



State Water Resources Control Board



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FROM: 
Bruce Fujimoto, Chief
Storm Water Section

DATE: April 13, 2010

SUBJECT: RESPONSE TO DEPARTMENT OF TRANSPORTATION (CALTRANS)
LETTER OF JANUARY 12, 2010 PROPOSING CALTRANS-SPECIFIC
APPROACHES TO IMPLEMENTATION OF THE CONSTRUCTION
GENERAL PERMIT (CGP) (ORDER NO. 2009-0009-DWQ)

Thank you for your letter dated January 12, 2010 requesting further clarification of several Caltrans-specific issues with implementation of the CGP.

Annual Fees

You requested that we continue "the present programmatic payment approach for CGP coverage, i.e. setting a flat annual fee for all Caltrans construction projects, in addition to the annual statewide MS4 fee."

Until the Caltrans permit is reissued, the status quo remains, in which Caltrans will continue to follow its present procedures of paying a flat annual fee for all Caltrans construction projects, in addition to the annual statewide MS4 fee. When the Caltrans permit is reissued, these procedures may change.

California Environmental Protection Agency

Third Party Activities

Your letter states that, "Though a Caltrans Encroachment Permit is not legally an 'easement' it is functionally equivalent. Caltrans proposes that for third-party construction activities in the state highway ROW [right-of-way] requiring coverage under the CGP, the encroaching party will be required to file for coverage under the CGP."

Until the Caltrans permit is reissued, the status quo remains, in which order Caltrans construction projects will continue to be covered by the Caltrans MS4 (Order 99-06-DWQ). When the Caltrans permit is reissued, these procedures may change. With respect to question #3 posted on the online FAQs for Caltrans, that answer was not reviewed by legal counsel and will be removed until the Caltrans permit is reissued.

Legally Responsible Person

Your letter states that, "Currently, the Caltrans Resident Engineer is the State's authorized agent for the administration of the construction contract, is responsible for all aspects for project construction and vested with the necessary authority to approve and implement the Project's SWPPP. Caltrans proposes that for each Caltrans project, the District Director (LRP) will designate the project's Resident Engineer as the State's duly authorized signatory for the LRP."

Until the Caltrans permit is reissued, all Caltrans construction projects will continue to be covered by the Caltrans MS4 Order, and notifications of construction for all construction projects will continue to be submitted to the appropriate regional water board at least 30 days prior to the start of construction. Accordingly, the CGP's requirement that a Legally Responsible Person or his or her Approved Signatory file Permit Registration Documents does not apply to Caltrans during this time frame. When the Caltrans permit is reissued, these procedures may change.

Clarification on who must have QSP/QSD Certification

Your letter requested clarification on who must have proper Storm Water Pollution Prevention Plan certification: the Contractor's SWPPP developer, the "discharger," or the landowner's representative. A Qualified SWPPP Developer is an individual who is authorized to develop and revise SWPPPs, whereas a Qualified SWPPP Practitioner is an individual who is responsible to ensure full compliance with the permit and implementation of the SWPPP. Anybody can be the QSD and/or QSP as long as he or she has the proper certifications set forth in Section VII.B of the CGP.

Regional Board Authority Timeframe

You requested clarification of "specific timeframes for the RWQCB [Regional Water Board] to determine if an individual permit or additional requirements are necessary for a project."

The language in Section XV of the CGP is consistent with the "Regional Water Quality Control Board Authorities" in the 99-08-DWQ permit. Section D.5 (page 7) of 99-08-DWQ states, "RWQCBs may require additional monitoring and reporting program requirements including sampling and analysis of discharges to water bodies listed in Attachment 3 to this permit. Additional requirements imposed by the RWQCB should be consistent with the overall monitoring effort in the receiving waters." Section D.6 (page 7) of 99-08-DWQ also states, "RWQCBs may issue individual NPDES permits for those construction activities found to be ineligible for coverage under this permit."

The Regional Water Boards need the flexibility to determine if additional requirements or and/or individual permit is necessary. The extent of needed controls and practices to control runoff and the discharge of pollutants may not be known up front, and it is important for the Regional Water Boards to have the flexibility to require additional controls as needed. Therefore, a specific time frame is not appropriate.

Monitoring and Reporting

Your letter requests clarification of monitoring and reporting language in various sections of the CGP.

Attachment D & E Sections I.5.d Risk Level 2 and 3 Monitoring and Reporting Requirements – "the intent of 'monitor and report site run on' is unclear; is water quality sampling and analysis required, if so, how many samples and at what frequency?"

Exceedance of an NAL or NEL will ultimately be the responsibility of the permittee. If there is reason to believe that run-on to a project site may contribute to an exceedance of an NAL or NEL, then it is the responsibility of the Qualified SWPPP Practitioner (QSP) to determine the appropriate sampling and analysis plan in order to characterize the run-on adequately to support that claim.

Attachment D & E Section I.10.b.i-iii Risk Level 2 and 3 Non Storm water Discharge Monitoring Requirements – "what are the number of samples and at what frequency?"
The sampling and analysis plan for non-storm water discharges must be appropriate to adequately characterize the non-storm water and/or authorized non-storm water discharged off – site.

Scott McGowan
Joyce E. Brenner

- 4 -

April 13, 2010

Attachment D & E Section I.15.a Risk Level 2 and 3 NAL Exceedance Report – “what is the deadline for submitting the Report?”

Submittal of an NAL Exceedance Report is required upon Regional Water Board request. The request from the Regional Water Boards to submit NAL Exceedance Reports should contain the timeline for report submittal and will likely be considered on a case-by-case basis.

Please direct any questions regarding this matter to myself at (916) 341-5523 or bfujimoto@waterboards.ca.gov or Annalisa Kihara at (916) 324-6786 or akihara@waterboards.ca.gov.