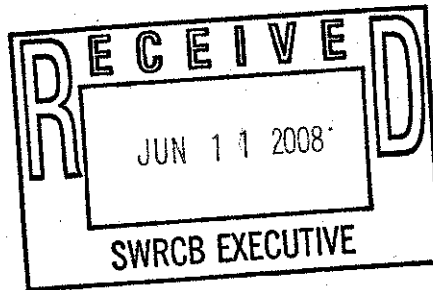




City of
Encinitas

Public Comment
Draft Construction Permit
Deadline: 6/11/08 by 12 p.m.



June 11, 2008

State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Attention: Jeanine Townsend, Clerk to the Board

**SUBJECT: COMMENTS ON THE NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM (NPDES) PROPOSED DRAFT GENERAL
PERMIT FOR DISCHARGES OF STORMWATER RUNOFF
ASSOCIATED WITH CONSTRUCTION ACTIVITIES, DATED MARCH
18, 2008**

The City of Encinitas appreciates the opportunity to provide comments on Proposed Order No. 2008-XX-DWQ, General Permit No. CAR000002, Draft General Permit for Discharges of Stormwater Runoff Associated with Construction Activities. City staff has carefully reviewed the Proposed Order, and has developed specific comments that are presented in Attachment A to this letter.

We trust that the State Board will give full consideration to the comments and recommendations provided in an effort to develop effective and achievable compliance standards for construction activities.

Should you have any questions or if you need further information, please contact Erik Steenblock, Clean Water Program Manager at (760) 943-2108. Thank you.

PETER COTA-ROBLES, P.E.
DIRECTOR OF ENGINEERING SERVICES

Attachment

cc: Phil Cotton, City Manager
Erik Steenblock, Clean Water Program Manager

ATTACHMENT A

CITY OF ENCINITAS'S COMMENTS ON THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PROPOSED DRAFT GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITIES, DATED MARCH 18, 2008

- Notes: 1. Texts in *italic* are quotes from the Proposed Construction Permit
2. Some topics are discussed in several sections of the Draft Construction Permit. Page and Section numbers referenced below are those in which related topics are discussed for the first time.

1. Page 9, Section IV.A.2 – Narrative Effluent Limitations

Dischargers shall reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.

Comment:

This Section of the Proposed Permit incorporates two key compliance standards into the provisions of the Order. The BAT and BCT compliance standards, used in the Proposed Order as *Narrative Effluent Limitations* effectively set up a compliance framework that is potentially unachievable in a construction setting.

Attachment A – Glossary of the Proposed Draft Order defines BAT and BCT in the following manner:

Best Available Technology Economically Achievable (BAT) – As defined by the USEPA, technology-based standard established by the Clean Water Act (CWA) as the most appropriate means available on a national basis for controlling the direct discharge of toxic and non-conventional pollutants to navigable waters. BAT effluent limitations guidelines, in general, represent the best existing performance of treatment technologies that are economically achievable within an industrial point source category or subcategory.

Best Conventional Pollutant Control Technology (BCT) – As defined by USEPA, technology-based standard for the discharge from existing industrial point sources of conventional pollutant including BOD, TSS, fecal coliform, pH, oil and grease. The BCT is established in light of a two-part “cost reasonableness” test which compares the cost for an industry to reduce its pollutant discharge with the cost to a POTW for similar levels of reduction of a pollutant loading. The second test examines the cost-effectiveness of additional industrial treatment beyond

BPT. EPA must find limits, which are reasonable under both tests before establishing them as BCT.

As defined above, and as prescribed in the Permit language, the application of BAT and BCT standards as a compliance measure within this Proposed Draft Permit is wholly dissonant with construction related activities. Most notably, these standards are industrial in nature, and the definitions above clearly assert their application within the realm of point source industrial discharges, and are, therefore, not compatible with construction related discharges.

2. Page 10, Section IV.B – Numeric Effluent Limitations

1. Numeric Effluent Limitations (NELs):

a. Single Sample pH Limits – the pH of storm water and non-storm water discharges shall be within the ranges specified in Table 1 during any project phase where there is a “high risk of pH discharge”

b. Single Sample Turbidity Maximum Limit – the turbidity of storm water and non-storm water discharges shall not exceed 1000 NTU.

Comment:

The inclusion of Numeric Effluent Limits (NELs) represents a shift from a BMP implementation compliance standard to a monitoring based discharge quality compliance standard. The establishment of such stringent standards has not been fully substantiated within the Proposed Draft, and is not consistent with the recommendations presented in the Blue Ribbon Panel report entitled *“The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial, and Construction Activities,”* dated June 19, 2006. Most notably, the requirements established in this draft are largely contrary to the considerable reservations and concerns described in the report including:

- **“Non-active erosion and sediment control BMPs, while effective when applied and adequately maintained, produce highly variable effluent quality, making settling [sic] Numeric Limits difficult, if not impossible.”**
- **“The Board should consider the phased implementation of Numeric Limits and Action Levels, commensurate with the capacity of the dischargers and support industry to respond.”**

While it is clear that a “tiered” approach, through the use of Numeric Action Levels at the lower threshold and Numeric Effluent Limits at the upper threshold,

has been attempted in order to temper some of these reservations, it is a significant compliance precedent to establish such a set of standards without trial. The NELs for *Single Sample pH Limits* have been qualified by the *project phase where there is "high risk of pH discharge"*, though the definition provided in footnote (5) captures nearly all phases of construction, and effectively contradicts the qualifier. Further, the proposed index from NALs to NELs does not account for the inherent variability of pollutant concentrations associated with construction activities, and therefore does not support the broad application of numeric effluent limitations as a compliance standard.

Ultimately, the application of BAT, BCT, NAL, and NEL compliance standards within the Proposed Draft has set up a regulatory environment for which compliance is conceivably, albeit unintentionally, unachievable. As such, the compliance standards established within this Proposed Draft should be moderated in consideration of the unique and dynamic nature of construction related activities, associated discharges and constituents, and industry acceptance, as well as commensurate with the reservations, concerns, and conclusions of the State Water Board convened Blue Ribbon Panel that prepared the report entitled "*The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial, and Construction Activities*," dated June 19, 2006.

3. Page 11, Section V – Receiving Water Limitations

Storm water discharges and authorized non-storm water discharges shall not cause foam at discharge locations.

Comment:

The establishment of a compliance standard such as *foam* is vague and ambiguous and may equate to unreasonable enforcement, and conceivably not supported by actual conditions or discharge quality. Some surface waters and urban runoff may contain naturally dissolved organic compounds. Some are surfactants, which due to flow rate of the runoff, duration of the event, and location can cause foam to form and build up against an obstruction in a channel. The storm water runoff from an outfall or discharge point from a construction site most likely will commingle with other runoff from an already developed area.

4. Page 11, Section V.4

Storm water discharges and authorized non-storm water discharges shall not disrupt the pre-project equilibrium flow and sediment supply regime. In cases where the pre-project flow and sediment supply regime is not in equilibrium, project related activities shall not impede the natural channel evolution process.

Comment:

The proposed permit limitation that "*any discharge shall not disrupt the pre-project equilibrium flow and sediment supply regime*" is a requirement that would be very difficult to evaluate, particularly on a project-specific basis. Channel flow and sediment supply can be highly variable, especially in urbanized watersheds which have very dynamic land use characteristics. The dynamic nature of urban watersheds makes flow and sediment regimes virtually impossible to measure with any certainty. Channel flow and sediment supply are influenced by numerous varying factors, including the cumulative effect of multiple construction projects. There is no scientific technology or method available (to date) that could determine with any certainty that the equilibrium flow or sediment supply regime of any downstream receiving water was altered from one construction project in the watershed versus another. This condition is impracticable to definitively measure on a project-specific basis and therefore should be removed from the Proposed Permit.

5. Page 12, Section VI – Provisions

New dischargers requiring permit coverage on or after the adoption date [insert effective date of permit] shall electronically file their PRDs no later than 14 days prior to the commencement of construction activities or change of ownership, and mail the appropriate permit fee no later than seven days prior to the commencement of construction activities or change of ownership. Permit coverage shall not commence until the PRDs are accepted and the permit fee is received by the State Water Board.

Comment:

Specifically, the permit language in Section VI states that "*Permit coverage shall not commence until the PRDs are accepted and the permit fee is received by the State Water Board*". This statement must be clarified, as there is no clear definition of *accepted* within the Proposed Permit and strong potential for State Board actions to impact permitting decisions made by municipalities. It is recommended that the term *accepted* be fully defined as it refers to the fate of PRDs.

6. Page 20, Section F.6 – Good Site Management "Housekeeping" (All Risk Levels)

The discharger shall implement appropriate controls throughout all stages of construction to address air deposition issues.

Comment:

The reference to *air deposition issues* sets up a compliance standard that is vague and ambiguous. It is recommended that this language be deleted from the Proposed Permit.

7. Attachment B: Monitoring Program and Reporting Requirements, Section E.8

8. *Risk Level 3 dischargers shall conduct or participate in benthic macroinvertebrate bioassessment of RWs [receiving waters] prior to commencement of construction activity.*

Comment:

In general, it should be considered that receiving water quality monitoring requirements in Attachment B do not support the compliance standards established throughout the Proposed Permit. For example, the requirement summarized above for dischargers to *conduct or participate in benthic macroinvertebrate bioassessment of receiving waters* is superfluous to the already burdensome monitoring requirements outlined in this attachment. While the compliance standards within the Proposed Permit are premised on construction site discharge quality (i.e. NAL and NEL discharge standards) versus BMP implementation, the application of macroinvertebrate bioassessment in receiving waters will provide little to support this compliance standard. Further, it is conceivable that the application of such advanced receiving water assessment and characterization measures, if not handled appropriately and by qualified parties, may result in a gross mischaracterization of benthic invertebrate or water quality in local receiving waters. The receiving water sampling requirements found in this section constitute a large expansion from the characterization of discharge from a construction site, and it is requested that requirements to sample local surface waters be moderated to only include significant or egregious violations or to be eliminated from the Proposed Permit as it applies to Risk Levels 1-3.