

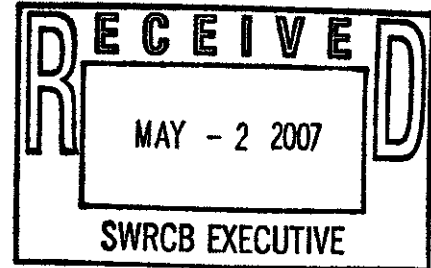


DEPARTMENT OF THE AIR FORCE
AIR FORCE CENTER FOR ENVIRONMENTAL EXCELLENCE
REGIONAL ENVIRONMENTAL OFFICE, WESTERN REGION
SAN FRANCISCO, CALIFORNIA

30 Apr 07

US Air Force Western Regional Environmental Office*
50 Fremont St Ste 2450
San Francisco CA 94105

Ms. Song Her, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: Comments on the Preliminary Draft NPDES General Permit for Discharges of Storm Water Associated with Construction Activities (Construction General Permit)

Dear Ms. Her

Our office appreciates the opportunity to provide comments on the preliminary draft of the Construction General Permit. On behalf of the US Air Force installations in California, I am forwarding our comments in the attached enclosure. Should you have any questions regarding these comments, please contact me at (415) 977-8843.

Sincerely

A handwritten signature in cursive script that reads "Baha Y. Zarah".

BAHA Y. ZARAH
Regional Environmental Officer - California

Enclosure: Comments on California State Water Resources Control Board Order No. 2007-XX-DWQ NPDES General Permit No. CAR000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity

cc:

Commander, Navy Region SW (Mike Huber)
US Army Western Regional Environmental Office (Mark Mahoney / Park Haney)
US Marine Corps Installations West (Col. Anthony Wendel / Patrick Christman)
US Coast Guard (Jack Hug / Lisa Houlihan)

**US Air Force Western Regional Environmental Office
Comments on California State Water Resources Control Board Order No. 2007-XX-DWQ
NPDES General Permit No. CAR000002, Waste Discharge Requirements for Discharges of
Storm Water Runoff Associated with Construction Activity**

General Comments

1. This Construction General Permit is considerably different and much more complicated than the previous permit. There are many new requirements, including:

- the Action Level Exceedance Evaluation Report or ALEER (Part I.18)
- Soil analysis (Part I.19)
- Rain Event Action Plan or REAP (Part I.20)
- Pre-project recharge requirements (Part I.30 and Attachment G)

Our concern is that these new requirements are such a huge departure from the previous permit's requirements that Permittees will not be able to implement them in the field. This Construction General Permit requires considerably more resources and manpower. There are also considerably more technical requirements involved. Together, we believe these two factors will result in confusion and incorrect implementation of the requirements, which will not result in actual improvements in water quality. We strongly recommend a simpler approach, one that is not extremely different from the previous permit.

2. We feel the Construction General Permit's increased monitoring requirement is largely driven by the State Water Board's need for water quality data (see Fact Sheet Part III.B.4.c page 34). While we strongly support and require the use of adequate monitoring data as the basis for development of permit limits, we believe obtaining that water quality data is a responsibility of the State under the authority of the California Water Code §§ 3160-13176, otherwise known as the *Surface Water Ambient Monitoring Program*, funded in part through an *Ambient Water Monitoring Surcharge (AWMS)*, 23 CCR 2200. We do not believe it is the intention of state law to place this burden on Permittees, and the Construction General Permit should be revised accordingly.

3. In the past with other statewide permits, it has been our experience that the State Water Board does not directly respond to the comments submitted by the public. In an effort to maintain faith in the public review process, we strongly recommend the State Water Board provide a response to each and every comment it receives on the Construction General Permit, or respond to those who submitted comments addressing their concerns directly. This will serve to reassure interested public parties and potential Permittees that their concerns were indeed considered by the State.

Specific Comments

1. Revise Part I.17 (page 5) to consider how representative the receiving water monitoring of the Permittee's actual discharge in order to determine the value of performing it.

Comment: Part I.17 states that receiving water monitoring for pH and turbidity are required for all sites meeting high risk criteria and for any site where consecutive effluent samples exceed any one of the ALs at a single effluent sampling location. This requirement is problematic in situations where the receiving water receives discharges from other dischargers (including other

construction sites) such that the receiving water monitoring may not be representative of the Permittee's (under this General Permit) actual discharge. If the receiving water monitoring data is not representative of the Permittee's actual discharge, it cannot be used to determine compliance with this Construction General Permit, and thus, the value of the receiving water monitoring as it relates to the Permittee's site is very limited.

Recommendation: Receiving water monitoring is beneficial only if can be linked to the actual discharge of the Permittee's construction site. We recommend that this Part be revised to indicate that receiving water monitoring should be conducted when the Regional Board and the Permittee have determined the monitoring would be representative of the Permittee's actual discharge.

2. Revise Part I.18 (page 5) to re-consider when an ALEER should be submitted.

Comment: Part I.18 requires the submittal of an Action Level Exceedance Evaluation Report (ALEER) when discharges of storm water or non-storm water result in two consecutive AL exceedances for any *one* parameter (pH, turbidity, or TPH) at a single effluent sampling location. This requirement does not give the Permittee adequate data to correctly identify the water quality concerns at the construction site. It also does not allow the BMP iterative approach an opportunity to work and show its effectiveness. Consider a situation in which the AL for pH (but no other parameter) is exceeded. The Permittee responds by implementing a new BMP to eliminate the pH exceedance. At the next sampling event, the AL for turbidity (but no other parameter) is exceeded. The next logical step would be to wait for additional sampling to understand the true cause of the exceedances. But under this Part, the Permittee would already be required to submit an ALEER at this point, even though he/she may not completely know the cause(s) of the exceedances, and even though he/she has appropriately responded to the previous exceedance by implementing BMPs.

Additionally, the statement in this Part contradicts with what is written in Fact Sheet Part III.B.1.e (page 25) which requires reporting to the State Water Board whenever effluent monitoring indicates that storm water discharges or non-storm water discharges have caused or contributed to AL exceedances for the *same* parameter (pH, turbidity, or TPH) in two consecutive storm events.

Recommendation: In order to ensure the Permittee accurately identifies the water quality concern at his/her construction site and that the iterative BMP approach is given an opportunity to work, we suggest that this part be revised to require the submittal of an ALEER when discharges of storm water result in three consecutive AL exceedances of the *same* parameter. Both Part I.18 and Fact Sheet Part III.B.1.e should also be revised to contain the same requirement.

3. Revise Table 1 - Summary of Risk Categories and Required Elements (page 7).

Comment: See Specific Comment #1

Recommendation: We suggest revising Footnotes 4 and 5 to Table 1 to indicate that receiving water monitoring should be performed at medium and high risk sites only if doing so would produce data that would be representative of the Permittee's actual discharge.

4. Delete requirement in Part I.30 (page 8) for Permittees to visually inspect their sites during all storm events.

Comment: Part I.30 requires Permittees to visually inspect their sites before, during, and after all storm events. While Attachment E Part G.1.a (page 65) does not require visual observations during “dangerous conditions such as flooding”, this exclusion should be extended to all inspections during storm events. Inspection *during* a storm event poses a public safety concern especially at construction sites where there is heavy equipment involved.

Recommendation: We recommend deleting the requirement to inspect the construction site *during* all storm events.

5. Clarify Part IV.3 (page 11) regarding the pH levels of storm water and non-storm water discharges.

Comment: Part IV.3 states that the pH of storm water and non-storm water discharges shall at all times be within the ranges of 5.8 – 9.0 pH units. The wording of this part makes it unclear whether storm water discharges and non-storm water discharges should, separately, be within this pH range. There will be situations where a Permittee’s sampling location includes a combination of storm water and non-storm water discharges.

Recommendation: We recommend clarifying this part to read that the pH at a sampling location within the construction site shall fall within the range of 5.8 – 9.0 pH units.

6. Delete references to toxicity in Part IV.4.a - b (page 11).

Comment: Part IV.4.a – b states that for an ATS, acute and chronic toxicity values shall fall within certain limits. This Construction General Permit mentions that sediment, not toxicity, is the primary pollutant at construction sites, yet this part attempts to regulate toxicity.

Recommendation: We suggest deleting these requirements, unless the Regional Board or Permittee have a reasonable basis for suspecting the storm water discharges from the construction site may contribute to toxicity.

7. Revise Action Level for Total Petroleum Hydrocarbons (TPH) in Part V.3 (page 11).

Comment: Part V.3 lists the Action Level of TPH at 15 mg/L. The accompanying Fact Sheet Part III.B.4.iii (page 37) states the TPH-diesel Action Level was selected based on a City of Tacoma publication, which indicated that typical oil water separators should be designed to reduce effluent concentrations to 15 mg/L. We do not agree that this Action Level for TPH is an appropriate one because (1) it is derived based on the assumption that the construction site has an oil water separator through which storm water passes through, and (2) this value does not relate in any way to the water quality of the receiving waterbody the construction site may contribute to.

Recommendation: We strongly recommend that the State Water Board consider a more scientifically-defensible value for the TPH Action Level, other than 15 mg/L.

8. Delete regulation of “public nuisances” in Part VI.1 (page 12).

Comment: Part VI.1 states that storm water and authorized non-storm water discharges shall not contain pollutants in quantities that cause a public nuisance. The term “public nuisance” is vague and not defined in Attachment A. Additionally, for federal facilities, we believe regulation of “public nuisances” is not within the scope of the Federal government’s waiver of sovereign immunity under the Clean Water Act, under which this Construction General Permit is being promulgated.

Recommendation: We suggest that this Part be deleted.

9. Clarify Part VI.3 (page 12) prohibiting discharges that cause foam.

Comment: Part VI.3 prohibits discharges that cause foam; however, foam is not defined in Attachment A. There are many causes of foam and to prohibit discharges that cause it is vague and non-specific.

Recommendation: We suggest clarifying this part to indicate what specific constituents or chemicals in storm water discharges should be limited in order to prevent causing foam at discharge locations. This part should also discuss the relationship, if any, between foam in storm water discharges and water quality protection, so that Permittees understand why foam is being regulated.

10. Delete pH levels listed in Part VI.6 and Part VI.7 (page 12).

Comment: Part VI.6 and Part VI.7 state that storm water and non-storm water discharges from medium and high risk construction projects shall not be more than 0.2 standard units higher or lower than the pH of the receiving water. This part is confusing because the AL for pH was identified earlier in Part V.1 (page 11) as being in the range of 6.5 – 8.5 pH units. Additionally, the basis for limiting the pH units to 0.2 units (versus 1 pH units, for example) higher or lower than the pH of the receiving water seems arbitrary.

Recommendation: We recommend deleting these Parts to avoid confusion with the ALs listed in Part V.1.

11. Revise Part VIII.B (page 15) regarding the requirement for soil analysis.

Comment: Part VIII.B requires the Permittee to conduct particle size analysis of the soil at the construction site. With large construction projects that cover varying soil units, the cost of performing such analysis could be costly and time-consuming. Financial and manpower resources that can go towards implementation of BMPs will consequently be spent towards soil analysis

Recommendation: We recommend that each Regional Board, using NRCS soil maps and other soil studies, identify those areas within their jurisdiction which have soils with more than 10% (by weight) of particles smaller than 0.02 millimeters. Each Regional Board can then inform the Permittees during the construction storm water permitting process. A Permittee who disagrees with their Regional Board's designation can choose to perform the soil analysis themselves.

12. Revise Part IX.A.2 (page 15) to increase the reporting time frame from 48 hours to 5 business days

Comment: Part IX.A.2 requires the Permittee to electronically enter the analytical results of any NEL violation into SWARM within 48 hours of receiving the results. Permittees often handle a multitude of environmental issues for a construction site, and requiring a 48-hour reporting time may be difficult to meet, especially if the SWARM electronic database experiences some technical problems.

Recommendation: We recommend extending this deadline from 48 hours to within 5 business days of receiving the analytical results. This will give the Permittee the adequate time

to coordinate within his/her own organization, understand the analytical results, and input into the SWARM database.

13. Revise Part IX.B (page 16) to increase deadlines from 48 hours to 5 business days

Comment: Part IX.B requires the Permittee to electronically enter the analytical results of any AL violation into SWARM within 48 hours of receiving the results. Permittees often handle a multitude of environmental issues for a construction site, and requiring a 48-hour reporting time may be difficult to meet, especially if the SWARM electronic database experiences some technical problems or the results are received late Friday afternoon.

Recommendation: We recommend extending the deadline from 48 hours to within 5 business days of receiving the analytical results. This will give the Permittee the adequate time to coordinate within his/her own organization, understand the analytical results, and input into the SWARM database.

14. Revise Part IX.B.1 (page 16) to increase the demonstration time frame from 48 hours to 7 business days

Comment: When an AL is exceeded, Part IX.B.1 requires the demonstration (that sources of the pollutants are not related to the construction site) be submitted to the Regional Board within 48 hours from the discovery of the exceedance. 48 hours does not give adequate time to research the cause(s) of the exceedance and consider whether off-site sources could be the problem.

Recommendation: We suggest extending the deadline from 48 hours to 7 business days to give the Permittee enough time to make an adequate demonstration. The 7 day deadline will also be consistent with the SWPPP revision deadline of 7 days described in Part IX.B.2 (page 17).

15. Simplify Part IX.B.2 (page 17) regarding additional on-site activities or SWPPP revision.

Comment: Part IX.B.2 states that no additional on-site activities or SWPPP revisions with respect to sediment control will be required if the turbidity in the release was equal to or less than 1.2 times the turbidity estimated to occur under the actual rainfall conditions at the time of the exceedance, if the site were naturally vegetated, using the method presented in Attachment E, OR if the turbidity in the release was equal to or less than 1.2 times the actual turbidity measured in the receiving water upstream of the storm water discharge from the site. This part is confusing. It does not explain what Permittees should consider as "actual rainfall conditions at the time of the exceedance", nor how the Permittee should determine what the estimated turbidity would be.

Recommendation: We strongly recommend simplifying this section. If there has only been an AL exceedance, a site evaluation should be sufficient. If exceedances for the same AL continue, this Construction General Permit already contains a provision to prepare and submit an ALEER.

16. Clarify the requirement in Part IX.C.4 (page 18) to stabilize all finished slopes as soon as they have been completed.

Comment: Part IX.C.4 requires the discharger to stabilize all finished slopes, open space, utility backfill, and lots as soon as they have been completed. However, it is not clear what the requirement is for stabilization. If stabilization is to mean establishment of vegetation, this may not be feasible during the dry season unless the Permittee utilizes irrigation and/or watering trucks.

Recommendation: We recommend clarifying the term "stabilize" to mean simply actions that ensure sediment run-off does not take place.

17. Revise Part IX.H.1 (page 21) to account for construction site-specific conditions.

Comment: Part IX.H.1 outlines various source control options that the Permittee should comply with if the soils to be exposed contain more than 10% (by weight) particles sizes smaller than 0.02 mm. Because each construction site varies, some of the source control requirements are more appropriate at some sites than others.

Recommendation: We recommend adding some flexibility in this Part by adding the phrase (see underlined text) "...the discharger shall either comply with the following source control requirements that they determine are appropriate for their construction site, or use an ATS:"

18. State whether new development and re-development storm water performance standards in Part IX.K (page 24) apply to all projects.

Comment: Part IX.K outlines new development and re-development storm water performance standards. It is not clear; however, whether these standards apply to all projects, or to only medium or high risk sites.

Recommendation: We recommend that these standards apply only to projects that exceed two acres and which are determined to be medium or high risk sites.

19. Revise Part X.A.1 (page 26) to allow minor SWPPP amendments be made without the certification of a Qualified SWPPP Developer

Comment: Part X.A.1 requires that any amendment to the SWPPP be made by a Qualified SWPPP Developer. For many military bases, this would be difficult to accomplish within the short timelines given in Part IX.B.2 (page 17).

Recommendation: We believe in the value of a Qualified SWPPP Developer in writing and certifying the SWPPP. However, we believe minor revisions do not need to be made by a Qualified SWPPP Developer in order to be effective. We recommend that facility managers be allowed to make minor revisions to the SWPPP without the certification of a Qualified SWPPP Developer, provided the initial SWPPP was written and certified by a Qualified SWPPP.

20. Provide clarification in Part XII.1 (page 28) regarding NOT requirements.

Comment: Part XII.1 states that when construction is completed, the discharger shall file electronically a NOT, a final site map, and photos in accordance with Attachment E. However, Attachment E (page 59) does not include any more specific information about what photos need to be taken when construction is completed.

Recommendation: We recommend either revising Part XII.1 or Attachment E to provide more specific information about what types of photos should be taken upon termination of construction.

21. Add provision in Part XII.1 (page 29) regarding Notice of Termination.

Comment: Part XII.1 outlines the conditions under which a construction project is considered complete.

Recommendation: We strongly recommend adding a new Part XII.1.g to the list of conditions:

“g. Within 30 days upon receipt of the Notice of Termination, the Regional Board shall visit the construction site and make a determination that the construction project is complete. After this 30 day period, the Permittee shall not be required to pay associated permit fees. Additionally, if the Regional Board does not respond to the NOT correspondence with the Permittee within six months, then permit coverage is automatically terminated.”

22. Revise Part XII.2.a (page 29) to provide greater flexibility and practicality in the field

Comment: Part XII.2.a requires the remaining exposed soil (30%) be partially covered by fallen plant litter or standing dead litter. This section also requires nearly 100% coverage after the second growing season. We believe these requirements are much too prescriptive and demand a practice that may not be appropriate for each construction site. Additionally, Permittees are forced to keep permits open (and thus pay the permit fees) through the second growing season.

Recommendation: We recommend that this Part be deleted since the section already requires the discharger to demonstrate final stabilization.

23. Reduce public review period in Part XIII.2 (page 30).

Comment: Part XIII.2 states that the Regional Water Boards shall review comments provided from the public on new permit applications within the 90-day public review period.

Recommendation: We recommend reducing the public review period from 90 days to no more than 30 days in order to facilitate greater coverage under the permit.

24. Define additional terms in Attachment A (page 32).

Comment: A couple of terms are not defined in the glossary which would be helpful to Permittees.

Recommendation: We recommend including definitions of (1) “qualifying rain event” and (2) “inactive areas of construction”.

25. Revise the requirement in Attachment C (page 50) that the owner of the land where the construction activity is occurring is responsible for obtaining a permit.

Comment: Attachment C states that the owner of the land where the construction activity is occurring is responsible for the obtaining a permit. For Air Force installations, much of the construction work is contracted out to state-certified contractors. We simply do not have the manpower to provide oversight to so many construction contractors. Additionally, the Air Force does not have day-to-day operational control of the construction site – this belongs only to the construction contractor. Thus, we rely on the contract to ensure the construction contractor takes responsibility for his/her actions and maintains compliance with all federal, state, and local environmental regulations.

Recommendation: We strongly recommend that the construction contractor be held responsible for obtaining permit coverage (including payment of permit fees) under the Construction General Permit, since they are truly the only ones who have day-to-day operational controls of their actions and employees. The Air Force will assist Regional Boards taking enforcement action against a construction contractor found to be out of compliance.

26. Re-organize Attachment D (starting on page 52) for greater clarity.

Comments: Attachment D should be revised for greater clarity.

Recommendation: We recommend (1) Part 3 (page 53) "Erosion Control" should be renamed "Best Management Practices", and it should include the information currently listed in Part 9.b (page 56). This new Part 3 should also refer to Part IX of the Construction General Permit (page 15) for project implementation requirements; (2) Part 10.d (page 57) is already in Part 9.a (page 56) and so should be deleted since it is a housekeeping issue and not a non-storm water management issue; (3) Parts 10.e, 10.f, 10.g, and 10.h (page 57) belong in Items 9.a (page 56).

27. Revise toxicity monitoring requirements in Attachment E Part E.5.c (page 63) to reflect site-specific requirements.

Comment: Part E.5.c of Attachment E requires toxicity monitoring for any discharger who deploys an ATS. Toxicity monitoring should be required only if the receiving water that receives the storm water discharge is impaired for toxicity. See Specific Comment #6.

Recommendation: We recommend revising this Part so that toxicity monitoring is required only for those construction sites whose discharge really pose a potential for toxicity.

28. Revise Attachment F (page 70) to make it simpler and more understandable to Permittees.

Comments: The Sediment Transport Risk Worksheet is complex.

Recommendation: We strongly recommend including a checklist of some kind at the beginning of Attachment F so that if a site is small and flat with sand or loam soils, it would be considered low risk without having to complete the remainder of the worksheet.