



February 18, 2016

Via E-Mail: Borre@biasandiego.org

Mr. Borre Winckel
President and CEO
Building Industry Association of San Diego County
9201 Spectrum Center Blvd, Suite 110
San Diego, CA 92123

Dear Mr. Winkel,

As an associate member of the San Diego BIA, Brash Industries (BI) is occasionally sought to render a professional opinion on regulatory matters. In some cases, the more challenging ones in particular, regulations either lack precision, or specificity to clearly define the anticipated role of the regulated party. In matters in which this occurs, a qualified individual frequently interprets regulation on the basis of Best Professional Judgment or BPJ. A qualified individual would most likely be someone not only knowledgeable about the Permit and field practices but also understands the reasoning associated with the integration of these two elements. Examples of a qualified individual would include a P.E. familiar with storm water issues, a Construction General Permit Trainer of Record (CGP ToR), or a Qualified SWPPP Developer (QSD). BPJ is traditionally a composite of many elements, with conclusions that are extrapolated from varying and differing experiences that have previously been applied to a unique set of circumstances. The subject in which you are seeking clarification deals with the application of the Storm Water Permit (2009-0009 DWQ), to areas possibly requiring stabilization while under construction, inclusive of roads and stock piles.

If rain is anticipated, the permit is clear. Stock piles and graded areas require stabilization. When rain is not anticipated, or operating under not storm conditions, the permit requires exposed soil surfaces, which includes stock piles and roads, that are not being actively disturbed during any 14 day period, to be stabilized. From this perspective it can be concluded that land disturbances, when properly managed, are in compliance with the permit. Where the permit lacks precision, is in the definition of an active stock pile/waste pile (height, width, proximity to a discharge point, etc.) nor does it address in specific terms what BMPs are to be applied to access roads which are also graded areas with exposed soil. To add to compliance confusion the Supreme Court has held that storm water discharges from immediate access roads for use in logging operations are not considered to be regulated by an NPDES permit.

In evaluating the compliance of a site to the Permit a large number of variables are to be considered including the Permit, Risk Level, SWPPP guidance, and the quality of the Storm Water being discharged. Also the type of soil, proximity to a water body, water body restrictions, the water shed in which the site is located, wind characteristics, municipal inspector requirements, phase of construction , soil type, etc.

In addition to these considerations it frequently occurs that compliance guidance is provide by municipal inspectors. Some municipal inspectors as well as regional water board inspectors provide guidance or suggestions on how to best manage a construction site. And more often than not there are differing perspectives proffered by the different inspectors and different agency representatives.

The purpose of relating the foregoing situations are to note that these actions often lead to construction site superintendents becoming confused as to the most effective method of Permit compliance. This confusion tends to have the site superintendent contact a storm water professional. The professional consultant then resolves the unclear area of the Permit's application by utilizing BPJ.

Mr. Winkel, I apologize for not being able to provide you with a single specific answer to your query regarding the specific BMPs utilized for areas under construction with exposed soil as, in

many cases, the appropriate compliance strategy could well be based upon the vague and somewhat subjective term of BPJ.

Sincerely,

A handwritten signature in black ink, reading "M. H. Sachse". The signature is written in a cursive, flowing style.

Marvin H Sachse

CC: Mike McSweeney: MMcSweeney@biasandiego.org
S. Wayne Rosenbaum, Esq.: SWR@Envirolawyer.com