

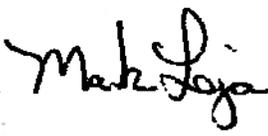
Memorandum

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To: DEPUTY DISTRICT DIRECTORS, Construction
DEPUTY DIVISION CHIEF, Structure Construction
CONSTRUCTION MANAGERS
SENIOR CONSTRUCTION ENGINEERS
RESIDENT ENGINEERS
CONSTRUCTION STORMWATER COORDINATORS

Date: July 30, 2010

File: Division of Construction
CPD 10-9

From: MARK LEJA 
Chief
Division of Construction

Subject: Implementation of New Construction General Permit Risk Levels 2 and 3

On September 2, 2009, the State Water Resources Control Board adopted the National Pollution Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ), commonly referred to as the Construction General Permit (CGP). The new CGP, effective July 1, 2010, supersedes the existing CGP (Order No. 99-08-DWQ).

The new CGP includes requirements based on project risk level, determined on the basis of potential for sediment yield and proximity to sensitive receiving waters. Each risk level (1, 2, or 3) has requirements that become more stringent as the risk level increases.

The new CGP allows ongoing projects with a Storm Water Pollution Prevention Plan (SWPPP) and a Notice of Construction (NOC) submitted before July 1, 2010, to be grandfathered at Risk Level 1 until September 2, 2011. CPD 10-4, "Implementation of New Construction General Permit," issued May 24, 2010, contains the requirements, project exceptions, and procedure for ongoing projects to implement the new CGP at Risk Level 1.

Ongoing projects may need to implement the new CGP at either Risk Level 2 or Risk Level 3 under the following two scenarios.

1. A Regional Water Quality Control Board (RWQCB) requests recalculation of a project risk level based on one of these situations:
 - a) When the project has a demonstrated history of noncompliance with State Water Board Order No. 99-08-DWQ.
 - b) When the project site poses a significant risk of causing or contributing to an exceedance of a water quality standard without implementing the additional Risk Level 2 or 3 requirements.
2. The project completion date is after September 2, 2011, the expiration period of the Risk Level 1 grandfathered status, and the project risk level recalculation at that time determines a project to be Risk Level 2 or 3.

This construction procedure directive provides instructions on how ongoing grandfathered projects will implement the new CGP Risk Level 2 or 3 for projects that either have received a request from a RWQCB for a project risk level recalculation or that will be completed after September 2, 2011.

RWQCBs have sent the Department of Transportation several written requests for recalculation of project risk level for both ongoing and future projects with NOCs filed before July 1, 2010. If a representative of the RWQCB visits the project site requesting a recalculation, inform the representative that the project risk level recalculation request must be in writing. A resident engineer who receives the request should contact the project engineer for assistance. The project engineer will coordinate with the district NPDES coordinator to provide the risk level determination to the resident engineer.

For grandfathered Risk Level 1 projects that will not be completed before September 2, 2011, the resident engineer should contact the project engineer and provide information about project work remaining to be completed after September 2, 2011, so the project risk level can be recalculated. The project engineer will coordinate with the district NPDES coordinator to provide the risk level determination to the resident engineer.

If the recalculated project risk level is Risk Level 1, the project should continue to follow the Risk Level 1 requirements of the new CGP implemented by a contract change order that follows the procedure in CPD 10-4.

Contract Change Order Implementing Risk Level 2 or 3

If the recalculated project risk level is either Risk Level 2 or 3, a contract change order is needed to implement additional new CGP requirements. This directive provides a sample contract change order memorandum and a sample contract change order with two attachments, the "Water Pollution Control" specification, and the "Construction Site Management" specification to help implement the new Risk Level 2 or 3 CGP requirements. Implement the contract change order as soon as possible for projects when the RWQCB has requested risk level recalculation. For projects that will not be completed before September 2, 2011, implement the contract change order no later than August 1, 2011.

The change order includes contractor compensation for revising the project SWPPP, weekly stormwater site inspection reports, rain event action plans, stormwater sampling and analysis, laboratory stormwater discharge analyses, and stormwater annual reports, as Risk Level 2 or 3 requires. The contract change order also includes compensation to the contractor for providing a water pollution control manager (WPC manager) who meets the qualified SWPPP developer requirement of Section IV, "Training Qualifications and Certification Requirements," of the new CGP.

A WPC manager must have one of the following registrations or certifications:

- a. California registered professional civil engineer
- b. California registered professional geologist or engineering geologist
- c. California registered landscape architect
- d. Professional hydrologist registered through the American Institute of Hydrology

- e. Certified Professional in Erosion and Sediment Control registered through Enviro Cert International, Inc.
- f. Certified Professional in Storm Water Quality registered through Enviro Cert International, Inc.
- g. Professional in erosion and sediment control registered through the National Institute for Certification in Engineering Technologies.

Base additional contract change order compensation for the WPC manager in the contract change order on the hourly pay differential between the current WPC manager and the new WPC manager who meets the qualified SWPPP developer requirements of the new CGP.

The current water pollution control specification requires the contractor to conduct stormwater site inspections bi-weekly during the non-rainy season. For weekly stormwater site inspections not previously accounted for, base additional compensation in the contract change order on costs estimated for the contractor to perform inspections conducted every other week.

To assist in calculating contract change order estimated costs for rain event action plans, stormwater sampling and analysis, and the stormwater annual report, the Division of Design, Office of Storm Water Management has CGP estimating guidance available at this website:

<http://www.dot.ca.gov/hq/oppd/stormwtr/index.htm>

Base the estimated cost for laboratory stormwater discharge analysis extra work on the amount provided in the project supplemental funds for stormwater sampling and analysis.

This directive serves as delegation of authority from the Division of Construction and the Federal Highway Administration for approval of contract change orders when implemented under its requirements. Division of Construction approval is required if the contract change order language is altered or has a total absolute value exceeding \$200,000 according to CPB 06-5, "CCO Approval Delegation." On high-profile projects, change orders with altered language or that require time extensions need FHWA approval.

For additional information or assistance, please contact:

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Attachments: Sample Contract Change Order Memorandum
 Sample Contract Change Order
 CCO Attachment 1, Water Pollution Control
 CCO Attachment 2, Construction Site Management
 FHWA—Record of Blanket Prior Approval for Major Contract Change Order