

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

- Very expensive
- Very dangerous
- Very complex



Monitoring and Reporting

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



Authority of Regional Boards

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



Economic Impacts

- 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

- 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?



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