

September 10, 2009 | Posted By

NEW CONSTRUCTION GENERAL PERMIT IMPOSES SIGNIFICANT NEW REQUIREMENTS FOR STORM WATER DISCHARGES

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On September 2, 2009, the State Water Resources Control Board (“State Board”) [adopted a new General Permit for Discharges of Storm Water Associated with Construction Activities](#) (“CGP”) that imposes significant new and potentially burdensome requirements for discharging storm water from construction sites. The CGP would apply to all construction activities disturbing one or more acres of land or to smaller areas that are part of a common plan for development, as well as to construction activities related to linear overhead/underground projects, which were previously covered under a separate general permit. Unless the CGP is challenged and set aside, the new permit will become effective on July 1, 2010, allowing current dischargers to get through the 2009-2010 rainy season before the new standards go into effect.

The CGP represents a fundamental shift storm water management practices from the existing general permit for construction activities, Order 99-08-DWQ. The existing permit contained a narrative effluent limit that required the iterative application of Best Management Practices (“BMPs”) to ensure that water quality standards were not violated. The new CGP contains Numeric Action Levels (“NALs”) and, for certain “high risk” sites, Numeric Effluent Limitations (“NELs”) for pH and turbidity. NALs serve as benchmarks that, if exceeded, require the discharger to apply additional BMPs. Exceedance of an NAL does not itself constitute a violation of the CGP, but failure to take the required corrective action may result in a violation. Exceedances of NELs are violations of the CGP and could result in substantial penalties. One problem with this new approach is that NALs and NELs do not account for high natural variation in turbidity that occurs throughout the State, including some areas where the background levels of turbidity exceed the 500 NTU NEL established by the CGP. The State Board may reconsider the numeric limits in light of the pending rulemaking for effluent limitation guidelines that the EPA is [currently undertaking](#) and expected to complete by December 1, 2009.

Other significant changes introduced by the CGP include:

Minimum Requirements Specified: The new CGP imposes mandatory minimum BMPs and other controls that were previously only required as elements of the Storm Water Pollution Prevention Plan (“SWPPP”) or were suggested by guidance.

Rain Event Action Plan: In addition to a SWPPP, the new CGP requires certain sites to develop and implement a Rain Event Action Plan (“REAP”) that must be designed to protect all exposed portions of the site within 48 hours prior to any likely precipitation event.

Increased Monitoring and Reporting: The existing permit relied primarily on visual monitoring, requiring sampling only in limited circumstances. In addition to visual monitoring of all sites, the CGP requires sampling and monitoring for non-visible pollutants at all sites, effluent and receiving water monitoring for pH and turbidity at certain high risk sites, and sampling of receiving waters for bioassessment purposes at high risk sites. Most reports—including violations of NELs, exceedances of NALs, results of receiving water monitoring, and annual reports—under the new CGP must be filed electronically within narrow time limits. All reports will be contemporaneously available online to the general public.

Post-Construction Storm Water Performance Standards: The new CGP specifies runoff reduction requirements for all sites not covered by a Phase I or Phase II MS4 NPDES permit, to avoid, minimize and/or mitigate post-construction storm water runoff impacts. The post-construction requirements do not apply to projects that will be completed (i.e., no longer covered by the CGP) by September 2, 2012.

Certification/Training Requirements for Key Project Personnel: The new CGP increases the training and certification requirements for key personnel (e.g., SWPPP preparers, inspectors, etc.).

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