.	Can a project unambiguously comply with a TMDL without a specific waste load? Is the waste load therefore zero because discharges must not cause or contribute to an exceedance of a water quality standard?
11.	Order Section IV, L	40 CRF Section 122.41(m) regulates bypasses.	Bypasses were intended to prohibit the intentional diversion of a wastewater stream from a POTW. Waste stream under the CWA means something entirely different from waste under the Porter-Cologne Act. Bypass in this case would mean the intentional diversion of a regulated discharge from a treatment facility on site like a detention basin, sediment basin, or ATS system.

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12.	Order, Section XLA, p.36	The QSD shall ensure the SWPPP is amended to ensure that BMPs installed after construction are completed and maintained.	The QSD is either the contractor or their consultant. It is likely the QSD will not be involved in the maintenance of permanent BMPs.
13.	Order, Section XIV.C, p.36	Permit Registration Documents	Once the SWPPP and risk analysis is submitted to the Water Board, is there a specific time frame for a review or comments?
14.	Attachment C, 4.a.ii, p.9	Normal Business Hours	Define "normal business hours". Our projects sometimes are constructed during nights and weekends only. Are normal business hours Monday through Friday, 9 a.m. to 5 p.m.?
15.	Attachment C, D & E, Section B.1.b	Cover and berm stockpile materials that are not actively being used.	Stockpiles containing living organisms, should be handled in a manner that preserves the beneficial qualities of the product e.g., topsoil, mulch and compost. The permit should accommodate this.
16.	Attachment D	Rain Event Action Plan "...to have a 50% or greater chance of producing precipitation..."	At what time period? One hour before, 48 hours before? What happens with the sudden onset of the forecast of rain, as in tropical monsoonal patterns?
17.	Attachment D, Section I.4.c, p.12	At minimum, Risk Level 2 dischargers shall collect three samples per day.	If rainfall starts at the end of the day, three samples will not be collected. Caltrans suggests that clear protocols be developed regarding all aspects of the sampling and monitoring, before being subject to application of numeric permit compliance measures.
18.	Attachment E, Section 17, p.22 Appendix 5	Bioassessment Monitoring Requirements appears to be duplicative of the requirements under CEQA.	Is the required monetary bioassessment mitigation requirement intended to serve as a programmatic means of project level mitigation of environmental impacts? Would landscape projects be exempted from this requirement if there were no/minimal change in pervious surface? The exact amount of fee payable to Cal State Chico Foundation is unclear. The website link on p.2, second paragraph is not accessible.

#	Location	Issue	Discussion/Comments
19.	Attachment E, Risk Level 3, (D) (4), p.5	Ensure soil loss during each phase ...is equivalent or less than the pre-construction soil loss for the same period.	The Erosion Prediction Procedure (EPP), which is the guidance that accompanies the Caltrans RUSLE2 software, never claims to match construction to pre-construction conditions. Instead, it allows the practitioner to set a maximum allowable erosion rate (MAER) for soil loss for construction phases. This can show that the post construction condition is stable; the EPP guides the practitioner to use RUSLE2 to show that the post construction soil loss is equivalent or less than the pre-construction soil loss. Caltrans suggests that Section (D) (4) be corrected or deleted.
20.		Fourth exceedance of NEL requires minimum penalty assessment.	<p>Considerable uncertainty exists over the specific events leading to mandatory minimum penalties; a clear process needs to be established, which describes the actions necessary between exceedances to avoid such penalties.</p> <p>An exceedance should be based on an event and not per individual failed test result.</p>