

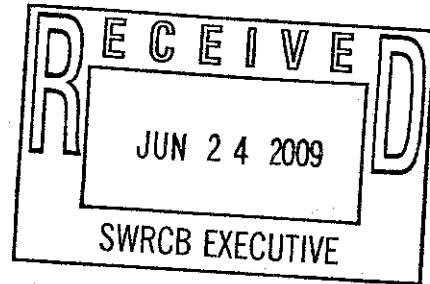
RIVERSIDE

Public Works  
Department

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

June 24, 2009

Jeanine Townsend, Clerk to the Board  
STATE WATER RESOURCES CONTROL BOARD  
101 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



**Subject: Comment Letter – 2009 Draft Construction General Permit**

Dear Ms. Townsend:

The City of Riverside appreciates the opportunity to comment on the Draft Construction General Permit for Discharges of Storm Water Associated with Construction Activities (CGP). As a Phase I Municipal Separate Storm Sewer System (MS4) Permittee, the City of Riverside has reviewed the Draft CGP for both its own municipal construction projects and for potential private development projects that may impact our MS4. The City commends the collaborative approach by the State Water Resources Control Board's (State Board) staff to address stakeholder concerns and believes that the current draft incorporates tremendous improvements over prior drafts. The City supports the State's goals of increased consistency and risk-based regulations, as long as they also result in increased efficiencies.

**CGP COVERAGE FOR MS4 PERMITTED AGENCIES**

The City appreciates the increased clarity of project registration requirements for CGP coverage, as provided in the June 10, 2009 errata sheet. Although City projects subject to the CGP are compliant with the CGP, the City is one of many agencies that attain CGP coverage via its MS4 Permit by providing modified CGP notification and compliance verification to our Regional Board. This incorporation of CGP coverage into the MS4 Permit enable the Regional Board to better coordinate enforcement of Permittee activities and MS4 compliance via a modified Waste Discharge Identification Number (WDID). Because MS4 construction activities are enforced against an agency's MS4 permit, submittal of a second fee for the same enforcement activities is redundant. For continued coordination, compliance and enforcement efficiencies, the City recommends that the documentation submittal program be modified for MS4 Permittees' permit registration documents (PRD) and related submittals or to allow continued direct registration with the affected Regional Boards.

Furthermore, the City recommends that the Legally Responsible Person for municipal agency projects be further refined. Frequently, municipal construction projects (such as streets, sidewalks and storm drain systems) occur in City easements or temporary construction easements. It is not practical for the City to request and receive written authorization by every property owner along a street project. Therefore, the proposed revision for "Legally Responsible Person" to be included in Appendix 7-Glossary is as follows: "For linear underground/overhead projects, and other municipal projects, it is the person in charge of the utility company,

municipality, or other public or private company or agency that owns or operates the LUP or municipal project.”

#### **STORM WATER MULTI-APPLICATION AND REPORT TRACKING SYSTEM (SMARTS)**

The City is concerned about the reliability of the Stormwater Multi-Application and Report Tracking System (SMARTS). The beta version of this application is not yet publicly available for testing. Therefore, it is not possible for the City to evaluate the functionality, accuracy, reliability or efficiency of the application. Furthermore, because of the infancy of this application, the City is concerned about its ability to reliably manage the tens of thousands of permit registration documents and follow-up documentation that need to be processed within the first 100 days after permit adoption, or for the July 1 submittal requirement for annual reports. Therefore, to allow continued development and testing for a reliably stable and accurate SMARTS, the City recommends a phased-in approach for SMARTS requirements, with paper documentation for at least two years, along with system verification each submitted item.

#### **STORM WATER POLLUTION PREVENTION PLANS (SWPPP) AND RAIN EVENT ACTION PLANS (REAP)**

In order to maintain accountability for construction activities, the City encourages the State to hold the project's Legally Responsible Person responsible for all CGP site reporting and maintenance requirements. Such accountability should be consistently assigned throughout the CGP. For example, maintenance of the SWPPP should be the responsibility of the Legally Responsible Person, not the Qualified SWPPP Developer (QSD), as indicated in the Draft CGP.

The City continues to question the need for a Rain Event Action Plan (REAP) checklist, given that sites for all risk levels require: a) a SWPPP to identify all potential pollutant-generating activities and sources and b) pre-rain event inspections for BMPs and discharge potential. As redundant documentation requiring certification (increased cost) without providing additional water quality protection (no benefit), the REAP would be a misuse of public funds. In order to increase both the consistency of requirements and inspections both on a single site and among sites, it is recommended that REAP requirements be incorporated into the SWPPP and/or site inspection checklist, as appropriate.

The Draft CGP requires a Qualified SWPPP Developer (QSD) or Practitioner (QSP) for development and implementation of a SWPPP. The City supports required training for QSDs and QSPs without a relevant state-issued professional license and for projects that do not require engineering activities. SWPPP training should be optional for QSDs and QSPs with a relevant state-issued professional license, due to legal concerns requiring additional training for engineering-related activities. For maximum accountability, a state-issued professional license seal associates a higher level of accountability than either a certificate program or evidence of additional training.

#### **COMPLIANCE STORM EVENT**

The City appreciates inclusion of a Compliance Storm Event, above which a discharger is no longer held to numeric action levels or numeric effluent limitations. The larger compliance storm event for projects with an active treatment system reinforces the State's risk-based water

quality policies. The proposed 5 year, 24 hour Compliance Storm Event is a larger storm than the 2 year, 24 hour storm that most sites are required to address post-construction; therefore the cost-benefit value of managing the additional event size is questioned. Logistically, the 5 year, 24 hour Compliance Storm Event will be a difficult compliance and enforcement metric, given the site-specific basis of compliance storm events, proximity to official rain gauges for storm and compliance rainfalls, etc. Furthermore, preparing multiple sites to prepare for different storm sizes will be cumbersome for Dischargers to track. Therefore, the City recommends a standardized storm size across sites, such as one-half inch rain, as the Compliance Storm Event.

#### **LINEAR UNDERGROUND/OVERHEAD PROJECTS**

Including NPDES permit coverage for Linear Underground/Overhead Projects (LUP) into the CGP will increase opportunities for coordination and consistency, when it also provides for increased efficiency. Numerous inconsistencies remain between Attachment A and Attachment A.2, including the definition of qualified projects; the City recommends continuation of current permit eligibility for only projects disturbing one or more acres.

The City supports the consolidation of LUP requirements and having three-tiered, risk-based requirements. Incorporation into a single permit will allow for more consistent implementation, instead of requiring dischargers to track diverse LUP and traditional CGP permit requirements based on project size.

#### **MONITORING REQUIREMENTS**

The City understands the requirement for monitoring direct runoff from a construction site and appreciates the tiered risk management approach that only requires receiving water to be monitored by Risk Level 3 projects that exceed Numeric Effluent Limits. However, the City continues to be concerned about safety, access, data reliability and cost of monitoring receiving waters, or in a Municipal Separate Storm Sewer System (MS4). Because of potential data reliability issues, the City is concerned that improperly gathered or analyzed data may result in future impairment listings or unsubstantiated costs for remediation. Therefore, the City recommends in-lieu fees to fund a new Receiving Water Monitoring Fund, either held by the State Water Board or managed directly by the local agencies. Use of the funds would be limited to monitoring receiving waters directly impacted by the project.

#### **NUMERIC ACTION LEVELS (NALs) AND NUMERIC EFFLUENT LIMITS (NELs)**

The City understands the State Board's reason for including Numeric Action Levels (NALs) and Numeric Effluent Limits (NELs). However, we are concerned about possible impairment resulting from ignoring natural background. For example, a target pH between 6.5 and 8.5 may be a default target; exceedances of that pH range would trigger additional upstream monitoring for a possible difference baseline due to background conditions. Without sufficient scientific analysis using sound methodology in accordance with USEPA protocols, the City is concerned that a rush to establish numeric levels and limits may result in long-term environmental harm. Using the State Board's standard for iterative development of water quality regulations, the City supports required field testing for construction sites in order to establish baseline data and differences throughout the State; future regulations would then have a basis for establishing numeric enforcement standards.

June 24, 2009

**RUN-ON FLOW**

The City objects to the requirement to effectively manage all site run-on, particularly in consideration of street and other MS4-related projects. Streets, catchbasins and gutters are part of a local agency's MS4; inherently they are designed to accept all run-on. As part of a public agency's MS4, street projects may receive run-on from more than thirty acres of private property developed prior to current stormwater protection regulations. Currently, during construction, such projects divert dry weather run-on away from active disturbed soils where feasible; wet weather run-on is filtered and detained, where possible, but may be required to bypass BMPs for safety reasons. As a result, the requirement to manage run-on and direct flow away from disturbed areas is not always feasible for MS4-related projects. An exemption is requested.

**GRANDFATHERING**

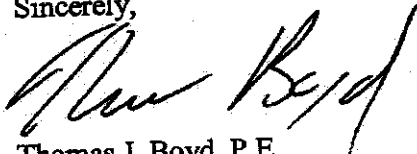
The City appreciates the grandfathering clause to allow all actively permitted projects to continue CGP coverage at Risk Level 1 for two years after adoption. The grandfathering clause will allow for a fiscally responsible transition to the new CGP. We request criteria for which Regional Board or State Board staff would request a risk assessment to a grandfathered project. Knowing the criteria, the City would be better able to prepare required documentation or coordinate project reviews in a fiscally managed process.

**CONCLUSIONS**

In closing, thank you for your consideration of our comments and for your efforts to resolve issues identified throughout development of the new CGP. We look forward to the opportunity to continue working with State Board staff to achieve the difficult balance of meeting technical and practical differences across the State. While we continue to have concerns about some new CGP requirements, we support adoption of a new permit prior to December 2009.

Please feel free to contact me at (951) 826-5575 or Robert VanZanten at (951) 826-5875 if you have any questions regarding these comments.

Sincerely,



Thomas J. Boyd, P.E.  
Deputy Public Works Director/City Engineer