

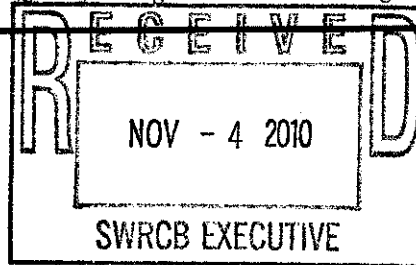


California Stormwater Quality Association*

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

November 4, 2010

Jeanne Townsend, Clerk to the Board
State Water Resources Control Board



Subject: CASQA comments on Modifications to Order No. 2009-0009-DWQ [NPDES NO. CAS000002]; Construction General Permit

Dear Ms. Townsend and Board Members:

On behalf of the California Stormwater Quality Association (CASQA)¹, thank you for the opportunity to provide comments on the modifications to Order No. 2009-0009-DWQ (Construction General Permit). The proposed broadening of the types of property interest holders that may apply for the permit, and broadening of the types of signatories who can sign and submit documents for government agencies are much needed changes to the permit language.

Currently, the Construction General Permit only allows application by landowners except in the case of mineral interest lessees and Linear Underground/Overhead Projects (LUPs). CASQA members have identified that the limitation of the Legally Responsible Person (LRP) to the landowner was awkward and occasionally inappropriate, resulting in stretching the definition of LUPs to accommodate infrastructure projects affecting numerous landowners. CASQA supports the new definition of LRP as a more workable approach.

The proposed modifications would further allow a government agency LRP to use an Approved Signatory who is a "public employee with managerial responsibility over the construction or land disturbance project." This is a welcome change from the existing requirement for a high-ranking agency official to serve in this capacity. CASQA supports the revised definition of the Approved Signatory, as it will facilitate the ability of permittees to meet the deadlines for the various reports required by the permit. CASQA suggests some minor changes to the definition of the Approved Signatory in connection with the next comment to add a definition of an Authorized Representative.

While CASQA supports the proposed language changes, in discussions with our members, we have identified continued confusion regarding the individual who signs on behalf of the LRP in instances where the LRP is a legal entity (e.g., corporation, municipality, or public agency) and not a "live" person.

¹ CASQA is comprised of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout California. Our membership provides stormwater quality management services to more than 22 million people in California. CASQA was originally formed in 1989 as the Stormwater Quality Task Force to recommend approaches for stormwater quality management to the California State Water Resources Control Board.

CASQA comments on Modifications to Order No. 2009-0009-DWQ [NPDES NO. CAS000002];
Construction General Permit

In these cases, the organization official is not the LRP, nor is the official the Approved Signatory, since the LRP must designate Approved Signatories.

CASQA therefore suggests the addition of a definition of an Authorized Representative to clarify the distinctions. In the proposed scenario, the Authorized Representative will act on behalf of the LRP, and will be the party with the authority to designate Approved Signatories.

CASQA looked to the language in 40 CFR §122.22(a) as a guide for developing the definition of Authorized Representative suggested below. While there will be overlap between the individuals that can serve as Authorized Representative and Approved Signatory, especially for less complex organizations, we feel it is important that the permit language clearly identify Authorized Representatives and the distinction between this role and that of the Approved Signatory and the distinction between the LRP and the Authorized Representative.

Authorized Representative

The person who has legal authority to sign, certify, and electronically submit Permit Registration Documents and Notices of Termination on behalf of the Legally Responsible Person. The Authorized Representative must be one of the following:

1. For a corporation: a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of a facility provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

Note: The State Water Board does not require specific assignments or delegations of authority to responsible corporate officers identified above. The State Water Board will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency: a principal executive

CASQA comments on Modifications to Order No. 2009-0009-DWQ [NPDES NO. CAS000002];
Construction General Permit

officer, ranking elected official, city manager, council president, or other public employee with managerial responsibility to assure long term environmental compliance with environmental laws and regulations and the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements;

4. For the military: any military officer who has been designated to assure long term environmental compliance with environmental laws and regulations and the officer can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements;

5. For a public university: an authorized university official who assures long term environmental compliance with environmental laws and regulations and the official can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements;

6. For an individual: the individual.

To distinguish the role of the Approved Signatory from the Authorized Representative, CASQA suggests the following changes to the proposed definition of the Approved Signatory.

Approved Signatory

A person who has been approved in writing or through SMARTS by the LRP (or the LRP's Authorized Representative) ~~legal authority~~ to sign, certify, and electronically submit Permit Registration Documents; ~~and~~ Notices of Termination; SWPPPs; and other documents, reports or information required by the Construction General Permit, the State or Regional Water Board, or USEPA. ~~on behalf of the Legally Responsible Person.~~ The Approved Signatory must be one of the following:

1. For a corporation: a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (b) the manager of the facility or employee with managerial responsibility over the construction or land disturbance project (including, but not limited to, project manager, project superintendent, or construction manager) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, State, Federal, or other public agency: a ~~principle~~ principal executive officer, ranking elected official, city manager, council president, or

CASQA comments on Modifications to Order No. 2009-0009-DWQ [NPDES NO. CAS000002];
Construction General Permit

other public employee with managerial responsibility over the construction or land disturbance project (including, but not limited to, project manager, project superintendent, or resident engineer);

4. For the military: any military officer who has been designated;
5. For a public university: an authorized university official;
6. For an individual: the individual, because the individual acts as both the Legally Responsible Person and the Approved Signatory.

Appropriate changes and clarifications will be needed in the SMARTS system to acknowledge the Authorized Representatives' ability to take all actions currently reserved for the LRP. Certification statements and signature blocks should be revised to indicate signature by the Authorized Representative.

Finally, to assist permittees who may need to make changes, CASQA recommends that the State Water Board provide guidance to permittees on how they can change the LRP for their projects or change the designation of their project from LUP to Traditional as many Permit Registration Documents may have been filed with a strained definition of LUP. In other cases the project proponent and landowner might prefer to remove landowners as the LRP to more closely reflect project management.

CASQA appreciates this opportunity to provide comments on the proposed modifications to the Construction General Permit.

Please feel free to contact me at (760) 603-6242 if you have any questions regarding these comments. Alternately you may contact Sandra Mathews, Chair of CASQA's Construction Subcommittee, at 510-625-1580 ext. 12.

Sincerely,



Scott Taylor, Chair
California Stormwater Quality Association

cc: Bruce Fujimoto, State Water Board
Greg Gearheart, State Water Board
Annalisa Kihara, State Water Board
CASQA Executive Program Committee
CASQA Board of Directors