

WARREN D. WILLIAMS  
General Manager-Chief Engineer



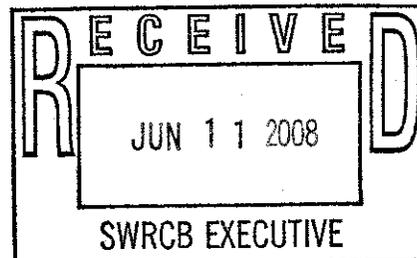
1995 MARKET STREET  
RIVERSIDE, CA 92501  
951.955.1200  
FAX 951.788.9965  
www.floodcontrol.co.riverside.ca.us

RIVERSIDE COUNTY FLOOD CONTROL  
AND WATER CONSERVATION DISTRICT

June 11, 2008

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

Ms. Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, California 95814



Submitted via email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Dear Ms. Townsend and Members of the Board: Re: Comment Letter – March 2008 Draft Construction General Permit

The Riverside County Flood Control and Water Conservation District, the County of Riverside, the Coachella Valley Water District and the incorporated cities of Riverside County appreciate the opportunity to comment on the National Pollutant Discharge Elimination System (NPDES) Draft General Permit for Discharges of Storm Water Associated with Construction Activities (Construction General Permit). We believe that actions taken by the State Water Resources Control Board (State Board) on this Draft Construction General Permit will likely have significant economic impacts not only on stormwater dischargers but on all Californians through collateral impacts on development. Our comment letter has been organized into five sections:

- I. General Description of Riverside County
- II. Support and Concurrence with the Comments Developed by the California Stormwater Quality Association (CASQA)
- III. Specific Comments Requesting Clarification of a Few Proposed Requirements
- IV. Comments on those Aspects of the Draft Construction General Permit that would most Significantly Affect Our Municipalities
- V. Response to the Questions Posed by State Board Member Wolff

**I. General Description of Riverside County**

Riverside County encompasses 7,300 square miles with an estimated population of 2,088,322<sup>1</sup> as of January 1, 2008. Within Riverside County, the climatic conditions vary from low arid desert in the east with average annual rainfall of 2-4 inches in the Coachella Valley to Mediterranean climate in the western inland valleys with average annual rainfall of 10-13 inches to the San Jacinto and San Bernardino Mountains with average annual precipitation

<sup>1</sup> California Department of Finance. June 2008.  
[http://www.dof.ca.gov/research/demographic/reports/estimates/e-1\\_2006-07/documents/E-1table.xls](http://www.dof.ca.gov/research/demographic/reports/estimates/e-1_2006-07/documents/E-1table.xls)

(including snowfall) of 30-40 inches. Many of the receiving waters in Riverside County are naturally predominately ephemeral with a few mountainous streams that are perennial interrupted streams (i.e., reaches in which the flow is continuous and other reaches where flow is ephemeral). Notably, some reaches of the Santa Ana River have perennial flow mostly due to treated discharges from wastewater treatment plants. Also, it is important to note that Riverside County falls under the jurisdiction of three Regional Water Quality Control Boards (Regional Boards).

## II. Concurrence with CASQA Comments

We concur with the summary and detailed comments developed by California Stormwater Quality Association (CASQA). We also agree with CASQA's significant concerns regarding:

- Changing the regulatory approach for stormwater discharges from the iterative approach for improved Best Management Practice (BMP) implementation to a numeric effluent limit-based approach by incorporating numeric limits (both effluent and action levels) without addressing the concerns for the use of these numeric limits expressed by the Blue Ribbon Panel in their report on *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities* (Currier et al., 2006).
- Establishing numeric effluent limits without developing a scientifically sound and defensible methodology that is in accordance with USEPA protocols.
- Including hydromodification requirements (New Development and Redevelopment Performance Standards) in a construction activity permit, although the requirements have been improved by deferring to NPDES municipal separate storm sewer system (MS4) permits where applicable.
- Lack of pre-defined processes and timelines for many critical path elements requiring Regional Board review, approval or other action (e.g., disposition of public comments on Project Registration Documents, Risk Level 4 projects that require an individual permit).
- Requiring dischargers to conduct receiving water monitoring.

We request that the State Board direct staff to 1) address the summary and detailed comments provided by CASQA, 2) develop a revised Draft Construction General Permit subject to workshops and public comment, and 3) continue the stakeholder process used in developing the March 2008 Draft Construction General Permit.

## III. Requested Clarification of Several Draft Construction General Permit Requirements

Section VII.B of the Draft Construction General Permit requires dischargers to complete a soil particle size analysis. If this requirement remains, the section must be revised to indicate

if the analysis is submitted with the Project Registration Documents (PRDs), how the analysis is related to the risk assessment, and how the information will be used.

Sections VIII.F.1.b and VIII.F.4.a of the Draft Construction General Permit use the phrase "not actively being used" when describing BMPs for covering and berming stockpiles of various construction materials. What time frame is contemplated when identifying stockpiles as "not being actively used" and would the requirements for "covering" apply throughout the year as opposed to only prior to a predicted rain event? Would the application of soil stabilizers qualify as "covering" for soil stockpiles?

Section VIII.F.6 of the Draft Construction General Permit states, "The discharger shall implement appropriate controls throughout all stages of construction to address air deposition issues". It is unclear what air deposition issues (constituents) are to be addressed as Section VIII.B.1 requires all dischargers to implement effective wind erosion control. The intent of Section VIII.F.6 must be clarified.

Section XI (Conditions for Termination of Coverage) of the Draft Construction General Permit must be revised to be consistent with Section VIII.H. Section VIII.H exempts all dischargers subject to the new development and redevelopment standards of a Phase I or II MS4 permit from complying with the New Development and Re-development Storm Water Performance Standards. This exemption must also apply for the Notice of Termination.

#### IV. **Comments from the Municipal Perspective**

We have focused our comments on those aspects of the Draft Construction General Permit that would most significantly affect municipalities in Riverside County. There are aspects of the Draft Construction General Permit that affect the land use entitlement and permitting process, safe operation and security of our MS4 and flood control facilities, capital improvement projects plans, and grandfathering of municipal projects covered under the existing Construction General Permit. The Draft Construction General Permit also does not provide a protocol that acknowledges the relationship between some NPDES MS4 permits and the General Construction Permit.

##### Land Use Entitlement and Permitting

We are opposed to a Construction General Permit that includes requirements related to hydromodification (New Development and Redevelopment Performance Standards). Such requirements are most appropriately addressed during the local jurisdiction land use entitlement process and the National Environmental Protection Act (NEPA) or California Environmental Quality Act (CEQA) compliance process. It would be infeasible for projects currently in construction to redesign to meet the standards proposed in the Draft Construction General Permit. For projects, which are not yet in active construction, but have completed design and/or have completed environmental review processes (e.g., NEPA, CEQA assessments and local planning approvals), redesign would be prohibitively costly and likely to jeopardize existing land use entitlement or NEPA/CEQA compliance approvals resulting in economic harm to project owners. Lastly, the State Board and the Regional Boards already

Ms. Jeanine Townsend  
State Water Resources Control Board  
Re: Comment Letter – March 2008 Draft  
Construction General Permit

- 4 -

June 11, 2008

have the authority to regulate hydromodification through Clean Water Act Section 401 Water Quality Certifications or through Waste Discharge Requirements. Duplicative regulation of hydromodification is not necessary.

*Safe Operation and Security of MS4s and Flood Control Facilities*

We are opposed to construction site stormwater dischargers conducting receiving water monitoring. Access and safety issues are a significant factor in receiving water sampling. In most cases the receiving water will not be on the discharger's property. Access to the receiving water may be limited (or not possible) where access is via other private property or on controlled public land (e.g., flood control channels). More importantly, many receiving waters in Riverside County and elsewhere in California have been engineered, have restricted or prohibited access, and access is actively discouraged during wet weather due to safety concerns.

*Capital Improvement Project Plan and Definition of Routine Maintenance*

We are opposed to a definition of projects requiring coverage incorporating a reference to projects included in a municipal Capital Improvement Project Plan. The Fact Sheet (page 21 of 63) states, "Where clearing, grading, or excavating of underlying soil takes place, 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 suggests that the intent of State Board staff is to make projects of any size and nature subject to the Construction General Permit if the projects are part of a municipality's Capital Improvement Project Plan. Capital Improvement Project Plans are typically used for long range budgetary purposes and identify projects that may or may not be funded in the future or that may be authorized and funded in a different sequence than originally contemplated. A municipality's Capital Improvement Project Plan is not to be construed as a "common plan of development."

*Grandfathering of Municipal Projects Covered Under the Existing Construction General Permit*

We strongly believe that municipal capital improvement projects with coverage under the existing Construction General Permit be allowed to complete construction without meeting the new requirements of the next permit. Many municipal capital improvement projects have multiple funding sources (local, state, and/or federal) that are limited. A municipality's ability to find additional funding is severely limited, if not impossible, to support preparation of different compliance documents, expanded compliance activities, including monitoring, and the utilization of qualified professionals (as defined by the Draft Construction General Permit). In some cases, the change in the scope of work being contracted may be significant enough to result in a municipality having to stop work and re-bid portions of the capital improvement project mid-project.

*NPDES MS4 Permits and the General Construction Permit*

Section VI.2 of the Draft Construction General Permit states, "All dischargers requiring coverage under this General Permit shall electronically file their PRDs and submit payment of annual fees,..." Currently, at least three Phase I MS4 permits and the Caltrans Statewide

Stormwater Permit contain provisions that 1) authorize the discharge of stormwater runoff from the MS4 permittee's construction sites, 2) require compliance with the Stormwater Pollution Prevention Plan (SWPPP) and monitoring program elements of latest version of the Construction General Permit, 3) require notification to the appropriate Regional Board for each project of 1 acre or more, and (4) the fee is waived. The Construction General Permit should be supplemented to provide that Project Registration Documents can be filed with the appropriate Regional Board where a Phase I MS4 permit or the Caltrans Statewide Stormwater Permit authorizes the discharge of stormwater runoff from the permittee's construction sites.

Prior to issuing building/grading permits most municipalities rely upon the applicant demonstrating coverage under the Construction General Permit by providing the Waste Discharge Identification (WDID) number issued by the State Board upon receipt of the Notice of Intent (NOI) and the appropriate fee. This verification of coverage under the Construction General Permit prior to issuance of a building/grading permit is a requirement of most (if not all) NPDES MS4 permits. Section VI.2.a of the Draft Construction General Permit states that permit coverage shall not commence until the PRDs are accepted and the permit fee is received by the State Board. In addition, Section XII.1 of the Draft Construction General Permit states that the Regional Water Board staff may review PRDs and reject or accept permit coverage, and Section XII.2 further states that based upon public comments and Regional Board review, dischargers may be requested to revise their SWPPP and/or Construction Site Monitoring Program. At what point in the process will a WDID number be issued? If municipalities rely on the WDID number as demonstration of coverage, how will they be notified if the Regional Board subsequently rejects coverage?

**V. Questions Posed by State Board Member Wolff**

*Question #1. The permit attempts to balance the need for simplicity and transparency with the need to sensitively address widely different physical conditions across sites. In what parts of the draft permit do you think complexity is most and least valuable?*

Comment: Complexity is not valuable in a General Permit. Given that the Draft Construction General Permit would apply to construction sites of 1 acre or more, the greater the complexity in the permit and its attachments, the more likely there will be non-compliance through sheer misunderstanding. The complexity of Attachments A (Risk Determination Worksheet), C (Turbidity Numeric Action Level Spreadsheet) and F (New and Redevelopment Performance Standard Spreadsheet) is particularly disconcerting given the information and technical sophistication needed to correctly complete the worksheets and the lack of a robust and comprehensive outreach plan for State Board to educate for correct use.

*Question #2. Our scientific understanding of when and where a management practice is best is limited. Self monitoring for compliance will not necessarily increase our understanding due to variations between practitioners and for other reasons. Are you interested in creating a scientifically valid database on management practice performance via rigorous third party 'random' monitoring in lieu of self-monitoring and at least partially paid for by permittees?*

Ms. Jeanine Townsend  
State Water Resources Control Board  
Re: Comment Letter – March 2008 Draft  
Construction General Permit

- 6 -

June 11, 2008

Comment: We cannot emphasize strongly enough the importance of, and our support for, a collaborative approach between the State Board, Regional Boards, the construction stormwater dischargers and other stakeholders in developing a cost-effective monitoring program and statistically valid data set for management practice performance and receiving water quality. However, prior to agreeing to fund or partially fund such an endeavor, dischargers would need to understand the questions to be addressed by such studies, have an idea of the scope of the studies, and an estimate of the level of funding necessary and over what time period.

*Question #3. Ignoring the numbers and how they are calculated, do you think that the tiered compliance structure of the permit is a desirable or undesirable feature? By tiered structure we mean action levels 'backstopped' by higher numeric effluent limits that are intended to simplify enforcement against egregious violations.*

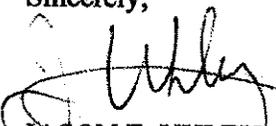
Comment: We do not support numeric effluent limits for the reasons provided by the Blue Ribbon Panel in their report on *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities* (Currier et al., 2006) and reiterated in CASQA's comment letter on the March 2008 Draft Construction General Permit.

### Conclusion

In revising the Draft Construction General Permit, it is important to consider that local capital improvement projects are implemented by and for the benefit of the citizens of California. The purpose of many local capital improvement projects is to improve the health, safety and well-being of Californians. Similarly, private development projects provide for housing and employment, and support other fundamental needs of Californians. To the extent that additional regulatory requirements delay and/or increase the cost of delivering capital improvement and private development projects, the citizens of California will be impacted. The anticipated impacts that would result from the Draft General Permit are significant. Therefore, the benefits of imposing the additional regulatory requirements on public and private construction projects must be carefully balanced against the adverse impacts on Californians.

Thank you for the opportunity to comment on the March 2008 Draft Construction General Permit. We appreciate your consideration of our comments and look forward to participating in the stakeholder process that we believe will be invaluable to resolving the issues that we have raised in our letter, as well as those identified by CASQA. If you have any questions regarding these comments, please contact me at 951.955.1273.

Sincerely,

  
JASON E. UHLEY  
Senior Civil Engineer

JEU:TT:cw