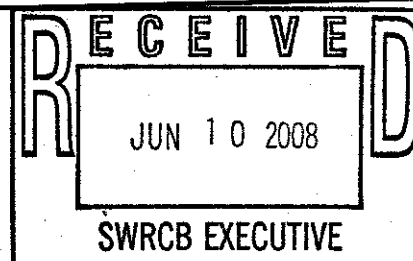


June 10, 2008

By Email and U.S. Mail
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: Comments on the March 2008 Preliminary Draft Construction General Permit

Dear Ms. Townsend and Members of the Board,

Thank you for the opportunity to provide comments on the March 2008 Preliminary Draft Construction General Permit (CGP). The County of Orange (County) appreciates the efforts of the State Water Resources Control Board to receive written comments as well as hold public workshops with stakeholders on this Preliminary Draft. The County is subject to two Phase I Municipal Separate Storm Sewer System (MS4) Permits (Santa Ana and San Diego Region) which both include extensive requirements for construction activities as well as development planning. As a large municipal agency responsible for building regional road and flood control facilities as well as improving existing infrastructure, the substantial changes to the CGP as proposed in this latest Preliminary Draft will have a significant impact on the County.

County staff have participated in a California Stormwater Quality Association (CASQA) coordinated review of the March 2008 Preliminary Draft and we support the comments detailed in the June 10, 2008, CASQA letter. In addition, we submit the following comments for your consideration:

I. Capital Improvement Projects

Section II.B of the Fact Sheet (Construction Activities Covered by this General Permit) contains the following language (pg. 21):

"Where clearing, grading, or excavating of underlying soil takes place, permit coverage is required if more than one acre is disturbed or part of a larger plan or if the activity is part of more activities part of a municipality's Capital Improvement Project Plan."

The County maintains a comprehensive capital improvement plan (CIP) which details flood control, street/road/highway, and other public infrastructure projects needed over the span of the next several decades. The CIP prioritizes projects by need and identifies potential funding sources. Many projects within the County's CIP such as street overlay/resurfacing, seismic retrofit and bridge expansion do not involve the disturbance of any soil. Also, many projects in the CIP disturb less than one acre of soil. Requiring projects that are part of the County's CIP but disturb less than 1 acre of soil to obtain coverage under the CGP is unnecessary and could

prevent some projects from being fully funded due to the extra costs associated with compliance with the CGP.

Each CIP project that the County undertakes is handled as a separate and individual construction project. Everything from the contract bid/award process, which may require approval by the County Board of Supervisors, to the preparation of construction plans, is specific to that project. Therefore, the comparison of CIP projects to private projects that are part of a larger common plan of development is not appropriate.

Currently, only County CIP projects that disturb one acre or more of soil are subject to Order No. 99-08-DWQ (current CGP). County CIP projects that disturb less than one acre of soil still receive rigorous implementation of best management practices (BMPs) as required by the Phase I MS4 Permits.

County recommendation: Remove or edit language from Fact Sheet that requires all public projects that are part of a CIP to obtain coverage under the CGP. Only municipal construction projects that disturb one acre or more of soil should be subject to the CGP.

II. Permit Enrollment

The County is authorized to discharge stormwater runoff by its Phase I MS4 Permits which place extensive requirements on all activities undertaken by the County that may impact the quality of stormwater runoff, including municipal construction. The County pays an annual fee to the SWRCB for Waste Discharge Requirements (Currently \$18,516 per SWRCB Invoice No. 0713065 for billing period 7/1/07-6/30/08).

Order No. R8-2002-0010 contains the following requirements with regard to municipal construction projects subject to the CGP in Section XV, Municipal Construction Projects/Activities:

- 1. This order authorizes the discharge of storm water runoff from construction projects that may result in land disturbance of five (5) acres or more (or less than five acres, if it is part of a larger common plan of development or sale which is five acres or more) that are under ownership and/or direct responsibility of any of the permittees. All permittee construction activities shall be in accordance with DAMP, Appendix H.*
- 2. Prior to commencement of construction activities, the permittees shall notify the Executive Officer of the Regional Board of the proposed construction project. Upon completion of the construction project, the Executive Officer shall be notified of the completion of the project.*
- 3. The permittees shall develop and implement a storm water pollution prevention plan (SWPPP) and a monitoring program that is specific for the construction project, prior to the commencement of any of the construction activities. The SWPPP shall be kept at the construction site and released to the public and/or Regional Board staff upon request.*
- 4. The SWPPP and the monitoring program for the construction projects shall be consistent with the requirements of the latest version of the State's General Construction Activity Storm Water Permit.*

5. *The permittees shall give advance notice to the Executive Officer of the Regional Board of any planned changes in the construction activity, which may result in non-compliance with the latest version of the State's General Construction Activity Storm Water Permit.*
6. *All other terms and conditions of the latest version of the State's General Construction Activity Storm Water Permit shall be applicable.*

The enrollment procedure detailed in **Section II.A** of the Preliminary Draft CGP requires all new dischargers to electronically file their Permit Registration Documents (PRDs) and submit payment of annual fees in order to obtain coverage. The County already submits an annual fee to the SWRCB for Phase I MS4 Permits that authorize stormwater runoff from municipal construction projects/activities, and the County is required to notify the Executive Officer of the Regional Board, not the SWRCB.

County recommendation: Modify language in **Section II.A** to defer to requirements in Phase I MS4 Permits which authorize municipal construction projects/activities. The County agrees that PRDs for municipal projects disturbing one acre or more of soil should still be filed electronically through the California Integrated Water Quality System (CIWQS) but payment of annual fees for enrollment of each project represents a double payment by municipalities and should be eliminated.

III. Receiving Water Monitoring

The County operates and maintains a flood control system consisting of over 300 miles of open channels. While some public access to these water bodies is allowed for recreational purposes, access to most channels is restricted to County flood control maintenance or inspection personnel and permits from the County are required in most cases if entry is requested by outside parties. The County's flood control channels are especially dangerous to access, even for experienced personnel, during storm events.

The County is concerned with **Attachment B** of the CGP, **Monitoring Program and Reporting Requirements**, as it relates to receiving water monitoring requirements. Receiving water monitoring is required of all risk level 3 projects for each storm event and for risk level 2 projects during each storm if any numeric effluent limit (NEL) is exceeded. Since a majority of the receiving waters in Orange County serve as flood control channels, the County anticipates that many dischargers will require access to these facilities during storm events in order to conduct receiving water monitoring. This is problematic for the County in that attempting to collect samples from a flood control channel during storm flows is inherently dangerous. The anticipated increase in the number of requests to enter County right of way to conduct receiving water monitoring will also place a strain on the County's permitting process. It is also conceivable that there could be multiple dischargers attempting to monitor a receiving water at the same location during a storm event.

County recommendation: The County recommends that **Attachment B** be modified to clarify that receiving water monitoring is directly subject to permission/authorization by the entity which controls access to the receiving water.

IV. Risk Analysis

The County is concerned with how flood control improvement construction projects will be impacted by the project risk analysis process. These projects are critical to the County's ability

to continue to provide flood protection to the residents of Orange County and they also relieve property owners of the requirement to carry flood insurance. Since these projects may occur within receiving waters, using the risk analysis worksheets provided in **Attachment A** of the CGP, our analysis indicates that the lowest possible risk level for these projects would be 3 (High).

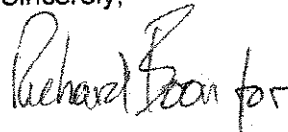
Designation as risk level 3 places the most significant requirements on a project and the options available to dischargers to reduce their risk level (utilization of an Active Treatment System to treat runoff and R factor reduction) are not feasible for in-stream projects. The County takes great care at considerable expense to divert wet and dry weather runoff around flood control improvement projects and yet this BMP would not help reduce risk level, even though it would eliminate discharges from the project.

Additionally, our analysis indicates that those projects that take place within sediment impaired water bodies would result in a risk level 4, making them ineligible for coverage under this CGP. Three water bodies in the County are currently impaired for sediment (Reach 1 & 2 of San Diego Creek and the Upper Newport Bay). San Diego Creek is a flood control channel maintained and operated by the County. The County is concerned that an inability to obtain coverage under this CGP for flood control improvement projects involving San Diego Creek will limit the ability to provide adequate flood control as well as continue to maintain in-stream sediment basins that have been established as part of the sediment reduction plan in response to the Sediment TMDL adopted in 1999.

County Recommendation: The risk analysis procedure should be modified so it does not penalize flood control improvement projects or prohibit their coverage under the CGP.

Thank you for your attention to our concerns. Please contact Grant Sharp at (714)973-6691 if you have any questions on these comments.

Sincerely,



Chris Crompton, Manager
Environmental Resources

CC: Mark Smythe, Santa Ana Regional Water Quality Control Board
James Smith, San Diego Regional Water Quality Control Board