

# The Draft Construction General Permit (CGP)

## A Brief Review

The last CGP was issued in 1999 and it applies to 20,000+ projects in the State of California. The 1999 permit expired in 2004 and since then the State Water Resource Control Board has been extending it until a new permit could be adopted. The State Board has released several drafts of the revised permit (starting in 2007) leading up to the latest release in April 2009. Some key provisions which you may find relevant are:

### Risk Levels:

These are determined on a project basis during the Storm Water Pollution Prevention Plan (SWPPP) preparation stage. The risk levels are based on two general criteria: **sediment transport risk** and **receiving water risk**. The projects are then be divided into three levels, with progressively more stringent requirements (i.e. BMP's, BMPs+site runoff monitoring, BMPs+site runoff monitoring+receiving water monitoring) based on the determined risk level.

Several factors define the risk levels, including proximity to receiving waters, size of project, soil type, and rainfall erosion potential. Once the CGP is adopted, all existing permits will be grandfathered for two years at a risk level 1. Once the grandfather period ends under the current proposed definitions, most construction projects are likely to be classified as higher risk sites (risk levels 2 or 3), subjecting them to more burdensome requirements like numeric effluent limits for runoff.

### Numeric Action Levels (NALs):

The CGP includes **Numeric Action Levels** (NALs) for pH and turbidity in runoff. The purpose of NALs is to *"assist dischargers in evaluating the effectiveness of their on-site measures."* NAL's are required for sites that are at a risk level of 2 or 3. NALs are *"not directly enforceable"*; rather they require the site operator to take actions to improve BMP performance. The NAL for pH has not changed from the previous permit drafts (6.5-8.5), but the turbidity NAL is now fixed at 250 NTU (nephelometric turbidity unit).

### Numeric effluent limits (NELs):

NEL's apply to risk level 3 sites or if you are using advanced sediment treatment systems (ATS). The NEL's are 6-9 for pH and 500 NTU for turbidity. The NEL's for ATS are 10 NTU average or 20 NTU single sample depending on operating conditions. The compliance rainfall event for enforcing an NEL is any rain event less than the 5-year, 24-hour storm (rainfall amount various depending on job site location). ATS system NELs are triggered up to the 10-year, 24-hour storm event.

### Monitoring:

Under the proposed CGP, site runoff monitoring is required with no exceptions. Visual monitoring is required at all sites. Sites which are at a risk level 2 or 3 must monitor runoff for both pH and turbidity, plus pollutants required by the Regional Board if necessary. If a risk level 3 site is more than 30 acres, bioassessment monitoring in the receiving water must be performed. In addition, risk level 3 sites must conduct monitoring within the downstream receiving water in the case that NELs are exceeded.

## **Post Construction Stream Protection Controls:**

New permit contents require Low Impact Development (LID) site design strategies so that post-construction runoff matches pre-construction hydrology for areas not within Phase I or Phase II MS4 systems. Phase I cities and counties have populations more than 250,000, while Phase II cities and counties have populations between 100,000 and 250,000.

## **Other Key Content/Issues:**

- Permit affects all construction sites > 1 acre
- Permit affects all linear sites > 1 acre; 2003 linear permit will be rescinded upon permit adoption
- Permit affects content of forthcoming Caltrans permit revision
- Permit gives the Regional Board new powers to re-do SWPPPs and change BMPs after State Board approval of an owner/operator's SWPPP
- The State Board is adamant about having post construction requirements (requiring LID design during construction phase)
- Site operator/owner must prepare a rain event action plan for predicted rain events greater than 0.5 inches; these plans implement site inspections and runoff monitoring

## **CICWQ comments regarding the permit:**

### **Oppose Numeric Effluent Limits:**

1. There is insufficient data to set a technology based or receiving water based effluent limit
2. There is insufficient data or examples to suggest that current practices are not working
3. Background concentrations and loads of sediment that cause turbidity are highly variable in California, making the establishment of a single number for compliance highly speculative and practically speaking, not that useful
4. NELs are a tool for litigation, not for cleaning water from construction sites

### **Oppose More Runoff Monitoring:**

We are opposed to excessive monitoring such as receiving water monitoring downstream of a job site or performing bioassessment monitoring in a receiving water. This is hugely expensive and speculative effort. CICWQ questions the water quality benefit derived by diverting resources to monitoring water quality a long distance from the job site. We are not opposed to monitoring runoff to determine if BMPs are not working as designed.

### **Remove Regional Board ability to force contractors to re-do SWPPP and BMPs:**

There is already tremendous inconsistency among Regional Board and State Boards concerning policy matters. The new authorities (page 37 of the draft permit) give the Boards too much discretion to make an owner or contractor change their approach mid-project.

### **Oppose Hydromodification Control (Post Construction Stream Protection) Requirements:**

These requirements need to be in municipal storm sewer permits and not in the construction permit. This is an example of regulatory duplication and bureaucratic excess. The construction industry does not oppose post construction runoff controls, only their inclusion in the construction permit.

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## Key Dates to Remember

CGP Draft Released **April 22, 2009**

Workshop on **June 3, 2009** in Sacramento

Comments due **June 17, 2009**

Adoption hearing will likely be late summer/fall 2009

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