

# Enforcement of the New Construction Permit

## Statewide Construction General Permit Overview Workshop

**Pete Peuron**

**San Diego Regional Water Quality  
Control Board**

**April 8, 2010**



# Overview

1. Regional Board Enforcement Process
2. Construction Site Enforcement Under the Current (Old) Permit
3. Construction Site Enforcement Under the New Permit




# Enforcement of the Water Code by Regional Boards

1. Authority is pursuant to the California Water Code (Porter-Cologne Act)
2. High-level enforcement actions must be approved by sitting members of the Regional Board, appointed by the Governor
3. Enforcement actions, including monetary penalties, can be challenged during hearings before the board members



# Common Enforcement Tools Used by Regional Board Staff

1. Inspection Reports/Notices of Violation/Staff Enforcement Letters/Verbal Notification – Provide notification of violations
  2. 13267 Letters – Directives to provide information
  3. Cleanup and Abatement Orders - Directives to perform site cleanup
  4. Administrative Civil Liabilities - Monetary penalties
- 

# Potential ACL Penalties (WC 13385)

1. Up to \$10,000 per violation and per day for each day on which a violation occurs
2. For discharges that are not cleaned up and which exceed 1,000 gallons – an additional \$10/gallon can be assessed for each gallon that exceeds 1,000 gallons
3. A Mandatory Minimum Penalty of \$3,000 will be assessed when there are 4 effluent limitation violations in a 6-month period



# Monetary Assessments in ACLs

- Goals:
  - Fair and Consistent Liability Amounts
  - Fully eliminate any economic or competitive advantage obtained from noncompliance
  - Relationship to:
    - The gravity of the violation
    - The harm to beneficial uses
    - Integrity of the regulatory programs
  - Deter future violations, both for the violator and for the discharger community



# Some Likely Differences in How the Old & New Permits Will Be Enforced

- Under the old permit enforcement was driven almost strictly by observations in the field (inspections)
- Submittals required by new permit can result in review & enforcement action
  - Permit Required Documents (PRDs)
  - Electronic exceedance/violation reports
  - Annual reports
- New permit has new BMP & inspection requirements
  - Weekly inspection checklists
  - Additional information on pre- & post-rain event inspections
  - Comprehensive Site Monitoring Plans
  - Prescriptive minimum BMPs

\* Except for sites already enrolled by 7/1/10

# Enforcement Under the Old Permit





# Typical Violations Found During Inspections (Current Permit)

1. Missing BMPs
    - A. No Erosion Controls
    - B. No Sediment Controls
    - C. Failure to address run-on
  2. Inadequate or Improperly Installed BMPs
    - A. Poor Stabilization
    - B. Poor Linear Sediment Controls
    - C. Poor Inlet Protection
  3. Improper Material Storage
  4. Inadequate Pre- & Post Rain Event Inspections
  5. Discharges of Sediment
- 

# No Erosion Controls (& Discharge of Sediment)



# No Channel Bed or Bank Stabilization



# No Erosion or Sediment Controls on an Exterior Slope



# No Inlet Protection (& Discharge of Sediment)



# No Run-On Controls



# Inadequate BFM/Hydroseed Application



# Poor Staking In of Fiber Rolls





# Fiber Roll Not Trenched In



# Hill is Too Steep for Silt Fences



# Silt Fence Failing as Inlet Protection



# Lime Exposed to a Storm



# Erroneous Information on Inspection Forms

**SECTION 2** **REVIEW OF BMP'S**

Yes	No	N/A	
		X	Are BMP's installed properly and in accordance with the SWPPP?
X			Are BMP's in good condition and maintained in functional order?
X			Does the SWPPP (including wall map exhibit) accurately reflect current site conditions?

If any boxes in this section have been marked No, Describe in writing corrective actions that will or have now been taken in order to provide for an affirmative response to each review



# Enforcement Under the New Construction Permit



# Summary of New Requirements

1. Document Submittal Requirements
  - a. Permit Required Documents (PRDs)
    - 1) SWPPP
    - 2) Risk assessment
  - b. Monitoring reports
  - c. Annual reports
2. New On-Site Requirements
  - a. Additional self-inspection criteria
  - b. Construction Site Monitoring Program
  - c. Minimum BMP requirements



# Enforcement Issues Related to Requirements for Document Submittal

## Permit Required Documents (PRDs)

### Review of SWPPPs, risk determinations & site maps

- Probably always done prior to an inspection
- May do some reviews in order to:
  - Prioritize inspections
  - Assess compliance with PRD submittal requirements





# PRDs for “Grandfathered” Sites

1. PRDs must be submitted by 7/1/10
2. All PRDs required except the risk determination
3. SWPPP must meet new permit standards for Risk Level 1 sites



# Elements of the SWPPP to be Updated at “Grandfathered” Sites

- Include a weekly inspection checklist
- Include a Construction Site Monitoring Program with visual monitoring
  - Quarterly monitoring of non-stormwater
  - Additional information in pre- & post rain event inspection reports
  - Protocols for testing for non-visible pollutants
- QSD must have prepared the SWPPP



# Potential Violations Related to PRDs

1. Failure to submit SWPPP or risk determination or site map
2. Inadequate SWPPP or risk determination
3. SWPPP or risk determination not prepared by a QSD
4. Intentional false representation in a SWPPP or risk determination



# Enforcement Issues Related to Requirements for Document Submittal

## Monitoring Reports

1. NAL Exceedance Reports (RL 2 & 3)
  - A. Violation if not submitted within 10 days of storm event with the exceedance
  - B. Violation if appropriate corrective actions not taken (BMP upgrade(s) must be included)



# Enforcement Issues Related to Requirements for Document Submittal

## Monitoring Reports

2. Effluent monitoring results (all results regardless of whether there were exceedances) for Risk Level 3 sites & ATS must be submitted within 5 days of the conclusion of the storm event.



# Enforcement Issues Related to Requirements for Document Submittal

## Monitoring Reports

3. NEL Exceedance Reports (RL 3 & ATS only)
  - A. Violation if not received within 24 hours of identification of the exceedance
  - B. NEL exceedance is a violation
  - C. Violation if appropriate corrective actions have not been taken



# Additional NAL & NEL Exceedance Report Requirements

4. Other information required includes:
  - A) QA/QC data
  - B) Date, place & time of sampling
  - C) Other measurements including amount of rainfall during the storm event



# Enforcement Issues Related to Requirements for Document Submittal

## Annual Reports Must Include:

- Monitoring data/records
  - Lab data
  - Visual monitoring records
- Corrective actions taken & not taken
- Permit violations
- Who is responsible for permit compliance
- Documentation of training of personnel implementing the SWPPP, BMPs etc.
- Annual certification that the site is in compliance with the permit is required





# Enforcement Issues Related to Requirements for Document Submittal

## Potential Annual Report Enforcement Issues

1. May not be too difficult to certify compliance since report is due in September
2. Most common problem is likely to be failure to submit an annual report
3. These reports are likely to be a basis for prioritizing inspections



# Inspection-Related Enforcement

## Potential SWPPP & Records Review Issues

1. Documents that should be available on site
  - A. SWPPP - updated for current conditions
  - B. Construction Site Monitoring Plan (CSMP)
  - C. Weekly & extended rain event inspection checklists
  - D. Pre- & post-rain event reports
  - E. Quarterly non-stormwater monitoring records
  - F. Rain Event Action Plans (RL 2 and 3 only)



# Inspection-Related SWPPP Considerations

1. Prepared by QSD?
2. Active & inactive\* areas identified?
3. Appropriate BMPs specified for inactive areas and active areas?
4. Monitoring records included?

\* Inactive area – Area that has been disturbed & will not be re-disturbed for 14 days.




# Construction Site Monitoring Program

1. Adequate description of protocols?
2. Correct identification of risk-based monitoring requirements?
3. Sampling points identified?
4. Are NAL & NEL limitations identified?
5. Records of NAL & NEL exceedances included?
6. If there are NEL exceedances (RL 3):
  - A. Is there testing for Suspended Solids Concentration?
  - B. Is receiving water monitoring taking place?



# Weekly Inspections & Visual Monitoring

1. Are weekly checklists filled out correctly?
  2. Have pre- & post-rain event observations been done for all qualifying rain events?
  3. Do pre- & post-rain event inspections include observations of stored water?
  4. Have pre- & post- rain event observations been made at all drainage areas?
  5. Are quarterly non-stormwater observations included (for each drainage area)?
  6. Were inspections performed by QSP or QSP supervised personnel?
- 

# Potential Rain Event Action Plan (REAP) Concerns (RL 2 & 3)

1. Did a QSP prepare the REAP?
2. Does the REAP (at a minimum) address all active areas?
3. Has a REAP been prepared each time there has been a 50% chance of rain?
4. Do REAPs include criteria specific to each stage of construction?



# Inspection-Related Enforcement

## New BMP Requirements (all risk levels)

1. Has **effective soil cover** been provided for inactive areas\*, all finished slopes, open space, utility backfill, and completed lots?

\* Areas of construction activity that have been disturbed and are not scheduled to be re-disturbed for at least 14 days.



# Inspection-Related Enforcement

## New BMP Requirements (RL 2 & 3 only)

2. Do linear controls meet this spacing criteria?

Slope Percentage	Sheet Flow Length Less Than
0 – 25%	20 feet
25 – 50%	15 feet
Over 50%	10 feet



# Inspection-Related Enforcement

## New BMP Requirements (all risk levels)

### 3. Active Treatment Systems requirements

- A. Was an ATS plan submitted 14 days prior to implementation of the ATS?
- B. Does sediment basin meet the CASQA standards?
- C. Is appropriate monitoring (including toxicity monitoring) taking place?
- D. Are appropriate records available (including monitoring results & visual observation log)?



# Discharge & Receiving Water Violations

1. Will continue to note discharge violations based on:
  - A. Observation of turbid water entering drains
  - B. Residual sediment at inlets (overtopping of gravel bags, etc.)
2. Receiving water violations may be based on observations of turbidity plumes in receiving water
3. Monitoring requirements of the new permit provide additional lines of evidence



# Potential Discharge Violations May be Based on:

1. Reported NEL exceedences
  - A. At discharge locations, RL 3 only (500 NTUs)
  - B. From ATS systems (all risk levels)
    - 1) 10 NTUs average or
    - 2) 20 NTUs for a single sample
2. Exceedance of receiving water limitations
  - A. For RL 3 sites with prior NEL violations
  - B. Based on requirement for sampling upgradient and downgradient (of site impacts) in the nearest receiving water
  - C. Basin Plan Water Quality Objective is 20 NTUs



# Summary

1. Observations of problems with BMPs, SWPPPs, self-inspections and observed discharges are still key enforcement factors.
2. Additional enforcement issues are likely to result from requirements for submittals such as PRDs, NEL/NAL reports & annual reports.
3. Inspections have greater potential to yield violations based on requirements for monitoring, more rigorous self-inspections and the addition of prescriptive BMP requirements in the new permit.



# San Diego Regional Board Contacts for Construction Stormwater

Northern Watershed Unit – Tony Felix

[Tfelix@waterboards.ca.gov](mailto:Tfelix@waterboards.ca.gov) (858) 636-3134

Central Watershed Unit – Pete Peuron

[Ppeuron@waterboards.ca.gov](mailto:Ppeuron@waterboards.ca.gov) (858) 637-7137

Southern Watershed Unit – Dat Quach

[Dquach@waterboards.ca.gov](mailto:Dquach@waterboards.ca.gov) (858) 467-2978

