



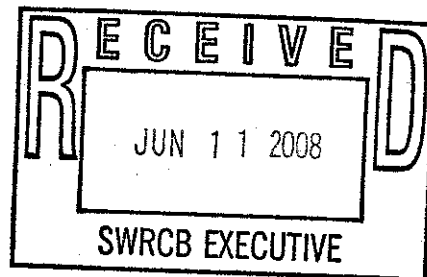
City of Carlsbad

Public Works Engineering

June 11, 2008

via e-mail

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COMMENTS ON THE MARCH 18, 2008 DRAFT CONSTRUCTION GENERAL PERMIT

On behalf of the City of Carlsbad, thank you for the opportunity to provide comments on the Draft Construction General Permit issued March 18, 2008. We have reviewed the Draft Construction General Permit, attended the workshop held in Los Angeles on May 7, 2008, viewed the May 21, 2008 workshop held in Sacramento via the webcast and viewed the hearing proceedings at the State Water Resources Control Board (Board) on June 4, 2008 via the webcast.

The City of Carlsbad supports the comments made by the California Stormwater Association (CASQA), the California Building Industry Association (BIA), and the City of Irvine. Our biggest concerns are the lack of detailed economic analysis of the impacts of this permit, the complexity of the very prescriptive permit, monitoring requirements, and exclusion of some projects (risk level 4) from the general permit coverage. In addition, we would like to put further emphasis on the following issues.

- Section V. Receiving Water Limitations. No. 4 – Sediment supply regime. The condition states that the discharge should not disrupt the "pre-project equilibrium" of sediment supply. However, the numeric limits imposed by this permit (10 NTUs for Active Treatment Systems (ATs) and 1,000 NTUs for all others) could potentially disrupt the natural sediment load arriving in a stream during a rain event. Based on our interpretation of the requirements of this section, we could be required to add sediment after treatment and BMPs to maintain the natural sediment load that a stream receives. Specifying a numeric limit, that could vary significantly from natural conditions and does not take into account local circumstances, has a significant potential to impact the natural load of sediment arriving in a stream. This could in turn affect stream development and beach replenishment, for those of us in coastal communities. If the Board wishes to set numeric limits that are not site specific, then this condition should be removed from the permit.



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- Section VI, Provision 2 (a) – This provision requires electronic submittal of documents, a new requirement as compared to the existing permit. We firmly believe in availability of data to the public and routinely provide information requested. Carlsbad complies with providing documents available to the public through the "Public Records Act" procedures. However, the requirement of the new permit will make information on our sensitive or high risk facilities (i.e. treatment plants, earthen dams, water storage tanks, chlorine disinfection facilities, etc) easily available through the internet. We believe that this will pose a security risk. Data about our sensitive facilities should not be easily available through the internet. We respectfully request that the Board adjust the electronic submittal requirements for any facility that would be a security risk for the agency and provide assurance that any sensitive information furnished to the Board will not be required to be easily available.
- Section VI, Provision 2 (b) – This provision gives permit holders 100 days to bring existing projects into compliance with the requirements of the new permit when adopted. Given the complexity of the new permit, this time period is not sufficient to come into compliance with these requirements. Given that this proposed permit will not cover Risk Level 4 projects, it appears that any ongoing projects that fall into this risk category will have to cease operation until an individual waste discharge permit is obtained. This would place an undo burden on the project owner and could cause significant delays and costs could exceed project budgets. Delays to projects are very costly. We estimate that a one-day delay on one of our medium size road construction projects could cost up to \$10,000, depending on the construction equipment present on site. Also, providing for the additional monitoring requirements of the proposed permit over the existing permit could be a significant additional cost to our existing projects that is not accounted for in existing appropriations by our City Council. The institutional processes that we have in place to increase appropriations to existing projects to meet the new permit requirements could extend past the 100-days limit. We request that the Board add a "grandfathering" clause that exempts projects that have signed construction contracts or grading permits from the new permit.
- Section VII.C – Runon and Runoff Controls – We are concerned about the requirements for runon control, especially the redirection of runon from the project. Redirection of runon from one property onto another could be a significant liability to Carlsbad from a legal and financial standpoint. Redirection of runon could require construction of specific facilities to convey the runon. If there are water quality issues with the runon, if we redirect, would we be held liable for the quality of water over which we have no control over? The Board should examine the legal and financial ramifications of this requirement as it could have significant impacts.
- Section XI – Termination of Coverage Provision 3 – The provisions of this section may require a construction site to remain under the coverage of this permit for many years after the active construction is completed. Complying with this provision of the permit will be very costly for municipalities. One growing season in a calendar year is generally not sufficient time to obtain self-sustaining plants that are of size that would provide

70% soil coverage. If all the other provisions of the permit will be in effect during this period of time, the cost associated with the additional monitoring for multiple years to achieve this plant-cover could be financially crippling to many of our projects. In addition, we do not have legal mechanisms in place to hold contractors responsible for projects past the standard one-year warranty period, unless we specify additional and multiple warranty periods, which could be a significant project cost increase. Also, if we do not issue notices of construction completion in a timely manner, we could be limiting the bonding capacity of a contractor and could be held liable. We request that these requirements be removed or amended so as to clearly distinguish between the active construction phase and the revegetation phase.

- Section XII Provision 2 – We are concerned that no time limit specified for public comments is provided. Most regulatory actions provide for public comments in a designated time period. We request that a statement be added to the provisions that states that the issuance of a Notice of Intent (NOI) from the Board constitutes acceptance of the documents and that the public comment period is limited to 30 days from the issue of the NOI. By the time a municipal projects is in the construction phase, multiple public comment opportunities have been offered to the public. We have concerns that opponents of projects could use this provision of the permit as a tactic to delay otherwise approved public projects. Also, the uncertainty of continuous public comments regarding documents that have otherwise been accepted by the Board creates a risk factor that could be a significant cost to the project.
- Attachment A – We found the technical analysis required in this attachment to be complex and leaning towards high risk levels. For example, the interpretation of channel stability index requires significant knowledge of stream morphology. Also, any of the categories that are not a measurement, but a descriptive differentiator, are open to differing interpretations by the experts. There appears to be no credit for storm water control other than ATS. We have implemented BMPs, other than ATS, on many of our projects that provided effective sediment control. We believe strongly that credit needs to be given to these BMPs in the risk evaluation. Also, please provide a detailed definition of "direct or indirect discharge" to a water body. Many of our sites discharge to a storm drain that is part of a bigger storm drain system that, in turn, discharges to a creek that is tributary to another creek that eventually discharge to a lagoon or ocean. We question at which point do we make the 303 (d) list determinations? The receiving water risk spreadsheet is heavily weighted towards the high risk factor. Is it the Board's intent to categorize any project that discharges into a 303 (d) listed water body to be a high risk factor for receiving water, even if the 303 (d) listed water body is miles away? We respectfully request that the Board simplify the risk analysis and provide credits for sediment controls other than ATS.
- Attachment B – The monitoring requirements, especially for receiving water quality, appear excessive. Most of our sites discharge to municipal storm drains. By the time the storm runoff enters a receiving water body it has comingled with runoff from many other sites. Monitoring the receiving water body will not have any benefit of identifying the impacts from a particular site, especially one that is miles away.

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Collecting receiving water body samples in a stream during a rain event can be very dangerous, especially in streams where flash-flooding is common.

Bioassessments - The order and fact sheet do not contain specific information regarding the usefulness or validity of the bioassessment tests. The requirements below Table 4 (1, 2, and 3) contradict requirements for bioassessments further in the attachment. We estimate that following the requirements described below Table 4 will make bioassessment testing very costly. Costs for a bioassessment are approximately \$800 per site (\$500 per site for lab work and \$300 per site for collection, transport and report preparation). Assuming a site has two discharge points and there are 10 measurable rain events in a one year period with two of those storms lasting two days, then the cost of sampling, testing and reporting will total \$22,400. During rain events, receiving water stream flows are running at maximum velocities and will scour benthic communities, providing no beneficial information from the testing. The requirements of item 8 for bioassessment samples combined with requirements of F.6 & 7 for up-stream and down-stream sampling, which is different from requirements 1, 2, and 3, at the beginning of construction will also provide no useful information as to the impacts of a particular construction site. As mentioned earlier, given the nature of our creeks and tendency to flash-flood, benthic communities could easily be displaced during a significant storm event. The location of the bioassessments can also be problematic. Carlsbad is a coastal city with sites that discharge directly to saltwater lagoons and the Pacific Ocean. Other sites discharge directly to freshwater lakes or water impoundments. The wadable stream methodology indicated in the permit does not apply to these water bodies. The bioassessment requirements are not applicable to these water bodies; and, if left in the permit, should be excluded from the requirements of the permit. In addition to the feasibility and applicability of bioassessments, we determined that there may not be sufficient laboratory capacity or technical expertise to conduct bioassessments for this permit. The CDFG Stream Bioassessment Procedure states in the Quality Assurance section that a CDFG biologist or supervisor should train field crews in the use of BMI sampling procedures described in the CSBP. We request that the Board coordinate with CDFG as to their workload and staffing before these requirements are adopted and the findings be presented to all agencies and concerned people.

We respectfully request that the requirements for receiving water monitoring be removed, as they provide no valuable information as to the impact of an individual construction site on the receiving water body.

- Attachment E ATS Requirements – We are concerned that there are not enough qualified ATS operators at the present time for the potential needs of the permit. Lack of available ATS units and operators could cause costly project delays. We request that the Board determine if there are adequate ATS units and trained operator staff available to meet all the ATS requirements across the State, given the short implementation window for this permit and potentially larger number of risk level 3 and 4 sites. Operation of ATS units requires advance skills and the Board needs to develop minimum standards to make sure that operators have the skills

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and training as not to cause toxicity events from ATS units in the receiving water bodies. The Board also needs to consider the economic impacts to permittees of the implementation of ATS and the possibility of projects being delayed or shut down because they cannot implement ATS within the 100 days specified in the permit.

- Attachment I, Provision I.1.c – We request that the limits on the delegation of authority for the legally responsible person (LRP) be removed. Carlsbad has a small engineering staff responsible for the large number of projects that fall under our jurisdiction. Therefore, we frequently retain consultants to prepare and submit documents on our behalf. Also, many of our engineers are non-managerial staff and these provisions would exclude us from delegating the authority of this position to them. We would also like to have the ability to delegate the authority to more than one person. The project managers of the various projects are best suited to submit and maintain any documents pertinent to their projects.
- Fact Sheet, Page 21 Item B "permit coverage is required if more than one acre is disturbed or part of a larger plan or if the activity is part of more activities part of a municipality's Capital Improvement Project Plan" – This statement implies that all projects within a Capital Improvement Project Plan would fall under the umbrella of this permit, regardless of size. We disagree that this permit shall lump all projects that include "clearing, grading, or excavating of underlying soils" within a Capital Improvement Project Plan as part of one large project. Capital Improvement Plans (CIPs) are large planning documents that generally are used for budgeting purposes. Carlsbad's CIP covers projects ranging from a few thousand feet of grading to major road improvements to water lines, storm drains, and sewer lines over the next 15-plus years. These projects are located throughout the City in different watersheds. Based on this language, we would be required to prepare documents and perform monitoring for all projects that disturb the ground, even small replacements. As an example, we recently completed a sub-drain installation that cost about \$50,000 and construction lasted less than two weeks. Adding the document preparation, monitoring, and reporting requirements of this permit to a project of that size would increase the costs significantly and potentially make the project financially difficult to justify, while providing no improved protection to a receiving water body. Given the nature of CIPs, we request that this statement be removed and projects within a CIP be treated as individual projects.

Thank you for your consideration of our comments and for your efforts to resolve the issues addressed during this comment period. Given the extent of the comments submitted on this permit, our request is that the Board re-issue the draft permit for additional public review after the comments are addressed.

If you have any questions, please contact me at 760-602-2730 or via e-mail at gprui@ci.carlsbad.ca.us.



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