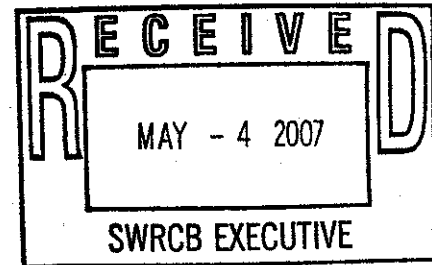


Construction General  
Permit - Stormwater  
Deadline: 5/4/07 5pm

May 4, 2007

Ms. Song Her, Clerk of the Board  
State Water Resources Control Board  
Division of Water Quality  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, California 95814



**Subject: Draft Construction General Permit Comments**

Dear Ms. Her:

Thank you for the opportunity to provide comments on the Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges of Storm Water Associated with Construction Activities (Construction General Permit). As a professional working in the storm water industry for over eight years, I recognize the inherent challenges associated with developing a new NPDES Permit that achieves the primary purpose of protecting water quality while at the same time does not establish regulations that are cost prohibitive or not feasible for implementation by the construction industry. Below are specific comments on the Permit, some of the comments are general in nature while others are specific recommendations for language modifications.

**1. BAT/BCT (General)**

Throughout the Draft Construction General Permit there are many references to the Best Available Technology (BAT) Economically Achievable and Best Conventional Pollutant (BCT) Control Technology performance standards. The BAT standard applies to toxic non-conventional pollutants, while the BCT standard applies to non-toxic conventional pollutants such as Total Suspended Solids (TSS), Biological Oxygen Demand (BOD), fecal coliform, pH, and oil and grease. The Federal Clean Water Act (CWA) requires the cost to the industry to be considered when setting BCT requirement and that costs should not be excessive when compared with the cost required to achieve specific pollutant reduction by sewage treatment plants. However, neither the Fact Sheet or the Construction General Permit includes any analysis or discussion of economics associated with the requirements relating to TSS, pH or oil and grease.

Many of the requirements for controlling sediment as stated in the current version of the Construction General Permit, such as limiting site grading to five acres during the non-rainy season or requiring the implementation of an Active Treatment System (ATS) during the non-rainy season, do not take into account the significant amount cost that the industry will incur. It is recommended that a discussion regarding the costs associated with implementing the requirements related to sediment and turbidity is included in the Fact Sheet and that Section I.2 of the Construction General Permit be modified to indicate which pollutants are considered conventional non-toxic pollutants and are this subject to the BCT criteria and not subjected to the BAT criteria.

## 2. New Development and Re-development Storm Water Performance Standards (General)

Many Phase I and II Municipal NPDES Permits include requirements that address new development and re-development storm water related performance standards. It is not feasible to also include these requirements in the Construction General Permit for the following reasons:

- The Construction General Permit does not have the appropriate legal framework for addressing post-construction storm water controls. The Construction General Permit is based upon the BAT/BCT standard while post construction controls are typically required to comply with the maximum extent practicable (MEP) standard. MEP applies to discharges from municipal separate storm sewer systems, while BAT/BCT applies to industrial and construction site discharges. The BAT/BCT has been numerically defined for sewage treatment plants but has not been defined for post-construction treatment or hydromodification controls. Therefore, there is not sufficient data to determine compliance with the new development/re-development requirements in the Construction General Permit which is based upon the BAT/BCT standard.
- It is not feasible to obtain Regional Water Board approval for all structural controls used to comply with the New Development and Re-development Storm Water Performance Standards. The impacts on water quality related to a specific project are best defined during site planning and project design, not during construction. New development and re-development projects currently go through an arduous design approval process that is administered by the local governing agency. These local agencies have legal jurisdictional control over site design and plan approval and many have established storm water treatment and/or runoff reduction design criterion and/or runoff reduction credit systems that may be different than those stated in the Construction General Permit. It is not feasible to require developers to potentially comply with two different standards that are addressing the same issue. New development and re-development standards should not be included in the Construction General Permit, they should remain addressed in the Municipal NPDES Permits.
- The Regional Water Board takes part in the environmental review process through CEQA and has the opportunity to comment on new projects. The Regional Water Boards should utilize this existing process to provide input on treatment controls and/or runoff reduction controls and not create another layer of redundant regulations.
- The Construction General Permit states that compliance with the new development/re-development standards will be determined upon the filing of the Notice of Termination (NOT). Waiting until the filing of the NOT to determine compliance is not logical because if compliance was not been achieved it would be

too costly to significantly modify site design after construction is complete to achieve compliance.

- The new development/re-development requirements do not take into account that many properties are sold to a new owner prior to all construction activities being complete. If a new owner is buying finished lots and is not the constructing entity of the storm drainage system, it would not be feasible to hold the new owner accountable for compliance with the new development/re-development requirements.

### **3. Sampling Requirements (TPH and Toxicity) (IV.4)**

The existing Construction General Permit requires sampling for sediment and turbidity if a water body has been identified on the 303(d) list for sediment and turbidity and also requires sampling for non-visible pollutants if there is reason to believe that a non-visible pollutant came into contact with storm water runoff. The existing permit does not require sampling for visible pollutants such as TPH because sources of TPH are easily identified visually. It is not economically feasible or necessary to require TPH sampling. TPH testing requires laboratory analysis which is costly and time consuming. By the time TPH analytical results came back from the laboratory it would be too late to address any significant issues resulting in the discharge of TPH. TPH is not a major pollutant of concern during grading activities because it can be identified, addressed and minimized through site monitoring and best management practice implementation. For example, it is easy to determine if equipment is leaking or if containers of fluids containing TPH are left out or have spilled. Therefore it does not seem reasonable to require sampling for TPH when there are less costly ways to minimize the potential for TPH to be discharged.

Requiring sampling for toxicity is also not necessary for the operation of active treatment systems (ATSS). Operators of ATSS already sample for residual polymer on a daily basis. If there is no residual polymer detected in the discharge from an ATS it would be reasonable to assume that toxicity would not be problematic. The logistics (sample size requirements, and handling and storage procedures) required for acute toxicity testing also make this requirement not feasible. Requiring toxicity testing is not economically feasible or necessary for the protection of water quality. Instead of requiring toxicity testing we recommend the Water Board develop a list of approved polymers and require testing for residual chemical additive.

### **4. Rain Event Action Plan (XI.)**

Complying with the timing requirements of the Rain Event Action Plan (REAP) will be difficult because the National Weather Service Forecast Office website does not consistently give the probability of precipitation percentage 48 hours in advance. Recommend also identifying an alternate web site that does consistently provide the probability of precipitation.

#### **5. NTU Maximum for ATS (IV.4.d.)**

The 10 NTU effluent limitation for ATSs can be achieved during most circumstances but not during all. During back-to-back rain events the containment basins are disturbed by rainfall and inflow and it is often difficult to get the initial discharge below 50 NTUs without recirculation the basin. Within an hour of operation the turbidity level typically drops to the 1 to 15 NTU range. Establishing a 10 NTU maximum will force recirculation of the basin and which will increase the risk of ATS malfunction or overflow because the ATS operator will have to retain more water while water is still coming in to the system and rain is still falling. Therefore it is recommended that the effluent limitation for an ATS should be based on the water quality standard of the receiving water.

#### **6. Source Control Options (VIII.H)**

It is not economically feasible to limit active construction areas to five acres at any time if an ATS is not implemented. The costs associated with grading in five-acre increments or implementing an ATS year-round does not result in a reasonable relationship between the cost to implement requirements and the perceived benefit to water quality. ATS rental can cost tens of thousands of dollars on a monthly basis and grading in small increments is not only costly but would also significantly prolong construction activities which will result in a greater risk to water quality.

Requirement VIII.H.e. should be clarified. As stated, it may be misinterpreted to imply that no construction activities can be conducted adjacent to a water body. Often times projects requires the construction of bridges or other facilities that encroach upon water bodies.

Requirement VIII.H.f should be clarified. It is not feasible to limit foot traffic to stabilized entrances nor is it necessary. This requirement should be performance based and not prescriptive in nature. Recommend that the requirement be modified as following: tracking of sediment from foot or vehicle traffic shall not result in a sediment laden discharges to the storm drain system, off of the site or into a water body.

#### **7. Good Housekeeping (VIII.I)**

The requirements in this section should be clarified. The way they are currently stated they do not allow for construction work to be conducted. How do you access a stockpile if it is required to be covered at all times? It is also not necessary to require berms around porta-potties. Instead of requiring berms, it is recommended that the requirement be modified to require porta-potties to be secured in a manner that will prevent them from tipping over. In addition requiring all waste disposal containers to be covered is also not feasible because many of the suppliers of waste disposal containers do not have containers that have covers.

Requirement VIII.I.4.b should be clarified. As it reads now it may be interpreted that even items such as sod cannot be placed within 2 days of a forecasted rain event.

~~Ms. Song Her~~

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**8. Runon and Runoff Controls (IX.D.1.)**

This requirement needs to be clarified. As stated, it appears that the Construction General Permit will require private property owners to be responsible for the quality of offsite storm water runoff that may enter their site. It is unreasonable to burden a property owner with policing other discharges when they have no legal authority to do so.

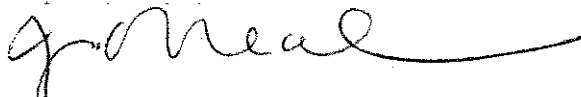
**9. Sediment Controls (IX.E.4.)**

It is not always necessary to require linear sediment controls along the top of the slope. In most cases it is only necessary to place a linear sediment control at the top of the slope if there is significant upland flow that will discharge over the face of a slope.

Thank you for the consideration of our comments. If you have any questions regarding these comments, please contact me at (916) 449-2204.

Sincerely,

**WOOD RODGERS, INC.**



Jennifer O'Neal  
Storm Water Department Manager