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Land Use & Construction Alert



[Shanda M. Beltran](#)
Orange County
(949) 851-5451
sbeltran@allenmatkins.com

Important dates

Public Hearing in Sacramento:
June 3, 2009 - 9 am

Written comment deadline:
June 17, 2009 - 5 pm

Likely adoption:
August 2009



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Last Chance to Change Statewide Construction Water Quality Permit

Yesterday, after two years of issuing drafts and taking in written and oral comments, the State Water Resources Control Board (State Board) issued its final draft of a general permit governing the water quality at construction

sites throughout the state (the Permit). The State Board will take comments on the Permit until June 17th and after that, the Permit is likely to be adopted in July. If adopted “as is”, this last draft of the Permit would radically change the way that new development and redevelopment projects are designed and managed during construction—adding significant costs and exposing landowners to substantial risk of fines.

The Permit governs all construction sites one acre and larger throughout the state, including large-scale linear projects (e.g., utilities), municipal projects and even sites less than an acre that are part of a common development plan. All new construction projects and all current construction sites that will be active more than 100 days after the Permit is adopted will be required to obtain coverage under the new Permit.

This last draft of the Permit continues to press many of the sweeping regulatory changes raised in prior drafts; adds new, more stringent requirements; and proposes provisions not even contemplated by the U.S. Environmental Protection Agency (U.S. EPA) in their proposed construction water quality regulations.

Landowners, developers and the construction industry all have a substantial stake in the Permit and should work to effect change before it is too late.

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Key elements of concern in the final draft of the Permit are:

- **Numeric effluent limits** for pH and turbidity (a measure of sediment concentration in runoff) and for discharges from Advanced Treatment Systems.
 - Numeric limits would apply to many projects statewide, especially in Southern California.
 - Exceeding the limits automatically subjects the site owner to potential enforcement.
 - Limits are set at what would be lower than natural conditions in many areas, meaning runoff would need to be abnormally clean.
 - Proposed limits are substantially more difficult to meet than the proposals in prior Permit drafts, and are vastly different than U.S. EPA proposals.
- **Numeric action levels** for pH and turbidity.
 - Action levels would apply to most projects throughout the state.
 - Exceeding the action levels could ultimately lead to enforcement actions.
- **Post-construction flow requirements** that will force sites to duplicate pre-development hydrology, affecting the design of developments.
 - Flow control provisions would apply to projects not already covered by local post-construction water quality programs, i.e., projects outside of major metropolitan areas (in rural and newly-developing regions) and could apply to many other small projects statewide that are exempted from local programs.
- **Unprecedented discretion given to local water boards** to terminate permit coverage after projects have commenced or modify permit requirements for specific sites.
- **Sampling of runoff and of downstream receiving waters** required for many sites.
 - Up to three times daily during storm events and from multiple areas on each site.

Penalties for Permit violations can be as high as \$25,000–\$37,500 per day per violation in either state or federal court, with 6- and 7- figure penalties not uncommon.

The State Board is accepting written comments on the Permit through June 17th. After the written comment period closes and all State Board hearings are held, there will be no other opportunities to try to effect change to this Permit. Once passed, the Permit's requirements will be enforced throughout the state and future renewals of the Permit will be as strict or more so than the adopted Permit.

Developers, landowners, and construction industry companies all have a substantial stake in the outcome of this regulatory process and should become familiar with the Permit's proposals and take advantage of opportunities to effect change.

Companies wishing to get a head start should learn the proposed requirements now and begin developing plans to modify their programs in order to meet the new Permit standards.

A copy of the draft Permit may be obtained at the [State Board's website](#).

Please contact us if you have questions regarding the draft Permit, would like assistance preparing comments on the Permit, or would like help developing a compliance program for your company.

Allen Matkins Land Use Attorneys

Orange County
(949) 553-1313

Pamela L. Andes
Shanda M. Beltran
John C. Condas
William R. Devine
A. Kristine Floyd
Matthew R. Fogt
Thomas E. Gibbs
Steven B. Imhoof
Michael Joyce
Suzanne E. Skov

Los Angeles
(213) 622-5555

Frederick L. Allen
John J. Allen
Patrick E. Breen
Alfred Fraijo Jr.
Michael Gonzales
Claudia Gutierrez
Mark R. Hartney
Michael J. Kiely
Kaylynn L. Kim
Emily Murray
Jerold B. Neuman
Anthony J. Oliva
Patrick A. Perry
Faith Pincus
Michael W. Shonafelt
Phillip M. Tate

San Francisco
(415) 837-1515

James T. Burroughs
David D. Cooke
Lee Gotshall-Maxon
James L. Meeder
Sandi L. Nichols
Eileen M. Nottoli
Sonia J. Ransom
Robert Wyatt

San Diego
(619) 233-1155

Jeffrey A. Chine
Thomas B. Crosbie
Jan S. Driscoll
Vernon C. Gauntt
David L. Osias
Heather S. Riley
Ellen B. Spellman

Walnut Creek
(925) 943-5551

David H. Blackwell
Michael P. Durkee
Thomas P. Tunny

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