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Construction Projects in California Greater Than One Acre Will Be Subject to New Storm Water Control Regulations

As of July 1, 2010, construction projects in California that are over one acre or more will be subject to new stormwater control regulations that are significantly more stringent, and considerably more complicated than the current stormwater control regulations. Property owners and operators of linear projects who fail to comply will risk potentially significant penalties.

For years, construction projects in California have been subject to control pollution in stormwater runoff through adherence to the requirements of a general permit approved by the State Water Resources Control Board (State Board) and enforced by the Regional Water Quality Control Boards (Regional Boards). The new 285-page general permit has substantially more administrative and substantive requirements compared to the current construction permit. This permit applies to construction projects in California except those in the Lake Tahoe Watershed which are subject to a separate permit. There are special provisions for construction projects with a greater risk of discharging sediment or impacting sensitive waterbodies, including numerical action and effluent limits for sediment and pH. All compliance documents must be submitted electronically to the State Board's Stormwater Multi-Application and Report Tracking System (SMARTS) and will be available to the public.

Regional Boards and the State Board can bring an enforcement action for failure to comply with the new permit, and violations are subject to administrative penalties of up to \$10,000 per violation and to civil penalties of up to \$25,000 per violation if referred to the Attorney General. Perhaps more importantly, private citizens can also bring enforcement actions under the federal Clean Water Act with penalties up to \$37,500 per violation. Because the electronic compliance submittals will be available to the public, citizen enforcement actions are expected.

Construction activities include any land disturbance of one or more acres with exceptions for routine maintenance, agricultural, and a few other activities. Small construction projects of less than five acres may qualify for certain waivers.

The following are some of the significant new stormwater general permit requirements:

- **Electronic Submittals.** As of July 1, 2010, all existing and new construction projects must submit electronically a Notice of Intent and other Permit Registration Documents (PRDs), including detailed maps and a Storm Water Pollution Prevention Plan (SWPPP). Photographs

and analytical data must also be submitted electronically.

- **Certification/Training.** The original SWPPP and all amendments must be prepared by a Qualified SWPPP Developer (QSD) who has one of six specified professional registrations or certifications. The SWPPP must be implemented by a Qualified SWPPP Practitioner (QSP) who must have one of eight specified professional registrations or certifications.
- **Risk Level Classification.** Projects are classified into three risk levels depending on the results of a risk assessment on the risk of discharging sediment and the sensitivity of receiving waters to sediment. Sites located in watersheds where a Total Maximum Daily Load (TMDL) has been adopted or approved may be subject to additional requirements. Current construction sites are grandfathered at the lowest risk level and not required to conduct a risk assessment until September 2, 2011, although Regional Boards may order current projects to conduct a risk assessment to determine the classification level if the project has a history of violations or is located near a sensitive waterbody.
- **Storm Events.** Photographs must be taken before, during, and after storm events of ½ inch or more and submitted to SMARTS every three rain events. Risk Level 2 and 3 projects must develop and implement a Rain Event Action Plan (REAP) within 48 hours of a likely rain event (defined as a forecast of 50% or more probability of 0.01 inch or more of rain).
- **Numeric Discharge Effluent Limits.** Risk Level 2 and 3 projects must take at least three samples of discharges at all discharge points daily during rain events for pH and turbidity. Risk Level 2 and 3 projects are subject to numeric action limits (NALs). If the daily average discharges exceed a NAL, the discharger must submit the data electronically, determine the cause of the exceedance and document any corrective action. Risk Level 3 sites are also subject to numeric effluent limits (NELs) for pH and turbidity. Discharges which exceed those limits must also be reported electronically and may be subject to additional requirements. Exceedances of NALs are not considered permit violations, but exceedances of NELs are considered permit violations. There are exceptions for certain weather conditions.
- **Post-Construction Standards.** A construction project is considered complete when there is no potential for construction related stormwater pollutant discharges compared to the pre-construction condition, final stabilization has been reached, and construction materials and wastes have been disposed of. Uncompleted portions of traditional construction projects will be subject to post-construction standards after September 2, 2012. For these projects, post-construction stormwater discharges must comply with runoff reduction requirements unless the site is located within an area subject to post-construction standards of an active Phase I or II

municipal separate storm sewer system (MS4) with an approved Storm Water Management Plan.

- **Permit Termination.** The discharger must submit a Notice of Termination (NOT) and certify that all applicable state and local requirements have been met, including final site stabilization and applicable post-construction standards. Until the NOT has been approved by the Regional Board, the discharger remains responsible for permit fees and applicable compliance issues.

Permit compliance may prove to be time-consuming and more difficult under the new permit than it has been under the existing stormwater control regime, especially in the initial months as State and Regional Board staff and the development community work through regulatory issues of first impression.

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