



**DEPARTMENT OF DEFENSE**  
**REGIONAL ENVIRONMENTAL COORDINATOR, REGION 9**  
937 N. Harbor Drive, Box 81  
San Diego, California 92132-0058

**IN REPLY REFER TO:**  
5090  
Ser N40VTC.ce/0173  
June 10, 2008

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

Subject: COMMENT LETTER - DRAFT CONSTRUCTION PERMIT

Dear Ms. Townsend:

I am writing as the deputy Department of Defense (DoD) Regional Environmental Coordinator (REC) for Federal Region 9 on behalf of all the United States military services in California to include the Army, Marine Corps, Navy, Air Force and the Coast Guard in regard to the National Pollutant Discharge Elimination System (NPDES) Proposed Draft General Permit for Discharges of Storm Water associated with Construction Activities.

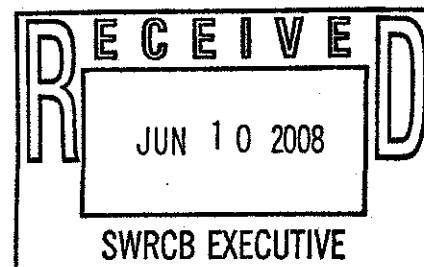
We understand the vital role the State Water Board plays in protecting and enhancing water quality. Please see enclosure (1), which sets forth DoD's comments on the Draft Construction Permit.

If there are questions, my point of contact is Michael Huber at (619) 532-2303 and at michael.huber@navy.mil.

Respectfully,

C. L. STATHOS  
By direction

Enclosure 1: DoD Comments on Draft Construction Permit

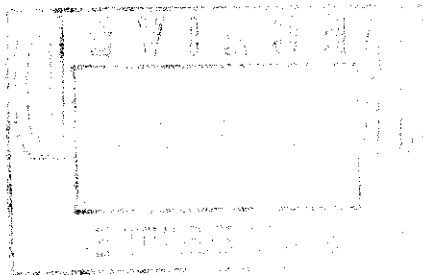


Enclosure 1:

DoD Comments on Draft California Construction General Permit  
(CGP)

General Comments

1. The CGP is considerably different and much more complicated than the current permit (Order No. 99-08-DWQ). There are many new and more technical requirements, including calculation of risk level, particle size analysis, prescribed design parameters for sediment controls, and determination of water balance and drainage density. Our concern is that these new requirements will require considerably more resources and technical expertise, at the expense of effective field implementation that would result in actual water quality protection. We strongly recommend a more streamlined approach, one that is not extremely different from the current permit.
2. We recommend that the State Water Board provide a response to comments it receives on the CGP, or respond to those who submitted comments addressing their concerns directly. This will assure interested public parties and potential Permittees that their concerns were received and considered.
3. There are other land uses, akin to agricultural operations, where land disturbance is part of the normal intended use of the land, thus "final stabilization" will not occur. Much like these agricultural operations, land disturbances associated with activities that are part of the normal intended use of the property should be excluded from the Construction General Permit.



## Specific Comments

1. Pg 2, Paragraph I.10: The last sentence of this paragraph requires all dischargers to maintain pre-development hydrologic characteristics in order to minimize post-development impacts to offsite water bodies. The term "pre-development hydrologic characteristics" is not defined. Similarly, the paragraph does not describe how Permittees are to "minimize post-development impacts". This requirement is vague and non-specific, and thus, compliance would be difficult to objectively determine. We recommend revising this paragraph to outline more specific, objective requirements.
2. Pg 3, Paragraph I.14: This paragraph mentions that the Numeric Action Levels (NALs) are "not directly enforceable and do not constitute NEL(s)". Please clarify the meaning of the phrase "not directly enforceable", specifically that exceedances of the NALs are not considered violations of the General Permit.
3. Pg. 5, Paragraph I.25: There is virtually no distinction regarding the required elements (tasks) between medium risk and high risk categories. There should be a gradual increase in the required elements from low risk to high risk. As drafted, there are essentially two elements: low risk and "not" low risk (high and medium). We recommend removing the requirement for a Rain Event Action Plan for the low and medium risk categories.
4. Pg. 6, Paragraph I.29: The permitting process/software and public access to the Permit Registration Documents (PRD) at the California Integrated Water Quality System (CIWQS) website does not address national security issues associated with access to maps and photographs of Department of Defense related sites. For national security purposes, there may be instances in which certain details of a project should not be given full public viewing. We recommend adding a provision in this paragraph for DoD permittees with sensitive information about their construction sites to request the respective regional boards to (1) accept PRD and other permit related documents in hard copy form and (2) not post designated sensitive information on any publically accessible website.
5. Pg. 6, Paragraph I.30: We recommend clarification of where required records are to be maintained, in situations where a construction project is composed of multiple construction sites. For ease of inspection, we recommend that Permittees be allowed to designate a single area within the construction project that will serve to stage all required records.

6. Pg. 8, Paragraph II.A.1: This paragraph requires Permittees to submit payment of annual fees. The Federal Facilities Pollution Control section of the Federal Water Pollution Control Act, authorizes the federal government to pay "reasonable service charges" respecting control and abatement of water pollution. 33 U.S.C. Section 1323 (FWPCA Section 313). This provision has been the subject of many judicial decisions that guide fees that can, or cannot be paid by the federal government. We recommend that the regulation adopt the longstanding global water fee agreement that was negotiated between the State Water Board staff and the DODREC staff, attachment(1), namely "The Federal government will pay an initial application-processing fee of up to \$700 for the construction, industrial or linear Notice of Intent Permit. Annual fees will not be assessed beyond the application fee and no additional surcharges will be assessed."

7. Pg. 8, Paragraph II.B: This paragraph provides for adjustment of the total acreage during the life of the permitted project. A similar mechanism to reduce the Risk Level of the project should be included within Section II of the General Permit. Some project phases will justly fall into different if not reduced risk categories. The most appropriate place for these factors to be considered is in Attachment F (Risk Worksheet) which should be completed at intervals throughout the project to allow for risk level adjustment.

8. Pg. 11, Paragraph V.4: This paragraph requires that discharges not disrupt the pre-project equilibrium flow and sediment supply regime. This requirement is vague and non-specific, making compliance with it difficult and subjective. Please provide greater clarification as to what Permittees are specifically required to do. We recommend that clear definitions of "pre-project equilibrium flow" and "sediment supply regime" be added to the glossary, Attachment L.

9. Pg. 15, Section VIII of the Draft CGP does not provide a dispute resolution process for actions taken by the regional boards. A process should be developed, or if one exists, it should be referenced in the permit.

10. Pg. 16, Section VIII.D - To account for the appropriateness of these sediment controls for a specific construction site, we recommend adding a provision in this section that states, "Selected sediment controls should be appropriate for the construction site as addressed in the SWPPP."

11.Pg. 18, Paragraph VIII.F.1.a - Suggest deletion of this paragraph because an inventory of materials used at a construction site does not necessarily indicate the material is a pollutant source. All construction materials of concern would already be identified in the requirement to have a list of potential pollutant sources in Paragraph VIII.F.5 (pg 19)

12.Pg. 21, Section VIII.H.3: This should not apply to development where discharges occur directly to bays, harbors, and the ocean. Development occurring near the coast or near waters at the bottom of a watershed has little potential to cause hydromodification.

13.Pg. 24, Paragraph IX.A.7: We strongly recommend that the word "landowner" be removed from this paragraph. For military bases, construction work is often contracted out to state-certified contractors. The construction contractors operate and maintain responsibility for their construction site, and hence are considered the discharger. Any required SWPPP or SWPPP amendment is the sole responsibility of the discharger, not the landowner.

14.Pg. 24, Section X: Requiring a REAP prior to each and every anticipated storm event is an onerous requirement. The intended requirement to protect all exposed portions of the site within 48 hours prior to any likely precipitation event could be required of SWPPPs and accomplish the same level of water quality protection.

15.Pg. 27, Paragraph XII.9: Under this provision, the Regional Water Board could determine that this General Permit does not provide adequate assurances that water quality will be protected. Please clarify and set forth what criteria the Regional Boards would consider in making a determination whether an individual Permit or a more specific General Permit is required.

16.Attachment A Table 2: This table does not provide a definition of direct or indirect discharge to sensitive water body. This question should be more fully developed by defining and providing examples of direct and indirect discharges.

17.Attachment B, Table 3: The frequency of storm water effluent monitoring for Risk Level 1 sites is "one sample per storm event." In Table 1; however, and in the current permit, sampling was only required during qualified rain events. For consistency with Table 1, we recommend revising Table 3 to require sampling per qualifying rain event.

18. Attachment B, Section F: This section of the draft permit deals with Inspection and Entry. There are national security/safety concerns with allowing regulators unrestricted access to our installations. DoD recommends this national security restriction be specifically set forth in the language of the permit.

19. Attachment B Table 3: Risk Level 3 requires continuous sampling where sampling results exceed the turbidity NEL. "Continuous" needs to be clarified. We recommend continuous be defined as a specific sampling interval, such as two hours, or as deemed appropriate by the qualified SWPPP practitioner.

20. Attachment B Section E.6: This section requires that a Risk Level 2 permitted project that exceeds an NEL must conduct receiving water sampling for the duration of permit coverage. If the cause of the NEL exceedance had been corrected, there should be a provision to remove the additional receiving water sampling requirements. Additionally, we are concerned that the requirement for receiving water monitoring will not be representative of the Permittee's actual discharge. Consider a common situation where the receiving water receives storm water discharges from other dischargers. If a Permittee samples the receiving water according to this Section, the sampling results would not be reflective of its actual discharge. If the receiving water monitoring data is not representative of the Permittee's actual discharge, it cannot be used to determine compliance with this CGP.

21. Attachment H, Paragraph 9.c: See Comment 11.

22. Attachment H, Section 10: See Comment 12.

**State Water Boards**  
**Fee Policies and Procedures**

Title of Policy/Procedure: BILLING GUIDELINES FOR FEDERAL FACILITIES	
Implementation Date: 4/4/06	Latest Revision Date:
Contact Name: Bob Rinker	Phone: (916) 341-5129
Org: Fee Branch, DAS	Email: rrinker@waterboards.ca.gov

### Policy

The State Water Board is implementing the following procedures for federal facilities in order to standardize the handling of application fees and annual billing practices.

The State Water Board has been working with the Federal government (Fed) to resolve issues with what the Fed considers a valid invoice and the criteria and method of calculating the fees. The Fed decides whether it will pay a fee based upon a case called United States vs. Massachusetts wherein the court set forth a three part test to determine when a fee could be considered to be a tax. After numerous meetings with the Fed the following guidelines were developed:

- (1) With regard to the Storm Water General Permit, the Fed has agreed to pay an initial application-processing fee of up to \$700 for the construction, industrial or linear Notice of Intent Permit. Annual fees will not be assessed beyond the application fee and no additional surcharges will be assessed.
- (2) Federal dischargers involved in Dredge and Fill operations only have a legal basis to refuse to pay permit fees based on the US District Court decision dated January 12, 1999. A new fee code (18) has been added to designate those federal facilities that are not subject to fees based on this decision.
- (3) All other federal facilities, whether WDR, approved conditional waivers of WDR's, or NPDES (except storm water general) permittees, shall be billed the annual fee based on the criteria in the State Board's fee schedules that govern the type of permit they possess. The "ownership type", located in the "additional information" tab in the regulatory measures in CIWQS for all federal facilities should be designated as "FED."
- (4) Federal facilities will only be invoiced for the calculated base fee. They will not be charged the ambient surcharge or any category surcharge, neither of which passes the three-part test outlined in United States vs. Massachusetts. AFBS will be programmed to identify federal facilities by using the "FED" designation in the "ownership type", located in the "additional information" tab in the regulatory measures in CIWQS.
- (5) Any federal facility that refuses to pay permit fees based on criteria in item (2) should be referred to the State Water Board Fee Unit. The fee code in CIWQS should be changed to "18" to remove the facility from the billing process. No other action should be taken.

