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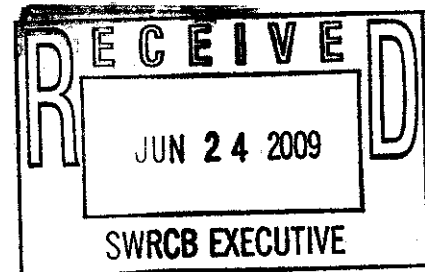


RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

June 24, 2009

*Submitted via email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)*

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



Dear Ms. Townsend and Members of the Board:    Re:    Comment Letter – April 2009 Draft  
Construction General Permit

The Riverside County Flood Control & Water Conservation District (District) appreciates the opportunity to comment on the April 22, 2009 National Pollutant Discharge Elimination System (NPDES) Draft General Permit for Discharges of Storm Water Associated with Construction Activities (April 2009 Draft CGP). The District serves as Principal Permittee for three NPDES Municipal Separate Storm Sewer System (MS4) Permits covering discharges from the District, the County of Riverside, the Coachella Valley Water District and the incorporated cities of Riverside County. This comment letter is provided on behalf of all the aforementioned Permittees. The District believes that actions taken by the State Water Resources Control Board (State Board) on this Draft Construction General Permit will likely have significant economic impact not only on stormwater dischargers but on all Californians through collateral impacts on both public and private development.

The Permittees comment letter has been organized into four sections:

1. General description of Riverside County
2. Concurrence with California Stormwater Quality Association (CASQA) comments
3. Requested clarification of permit requirements
4. Comments from the municipal perspective

Public Comment  
Dft. Construction Gen. Permit  
Deadline: 6/24/09 by 5:00 p.m.  
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Re: Comment Letter – April 2009 Draft Construction General Permit

## **I. GENERAL DESCRIPTION OF RIVERSIDE COUNTY**

Riverside County encompasses 7,300 square miles with an estimated population of 2,107,653<sup>1</sup> as of January 1, 2009. Within Riverside County, the climatic conditions vary from low arid desert in the east with average annual rainfall of 2-4 inches in the Coachella Valley to Mediterranean climate in the western inland valleys with average annual rainfall of 10-13 inches to the San Jacinto and San Bernardino Mountains with average annual precipitation (including snowfall) of 30-40 inches. The County has three predominant climatic regions – coastally influenced, inland valley and desert. Many of the receiving waters in Riverside County are naturally predominately ephemeral with a few mountainous streams that are perennial interrupted streams (i.e., reaches in which the flow is continuous and other reaches where flow is ephemeral). Notably, some reaches of the Santa Ana River have perennial flow mostly due to treated discharges from wastewater treatment plants. Also, it is important to note that Riverside County falls under the jurisdiction of the Santa Ana, San Diego and Colorado River Region Regional Water Quality Control Boards (Regional Boards), and as such, is aware of some of the unique issues associated with interpretation of the Permit requirements by local Regional Boards. This variability in climate, rainfall, and water quality regulation uniquely positions the Permittees to comment on certain aspects of the Permit.

## **II. CONCURRENCE WITH CASQA COMMENTS**

The Permittees support the summary and detailed comments developed by California Stormwater Quality Association (CASQA). The Permittees also agree with CASQA's significant concerns regarding:

- Substantial inconsistencies across the Fact Sheet, Tentative Order, and the Attachments of the April 2009 Draft CGP that directly affect a discharger's ability to comply with the requirements.
- An implementation effective date after the end of the 2009-2010 rainy season.
- Changing the regulatory approach for stormwater discharges from the iterative approach for improved Best Management Practice (BMP) implementation to a numeric effluent limit-based approach by incorporating numeric limits (both effluent and action levels) without addressing the concerns for the use of these numeric limits expressed by the Blue Ribbon Panel in their report on *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities* (Currier et al., 2006).
- Establishing numeric effluent limits without developing a scientifically sound and defensible methodology that is in accordance with USEPA protocols.

<sup>1</sup> California Department of Finance. June 2009.

<http://www.dof.ca.gov/research/demographic/reports/estimates/e-1/2008-09/>

- Including hydromodification requirements (Post-Construction Standards) in a construction activity permit.
- Requiring dischargers of Risk Level 3 sites to conduct receiving water monitoring where the discharge is to a MS4, flood control facility, or irrigation canal.

The Permittees request that the State Board direct staff to (1) address the summary and detailed comments provided by CASQA and others, (2) develop a revised Draft CGP, and (3) continue the stakeholder process used in developing the April 2009 Draft CGP.

### **III. REQUESTED CLARIFICATION OF PERMIT REQUIREMENTS**

Section B.1.b of Attachments C, D, and E of the April 2009 Draft CGP describes the use of BMPs for covering and berming stockpiles of various construction materials. Would the application of soil stabilizers qualify as "covering" for soil stockpiles?

### **IV. COMMENTS FROM THE MUNICIPAL PERSPECTIVE**

The Permittees have additional comments on those aspects of the April 2009 Draft CGP that would most significantly affect municipalities. There are aspects of the April 2009 Draft CGP that affect the land use entitlement and permitting process, safe operation and security of our MS4 and flood control facilities, capital improvement projects plans, municipal maintenance activities and grandfathering of municipal projects covered under the existing Construction General Permit. The April 2009 Draft CGP also does not provide a protocol that acknowledges the relationship between some NPDES MS4 permits and the Construction General Permit.

#### **Land Use Entitlement and Permitting**

The Permittees have the following comments regarding the likely impacts of the April 2009 Draft CGP on the Land Use Entitlement and Permitting Process of local jurisdictions:

- The Permittees are opposed to a Construction General Permit that includes requirements related to hydromodification (Section XIII, Post-Construction Standards). Even though the requirements are limited to areas not subject to MS4 Permit requirements, such requirements are most appropriately addressed during the local jurisdiction land use entitlement process and the National Environmental Protection Act (NEPA) or California Environmental Quality Act (CEQA) compliance process.
- For projects that have completed design or projects that have completed environmental review processes (e.g., NEPA, CEQA assessments and local planning approvals), redesign would be prohibitively costly and likely to jeopardize existing land use entitlement or NEPA/CEQA compliance approvals resulting in economic harm to project owners.

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- The discharger's obligation to comply with the runoff reduction requirements does not apply if the discharger's project is "located within an area subject to post-construction standard of an **active** Phase I or II MS4 permit that has an **approved** Storm Water Management Plan." [emphasis added] The meaning of an "active" (as opposed to "inactive" MS4 permit) is not clear. Is "approval" of the Storm Water Management Plan by the Regional Board Executive Officer satisfactory (as opposed to the Regional Board)? The San Diego Region RWQCB does not approve Storm Water Management Plans (SWMP) at the staff or Board level. What is the discharger's obligation if the MS4 permittees have submitted a SWMP to the Regional Board and no action of any kind has been taken by the Regional Board, the Regional Board Executive Officer, or Regional Board staff?
- Lastly, the State Board and the Regional Boards already have the authority to regulate hydromodification through Clean Water Act Section 401 Water Quality Certifications or through Waste Discharge Requirements. Duplicative regulation of hydromodification is not necessary.

#### **The Permittees Oppose Offsite Monitoring Requirements**

The Permittees are opposed to construction site dischargers conducting required receiving water monitoring in public MS4, flood control facility or irrigation canals. Access and safety issues are a significant factor in receiving water sampling and the municipal operators of these facilities do not have the staff or resources to ensure that proper safety precautions are taken by private sampling teams. The Permittees strictly prohibit access to MS4, flood control facilities and other public lands subject to flooding during storm conditions.

Access to the receiving water may be limited (or not possible) where access is via other private property or on controlled public land (e.g., flood control channels). More importantly, many receiving waters in Riverside County and elsewhere in California have been engineered, have restricted or prohibited access, and access is actively discouraged during wet weather due to safety concerns.

Monitoring requirements should be limited to the discharge points at the perimeter of projects subject to the Construction General Permit.

#### **Routine Maintenance Should Exempt any Municipal Maintenance Activity Covered Under a NPDES MS4 Permit SWMP**

We are opposed to the April 2009 Draft CGP's extremely narrow definition of projects that qualify as "routine maintenance" performed to maintain original line and grade, hydraulic capacity, or original purpose of the facility. Fact Sheet Section II.C.1.b limits routine maintenance to apply only to "road shoulder work, dirt or gravel road re-grading, or ditch clean-outs." There are other types of municipal facilities other than roads and ditches that require routine maintenance. Further, municipal governments also maintain stockpiles for municipal maintenance activities. These stockpiles are

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often perpetual and are addressed as part of NPDES MS4 Permit requirements. Dual regulation of any municipal maintenance activity is inappropriate. The Construction General Permit should exempt any municipal maintenance activity that is addressed in a SWMP required under a Municipal NPDES MS4 Permit. This would also be consistent with similar exemptions for hydromodification and post-construction BMP requirements in areas regulated by NPDES MS4 Permits.

### **Grandfathering of Projects Covered Under the Existing Construction General Permit**

The Permittees oppose the lack of an effective grandfathering clause. Specifically, this Draft Construction General Permit needs to include an effective date so that permit applications submitted prior to the effective date are covered by existing State Water Board Order No. 99-08-DWQ and permit applications submitted on or after the effective date are covered by the new General Permit. NOI's submitted prior to the effective date should not be terminated within 100 days of adoption of the new General Permit, but should rather continue to be valid until the existing project is completed and a Notice of Termination (NOT) is submitted under Board Order No. 99-08-DWQ. The grandfathering provision as included in the Fact Sheet Section II.D and the Draft Order Section II.B.4 only exempts existing dischargers from the risk level determination but does not address grandfathering for purposes of post-construction standards for projects not in MS4 areas with approved SWMPs (see comments above regarding issues with "approved" SWMPs) or consider the impacts of the Construction Permit transition on municipal plan check and inspection staff attempting to ensure projects also stay in compliance with local ordinances.

Without an effective grandfathering clause, any project over one acre – from small private homeowner grading activities to large multi-use development projects will be required to nearly simultaneously resubmit grading and erosion control plans to local governments to ensure changes required by the Construction General Permit are consistent with local ordinances. This rush of projects could overwhelm municipal staff and result in undue confusion and delay. Some project proponents may attempt to implement changes without the appropriate local approvals due to undue delay as both municipal and developer staff attempt to understand the requirements of the Construction General Permit and its land use and municipal permitting ramifications on projects already approved by local governments. This could lead to unintended water quality impacts from grading activities due to resultant confusion caused by retrofit activities.

Many municipal capital improvement projects have planning, funding, design, bidding, and construction schedules that span much more than two years. Often, municipal capital improvement projects have multiple funding sources (local, state, and/or federal) that are limited. A municipality's ability to find additional funding is severely limited, if not impossible, to support re-design to meet post-construction requirements, preparation of different compliance documents, expanded compliance activities, including monitoring, and the utilization of qualified professionals (as defined by the April 2009 Draft CGP). In some cases, the change in the scope of work being contracted may be significant enough to result in a municipality having to stop work and re-bid portions of the capital improvement project mid-project.

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Further, several years ago when NPDES MS4 Permits throughout the State first included Standard Urban Stormwater Mitigation Plan (SUSMP) requirements, those permits included language that *exempted* projects that already had building and/or grading permits prior to the effective date of a SUSMP. A parallel exemption (grandfathering projects before an effective date) for projects subject to the Construction General Permit would be consistent with those policies. Further, it would create an administratively efficient implementation process. For your consideration, July 1, 2010, is a reasonable effective date that occurs after the rainy season and allows grandfathering of projects covered under Board Order No. 99-08-DWQ.

#### **NPDES MS4 Permits and the Construction General Permit**

Section II.B of the April 2009 Draft CGP requires that entities requiring coverage under the Construction General Permit submit Permit Registration Documents (PRDs) and the annual fee to the State Board. Currently, at least three Phase I MS4 permits and the Caltrans Statewide Stormwater Permit contain provisions that (1) authorize the discharge of stormwater runoff from the MS4 Permittee's construction sites, (2) require compliance with the Stormwater Pollution Prevention Plan (SWPPP) and monitoring program elements of the latest version of the Construction General Permit, (3) require notification to the appropriate Regional Board for each project of 1 acre or more, and (4) the fee is waived. The Construction General Permit must provide that PRDs can be filed with the appropriate Regional Board where a Phase I MS4 permit or the Caltrans Statewide Stormwater Permit authorizes the discharge of stormwater runoff from the Permittee's construction sites.

Prior to issuing building/grading permits most municipalities rely upon the applicant demonstrating coverage under the Construction General Permit by providing the Waste Discharge Identification (WDID) number issued by the State Board upon receipt of the NOI and the appropriate fee. This verification of coverage under the Construction General Permit prior to issuance of a building/grading permit is a requirement of most (if not all) NPDES MS4 permits. Sections XV.A and XV.B of the April 2009 Draft CGP provide that the Regional Board staff may terminate coverage under the Construction General Permit if they do not agree with the discharger's risk level determination or if they determine that an individual NPDES permit is appropriate. The Permittees support CASQA's request that SMARTS notify local agencies with jurisdiction if the Regional Board terminates coverage on a project.

#### **Conditions for Termination of Coverage**

Section II.D (Conditions for Termination of Coverage) of the April 2009 Draft CGP must be revised to be consistent with Section XIII.A (Post-Construction Standards). Section XIII.A exempts all dischargers subject to the post-construction standards of an active Phase I or II MS4 permit with an approved Storm Water Management Plan from complying with the Post-Construction Standards. This exemption must also be reflected in the April 2009 Draft CGP Section II.D.1.e.

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#### CONCLUSION

In further developing the Construction General Permit, it is important to consider not only the impacts of the Permit on State staff, but also ancillary impacts on local governments and other entities who have related plan review and permitting processes that will be impacted by the roll out of the Permit. In addition, the Permit as proposed will have undue impacts on local public works projects. Local capital improvement projects are implemented by and for the benefit of the citizens of California. The purpose of many local capital improvement projects is to improve the health, safety and well-being of Californians. Similarly, private development projects provide for housing and employment and support other fundamental needs of Californians. To the extent that additional regulatory requirements delay and/or increase the cost of delivering capital improvement and private development projects, the citizens of California will be impacted. The anticipated impacts that would result from the next Construction General Permit are significant. Therefore, the benefits of imposing the additional regulatory requirements on public and private construction projects must be carefully balanced against the adverse impacts on Californians.

Thank you for the opportunity to comment on the April 2009 Draft CGP. The Permittees appreciate your consideration of our comments and look forward to participating in the stakeholder process that we believe will be invaluable to resolving the issues raised in this letter, as well as those identified by CASQA. If you have any questions regarding these comments, please contact Albert Martinez at 951.955.2901.

Very truly yours,



MARK H. WILLS  
Chief of Regulatory Division

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P8/125598