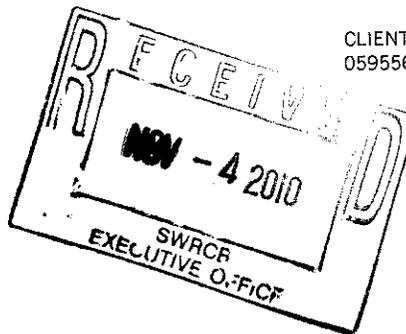


October 29, 2010

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CLIENT/MATTER NUMBER
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Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: Comment Letter - GCP Reopener

Dear Ms. Townsend:

Thank you for the opportunity to comment on those limited portions of the General Permit for Discharges of Storm Water Associated with Construction and Land Disturbance Activities ("General Construction Permit" or "GCP") that the State Water Resources Control Board ("State Board") will consider modifying. I write on behalf of the Building Industry Association of San Diego ("BIASD").

BIASD is a non-profit trade association that represents one of the cornerstone industries of the San Diego economy. With over 700 member firms and their employees BIASD members generate over \$1 billion dollars each year in the local economy. BIASD represents its members by advancing positive legislative and regulatory solutions built around the private sector expertise of its members. While BIASD believes that there are other substantive issues in GCP which require reconsideration by the State Board we limit our comments today to the definitions of Legally Responsible Party and Approved Signatory.

LEGALLY RESPONSIBLE PERSON

We are concerned that the expansion of the Legally Responsible Person ("LRP") to any entity holding any interest in the fee will result in confusion both for the regulated community and the regulators who are responsible for enforcement of the GCP. In many instances a fee simple parcel will have overlying easements, leases, mortgages, irrevocable offers of dedication or other encumbrances on the title. If any entity who holds any interest in the land can be the LRP, enforcement will be difficult, if not impossible. For example, what is to prevent a fee simple property owner from creating a single purpose LLC whose sole purpose is to act as the LRP and then grant the LLC a nonexclusive license to enter and use the land? Alternatively, what would prevent a public agency from granting a contractor a temporary interest in the land during the construction period such that the contractor could then be designated as the LRP. The LRP must remain the entity that has ultimate control over the property.

We suggest that the role of LRP be limited exclusively to the fee simple property owner, or an equivalent interest such as a co-tenancy, joint tenancy or a ground lease greater than thirty

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years. If the owner grants some interest in the fee to a third party, then the owner and the third party are always free to enter into contractual terms which distribute the responsibility for compliance with the GCP and any monetary liabilities associated with an infraction thereof. However, the fee simple property owner would have the ultimate responsibility for compliance with the GCP.

APPROVED SIGNATORY

While this definition has been significantly improved, we believe that some additional clarifications are required concerning both who may be an Approved Signatory ("AS") for other classes of ownership and how an AS may be appointed.

Appointment of the AS

The proposed language allows for municipality, State, Federal, or other public agencies to delegate the role of AS to "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)". However, there is no provision stipulating how such a public employee will be appointed. This could lead to confusion as to whether the individual who is acting as the AS is really doing so with the knowledge and consent of the agency's board of directors. We suggest that language be added that the delegation of authority has been assigned to the manager in accordance with procedures ratified by the agency's governing board.

Classes of Ownership

As discussed above, we believe that it is critical that the GCP limit the role of the LRP to entities holding a fee simple interest, or equivalent interest in the land. However, we note that there are many members of this class for which the authority to appoint an AS has not been defined.

For example, many private developers hold land in single purpose Limited Liability Companies. However, the GCP fails to address who may be the AS in those situations. We request that the definition of AS be expanded to cover ownership classes:

1. Limited Liability Companies,
2. Limited Partnerships,
3. Trusts, both public and private,
4. Estates,
5. Joint tenancies,

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6. Co-tenancies, and
7. Leaseholds longer than thirty years.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "S. Wayne Rosenbaum". The signature is written in a cursive, flowing style.

S. Wayne Rosenbaum

cc: Steven Maciej
BIASD Water Committee