



# COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

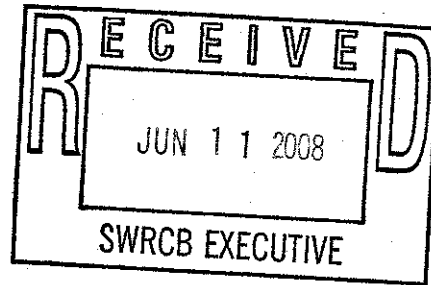
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STEPHEN R. MAGUIN  
*Chief Engineer and General Manager*

June 11, 2008  
File No. 31-370-40.4A

Public Comment  
Draft Construction Permit  
Deadline: 6/11/08 by 12 p.m.

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



Dear Ms. Townsend:

**County Sanitation Districts of Los Angeles County's Comments  
Relating to the Draft NPDES General Permit for  
Discharges of Storm Water Associated with Construction Activity (Draft General Permit)**

The County Sanitation Districts of Los Angeles County (Districts)<sup>1</sup> thank the State Water Resources Control Board (SWRCB) for the opportunity to submit comments on the Draft NPDES General Permit for Discharges of Storm Water Associated with Construction Activity (Draft General Permit). The Districts are a confederation of special districts, which operate and maintain regional wastewater and solid waste management systems for approximately 5 million people who reside in 78 cities and unincorporated areas in Los Angeles County. The Districts operate 11 wastewater treatment plants and six landfills, a refuse-to-energy facility and three materials recovery/transfer facilities. In addition to these facilities, the Districts also are responsible for maintaining approximately 1,300 miles of sewer lines, which convey flows from industries and municipalities within our service areas to our wastewater treatment plants. The discharge of stormwater from on-going construction and rehabilitation of these facilities will be regulated under the Draft General Permit.

The Districts would like to thank SWRCB staff for their careful consideration of comments to the Preliminary Draft General Permit provided by the Districts and other stakeholders. The Districts would also like to express our support of Board Member Wolff's proposal to create "a scientifically valid database on management practice performance via rigorous third party random monitoring in lieu of self-monitoring and at least partially paid for by permittees."

The purpose of this letter is to convey the Districts' remaining concerns regarding the Draft General Permit as follows:

<sup>1</sup> The Districts are County Sanitation District Nos. 1, 2, 3, 5, 8, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 28, 29, 34, Santa Clarita Valley Sanitation District, and the South Bay Cities Sanitation Districts of Los Angeles County. The ownership and operation of the Solid Waste System is proportionally shared among the signatory parties to the Districts' Solid Waste Management System Agreement effective February 21, 1996.

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**Major Issues****1. It is premature to incorporate numeric effluent limits (NELs) into the General Permit.**

The Districts believe the use of NELs is premature at this time since the SWRCB has not accumulated enough data to determine the feasibility of meeting the effluent limitations. The Districts request that the NELs be replaced with NALs until sufficient data has been accumulated to justify the use of NELs for enforcement. The risk to the discharger for non-compliance is substantial. With stormwater effluent sampling required "beginning the first hour of any new discharge and one sample during the first and last hour of every day of normal operations" for Risk Levels 2 and 3, NEL violations could accumulate at the rate of two per day. Water Code Section 13385 (i) states that "A mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations." Despite the elimination of the first three violations, it is possible that adherence to this policy could result in mandatory minimum penalties being imposed within two days of the beginning of a major storm, even with the application of Best Management Practices (BMPs).

**2. The process for Regional Water Board and public review of the dischargers' application should be clearly defined and limited in duration.**

Section VI.2.a. of the Draft General Permit states that new dischargers shall "electronically file their PRDs no later than 14 days prior to the commencement of construction activities... Permit coverage shall not commence until the PRDs are accepted and the permit fee is received by the State Water Board." This language implies that the application review and approval process will take no longer than 14 days. No guarantee is provided however that the Regional Board will act on the application let alone grant coverage within 14 days of receipt of PRDs or within 7 days of receipt of the fees.

Section XII.2. of the Draft General Permit states, "Regional Water Boards shall review comments provided from the public on new permit applications. Based upon the public comments and Regional Water Board review of the permit application submittal, Regional Water Boards may take actions that include, but are not limited to: rescinding permit coverage, requiring public hearings or formal Regional Water Board permit approvals, requesting dischargers to revise their SWPPP and/or Monitoring Program within a specified time period, or taking no action." No language is included as to time frames for public review and comment. Furthermore, the Draft General Permit language allows the Regional Board to approve an application and then, as a result of public comments and Regional Board review, rescind coverage, require public hearings, and require revisions to the SWPPP. No language is included with respect to how the public will be allowed to review and comment on the application.

The considerable uncertainty relative to the duration and details of the approval process will substantially affect the discharger's ability to construct projects in a timely and cost-effective manner. Public agencies such as the Districts are required by law to contract for the construction of work through a competitive bidding process. These contracts usually contain specific time schedules with an assumed duration to obtain coverage under the General Permit. The preparation of the SWPPP cannot proceed until a contract is awarded and the contractor determines his methods of construction. Once the SWPPP is complete, the discharger can apply for coverage under the Draft General Permit. Then the discharger and contractor must wait an indeterminate amount of time for approval before the work can begin. The discharger would be subject to delay claims from the contractor if the approval process is not timely. Additional delays would also occur if the Regional Board initially approves the application and subsequently rescinds the permit. Furthermore, delays could also affect the completion schedule for construction of compliance projects dictated by Regional Board time schedules.

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To remedy this situation, the Districts request that the Draft General Permit be revised to specifically require the Regional Boards to review, solicit public comments, and act on an application within 30 days. Once a permit is approved, subsequent rescission should only be allowed if the discharger fails to implement their SWPPP in accordance with their application or if the SWPPP is not protective of receiving water. This will provide the dischargers substantially more certainty in scheduling their construction activities and reduce the risk of delay and cost impacts. Furthermore, the Districts request that the process for the submittal and review of public comments should also be formally detailed in the Draft General Permit.

### **3. Receiving Water Monitoring is not an appropriate component of construction storm water monitoring.**

Monitoring of receiving water during a storm event will be of limited value and will result in substantial costs to the discharger that are not justified. In most cases, the surface area and resulting potential pollutant loading from a construction site will represent a small fraction of both the stormwater flow and pollutant load in receiving waters since construction sites represent a small portion of the tributary area. Thus, even if receiving water sampling is conducted both upstream and downstream of the discharge location, it will be impossible to differentiate the effect on water quality as a result of the discharge or other sources.

The definition of receiving water is also hard to define. Without definition, dischargers may interpret the location differently resulting in vastly different meaning of the data. For instance, is urban receiving waters the curb and gutter or the closest jurisdictional water body? Water quality of each of these locations will likely be substantially different.

The cost to implement the receiving water sampling requirements of the Draft General Permit are substantial. For example, for Risk Level 3 projects, receiving water samples are required within 1 hour of each rainfall event. Due to the inherent inaccuracies of weather prediction and the variable nature of rainfall patterns across a region, it would be impossible for sampling staff to reach each site within one hour of the beginning of every rainfall event. Rain may occur at the job site, and not where the sampling staff is. Rainfall can also occur in the non-rainy season with little warning. This uncertainty will require the discharger to have a qualified individual at the site at all times to ensure compliance. Since a typical construction site is only occupied during a normal 40-hour workweek, staff would need to be present an additional 128 hours per week. At a conservatively estimated \$20/hr rate for staff, the cost to achieve compliance with this provision would be in excess of \$250,000 for a typical two year construction project not including laboratory costs.

Thus, the Districts request that requirements for receiving water be removed from the Draft General Permit.

### **4. Existing projects should continue coverage under the existing General Construction Storm Water Permit.**

The Draft General Permit requires that projects covered under the existing General Permit come into compliance with the General Permit within 100 days of adoption. The Districts recommend that existing projects be allowed to reach completion and file an NOT under the terms of the existing permit. As a public agency, construction work as well as compliance with storm water regulations is dictated by legal contracts between the discharger and the contractor. For the Districts, this work includes projects designed to meet the requirements of other NPDES permits, sometimes under the conditions of a Time Schedule Order (TSO) that has been negotiated with the Regional Board. Compliance with the Draft General Permit will likely require changes in the schedule for the project, which would extend the construction time, and changes to the SWPPP for the project, which would incur additional costs. Higher risk sites will also require much more aggressive systems such as ATS be implemented. These will impact the timing and costs of the contract as well as potentially the entire worksite. The time and cost

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impacts to the contract will need to be evaluated, the contract modified, a revised SWPPP prepared and implemented all within 100 days, which is not feasible.

Notwithstanding our request to "grandfather" existing projects under the existing permit, if existing projects must obtain coverage under the Draft General Permit when it is adopted, a longer phase-in schedule should be incorporated to allow the discharger to implement the required changes. The Districts request the phase-in period be modified to a minimum of 180 days for sites of less than 5 acres and 240 days for larger sites. Furthermore, for those projects subject to other regulatory action from local agencies or CEQA coverage for land development, a period of one year is requested.

**5. Prior to developing the final General Permit, the SWRCB should provide the public and Board Members with an assessment of the estimated costs, economic impacts, and environmental benefits of the Draft General Permit.**

The Draft General Permit appears to be based on the assumption that the costs associated with permit compliance will be relatively minor compared to the water quality benefits achieved. During the workshop held in Los Angeles, SWRCB staff indicated they had not conducted any analysis of costs. Only with an accurate assessment of the costs, economic impacts, and water quality benefits can the SWRCB fulfill its duty to regulate so as to attain the highest water quality, which is reasonable, considering economics and other public interest factors specified in Water Code 13000.

**Minor Issues**

**1. The requirement for benthic macroinvertebrate bioassessment prior to commencement of construction activity (Attachment B, Section E.8) for Risk Level 3 is inappropriate.**

Notwithstanding the Districts' request above to remove all receiving water monitoring requirements from the Draft General Permit, if the SWRCB insists upon maintaining receiving water monitoring, we request that the requirement to perform or participate in benthic macroinvertebrate bioassessments be removed. Benthic macroinvertebrate bioassessments attempt to measure changes/impacts at the community level. It may take months or years for any community level changes to be observed as result of any construction activity and there is no requirement for repeated bioassessment monitoring. Furthermore, since bioassessment measures the aggregate impacts associated with instream habitat, water quality, and riparian habitat, it would be difficult, if not impossible to associate any observed changes with a specific discharge from a construction site. Additionally, regional and site specific bioassessment monitoring is already in widespread use through NPDES permitting and various regional and statewide monitoring programs. Any need for long-term community level monitoring data should utilize these already existing programs.

**2. The Draft General Permit should be revised to provide the same protections provided in the current General Permit for Discharge of Storm Water Associated with Industrial Activities (Order No. 97-03-DWQ) (Industrial Permit) with respect to conducting sampling and visual observations.**

The current Industrial Permit, Monitoring and Reporting Requirements, states in Section B.8.a, "A facility operator is not required to collect a sample and conduct visual observations in accordance with Section B.4 and Section B.5 due to dangerous weather conditions, such as flooding, electrical storm, etc., when storm water discharges begin after scheduled facility operating hours or when storm water discharges are not preceded by three working days without discharge. Visual observations are only required during daylight hours. Facility operators that do not collect the required samples or visual observations during a wet season due to these exceptions shall include an explanation in the Annual

Report why the sampling or visual observations could not be conducted." The Draft General Permit should be revised to provide the same level of protection.

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**3. The procedure for determining Risk Level should be clarified.**

While the procedure for determining the Risk Level associated with a given project has been substantially improved, the terminology in some of the websites referenced in Attachment A is inconsistent with the Draft General Permit or not applicable to typical construction sites. Specifically, terminology is inconsistent between the Draft General Permit and the calculator for the E1 or R-Factor. The calculation of the K-Factor refers to USDA\_NRCS website to acquire soil data for the location in question. No soil data is available for the greater Los Angeles County area.

**4. Finding No. 32, third bullet item, referencing "discharges within the Lake Tahoe Hydrologic Unit," and to "construction projects within the Lahontan region," needs to be clarified.**

Finding 32 of the Draft General Permit, states "Construction projects within the Lahontan region must comply with the Lahontan Region Project Guidelines for Erosion Control (R6T-2005-007 Section)." The referenced permit applies only to the Lake Tahoe hydrological unit.

**5. The term "non-chlorinated" should be removed from the description of authorized non-storm water discharges (Section VI.8 of the Permit).**

Section VI part 8 of the Draft General Permit authorizes non-storm water discharges from *non-chlorinated* sources. The use of the term "non-chlorinated" does not appear to be appropriate in this case. While the Districts appreciate the potential impacts to receiving waters that may occur due to the release of non-stormwater discharges containing chlorine residual, the use of "non-chlorinated" implies that non-stormwater releases of all potable water that might be used for these purposes is prohibited. Most potable water has been chlorinated at some point to protect public health and provide a residual in the distribution system and thus would fit under the description "chlorinated". The Districts suggest that the term "non-chlorinated potable water" be replaced with "potable water that does not contain residual chlorine" at the time of discharge.

**6. Toxicity testing requirements for Active Treatment Systems (ATS) should be clarified.**

Footnote No. 3 of Attachment E, section 5.a states that toxicity testing by an independent, third-party laboratory is required to determine the Maximum Allowable Threshold Concentration (MATC) of residual, or dissolved, coagulant/flocculant in the effluent. If, by "effluent," the SWRCB is referring specifically to the storm water leaving a particular construction site, it would be impossible to determine the MATC prior to discharge. If it is the Board's intention that the supplier of the coagulant/flocculant conduct the testing and then make the results available to the users, then the data will not be specific to the effluent. The Districts request that this requirement be modified to refer only to MATC testing by the manufacturer/supplier or allow the discharger to conduct the required testing during the first storm event after the SWPPP plan is implemented.

The draft permit also does not designate how many species would be required to be tested to determine the most sensitive species.

**7. Language in Section VI. Provisions should be consistent with respect to adoption and effective dates.**

In Part 2.a. "New discharges requiring permit coverage on or after the adoption date [insert effective date of permit]," should be replaced with "New discharges requiring permit coverage on or after the adoption date [insert adoption date of permit]."

**8. Section VIII.F.2.b requirements to berm sanitation facilities is inconsistent with industry BMPs.**

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The requirement for "berming sanitation facilities (e.g. Porta Potties)" is not consistent with industry practice or any reference for BMPs we are aware of. For example, in the CASQA Stormwater BMP Handbook for Construction ([www.cabmphandbooks.com](http://www.cabmphandbooks.com)) BMP WM-9 recommends use of a licensed service and securing of portable sanitary facilities with spikes or weights to prevent overturning. The Districts recommend that this requirement be modified to be consistent with industry BMPs.

**9. Section VII.F.6 requirements to implement air deposition controls are impossible to comply with.**

The requirement to "implement appropriate controls throughout all stages of construction to address air deposition issues," is overly broad and ill-defined. The Draft General Permit neither defines "air deposition issues," nor provides examples of what constitutes "appropriate controls." This requirement should be removed from the Draft General Permit, as "air deposition issues" are not under the control of the discharger.

**10. Section VIII.I.4 reference to "Project Implementation Requirement J" is incorrect.**

Section VIII of the Draft Construction Permit is titled "Project Implementation Requirements," and Section J is titled "Training and Qualifications." Since Section VIII.I.4 refers to a checklist "using a form provided by the State Water Board or Regional Water Board or an alternative format that includes the information described in Project Implementation Requirement J," it appears that it the SWRCB's intention was to provide some sort of checklist in Section VIII.J. There is no inspection checklist or form provided. If the checklist is to be developed at a later date, the permit should so specify.

**11. Section XI.3, footnote 12 should be revised to reflect natural conditions.**

As currently worded, the requirement that "the remaining exposed soil (65%) shall be partially covered by at least 2" of fallen plant litter or standing dead plant litter," is ambiguous. No definition has been provided for "partially covered".

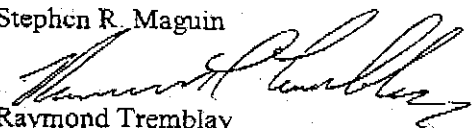
**12. The requirements for training (in Sections VIII.J.1, IX, and X) should be deferred until the State Board has approved a training program.**

The Districts support the requirement for training and recognize that the Draft General Permit includes this as a phased in requirement, due to the lack of any established training program in the State at this time. The Districts would prefer to see the training requirements schedule be directly tied to the establishment of the training program instead of two years after adoption since there is no guarantee the training program will be implemented in a timely fashion. The Districts recommend that the wording in Sections IX.A1.g and IX.A4 be revised from the current wording, "Effective two years after the adoption date of this General Permit," to state, "Effective one year after the State Board approves a State Water Board-sponsored training course."

If you have any questions concerning this letter, please contact the undersigned at extension 2801.

Yours very truly

Stephen R. Maguin

  
Raymond Tremblay  
Section Head  
Monitoring Section