



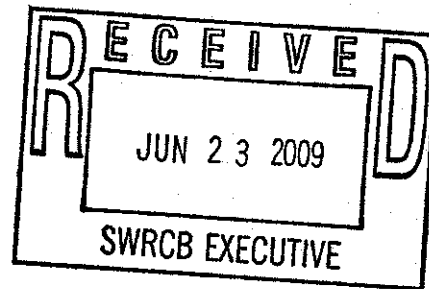
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

File 510.1313

Public Comment
Dft. Construction Gen. Permit
Deadline: 6/24/09 by 5:00 p.m.

June 23, 2009

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



Dear Ms. Townsend,

Draft General Construction Permit

Thank you for the opportunity to comment on the Draft California General Permit for Construction Activities, dated April 22, 2009. The Fresno Metropolitan Flood Control District (District) reviewed and commented on previous iterations of the Draft Permit in correspondence dated May 1, 2007 and June 11, 2008. Our review of the current Draft Permit finds many improvements that will assist us in fulfilling our dual roles of lead agency for the Fresno/Clovis Area NPDES Municipal Stormwater Permit and developer of the region's urban stormwater control and treatment system.

To protect receiving water quality and maintain local water resources, the State's construction stormwater objectives and intent to introduce greater accountability into the NPDES General Permit implementation process can be best met by:

- Continued support of MS4 permits as the proper mechanism for mitigation of hydro modification impacts. Regional stormwater retention facilities, such as those built and maintained by our agency, are already meeting the State's core objectives. The Draft Permit acknowledges this fact in its exemption of MS4s from the new Runoff Reduction Requirements.
- Exempting (from the new Permit) the maintenance of stormwater structural controls. The maintenance exemption in the current Permit serves to allow agencies the ability to conduct routine maintenance on our regional stormwater control system (which is itself a stormwater treatment BMP) without the cost or complications of filing NOIs, developing SWPPPs or installing redundant site controls. Language in the Draft Permit would require us to treat maintenance of stormwater control and treatment systems as projects subject to the full range of Permit requirements. Please see recommended language below.

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- Maintaining the permit's focus on proper construction site BMP planning, management and modification in response to rain events and field experience. The permit should retain an iterative approach to improving SWPPP implementation, acknowledging that construction site boundary stormwater discharge sampling, analysis and monitoring has a role to play in providing immediate and unambiguous feedback to field staff capable of using the information to initiate any immediate actions necessary to control offsite stormwater discharges.
- Adhering to a project risk-rating method that tightly correlates site-specific control requirements to the real risk each project poses to water quality.
- Allowing adequate time for public agencies and the development community to come up to speed on the new requirements and incorporate these into their planning, construction and monitoring activities.

These and other issues are discussed below as they apply in the Fresno/Clovis area.

Exemptions to Runoff Reduction Requirements

The Fresno-Clovis metropolitan area, via long-established local (City, County, District) project review and permitting processes and our regional system of stormwater conveyance, detention and infiltration, achieves the intended effect of the proposed Runoff Reduction Requirements. By design, our post-development runoff is already at or below pre-project levels, and future stormwater facilities will also be designed and operated to this effect. The Fresno Metropolitan Flood Control District's regional stormwater control system of ponds functions is, in effect, a giant post-construction BMP that isolates dischargers from receiving waters. Our system intercepts, treats and infiltrates a greater percentage of precipitation than under pre-development conditions, and the proposed exemption serves to recognize the environmental value of such a system. The Draft Permit acknowledges this fact by exempting MS4s from these requirements.

Maintenance Exemption

Permit Section I.C, paragraph 24 indicates that "Routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of the facility" is not covered under the proposed Construction General Permit i.e. these activities are exempt from permit requirements. This section further specifies that "Routine maintenance only applies to road shoulder work, dirt or gravel road re-grading, or ditch clean-outs". This definition of routine maintenance should include exemption of the maintenance of structural stormwater control facilities or delete the restrictive definition of maintenance activities. This change is critical to our agency's ability to efficiently maintain our system of 154 stormwater detention basins, which require periodic scraping, removal of accumulated sediment and re-grading. These are sites wherein, by design, stormwater drains exclusively to the interior of the site.

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Receiving Water Monitoring

The Draft Permit's restriction of receiving water monitoring and bioassessment to the highest risk sites is welcome, however, we suggest that additional restrictions be added so projects that have an indirect discharge (e.g. projects located long distances from the receiving waters and discharge through an MS4, or those that discharge to regional retention basins and flood control basins) not be required to conduct receiving water monitoring or bioassessment. Such monitoring and assessment will not yield useful information about the impacts of individual construction sites. We propose that the Permit include language along the lines of: "Dischargers to off-site regional municipal sediment settling ponds/pollutant traps that sever the direct connection between discharge and receiving waters are exempt from the receiving water monitoring and bioassessment requirements".

Sampling Frequency, Location and Site Boundaries

The permit requires that all Risk Level 2 and 3 dischargers perform sampling and analysis of storm water discharges to characterize discharges associated with construction activity from the entire area disturbed by the project. Dischargers must collect samples of stored or contained storm water that is discharged subsequent to a storm event producing precipitation of ½ inch or more at the time of discharge (*Fact Sheet page 21*).

Permit sampling requirements should reflect the fact that the only point at which a nexus can reliably be made between a specific construction site and polluted stormwater discharge is where surface flow from the project exits the site via the gutter or where it enters the subsurface system by way of a drainage inlet. For purposes of discharger and local agency monitoring, sampling and enforcement, these points will be static, accessible, identifiable, and serve to focus the discharger's compliance efforts.

Training & Certification Phase In

The proposed 100-day transition period between SWB adoption of the new Permit and the Permit effective date will not allow sufficient time for public agencies and the development community to acquire an understanding of the mechanics of the new permit or modify project and agency budgets to accommodate additional costs that will come with attempts to sustain compliance on new or existing Permitted construction sites. The Permit phase-in period should be extended to 180 days or the start of the next wet weather season, whichever date is further away.

Annual Report

The term compliance year is not defined in the draft fact sheet or order. The term should be defined in the permit order or Appendix 7 – Glossary of Terms. Our recommendation is that the compliance year should run from July 1 to June 30. This would cover the wet weather season and give the discharger 2 months to report on the prior compliance year.

Wind Erosion Control Plans & Air Deposition

The draft document provides no detail with respect to the standards or enforcement provisions of the requirement to implement effective wind erosion control. The measures necessary to avoid wind erosion are the same measures used to minimize the generation of dust. The State already assigns responsibility for construction-related dust control to Regional Air Pollution Control Districts. By extension, implementation of existing dust control rules will control wind erosion. Since Regional Air Pollution Control Districts already have the legislative mandate and expertise necessary to structure, review, approve and enforce dust control regulations. Wind erosion control plans should not be mandated in this permit.

Design Storm

The Permit language does not specify a design storm (specific intensity and duration) that can be used as the basis to plan site-specific BMPs. The use of an 85th percentile storm event as a threshold event, below which a site is expected to remain in compliance, ignores the need for developers to be prepared to withstand small high intensity events and, conversely, may require operators to respond strongly to prolonged, innocuous, low-intensity events incapable of producing sustained or substantial runoff.

Rain Event Action Plan Hours of Operation

This General Permit requires Risk Level 2 and 3 dischargers to develop and implement a Rain Event Action Plan (REAP) designed to protect all exposed portions of their sites within 48 hours prior to any likely precipitation event. Forecasts are normally issued for 12-hour time periods.

The District interprets the REAP requirements to read that a REAP must be developed and implemented within 48 hours of a forecasted rain event that equals or exceeds 50% as predicted and reported by NOAA on its web site. The fact sheet states that forecasts are issued every 12 hours. It does not give relief to the Discharger if the forecast is issued during non-operating hours. If it is the intention of the permit to make dischargers responsible for REAP development and implementation 24 hours a day, seven days a week, this needs to be articulated in the permit and fact sheet.

Inspections

Visual monitoring and BMP inspections need to be combined into one section and streamlined. As it is now, some sites are performing daily inspections, weekly visual observations, and post-storm, pre-storm and daily-during storm inspections. Pre-storm event inspections and observations should use the same trigger as the REAP.

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Qualifications & Responsibilities

The responsibilities of the QSD (Qualified SWPPP Developer) and Discharger need to be clarified in the permit language. For instance, the permit states the "QSD shall ensure SWPPPs ... are developed, amended or revised..." This is the Discharger's responsibility; the QSD develops amends or revises the documents at the direction of the Discharger.

The permit refers to qualified personnel (other than the Qualified SWPPP Developers or Qualified SWPPP Practitioners) without defining the qualifications needed. The "qualified personnel" may be charged with tasks such as installing, maintaining, and repairing BMPs. The Discharger must provide documentation of the training in the annual report. The Permit needs to be clear regarding what type of training is anticipated for construction workers installing maintaining and repairing BMPs and what type of documentation the Discharger is expected to provide (especially where the predominant mode of training is on-the-job).

Rainfall Erosivity Waiver

We support the addition of this waiver to allow sites, as determined by USEPA to have minimal risk, to stay out of the permitting program. We have applied the waiver criteria to existing sites that pose no possible risk to receiving waters to see how the waiver would function and have found that such sites would be eligible for the waiver as intended.

We thank you again for the opportunity to review the Draft General Construction Permit and to provide our thoughts in developing a more proactive and constructive stormwater management program. If you have any questions regarding our comments, please feel free to contact Daniel Rourke or Andrew Remus of my staff at (559) 456-3292 or andrewr@fresnofloodcontrol.org.

Sincerely,



Bob Van Wyk
General Manager-Secretary

BVW/DR/nl/sy