



CITY OF LOMPOC

Construction General Permit - Stormwater
Deadline: 5/4/07 5pm



April 18, 2007

Ms. Tam M. Dudoc, Chair
State Water Quality Control Board
1416 Ninth Street, Box 944209
Sacramento, CA 94244-2090

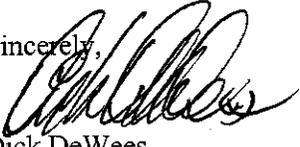
Dear Ms. Dudoc:

Thank you for the opportunity to comment on the proposed Revision to the Construction General Permit.

In the past several years, the City of Lompoc has been working with developers who are preparing and implementing construction Storm Water Pollution Prevention Plans (SWPPPs) for projects of one acre or more in size. We have found that the development community has had difficulty in preparing SWPPPs that address all the provisions of the existing Construction General Permit, in understanding some of the more detailed provisions of the existing Permit necessary for its implementation, and in ensuring that the workers on the ground-level of project development are able to implement the Permit in a way which is effective in preventing storm water pollution.

After review of the new draft Construction General Permit, we are concerned that it moves beyond the previous Permit's format, which concentrated on practical, understandable concepts to reduce construction storm water pollution, to a more detailed, scientific format, which focuses on sampling, action levels, effluent limits and advanced technology to attempt to address storm water pollution in construction.

It does not seem that the Construction General Permit Revision will be effective in reducing fine sediment in storm water, due to its emphasis on soil analysis and storm water sampling, rather than on easily understandable methods of pollution prevention. The Revised Construction General Permit may be difficult to administer and enforce in the field, and can be expected to exacerbate the high cost of construction in California, further reducing the availability of affordable housing, for limited environmental gain. A more detailed itemization of our concerns is attached.

Sincerely,

Dick DeWees,
Mayor, City of Lompoc

Attachment: City of Lompoc Detailed Concerns Regarding the Proposed Revision to the Construction General Permit

cc: Lompoc City Council

City of Lompoc Detailed Concerns Regarding the Proposed Revision to the Construction General Permit

The following items detail concerns of the City of Lompoc and questions regarding the proposed permit revision and its application:

General Approach

The technical approach to reducing storm water pollution taken in the Draft Construction General Permit raises several concerns. The first is that if the development community is having difficulty addressing the provisions of the existing Construction General Permit, particularly the sampling provisions, adding more sampling requirements can be expected to result in SWPPPs that are difficult to review, administer, and implement. While the burden of sampling has already been borne by larger Phase I communities in the state's metropolitan centers, contractors in smaller Phase II communities and rural counties have not been required to perform regular sampling and can be expected to have difficulty obtaining the resources necessary to meet the requirements of the proposed revision to the Construction General Permit.

It is important to remember that the knowledge and expertise necessary to prepare a SWPPP under the revised Construction General Permit may be difficult to find in many areas of California. Although criteria are proposed to ensure that the persons preparing SWPPPs are knowledgeable regarding storm water pollution prevention, the resources and expertise needed to evaluate soil particle size, the project site, and conduct sampling and testing may not be readily available.

The second concern is that sampling is costly, particularly in more rural or remote areas where approved laboratories may be several hours away. Multiple samples taken during a construction project and in the case of an Active Treatment System (ATS), daily, will be extremely costly. This aspect of the revised draft Permit can be expected to further raise the cost of housing, retail, and office space, exacerbating a critical shortage in affordable housing and business opportunities throughout California.

Thirdly, many of the requirements proposed in the new Construction General Permit can be expected to result in additional time lost in construction, which equates to additional cost of construction. The requirement to submit the Notice of Intent (NOI) and SWPPP 14 days prior to the anticipated start of construction and the subsequent 90-day review period, the 30-day review of ATS use plans, Regional Boards review of SWPPP applications, the need for preliminary soils testing, and development of detailed programs for sampling will all add time and cost to construction.

The City of Lompoc is also concerned about enforcement of the revised Construction General Permit. Local regional boards do not appear to currently have the staff to enforce the terms of the new Construction General Permit. It is not clearly stated in the Permit what the role of municipal governments will be in enforcing the Construction General Permit under the provisions of the Phase I or II NPDES permits. Local governments generally do not have the staff or expertise to enforce the terms of the Permit, especially in areas where there is no support for additional taxation or an increase in fees to developers.

As an alternative to storm water monitoring, we suggest the State Board focus its efforts on providing storm water education to contractors, ensuring that contractors responsible for SWPPP

implementation have had storm water education, and on conducting more inspections of construction sites. Additionally, the Board has not instituted a setback requirement, or limitations on construction, in areas directly adjacent to streams, rivers, lakes and wetlands. A setback of 25 to 50 feet, or additional Best Management Practices (BMPs) required within these areas would provide significant protection against sediment entering watercourses. This type of simple protective feature could result in a larger reduction in sedimentation of waterways, at a much lower cost, than would the monitoring requirements proposed in the revised Construction General Permit.

Processing and Submittals

1. The requirement that new permit coverage must be applied for and the documents submitted in electronic format a minimum of 14 days prior to the anticipated start of construction can be expected to add time and cost to the construction process. The permit notes that the SWPPP and NOI are not valid until the Regional Board accepts them. What constitutes acceptance?
2. Does the 90-day public review period run concurrently with the construction project after the required 14 days?

Recharge Requirement

3. Page 8 of 79, Finding 31. The City of Lompoc has a policy of not accepting pervious pavement / pavers in areas where vehicles will drive or be stored. In addition, detention basins and bioswales are not allowed without ensuring that oil and grease are first filtered out of the water prior to its entry into the basin / bioswale. These requirements are an effort to retain the quality of the City's drinking water which is stored in an underground aquifer below the City. For this reason, the City is concerned that the State Board proposes to encourage and / or require specific forms of recharge which may be detrimental to the water supplies of communities it serves. In addition, the requirement for no loss of recharge serves to add substantial cost to construction in those areas that are fully developed by necessitating expensive structural means of collecting and recharging storm water and serves to encourage the inefficient use of land in areas where more land is available. The effects of this policy may be far-reaching, as more agricultural land will be lost to sprawling development and the cost of construction continues to increase.

The Report on Feasibility of Numeric Effluent Limits 6/06

4. The report cited in Finding 10 of the Construction General Permit (CGP), The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities, dated June 19, 2006, concluded that while numeric limits or action levels are technically feasible for construction storm water discharges, it is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges. The study concluded that BMPs could be more rigorously selected, designed and maintained to achieve the level of pollutant removal that was intended. Action levels were identified as a tool to identify those sites which may need closer scrutiny.

These findings suggest that efforts and action level sampling results should be focused more on ensuring that the existing terms of the Construction General Permit are being met and Best Management Practices implemented, rather than requiring effluent and

- receiving water sampling, and establishing Action Levels and Numeric Effluent Limitations.
5. In the same report referenced above, the discussion of feasibility focused on larger municipal areas that have been under NPDES Phase I permits for over 10 years. It did not appear to take into account areas where Phase II permits have not yet been issued, as they are waiting hearing. The study concluded that establishing a basis for an action level in larger urban areas with established monitoring programs would be easier. Based on the report, we believe that more education and enforcement of the existing permit terms may yield the desired reduction in sediment more readily than will the application of Action Levels.
 6. The report above also states that storm water effluent limits can become very complex...and if complex, they are not likely to be workable. The City believes that as a result, their use in construction storm water permitting will be more confusing and confounding than effective at reducing sedimentation in waterways.
 7. The panel's reservations and concerns included that active treatment systems have generally been employed on sites of five acres or larger and that cost may prohibit their use on sites of an acre in size. The ATS' effectiveness is reported to be greatly enhanced for large drainage areas on which construction occurs for multiple years. The City believes that given the cost and 30-day review for plans to use an ATS, few if any will be used outside of larger construction sites in generally urbanized areas.
 8. The City agrees with the above report that natural background levels of turbidity in arid portions of California need to be taken into consideration in setting numerical limits or action levels.

Setbacks from Streams, Lakes, Rivers and Wetlands

9. The designation of mandatory, rather than voluntary, setbacks from water bodies and wetlands, and/or the imposition of additional BMPs adjacent to water bodies and wetlands would serve to be very effective in reducing sedimentation in waterways.

Soil Particle Size Requirements

10. The requirement to have a soil particle analysis of project sites as a part of the development of the SWPPP, is cumbersome, particularly in those areas where such soils are common and almost guaranteed to occur on any given project site. At a minimum, developers should have the option to assume fine particle size and implement the required BMPs in section VIII G, to reduce development costs.
11. The previously referenced report found that the toxicity and other environmental effects of widespread use of chemicals in active treatment systems has not been adequately studied and their safety shown. Effects on the many different ecosystem types in California should be evaluated before a requirement for ATS' to be used in any area of .02 millimeters (mm) sediment size is enacted. The City agrees with this statement. Although the systems are not required, the fact that their impact on downstream waters is unknown is a concern. Mere sampling to determine the amount of pollutants that may be discharged from such as system does not provide any information about the safety or toxicity of those pollutants in a marine environment. In addition, adding chemical

pollutants to storm water in an effort to remove sediment, a naturally occurring pollutant may not be cost effective in the long run.

Non-Storm Water Management

12. Page 24 of 70, Item J 2. This item should be changed to read “The discharger shall wash vehicles and streets in designated areas to prevent non-storm water discharges. Generally it seems that street washing would be a high hazard activity and would be likely to wash sediment into storm drains and drainage channels.

SWPPP Practitioners and Inspectors Qualifications

13. Requiring SWPPP preparers to have verified qualifications, education and experience in storm water management and construction can be expected to be beneficial. The City does, however, suggest that there are other professional disciplines which will provide the necessary education and experience for proper preparation of a SWPPP. The Board should consider adding Land Use Planners, Environmental Professionals, Registered Professional Foresters, and Range Scientists/Managers to the list of persons who may prepare a SWPPP.
14. The requirement for the SWPPP practitioner who implements the provisions of the SWPPP on the construction site to meet the same requirements as a SWPPP preparer can be expected to be a difficult condition for small construction projects of less than five acres to meet and can be expected to add a significant amount to the cost of the project.

Storm Water Sampling

15. Is sampling and testing not required if there is not enough discharge to sample after the first ½ inch of rain has fallen?
16. How will receiving water monitoring be effective in establishing the incremental contribution of a single construction site to combined pollutants in a water body that may drain thousands or millions of acres of land, including agriculture and multiple urbanized areas and wildlands? How will a representative sample of both the existing condition and the discharge from the construction site be obtained in situations of high (dangerous) flow and very low flow? How are individual contractors and developers supposed to arrange to have these samples taken?

Sediment Transport Risk Worksheet

17. Attachment F – Page 70 of 79 – There does not appear to be a “No” option to question 1, Proximity to Receiving Water.