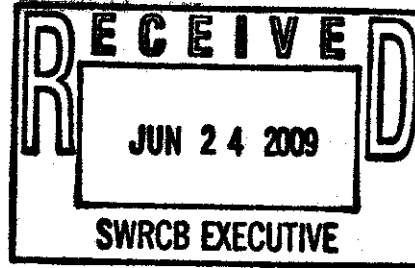




Public Comment
Dft. Construction Gen. Permit
Deadline: 6/24/09 by 5:00 p.m. **MARK NORRIS**
Assistant Public Works Director

Public Works Department - Utilities Services Branch
305 West Third Street • Oxnard, CA 93030 • (805) 385-8280 • Fax (805) 385-7907

June 24, 2009



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

Submitted via email commentletters@waterboards.ca.gov

Subject: Comment Letter –National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities

Dear Ms. Townsend:

On behalf of the City of Oxnard, we thank you for the opportunity to contribute comments regarding the proposed April 22, 2009 Draft General Construction Permit's (Draft GCP) stormwater regulations. We are looking forward to working cooperatively with State and Regional Water Board staff to effectively control construction-related discharges in a fair and efficient manner that prevents the impairment of the water quality within our receiving water bodies. The enclosed comments are driven towards this common goal and are intended to ultimately improve stormwater runoff quality at construction sites through an approach based on balance, flexibility, and consistency.

The City of Oxnard recognizes that improvements were made in the Draft GCP through the March 2008 Draft and subsequent stakeholder process. However, we still feel there is room for refinement and improvement, particularly, as this permit potentially represents a significant shift in California's approach to regulating stormwater discharges. These improvements and concerns are detailed below:

1. Noted Improvements in The Draft GCP

We are pleased to see modified and improved language in the April 2009 Draft GCP regarding the following permit elements: overall permit organization; inclusion of the "five (5) year minimum experience" for Qualified SWPPP Developers (QSD) and Practitioners (QSP); streamlining the risk determination process and factors; and limiting and clarifying the public review and regulatory approval of stormwater pollution prevention plans (SWPPPs) and permit registration documents (PRDs).

2. Qualified SWPPP Developers (QSD) and Practitioners (QSP)

City Staff appreciate the inclusion of a grandfathering system of qualification for individuals with 5 years of demonstrated experience and training in developing, writing, and/or implementing construction SWPPPs. The experience prerequisite added to the Draft GCP avoids the exclusion of qualified individuals who do not have certain professions or degrees (i.e., civil engineering, landscape architecture, geology, or hydrology) that would allow them to fulfill the role of QSD and/or QSP. Additionally, this language does not preclude municipal oversight by parties that do not meet the aforementioned qualifications. We note that the State and Regional Water Board staff are working with many stakeholders on the conceptual development of the training modules and curriculum required by the Draft GCP. To ensure consistency in the preparation, implementation, and oversight of the SWPPP, we suggest that these state-sponsored or state-approved training programs be made generally and broadly available to local regulatory agencies and the construction community.

On a related note, we recommend that the State Water Board acknowledge those local regulatory agencies/representatives that have 5 or more years of experience training stormwater professionals in SWPPP design, implementation, and oversight be recognized as certified trainers.

3. Numeric Action Levels (NALs)

We strongly support the technology-based NALs as drafted, since they provide a quantitative measure of performance and a definite trigger to identify deficiencies and redirect efforts to maximize effective corrective actions. This is an appropriate next step in the regulation of construction stormwater discharges from the current CGP. Further, the approach is consistent with the State Board's Blue Ribbon Panel's (BRP) assessment of NALs as upset indicators that would allow "bad actors" to receive additional attention and use of a monitoring strategy that provides immediate feedback. Oxnard recognizes that numeric measurements of BMP performance can be implemented to bridge the clear data gaps that exist in California and provide the information needed by site operators to calculate relevant and scientifically appropriate corrective actions at construction sites.

4. Risk Assessment

City Staff appreciate that the risk assessment process has been simplified and that the worksheets are more user-friendly in determining the risk level of project sites. The tiered risk approach to construction site regulation appropriately connects the water quality risk posed by a construction site to the practices necessary to assure protection of water quality. This risk approach, which provides increasingly protective BMPs, and tiered monitoring and compliance evaluation tools, provide the incentive to site operators to voluntarily lower the risk. Further, the addition of the rainfall erosivity waiver to the current draft completes the tiered risk approach by giving very small and dry season projects a waiver on permit requirements.

5. Grandfathering of Existing Sites

We support the grandfathering of existing sites into the Risk Level 1 requirements listed on Attachment C of the Draft GCP. We agree that the risk assessment presents difficulties for existing and ongoing projects that will need to comply with new requirements after construction activities are in the grading and land development, streets and utility, vertical construction, or the final landscaping or stabilizing phases of construction.

6. Rainfall Erosivity Waiver

As noted above, City staff support the inclusion of the R-Factor waiver to the permit to allow sites, as determined by the U.S. Environmental Protection Agency (USEPA) to have minimal risk to be exempt from the permitting program requirements. This will help encourage small sites to voluntarily conduct construction during the dry season. However, it should be noted that problems exist in accessing the USEPA website; the State Water Board should verify its availability and the availability of the tool for all areas of California. The permit language should be clarified to indicate that the R-factor waiver is available to Linear Underground/Overhead Projects (LUPs).

7. SWPPPs and Permit Registration Documents (PRDs)

We support the changes made in the Draft GCP regarding the 14-days advance submission period allowed to submit PRDs to the State Water Board. The 14-day window for advance submission of the PRDs appears to be workable for most projects and will not account for untimely delays. We also support the change to eliminate the regulatory and public review/comment/hearing of the SWPPPs before the start of construction. However, we recommend that SWPPPs for traditional projects not be submitted with the PRDs, but prior to start of construction, as is allowed for LUPs.

8. Effluent Monitoring

We support the inclusion of effluent monitoring requirements that focus on providing information to the discharger and regulator to use in the evaluation of BMP implementation. However, we suggest that a daily average discharge concentration be used to assess compliance with the NAL and we support using a statistical approach to evaluate effluent data to assess compliance with Action Levels.

9. Numeric Effluent Limits (NELs)

City staff are opposed to the incorporation of numerical effluent limits as proposed in the Draft GCP. The inclusion of NELs in the Draft GCP is a clear departure from the Best Management Practices (BMPs)-based approach in mitigating the impacts of stormwater runoff associated with construction sites. We understand that the inclusion of NELs in the GCP is an attempt by State Water Board to address the BRP report, however, they are premature and unnecessary. There is insufficient data available in California to drive appropriate numeric effluent limits for construction discharges.

Additionally, the processes to derive numeric limits for stormwater discharges must be fully developed and incorporate a scientifically sound and defensible methodology that is in accordance with USEPA protocols, prior to incorporating NELs into stormwater permits. Without applicable USEPA protocols, the reissued Draft GCP must continue to clearly emphasize a BMP-based approach, rather than prescribe NELs. The BMP approach to managing and regulating stormwater runoff, coupled with the focused study of NAL datasets, is the only numerical performance-based approach that can be applied to California at this time.

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. From this description the proposed NELs are more appropriately Action Levels or upset levels and should be called such, and not create the confusion and potential monetary liability under the Water Code provisions for mandatory minimum penalties.

10. Receiving Water Monitoring/Bioassessment Monitoring

We appreciate that the state has focused receiving water monitoring requirements on Risk Level 3 sites where there has been an exceedance of an effluent limitation. However this does not fully address the concerns regarding the utility of the monitoring information for project sites that are significantly distant from the receiving water. Most of the runoff from construction sites in Oxnard discharges into public or private storm drains which are commingled with runoff that may include discharges from open space, urban runoff, industrial sites, other construction sites, and agricultural lands. This type of monitoring would be better conducted by a defined state directed project, such as the Surface Water Ambient Monitoring Program (SWAMP) or Total Maximum Daily Load (TMDL) based monitoring program.

Similarly, the bioassessment monitoring requirement would also be better suited to the SWAMP or TMDL programs rather than a condition of the GCP. However, if it is included in the GCP, we recommend that this type of monitoring be restricted to project sites disturbing greater than 30 acres, that have a Risk 3 level, and are adjacent to environmentally sensitive areas or to a 303(d) listed waterbody.

11. New Development and Redevelopment Runoff Controls

The general construction permit is not the proper avenue to incorporate long-term water pollution controls into new development and re-development projects. This requirement is slated too late in the construction process, when it should be addressed in the earlier steps of planning and development. The Municipal Separate Storm Sewer System permit and the Stormwater Quality Urban Impact Mitigation Plan are existing mechanisms that require long-term pollution controls to meet water quality objectives.

12. Implementation of Effective Date

City staff recommends that the effective implementation date of the new permit be postponed to after the 2010 rainy season for ongoing construction projects. Establishing the effective date to coincide with the period following the rainy season will better allow these project sites to review and modify their pollution control BMPs and strategically prepare the required documents to effectively satisfy the new proposed permit requirements.

13. Reporting

We recommend that the new GCP maintains the current annual reporting date of July 1 and that the report focus on the previous rainy season (October through April). We feel that a July report provides sufficient time to properly assess the past and coming rainy season.

14. Legally Responsible Person (LRP)

City staff recommend that the current Order 99-08-DWQ language be maintained in the GCP that allows an owner or operator to certify permit requirement documents and to delegate this authority in accordance with corporate policy to appropriate individuals, including those individuals responsible for compliance such as a construction manager. The draft GCP's revised definition of a LRP will present a challenge for projects conducted by the City which are usually subject to long-term contracts under which the contractor is responsible. These legal contracts usually transfer compliance responsibility to the "operator" of the project and it would not be appropriate for the City or landowner to be involved in the certifications.

15. Compliance Storm Event

We are pleased to see the incorporation of a Compliance Storm Event to limit the liability of dischargers during large events. However, clarification is required regarding the rationale used to determine the implementation of the 5-year, 24 hour event. It should be noted that this compliance storm is inconsistent with the 2-year, 24 hour design event listed in Appendix 2 of the Draft GCP for sediment basins. Further, it is also inconsistent with the 10-year, 24 hour Compliance Storm Event for active treatment systems as listed on page 11 of the Draft GCP.

16. General

City staff recommends that Finding E 41 of the prohibitions be rewritten to read: Pursuant to the Ocean Plan, direct discharges to Areas of Special Biological Significance (ASBS) are prohibited unless covered by an exception that the State Water Board has approved.

In closing, thank you for your consideration of our comments and for your ongoing efforts to provide a General Construction Permit that offers compliance through an approach based on balance, flexibility, and consistency. We look forward to your response to all of our comments and to working together with State and Regional Board staff toward the common goal of creating a final draft that promotes a balanced framework between stormwater regulations and attainable field water quality measures.

If you have any questions regarding these comments, please contact me at (805) 385-8308, or Ms. Nora Reyes, Senior Stormwater Environmental Specialist, at (805) 385-3963.

Sincerely,



Mark S. Norris
Assistant Public Works Director

c: Edmund F. Sotelo, City Manager
Ken Ortega, Public Works Director
Anthony Emmert, Water Resources Manager
Paul Wendt, Civil Engineer

MSN:MP:NR

G:\AdminSvcs\Letters\2008-2009\06-24-09 Comment Letter to 2009 Draft General Construction Permit.doc