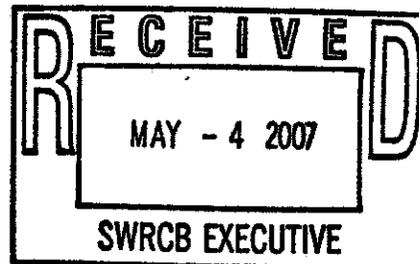




ORANGE COUNTY SANITATION DISTRICT

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

May 3, 2007



Song Her, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

SUBJECT: Comment Submittal on the Proposed National Pollutant Discharge Elimination System General Permit No. CAR000002 Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity

REFERENCE: Existing Order No. 99 - 08 - DWQ; NPDES No. CAS000002

The Orange County Sanitation District (OCSD) appreciates the opportunity to review and comment on the proposed draft *National Pollutant Discharge Elimination System General Permit For Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With Construction Activity* (General Permit). The General Permit has significant changes and additional requirements that present concerns to OCSD.

OCSD is a public agency responsible for collecting, treating and disposing of wastewater for 2.4 million residents and businesses within northern and central Orange County, California. OCSD operates two regional wastewater treatment plants, over 650 miles of trunk and subtrunk sewer lines, sixteen pump stations and an ocean outfall disposal system. OCSD is responsible for construction activities associated with upgrading its treatment facilities and replacing or rehabilitating sewer lines and pump stations.

OCSD understands the State Water Resources Control Board's (SWRCB) rationale for including new requirements within the General Permit regarding hydro-modifications, sediment runoff and erosion control, but the proposed regulatory approach is too onerous and costly, and it places regulatory conditions on permittees that do not necessarily achieve the desired outcome of improved water quality. Of particular concern to OCSD are the numeric limitations, risk category classifications, parameters for sampling, new 90-day review period and the apparent lack of a cost benefit analysis for the General Permit requirements. OCSD questions if the Storm Water Pollution Protection Plan (SWPPP) can be modified to address many of the SWRCB's concerns over hydro-modification and sediment and erosion controls instead of completely revamping the current permit.

1. Numeric Limitations

Section I.10. The SWRCB based, in part, its requirements for numeric limitations on the Storm Water Panel (Panel) recommendations presented within the Feasibility of Numeric

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Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial, and Construction Activities (Feasibility Report). One concern OCSD has is that although the Panel recognizes that active treatment systems (ATS) make numeric limitations technically feasible, the Panel qualified this opinion by stating that "technical practicalities and cost-effectiveness may make these technologies less feasible for smaller sites, including small drainage areas within a larger site."

The Panel also stopped short of proposing actual limits, due to concerns about background runoff concentrations for Numeric Effluent Limitations (NELs) and the need for multiple sampling events to determine average discharge concentration. The Panel recommended that the SWRCB consider, "the phased implementation of NELs and Action Levels (ALs), commensurate with the capacity of the permittees to respond." The General Permit does not address many of the concerns raised by the Panel and there is no consideration of background levels for monitored constituents.

OCSD recommends that the SWRCB develop technology-based effluent limits similar to the process used by USEPA when developing national technology-based effluent guidelines. The SWRCB should also fully address the concerns posed by the Panel. Any proposed technology-based effluent limits should be developed based on scientifically developed protocols and data gathering programs. Additionally, the NELs should be developed and selected in accordance with the process required by USEPA regulations.

At this time, OCSD is opposed to including NELs. The preliminary draft permit does not provide the foundation or references to justify NELs for pH or those set for the ATS. The use of numeric limits is premature and does not address concerns regarding the use of numeric limits identified within the Panel's Feasibility Report. There is currently not enough information to derive appropriate numeric effluent limits for construction dischargers. Further, before numeric effluent limits can be appropriately derived and incorporated into storm water permits, the processes to derive numeric limits for storm water discharges must be fully developed and incorporate a scientifically sound and defensible methodology that is in accordance with USEPA protocols.

2. Risk Category Classification

Section I. 26. Establishes requirements related to a construction project's overall risk of water pollution. Three categories of risk ("low," "medium" and "high") were developed, however, there does not appear to be much distinction between the "medium" and "high" category projects because both categories are subject to the same stringent requirements (with the exception of single exceedence action levels). Projects are placed within these categories based on the amount of points received from each question within the *Sediment Transport Risk Worksheet* (Attachment F). It is the permittees responsibility to determine which risk category its project falls

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under. OCSD understands that risk categories are a good way to make an all inclusive permit better suited to the breadth of construction activities requiring permit coverage. However, OCSD believes the current method for categorizing risk and the work sheet questions could be modified to be more user friendly, contain a more reasonable point system and include other information to more accurately assess a projects impact on water quality (such as how much storm water discharges really leave an individual project site).

The parameters used to establish risk would put most OCSD projects that are over one acre in the "medium" risk category as a result of the proposed point system, although most of these projects would realistically pose little or no risk to water quality because much of the stormwater for plant projects is routed into OCSD's treatment facilities. OCSD has several large construction projects underway at its two regional treatment plants that would have little or no offsite stormwater runoff. Nevertheless, under the draft General Permit's risk categorization, these projects would be considered "medium" risk because the project sites are over one acre, grading will occur during the rainy season, and the Erosivity Index for the location of both plants is above 5.00. OCSD would be required to conduct all the additional monitoring and reporting required for a "medium" risk project including: effluent monitoring, ALs, NELs and a Rain Event Action Plan in addition to a SWPPP with no real improvement to water quality based on the fact that the storm water does not leave the site.

The *Sediment Transport Risk Worksheet* requires permittees to determine the hydrologic soil group of the soil at a project site and to calculate erosion potential from the project's construction activities in order to determine which risk category a project falls under. This task may be too technical and expensive for many permittees. An unintended consequence of this requirement is that some permittees may be out of compliance simply based on the fact that they made mistakes answering questions on the worksheet which resulted in placing their project in the wrong risk category. Under this likely scenario, the local enforcing agency (i.e., the RWQCB) would then have to spend limited staff and monetary resources on assisting and ensuring a permittee accurately categorizes a project instead of focusing their efforts on actual stormwater site inspections.

OCSD asks that amount of runoff that could potentially leave the site be considered as one of the parameters for determining the risk classification. An additional parameter (perhaps as part of Question No. 1 or No. 3) regarding the amount of stormwater that will realistically leave the site could be added as part of risk categorization. Points could be deducted from the overall score for projects with low stormwater discharges.

OCSD believes the risk categories established through the *Sediment Transport Risk Worksheet* should be modified to a more realistic point system. The points for Questions No.1, No. 3 and No. 4 should be adjusted downward to lower numbers.

OCSD also recommends simplifying the worksheet by deleting Question No. 4: *Erodibility Index of Site* because the question may be confusing and too complicated for many permittees and by modifying Question No. 5: *Runoff Potential of Dominant Soils* to use soil types (e.g., clay) as the parameter for the question instead of the Hydrologic Soil Groups A, B, C, and D.

3. Parameters for Sampling

Section I.30. Requires permittees to visually inspect their construction sites before, during and after rain events. The details of this requirement are laid out in the Construction Site Monitoring Program (CSMP) which is captured in Attachment E: *Monitoring and Reporting Requirements*. OCSD has several concerns with several onerous requirements of the CSMP that won't necessarily result in improved water quality.

Under Section D. *Storm Event Related Inspections* (4) in order for the permittee to realistically comply with the visual inspections requirements, the permittee will have to continuously monitor the weather forecast and in some cases conduct unnecessary inspections (within 48 hours of an anticipated storm event) considering that the parameter for these inspections is a >30% chance of precipitation and weather forecasting as we know is not an exact science. OCSD believes that one pre wet-season inspection and daily inspections during rain events would be sufficient and that the >30 % prediction of precipitation is too low. The 30% factor should be eliminated or increased to 60% or higher.

Section E. *Sampling and Analysis*, (2) (c) states "any additional parameters for which monitoring is required by the Regional Board" is too broad and vague and can leave the permittee vulnerable to over zealous and subjective monitoring requirements. This section should be limited by such additional analyses that are necessary for a specific purpose such as a TMDL or regional monitoring program. Number 5 under ATS Monitoring Requirements states that "any discharger who deploys an ATS on their site shall conduct the following monitoring each 24 hour period of ATS operation" seems excessive especially considering that the highest concentration of pollutants runoff occurs during the initial rain (first flush). It does not seem like there is a great deal of benefit to additional monitoring every 24 hours; and yet the proposed monitoring requirements are unnecessarily extensive. If the SWRCB must require this type of sampling, OCSD recommends conducting one sampling within 24 hours at the onset of a rain event.

Section F. states that "The discharger shall perform sampling of storm water from all drainage areas associated with construction activities." OCSD recommends that this requirement be modified to allow for the combination of drainage areas if they are adjacent to each other and essentially the same in the type of runoff from each site.

4. 90-day Review Period

Section XIII.2 of the draft General Permit proposes a 90-day public review and comment period of the Permit Registration Documents (PRDs), but provides no further explanation of what that 90-day review period will entail. Based on the limited information provided in

the draft General Permit, OCSD believes that the 90-day review and comment period may result in the stormwater permitting process becoming a mechanism for some members of the public to challenge unpopular construction projects.

All public agencies engage in necessary public infrastructure projects that can be very inconvenient and frustrating to the public. OCSD replaces or rehabilitates sanitary sewer trunklines in the middle of busy streets. OCSD is concerned that members of the public who don't want construction in a certain area, due to numerous factors not associated with stormwater control, could use this permit process as a vehicle to stop or delay construction. The practical implications of the 90-day review and comment period are significant and present new challenges including: (1) overall project delays, which may be especially problematic if construction schedules are proceeding pursuant to separately imposed waste discharge requirements, NPDES permits, or related enforcement orders (e.g., consent decree).¹ (2) increased costs due to change orders for redesign of projects or modification of project operations; (3) increased risks to water quality for projects that require immediate rehabilitation due to the potential of ruptures in a line but are delayed because of public challenges to the project; and (4) Legal challenges.

OCSD also believes that no additional public review and comment period is necessary for the PRDs for the following reasons: (1) neither the Clean Water Act, the Porter-Cologne Water Quality Control Act, nor case law require an additional public review and comment period for PRDs since the General Permit that requires submission of PRDs contains prescriptive requirements and detailed management practices, and PRDs are submitted simply to demonstrate compliance; and (2) the Preliminary Draft Construction General Permit is already subject to lengthy public review and comment, beyond that prescribed by law.

However, if the SWRCB is committed to maintaining a review period, OCSD recommends that you, at a minimum, clarify the intent of the review and comment period of the PRDs and reduce the review period to 30 days.

5. General Comments

The SWRCB did not conduct a cost benefit analysis for implementation of this General Permit. OCSD believes the SWRCB should consider the economic benefits compared to the desired outcome of these new General Permit provisions. Permittees will incur numerous additional costs associated with complying with new documentation and reporting requirements, proposed numeric effluent limitations, and monitoring requirements which will not necessarily translate into improved water quality. We request the SWRCB conduct a basic cost benefit analysis on the financial ramifications of implementing the draft General Permit.

¹ OCSD is currently under a Consent Decree order to complete full secondary treatment upgrades by 2012.

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The current permit requirement to develop a project specific SWPPP is working well and adequately addresses stormwater discharge issues. OCSD believes any deficiencies could be handled by streamlining the SWPPP to include additional requirements such as a modified risk categorization of projects and different parameters for sampling (as discussed under item no. 3). This approach would be more prudent than completely revamping the General Permit because it would be easier for the RWQCB and local cities to enforce and most likely be better received by the permittees.

In closing, thank you for your considerations of our comments. OCSD is willing to provide further details on our comments and assist the SWRCB in refining its General Permit. If you have any questions please feel free to contact me at 714-593-7450. The staff person working on this issue is Karen Baroldi, and she may be reached at (714) 593-7461.



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