



Public Comment
Dft. Construction Gen. Permit
Deadline: 6/24/09 by 5:00 p.m.

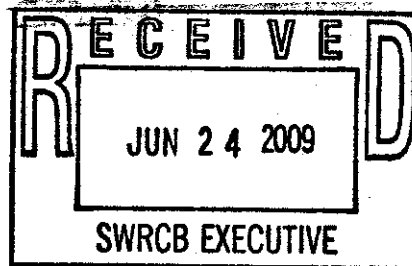
COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

STEPHEN R. MAGUIN
Chief Engineer and General Manager

June 24, 2009
File No. 31-370-40.4A

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 Construction General Permit)

The County Sanitation Districts of Los Angeles County (Districts)¹ 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 Construction 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 1,400 miles of sewer lines, which convey flows from industries and municipalities within our service areas to our wastewater treatment plants. The discharge of storm water from on-going construction and rehabilitation of these facilities will be regulated under the Draft Construction General Permit.

The Sanitation Districts would like to take this opportunity to thank SWRCB staff for addressing many of the Sanitation Districts' previous comments on the Draft Construction General Permit. The purpose of this letter is to convey the Districts' remaining concerns regarding the Draft Construction General Permit as follows:

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

¹ 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.

NELs be replaced with Numeric Action Levels (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 storm water 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 the duration of the discharge event," and "At minimum, 3 samples per day of the qualifying event," (Section I.4.c of Attachments D and E to the Draft Construction General Permit) for Risk Levels 2 and 3, NEL violations could accumulate at the rate of three 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, without knowing whether the application of Best Management Practices (BMPs) will prevent NEL violations, it is possible that adherence to this policy could result in mandatory minimum penalties being imposed within as little as two days of the beginning of a major storm.

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

Section II.B.4 of the Draft Construction General Permit states that new dischargers shall "electronically file their Permit Registration Documents (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 SWRCB 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 II.B.5 of the Draft Construction General Permit states that "The discharger is only considered covered by this General Permit upon receipt of a Waste Discharger Identification (WDID) number assigned and sent by the State Water Board Storm Water Multi-Application and Report Tracking System (SMARTS)." This language assumes that a WDID will be issued within 14 days of receipt of the PRDs (assuming the permit fee is also received).

Although the current draft wording is a distinct improvement over the 2008 draft, there is still some remaining uncertainty regarding permit coverage and the review process of Regional Boards. Clearly, if the SWRCB intends to issue WDIDs within 14 days of receipt of PRDs, there is little or no time for public or Regional Board review, even if the documents are posted on the Internet. Section XV of the Draft Construction General Permit explains the authority of the Regional Boards. If a Regional Board chooses to invoke any of the authorities in this section, the discharger's ability to construct projects in a timely and cost-effective manner may be impacted. Section XV of the permit should be revised to clarify that the discharger is fully covered under the issued WDID while the Regional Board evaluates additional requirements. In particular, if a Regional Board decides to require a discharger to submit a Report of Waste Discharge/NPDES permit application for Regional Board consideration of individual requirements, this Draft Construction General Permit should state that the original WDID will remain in effect until the individual NPDES permit becomes effective.

To remedy this situation, the Districts request that the Draft Construction General Permit be revised to specifically require the Regional Boards to review, solicit public comments if necessary, and act on an application within 30 days of receipt of an NOI at the SWRCB. Once the SWRCB approves a permit, subsequent rescission should only be allowed if the discharger fails to implement their Storm Water Pollution Prevention Plan (SWPPP) in accordance with their application or if the SWPPP is not protective of receiving water. This will provide the discharger substantially more certainty in scheduling construction activities and reduce the risk of delay and associated cost impacts.

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 storm water 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 construction site discharge as compared to other sources.

The costs to implement the receiving water sampling requirements of the Draft Construction General Permit are substantial. Due to the inherent inaccuracies of weather prediction and the variable nature of rainfall patterns across a region, it may be impossible for sampling staff to reach each receiving water site within one hour of the beginning of every rainfall event, even with the requirement limited to normal working hours. Rain may occur at the job site, but not where the sampling staff is located, and rainfall may also occur during the non-rainy season with little warning. This uncertainty may require the discharger to suffer the considerable expense of having a qualified individual at the site, at all times during normal working hours, just to ensure compliance.

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

4. 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 Construction General Permit.

The validity of the Draft Construction 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. The Fact Sheet, Section F.1, estimates the "measuring costs" to be "approximately \$1000 per construction site for the duration of the project. This represents the estimated cost of purchasing (or renting) monitoring equipment, in this case a turbidimeter (~\$600) and a pH meter (~\$400)." Unfortunately, this estimate does not take into account the considerable costs associated with the additional staff time required to establish monitoring locations, conduct the actual sampling, and analyze and report the results. As pointed out in Section F.1 of the Fact Sheet, "costs could be more if the project is subject to many effluent monitoring events or if the discharger exceeds NALs and/or NELs, resulting in additional monitoring requirements." The SWRCB has not yet provided a finding regarding the water quality benefit as compared to the considerable costs associated with the sampling, analysis, and reporting requirements of this permit. 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, as specified in Water Code 13000.

5. Existing projects should continue coverage under the existing General Construction Storm Water Permit (General Permit).

Section II.B.4.b of the Draft Construction General Permit requires that projects covered under the existing General Permit electronically file PRDs for coverage under the new permit within 100 days of adoption. Further, Section II.B.4.b states "All existing dischargers shall be exempt from the risk determination requirements in Section VIII of the General Permit. All existing dischargers are therefore subject to Risk Level 1 requirements regardless of their project's sediment and receiving water risks. This exemption applies until [insert date 2 years after permit adoption]." This is a substantial improvement over the previous version of the Draft Construction General Permit, which did not provide an exemption for ongoing projects. Nonetheless, the Districts recommend that a provision be made to allow existing projects to apply for an extension of the exemption for projects requiring more than two years after

adoption of the Draft Construction General Permit to complete construction. For public agencies, construction work, as well as compliance with storm water regulations, is dictated by legal contracts between the public agency 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 a Regional Board. Some of these projects will require more than two years to complete after the adoption of this Draft Construction General Permit, which would necessitate contract change orders that may result in construction delays and cost impacts.

Minor Issues

1. The requirement for benthic macroinvertebrate bioassessment prior to commencement of construction activity and after project completion (Attachment E, Section 17 and Appendix 5) for Risk Level 3 is inappropriate.

According to Appendix 5, benthic macroinvertebrate bioassessment monitoring is required only in areas with existing sediment impairments or specific beneficial uses that would be sensitive to increased silt and sediment deposits. While benthic macroinvertebrate populations can be sensitive to increased sedimentation, bioassessments measure the aggregate impacts associated with not only instream conditions, but also water quality and riparian habitat. Furthermore, community level changes detectable with bioassessment monitoring typically take months or years of consistent exposure to occur. Stormwater discharges are intermittent, therefore it would be difficult, if not impossible to measure a "before and after" change in community structure during construction, and because bioassessments measure aggregate impacts, it would not be possible to associate any observed differences with a specific construction site.

Since the intent of this monitoring appears to be associated with increased sedimentation concerns, requiring instream condition/habitat monitoring would be appropriate, but the macroinvertebrate collection and subsequent taxonomic identification is unnecessary. 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 macroinvertebrate community monitoring data should utilize these already existing programs.

2. Applicability of the Small Construction Rainfall Erosivity Waiver (Section II.B.7) of the Draft Construction General Permit to Linear Underground/Overhead Utility Projects (LUPs) needs clarification.

Clarification is requested as to whether the Small Construction Rainfall Erosivity Waiver can be applied to LUPs. As the Draft Construction General Permit is written, LUPs are covered under a "permit within a permit," as Attachment A.1 appears to be self-standing. The Small Construction Rainfall Erosivity Waiver is described in Section II.B.7, which implies it is only available to projects that are covered under Section II.B, "Obtaining Permit Coverage for Traditional Construction Projects." If the SWRCB intends for the Small Construction Rainfall Erosivity Waiver to apply to LUPs, then it should be so stated in Attachment A.1.

3. Language in Section II.B.4.a should be consistent with respect to adoption and effective dates.

In Section II.B.4.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 *effective* date [insert *effective* date of permit]."

4. Section II.B.4.c is unclear as to which permit dischargers provides coverage.

In Section II.B.4.c, for dischargers "scheduled to begin construction activities on or after the adoption date of this General Permit [insert adoption date of permit] but prior to [insert 14 days after effective date of permit]," it is unclear which permit provides coverage. The SWRCB's intention, presumably, is for coverage to occur under the terms of the new permit; otherwise, permittees would immediately have to re-apply after the effective date. However, part II.B.6 states "During the period this permit is subject to review by the USEPA, the prior permit (State Water Board Order No. 99-08-DWQ) remains in effect." Adding "for existing dischargers" at the end of the sentence would clarify for whom Order No. 99-08-DWQ is in effect.

5. The term "dechlorinated" should be removed from the description of authorized non-storm water discharges (Section III.C. of the Draft Construction General Permit).

Section III.C. of the Draft Construction General Permit authorizes non-storm water discharges from dechlorinated sources. While the Districts appreciate the potential impacts to receiving waters that may occur due to the release of non-storm water discharges containing chlorine residual, the use of the term "dechlorinated" implies that non-storm water releases of water from potable sources 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. It is not practical for a contractor to attempt dechlorination on a construction site; instead, the requirement should be that authorized non-storm water discharges should be from potable water sources of water, and that they should be minimized.

Thank you for your consideration of these comments. If you have any questions concerning this letter, please contact Thomas Weiland at (562) 908-4288, extension 2855.

Yours very truly
Stephen R. Maguin



Michael Sullivan
Section Head
Monitoring Section

MS:FG:lmb