

# New General Construction Storm Water Permit for California — Status Update



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## Introduction

- Historic Background
- Legal Issues
- New Proposed Requirements
- Where do we go from here

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## Procedural Background

- Current permit adopted in August 1999
- Amended in December of 2001 to reduce regulated projects from 5 to 1 acre
- Amended in December 2001 to include mandatory monitoring requirements
- New permit is 4 years overdue



## Legal Background

- EDC v. USEPA (2003)
  - SWPPPs must be made available for public review and comment
  - SWPPPs must be reviewed and determined to meet applicable standards by the permitting authority before coverage begins
  - Adequacy determinations of SWPPPs must include a process to accommodate public hearings
  - **OR Permits must include prescriptive requirements which limit the scope of self regulation by the regulated community**



## Technical Background

- Blue Ribbon Panel (2005-2006)
  - Is it technically feasible to adopt numeric effluent limits for construction sites to limit the scope of self regulation by the regulated community?
  - Conclusions
    - Traditional erosion and sediment controls produce highly variable results depending on site conditions and application
    - Background turbidity is highly variable
    - Active treatment technologies have the potential to significantly reduce turbidity
    - Construction sites have not focused on non visible pollutants (nitrates, pH, phosphates, O&G)
    - There are no training or certification standards for SWPPP preparers or managers
    - Oregon and Washington have adopted Numeric Action Levels



## Blue Ribbon Panel Continued

- Recommendations
  - Advanced treatment is feasible for larger sites **if chemical addition is permitted**
  - The board should consider numeric limits or actions levels for other pollutants such as pH
  - The board should consider the phased implementation of numeric limits based on the capacity of dischargers and support industry to respond



## More Legal Background: Arcadia, et al v. State Water Resources Control Board (2008)

- Court invalidates LA Regional Board Basin Plan.
  - Failure to consider impacts of storm water on water quality and beneficial uses
- Court orders Regional Board to revise water quality standards that apply to storm water in consideration of Water Code Section 13241
  - Past present and probable future beneficial uses
  - Water quality conditions reasonably achievable
  - Economic consideration
  - Need for housing
- State board imposes moratorium on all new enrollees for coverage under construction permit in LA region



## Proposed requirements or new permit

- Permit Coverage
- Discharge Limitations
- Active Treatment
- Monitoring and Reporting
- Authority of Regional Boards
- Economic Impacts
- Special Qualifications



## Permit Coverage

- Risk factor calculator
  - Very complex
    - Vague definitions
      - Receiving water
      - Indirect discharge
  - Very biased
    - Sediment risk conservatively biased
    - Does not consider the implementation BMPs other than active treatment
  - Uses wrong factors
  - Missing factors
- No coverage for level four sites
- No coverage in LA region



## Discharge Limitations

- NELs are not technically supported
  - Variability of geology
  - Variability of storm size
  - No consideration of ambient background
  - No proof that BMPs can achieve proposed levels.
  - No BAT/BCT evaluation
- NALs may be appropriate if appropriately established and used
  - Guidance not Enforcement
    - Agency Enforcement
    - Citizen Suits



## Active Treatment

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- Very expensive
- Very dangerous
- Very complex



## Monitoring and Reporting

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- Use of data
- Cost and quality of the data
- Ability to sample receiving water off site



## Authority of Regional Boards

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- Current authority is vague
  - Who makes decisions, board or staff?
- Public participation process is still unclear



## Economic Impacts

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- Impacts a wide range of projects
  - Real estate (residential, commercial)
  - Public projects (schools, hospitals, etc.)
  - Infrastructure (roads, highways, airports, mass transit)
- Added costs
  - Monitoring and reporting
  - Compliance costs



## Sample Costs for a 5 Acre Site (BIA)

- Baseline
  - SWPPP \$12,750
  - Visual Monitoring \$10,235
  - Erosion and Sediment controls \$11,425
- Incremental
  - Trained monitor \$500
  - Rain event monitoring \$34,765
  - REAP \$10,000
- Enhanced BMPs
  - ATS \$43,875



## Special Qualifications

- SWPPP preparer
  - Allowed by the permit
  - Allowed by law
- SWPPP manager



## Where do we go from here

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- When does the state board approve the permit?
- How will the state board address the infirmities in the current draft?
- How will the state board address the infirmities in basin plans?



## Contact Information

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### **S. Wayne Rosenbaum**

Partner

Foley & Lardner LLP

402 West Broadway

Suite 2300

San Diego, CA 92101-3542

[srosenbaum@foley.com](mailto:srosenbaum@foley.com)

