

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
NOVEMBER 16, 2010**

ITEM 5

SUBJECT

CONSIDERATION OF PROPOSED AMENDMENTS TO STATE WATER BOARD ORDER NO. 2009-009-DWQ (THE CONSTRUCTION GENERAL PERMIT, OR CGP) FOR THE LIMITED PURPOSE OF MODIFYING THE DEFINITIONS OF “LEGALLY RESPONSIBLE PERSON” AND “APPROVED SIGNATORY.”

DISCUSSION

On September 2, 2009, the State Water Board adopted the Construction General Permit for regulation of storm water discharges associated with construction and land disturbance activities. Under the Construction General Permit, the Legally Responsible Person (LRP) is required to, among other requirements electronically sign the Notice of Intent in order to obtain permit coverage for a project. For non-linear construction projects, the LRP is defined as the person who possesses title of the land or the leasehold interest of a mineral estate upon which the construction or land disturbance activities will occur. For linear construction projects, the LRP is defined as the person in charge of the utility company, municipality, or other public or private company or agency that owns or operates the linear project.

When the Construction General Permit became effective on July 1, 2010, State Water Board staff received, and has continued to receive, numerous complaints that the definition of LRP for non-linear construction projects is unduly burdensome and threatens to stall many important construction and other land disturbance projects in the state. When it adopted the Construction General Permit, the State Water Board neither intended nor anticipated the extent of problems the LRP definition would present to both landowners and dischargers. As a result, State Water Board staff is using this new information to propose a modified definition of LRP that applies to both non-linear and linear projects, which allows persons and entities with various real property interests to be the LRP. To make the process of obtaining permit coverage even easier to follow and implement, State Water Board staff is also proposing to clarify the definition of “Approved Signatory,” as well as a few formatting changes.

POLICY ISSUE

Should the Board amend the Construction General Permit to modify the definitions of “legally responsible party” and “approved signatory”?

FISCAL IMPACT

No fiscal impact or immediate staff resource commitment.

REGIONAL BOARD IMPACT

No Regional Board Impact

STAFF RECOMMENDATION

That the Board adopts the proposed amendments to the Construction General Permit that modify the definitions of “legally responsible person” and “approved signatory.”



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Quality

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Arnold Schwarzenegger
Governor

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR
STORM WATER DISCHARGES
ASSOCIATED WITH CONSTRUCTION AND LAND DISTURBANCE ACTIVITIES

ORDER NO. 2010-XXXX-DWQ
NPDES NO. **CAS000002**

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|--|-------------------------------|
| Order No. 2009-0009-DWQ was adopted by the State Water Resources Control Board on: | September 2, 2009 |
| Order No. 2009-0009-DWQ became effective on: | July 1, 2010 |
| Order No. 2009-0009-DWQ shall expire on: | September 2, 2014 |
| This Order, which amends Order No. 2009-0009-DWQ, was adopted by the State Water Resources Control Board on: | <Adoption Date> |
| This Order shall become effective on: | <Effective Date> |

IT IS HEREBY ORDERED that this Order amends Order No. 2009-0009-DWQ. Additions to Order No. 2009-0009-DWQ are reflected in blue-underline text and deletions are reflected in ~~red-strikeout~~ text.

IT IS FURTHER ORDERED that staff are directed to prepare and post a conformed copy of Order No. 2009-0009-DWQ incorporating the revisions made by this Order.

I, Jeanine Townsend, Clerk to the Board, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the State Water Resources Control Board, on **November 16, 2010**.

Jeanine Townsend
Clerk to the Board

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Fact Sheet pages 11-12**

those areas may be subject to this General Permit based on the area of disturbed land outside the original right-of-way, easement, or agreement.

- b. LUP construction activity does not include field activities associated with the planning and design of a project (e.g., activities associated with route selection).
- c. Tie-ins conducted immediately adjacent to “energized” or “pressurized” facilities by the discharger are not considered construction activities where all other LUP construction activities associated with the tie-in are covered by an NOI and SWPPP of a third party or municipal agency.

3. EPA’s Small Construction Rainfall Erosivity Waiver

EPA’s Storm Water Phase II Final Rule provides the option for a Small Construction Rainfall Erosivity Waiver. This waiver applies to small construction sites between 1 and 5 acres, and allows permitting authorities to waive those sites that do not have adverse water quality impacts.

Dischargers eligible for this waiver are exempt from Construction General Permit Coverage. In order to obtain the waiver, the discharger must certify to the State Water Board that small construction activity will occur only when the rainfall erosivity factor is less than 5 (“R” in the Revised Universal Soil Loss Equation). The period of construction activity begins at initial earth disturbance and ends with final stabilization. Where vegetation will be used for final stabilization, the date of installation of a practice that provides interim non-vegetative stabilization can be used for the end of the construction period. The operator must agree (as a condition waiver eligibility) to periodically inspect and properly maintain the area until the criteria for final stabilization as defined in the General Permit have been met. If use of this interim stabilization eligibility condition was relied on to qualify for the waiver, signature on the waiver with a certification statement constitutes acceptance of and commitment to complete the final stabilization process. The discharger must submit a waiver certification to the State Board prior to commencing construction activities.

USEPA funded a cooperative agreement with Texas A&M University to develop an online rainfall erosivity calculator. Dischargers can access the calculator from EPA’s website at: www.epa.gov/npdes/stormwater/cgp. Use of the calculator allows the discharger to determine potential eligibility for the rainfall erosivity waiver. It may also be useful in determining the time periods during which construction activity could be waived from permit coverage.

D. Obtaining and Terminating Permit Coverage

The appropriate Legally Responsible Person (LRP) must obtain coverage under this General Permit, ~~except in two limited circumstances. First, where the construction of pipelines, utility lines, fiber-optic cables, or other linear underground/overhead projects will occur across several properties, the utility company, municipality, or other public or private company or agency that owns or operates the linear underground/overhead project is responsible for obtaining coverage under the General Permit. Second, where there is a lease of a mineral estate (oil, gas, geothermal, aggregate, precious metals, and/or industrial metals), the lessee is responsible for obtaining coverage under the General Permit.~~ To obtain coverage, the LRP or the LRP's Approved Signatory ~~or other entity described above~~ must file Permit Registration Documents (PRDs) prior to the commencement of construction activity. Failure to obtain coverage under this General Permit for storm water discharges to waters of the United States is a violation of the CWA and the California Water Code.

To obtain coverage under this General Permit, LRPs must electronically file the PRDs, which include a Notice of Intent (NOI), Storm Water Pollution Prevention Plan (SWPPP), and other documents required by this General Permit, and mail the appropriate permit fee to the State Water Board. It is expected that as the storm water program develops, the Regional Water Boards may issue General Permits or

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Section IV – Special Provisions pages 24-25**

1. Access and copy at reasonable times any records that must be kept under the conditions of this General Permit;
2. Inspect at reasonable times the complete construction site, including any off-site staging areas or material storage areas, and the erosion/sediment controls; and
3. Sample or monitor at reasonable times for the purpose of ensuring General Permit compliance.

I. Electronic Signature and Certification Requirements

1. All Permit Registration Documents (PRDs) and Notices of Termination (NOTs) shall be electronically signed, certified, and submitted via SMARTS to the State Water Board. Either the Legally Responsible Person (LRP), as defined in Appendix 5 – Glossary, or a person legally authorized to sign and certify PRDs and NOTs on behalf of the LRP (the LRP's Approved Signatory, as defined in Appendix 5 - Glossary) must submit all information electronically via SMARTS.

~~a. The LRP's Approved Signatory must be one of the following:~~

- ~~i. For a corporation: a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (b) the manager of the facility if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;~~
- ~~ii. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;~~
- ~~iii. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. The principal executive officer of a Federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA);~~

CGP Proposed Amendments Concerning LRPs
(Underline/Strikeout Version)

- ~~iv. For the military: Any military officer who has been designated.~~
- ~~v. For a public university: An authorized university official~~
- b. 2. Changes to Authorization. If an ~~a~~Approved ~~s~~Signatory's authorization is no longer accurate, a new authorization satisfying the requirements of paragraph (a) of this section must be submitted via SMARTS prior to or together with any reports, information or applications to be signed by an ~~a~~Approved ~~s~~Signatory.
- ~~2.~~ 3. All Annual Reports, or other information required by the General Permit (other than PRDs and NOTs) or requested by the Regional Water Board, State Water Board, USEPA, or local storm water management agency shall be certified and submitted by the LRP or the LRP's ~~a~~Approved ~~s~~Signatory ~~as described above.~~

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Attachment A, Section E - Special Provisions pages 10-11

member's vehicle until construction is completed, and shall be made available upon request.

- b. The LUP discharger shall furnish the Regional Water Board, State Water Board, or USEPA, within a reasonable time, any requested information to determine compliance with this General Permit. The LUP discharger shall also furnish, upon request, copies of records that are required to be kept by this General Permit.

8. Inspection and Entry

The LUP discharger shall allow the Regional Water Board, State Water Board, USEPA, and/or, in the case of construction sites which discharge through a municipal separate storm sewer, an authorized representative of the municipal operator of the separate storm sewer system receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the discharger's premises at reasonable times where a regulated construction activity is being conducted or where records must be kept under the conditions of this General Permit;
- b. Access and copy at reasonable times any records that must be kept under the conditions of this General Permit;
- c. Inspect at reasonable times the complete construction site, including any off-site staging areas or material storage areas, and the erosion/sediment controls; and
- d. Sample or monitor at reasonable times for the purpose of ensuring General Permit compliance.

9. Electronic Signature and Certification Requirements

- a. All Permit Registration Documents (PRDs) and Notices of Termination (NOTs) shall be electronically signed, certified, and submitted via SMARTS to the State Water Board. Either the Legally Responsible Person (LRP), [as defined in Appendix 5-Glossary](#), or a person legally authorized to sign and certify PRDs and NOTs on behalf of the LRP (the LRP's Approved Signatory, [as defined in Appendix 5-Glossary](#)) must submit all information electronically via SMARTS. ~~For Linear Underground/Overhead~~

CGP Proposed Amendments Concerning LRPs
(Underline/Strikeout Version)

~~projects, the Legally Responsible Person is the person in charge of the utility company, municipality, or other public or private company or agency that owns or operates the LUP. The LRP's Approved Signatory must be one of the following:~~

- ~~i For a corporation: a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - ~~(1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or~~
 - ~~(2) the manager of the facility if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;~~~~
 - ~~ii For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or~~
 - ~~iii For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. The principal executive officer of a Federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA).~~
- b. Changes to Authorization. If an aApproved sSignatory's authorization is no longer accurate, a new authorization satisfying the requirements of paragraph (a) of this section must be submitted via SMARTS prior to or together with any reports, information or applications to be signed by an aApproved sSignatory.
- c. All SWPPP revisions, annual reports, or other information required by the General Permit (other than PRDs and NOTs) or requested by the Regional Water Board, State Water Board, USEPA, or local storm water management agency shall be certified and submitted by the LRP or the LRP's aApproved sSignatory ~~as described above.~~

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Appendix 5 – Glossary pages 1-2**

Active Areas of Construction

All areas subject to land surface disturbance activities related to the project including, but not limited to, project staging areas, immediate access areas and storage areas. All previously active areas are still considered active areas until final stabilization is complete. [The construction activity Phases used in this General Permit are the Preliminary Phase, Grading and Land Development Phase, Streets and Utilities Phase, and the Vertical Construction Phase.]

Active Treatment System (ATS)

A treatment system that employs chemical coagulation, chemical flocculation, or electrocoagulation to aid in the reduction of turbidity caused by fine suspended sediment.

Acute Toxicity Test

A chemical stimulus severe enough to rapidly induce a negative effect; in aquatic toxicity tests, an effect observed within 96 hours or less is considered acute.

Air Deposition

Airborne particulates from construction activities. .

Approved Signatory

A person who has legal authority to sign, certify, and electronically submit Permit Registration Documents and Notices of Termination on behalf of the Legally Responsible Person. The Approved Signatory must be one of the following:

1. For a corporation: a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (a) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (b) the manager of the facility if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
3. For a municipality, State, Federal, or other public agency: a principle executive officer, ranking elected official, city manager, council president, or other public employee with managerial responsibility over the construction or land disturbance project (including, but not limited to, project manager, project superintendent, or resident engineer);

CGP Proposed Amendments Concerning LRPs
(Underline/Strikeout Version)

4. For the military: any military officer who has been designated;
5. For a public university: an authorized university official;
6. For an individual: the individual, because the individual acts as both the Legally Responsible Person and the Approved Signatory.

Beneficial Uses

As defined in the California Water Code, beneficial uses of the waters of the state that may be protected against quality degradation include, but are not limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

Best Available Technology Economically Achievable (BAT)

As defined by USEPA, BAT is a 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 nonconventional pollutants to navigable waters. The 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.

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periods differ for different parts of the state, it is essential to know the index period for your area.

K Factor

The soil erodibility factor used in the Revised Universal Soil Loss Equation (RUSLE). It represents the combination of detachability of the soil, runoff potential of the soil, and the transportability of the sediment eroded from the soil.

Legally Responsible Person

~~The A person, company, agency, or other entity that possesses a real property interest (including, but not limited to, fee simple ownership, easement, leasehold, or rights of way) in the land who possesses the title of the land or the leasehold interest of a mineral estate~~ upon which the construction or land disturbance activities will occur for the regulated site. If the land is controlled by an estate or similar entity, the person who has day-to-day control over the land (including, but not limited to, a bankruptcy trustee, receiver, or conservator) is considered to possess a real property interest. The Legally Responsible Person will typically be the project proponent. A contractor who does not possess a real property interest is not qualified to be a Legally Responsible Person. ~~For linear underground/overhead projects, it is in the person in charge of the utility company, municipality, or other public or private company or agency that owns or operates the LUP.~~

Likely Precipitation Event

Any weather pattern that is forecasted to have a 50% or greater chance of producing precipitation in the project area. The discharger shall obtain likely precipitation forecast information from the National Weather Service Forecast Office (e.g., by entering the zip code of the project's location at <http://www.srh.noaa.gov/forecast>).

Maximum Allowable Threshold Concentration (MATC)

The allowable concentration of residual, or dissolved, coagulant/flocculant in effluent. The MATC shall be coagulant/flocculant-specific, and based on toxicity testing conducted by an independent, third-party laboratory. A typical MATC would be:

The MATC is equal to the geometric mean of the NOEC (No Observed Effect Concentration) and LOEC (Lowest Observed Effect Concentration) Acute and Chronic toxicity results for most sensitive species determined for the specific coagulant. The most sensitive species test shall be used to determine the MATC.

Natural Channel Evolution

The physical trend in channel adjustments following a disturbance that causes the river to have more energy and degrade or aggrade more sediment. Channels

Fact Sheet (page 11)

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Order Section IV - Special Provisions (page 24)

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2. Changes to Authorization. If an approved signatory's authorization is no longer accurate, a new authorization satisfying the requirements of paragraph (a) of this section must be submitted via SMARTS prior to or together with any reports, information or applications to be signed by an approved signatory.
3. All Annual Reports or other information required by the General Permit or requested by the Regional Water Board, State Water Board, U.S. EPA, or local storm water management agency, shall be certified and submitted by the LRP or the LRP's approved signatory.

Attachment A, Section E – Special Provisions (Page 10)

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Appendix 5 – Glossary

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3. For a municipality, State, Federal, or other public agency: a principal executive officer, ranking elected official, city manager, council president, or other public employee with managerial responsibility over the construction or land disturbance project (including, but not limited to, project manager, project superintendent, or resident engineer) The principal executive officer of a Federal agency includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA);
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Legally Responsible Person

A person, company, agency, or other entity that possesses a real property interest (including, but not limited to, fee simple ownership, easement, leasehold, or rights of way) in the land upon which the construction or land disturbance activities will occur for the regulated site. If the land is controlled by an estate or similar entity, the person who has day-to-day control over the land (including, but not limited to, a bankruptcy trustee, receiver, or conservator) is considered to possess a real property interest. The Legally Responsible Person will typically be the project proponent. A contractor who does not possess a real property interest is not qualified to be a Legally Responsible Person.