




time to
comment...

The Monthly Dirt


A monthly newsletter on the California Construction
General Permit

***If you don't speak up now,
you have no room to
complain later about what
is in the permit.***

Let's look at what changed with the "Dislikes" we reviewed in January:

 *Erosivity waivers will not be available for projects that discharge to a watershed having a water body with cold, spawn, and migratory beneficial uses. This will eliminate most of the waivers in Northern California. Is that really necessary?*

We applaud the Water Board's decision to remove this waiver prohibition from the new draft CGP. This returns the Erosivity Waiver conditions to what they are currently.


 *NAL exceedances were changed from site wide daily averages to the result of one single sample. Ouch! This removes the incentive to take immediate action to try to average down the value for the site on that day. The old system of using daily site-wide averages as NALs was working. It provided the discharger the opportunity and incentive to quickly rectify the situation and avoid an NAL exceedance. It was a positive behavioral incentive. Slapping a single high (or low) number with the label of an NAL exceedance is not only a negative behavioral incentive but it removes the incentive to take immediate action. We suggest the Water Board rethink this one!*

In January, **The Monthly Dirt** revealed its "likes" and "dislikes" regarding the draft Statewide Construction Stormwater General Permit (CGP) released in December 2020. Last month, the State Water Board released a second draft of the CGP and recently held two more workshops on the draft permit. We wanted to follow-up with our readers on some of the things that we did not like about the first draft to see how they may have changed. **But most importantly**, we want to call our readers to action! This is your opportunity to comment. For the last 10+ years we have heard from many individuals about what they don't like or would want changed in the permit. It is not too often that we have the ability to influence the permit requirements. But, between now and August 13 is an opportunity to let your voice be heard. If you don't speak up now, you have no room to complain later about what is in the permit.


We believe the Water Board is headed in the right direction with the following newly revised language: "An NAL exceedance for pH is the analytical result of the median or calculated average value of at least three samples per sampling location per day of each qualifying precipitation event, taken at the site's discharge location(s), that is below the lower NAL or above the upper NAL ... An exceedance of the turbidity NAL occurs when the analytical result of the mean value of at least three samples, taken at the site's discharge location(s), is over 250 NTU."

We are pleased that they departed from the single sample NAL exceedance. While the language is pretty clear that, for pH, the NAL exceedance is for each sampling location and not the whole project as it is currently; the turbidity NAL language is unclear about whether it is per discharge location or for the entire project. When we asked Water Board staff during the recent workshop if NAL exceedances were based on a single discharge point or the average of all results from all of the project's discharge points, the Water Board responded that it is per discharge location. We suggest that the Water Board do two things. First, for the reasons already given in our [January newsletter](#), we recommend they consider an NAL exceedance to be based on an average of all

analytical results for all discharge testing points on each day of discharge. Second, we recommend that the permit language be clarified. For example, it currently reads that we only have to average at least three samples per location per day. If we have five testing results, can we throw out the two highest and only average the best three? Should the turbidity language read "of the mean value of at least three samples taken from each of the site's discharge locations" or does it mean that we are averaging daily turbidity data for the entire site?


 *Reliance on RUSLE2. Believe me, we have tried using this tool multiple times and have almost always found it a waste of time. This tool does not have enough precision and does not produce practical useable results. In lieu of this somewhat frustrating modeling tool, we would suggest just using manually derived RUSLE or MUSLE equations. After all, isn't that why we got our CPESC certifications?*

Other than as referenced in approved TMDLs, the Water Board removed the mandated use of RUSLE2 for follow-up to NAL exceedances.


 *We found that there was still too much reliance or emphasis on paper copies and wet signatures in this permit. The industry needs to be*

able to accomplish the same through electronic means. The permit, on one hand, seems to encourage electronic documentation, but then turns around and requests paper copies and signatures in the SWPPP binder. LRP signatures (and possibly QSD signatures) on SMARTS should be good enough and should not be needed on a physical document.


The Water Board found a good compromise here. The only paper documentation required to be kept on site are the SWPPP maps.

 Concrete washout areas should not have to be covered at the end of every business day if there is no rain forecasted. Nor should trash containers for that matter! (Although, we might concede they should be covered during windy conditions.) We oppose mandatory BMPs that are unnecessary or will inevitably be ignored.

There was no change with this new requirement. This is probably something about which you will want to comment.


 The new RL2&3 Preserve Existing Topsoil requirement ... nice idea, but impractical to define, verify, and enforce. In regard to preserving and stockpiling topsoil, who defines “to the extent feasible” and “when feasible”? Some of these ideas should be left to education and professional expertise, not regulated. Same with the new requirement “control peak flowrates and total volume of stormwater and authorized non-stormwater discharges to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points.” These requirements should either be better defined to remove the ambiguity or removed from the permit. In the past, we have seen similar ambiguous permit language applied to projects by inspectors in a way we do not believe was intended by the permit writers.

No change here either. We have spoken with operators of large projects and they are very concerned about the logistics involved with this requirement.

 The sampling requirement was modified to 3 samples per day, with the first sample within the first 2 hours of the storm event, and then sampling separated by 2 hours for the remainder of the day. For many sites, this means someone (and possibly more than one person) will need to be dedicated to sampling and standing by all day at the site to wait for the black cloud to arrive. This adds a significant expense and logistical headache to projects. If the Water Board feels it necessary to require this type of sampling, then maybe they should consider reducing the daily requirement and make it for one time per storm event or a maximum frequency of weekly. We also question the value of more than one sample per day per point of discharge unless there has been a breach or malfunction of a BMP.

The Water Board altered this requirement to: “Risk Level 2 [and 3] discharger[s] shall obtain a minimum of 3 samples per sampling location per day of each

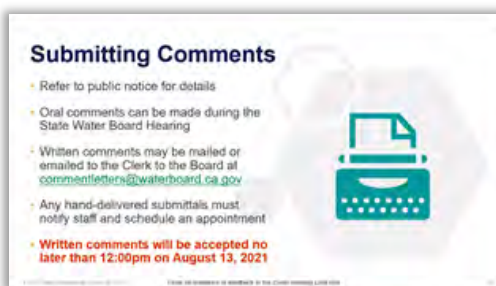
qualifying precipitation event, with at least 15 minutes between samples. The Risk Level 2 [and 3] discharger[s] shall record the time the discharge ends in the monitoring report. The first sample must be taken within the first two hours of discharge during site operating hours if possible; otherwise, as close in time to the beginning of the storm event as practicable.” We do approve of the new Qualifying Precipitation Event definition, “Any weather pattern that results in 0.5 inches of precipitation within a 24-hour period. The event begins on the calendar day when 0.5 inches has accumulated and continues on subsequent days where 0.25 inches of precipitation or more occur. The event ends when there are two sequential calendar days with less than 0.25 inches of precipitation on each day.” However, our comment we will make to the Water Board is that they are being overly prescriptive on the timing of the sampling. Since they require QSPs to take two full days of training, pass an exam, and maintain an underlying certification, let’s allow QSPs to make a best professional judgement as to when they sample at each site and for each storm event.

 Beware! Non-visible pollutant sampling has been given a new twist! Now, not only do breaches, leaks, spills, or failures trigger the sampling; but non-visible pollutants associated with construction activities which could cause or contribute to a water quality objective exceedance are required to be sampled three times a day. There is no apparent off-ramp for this monitoring; as long as the potential pollutant is present, it will need to be sampled three times per day of discharge and sent to a laboratory.

The Water Board removed the nebulous language about sampling for pollutants associated with construction activities. It is once again a sampling event triggered by “a failure to implement BMPs, spill, breach, malfunction, failure, and/or any BMP leak.” We also are happy to see the number and frequency of samples to be returned to one sample from each discharge location down-gradient of the incident. The Water Board also dropped the requirement in the current permit to sample from an unaffected area.

We have probably only scratched the surface of the comments that should be made. But that is where you come in—it’s your opportunity to let your voice be heard. Speak up now, or forever hold your peace (well, at least through the permit term).

Send comments to commentletters@waterboard.ca.gov. MD



Submitting Comments

- Refer to public notice for details
- Oral comments can be made during the State Water Board Hearing
- Written comments may be mailed or emailed to the Clerk to the Board at commentletters@waterboard.ca.gov
- Any hand-delivered submissions must notify staff and schedule an appointment
- **Written comments will be accepted no later than 12:00pm on August 13, 2021**

TRAINING OPPORTUNITIES

Upcoming Live Online Events:

Jul. 27- 29, 2021: Online QSP/QSD Class

Register at <https://secure.wgr-sw.com/training/live-courses/>

Need to get some PDHs?
See what's new on FORGE!



Speaking of comments ... we received a comment from the San Diego Regional Water Quality Control Board about last month’s article on stockpiles. They told us that stockpiles do not have a 14-day inactivity period applied to them. The stockpiles must have BMPs when they are no longer active - “active” means when equipment is no longer adding or removing material from the stockpile. Apparently, we were not the only ones passing along misinformation. The CASQA WM-3 BMP Fact Sheet says, “After 14 days of inactivity, a stockpile is non-active and requires further protection described below. All stockpiles are required to be protected as non-active stockpiles immediately if they are not scheduled to be used within 14 days.” The Caltrans WM-3 BMP Fact Sheet does not reference 14 days, but their CEM2030 form queries inspectors if it has been 3 days (72 hours) since a stockpile has been active, and if so requires them to report it under the inactive stockpile management section of the report.

So, who is correct in this matter of inactive stockpiles? It seems that the Regional Board has the right interpretation. They pointed to a nearly \$600,000 fine that was largely based on inactive stockpiles that was issued in 2016 to a home builder. You can view the violation at [Order No. R9-2016-0064](#). Look at violation #2 starting on page 14 of the pdf to see what they said about inactive stockpiles.

Please contact us if you have any questions ...

The Monthly Dirt

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Technical Questions about Environmental Compliance?

Call ...

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ONLINE QSP/QSD TRAINING

**JOIN US FOR OUR NEXT ONLINE COURSE
JULY 27-29, 2021**

**QSP TRAINING (2-DAY): \$375 | QSP/QSD TRAINING (3-DAY): \$550
QSD-ONLY (1-DAY): \$250**

The first 12 people to register will receive a \$25 gift card to Chipotle to enjoy during the course.



save the date

STORM WATER AWARENESS WEEK

SEPTEMBER 27 - OCTOBER 1, 2021

STOCKPILES DONE RIGHT.

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State Water Resources Control Board

REVISED
**NOTICE OF OPPORTUNITY FOR PUBLIC COMMENTS,
PUBLIC WORKSHOPS, AND PUBLIC HEARING**

**PROPOSED STATEWIDE CONSTRUCTION STORMWATER
GENERAL PERMIT REISSUANCE**

NOTICE IS HEREBY GIVEN that the State Water Resources Control Board (State Water Board) will receive public comments on the proposed reissuance of the statewide National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit.

NOTICE IS ADDITIONALLY HEREBY GIVEN that State Water Board staff will hold two public staff workshops to:

- Provide interested parties with information regarding the draft Construction Stormwater General Permit reissuance, and
- Respond to questions interested parties may have regarding the details of the draft Permit.

A quorum of the State Water Board may attend the public workshops; however, no State Water Board action will be taken at these workshops.

The public workshops will be held remotely as follows:

Public Workshop #1

Wednesday, June 9, 2021, 1:30 p.m. - 5:00 p.m.

[Zoom Registration Link](#)

Public Workshop #2

Thursday, June 10, 2021, 8:30 a.m. - 12:00 p.m.

[Zoom Registration Link](#)

Additional information regarding the public workshops is located on the [State Water Board Construction Stormwater Program page](#) (www.waterboards.ca.gov/constructionstormwater).

NOTICE IS ADDITIONALLY HEREBY GIVEN that the State Water Board will hold a public hearing to receive public comments on the draft Construction Stormwater General Permit reissuance. A quorum of the State Water Board will be present at the public hearing; however, no State Water Board action will be taken at the public hearing.

The public hearing will be held remotely as follows:

Wednesday, ~~July 7~~August 4, 2021 – 9:00 a.m.

Video and Teleconference Only

No Physical Meeting Location

(Authorized and in furtherance of Executive Orders N-29-20 and N-33-20)

Video Broadcast: <https://video.calepa.ca.gov/>

Additional information about participating telephonically or via the remote meeting solution will be available at least 10 days before the hearing at the [Remote Meeting page](https://www.waterboards.ca.gov/board_info/remote_meeting/) (https://www.waterboards.ca.gov/board_info/remote_meeting/). This public hearing is currently scheduled to take place via video and teleconference only, but the format may be changed in the future to also allow for in-person attendance. Any person desiring to receive future notices about changes to the date, time, location, or format of the public hearing should sign up for the Lyris e-mail list, as described below.

BACKGROUND

The federal Clean Water Act requires discharges of construction stormwater to waters of the United States to be regulated by an NPDES permit. The State Water Board adopted the existing statewide NPDES Construction Stormwater General Permit in 2009 to regulate stormwater discharges associated with construction activities disturbing one or more acres. The existing Construction Stormwater General Permit expired on September 2, 2014 and is administratively extended until the effective date of a reissued permit.

The draft Construction Stormwater General Permit incorporates:

- New requirements to implement existing Total Maximum Daily Loads adopted by Regional Water Boards into applicable Basin Plans;
- New regulation of passive treatment technology uses and discharges from dewatering activities;
- New criteria for Notices of Non-Applicability;
- Efficiency to the existing Notice of Termination process;
- Requirements to implement the California Ocean Plan and the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries, including the statewide Trash Provisions;
- Updated requirements for demolition activities;

- Updated water quality sampling requirements per the federal Sufficiently Sensitive Test Methods Rule; and
- Updated monitoring and reporting requirements.

State Water Board staff released an informal draft of the proposed Construction Stormwater General Permit on November 30, 2020, hosted two public workshops in December 2020 and held subsequent focused meetings with interested parties. Staff considered all informal public feedback in the development of the proposed permit.

DOCUMENT AVAILABILITY

The draft Construction Stormwater General Permit reissuance documents are available on the State Water Board [Construction Stormwater Program web page](http://www.waterboards.ca.gov/constructionstormwater) (www.waterboards.ca.gov/constructionstormwater).

PROCEDURAL MATTERS

Due to ongoing circumstances related to the COVID-19 pandemic, the public workshops and public hearing are currently scheduled to be held remotely via an online platform. Instructions for participation in the workshops through the online platform will be distributed via email to registered participants.

During the public workshops, staff will present a detailed explanation of the draft Construction Stormwater General Permit and changes made in consideration of feedback received on the informal draft. Participants will have the opportunity to ask staff detailed questions regarding the draft Permit during the public workshops.

At the State Water Board public hearing, there will be no sworn testimony or cross-examination of participants. However, the State Water Board and its staff may ask clarifying questions. Participants will be given an opportunity to provide oral presentations. To ensure a productive and efficient hearing in which all participants have an opportunity to participate, oral presentations may be time limited.

Participants planning to use a Power Point presentation during the State Water Board public hearing must submit the file electronically, in .ppt. format, to the Clerk to the Board via email at commentletters@waterboards.ca.gov, no later than **12:00 p.m. (noon) on Thursday, July 12th, 2021**. Please indicate in the subject line “**Power Point Presentation – Construction Stormwater General Permit Reissuance Public Hearing.**”

Presentation recommendations are available at the [State Water Board presentations page](http://www.waterboards.ca.gov/board_info/meetings/board_presentations.shtml) (http://www.waterboards.ca.gov/board_info/meetings/board_presentations.shtml).

WEBCAST INFORMATION

Live video and audio broadcasts of the public workshops and public hearing, for attendees that are solely interested in watching and not participating in the workshops or hearing, will be available via the internet and can be accessed at the [CalEPA Public Meeting Live Webcasts page](https://video.calepa.ca.gov/) (https://video.calepa.ca.gov/). The workshops and hearing will be recorded.

SUBMISSION OF COMMENTS

The State Water Board will accept both written and oral comments regarding this item. Oral comments must be made at the public hearing. Written comment letters must be received no later than **12:00 p.m. (noon) on Friday, ~~July 30~~August 13, 2021**. Written comments must be addressed to:

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000 (mail)
1001 I Street, 24th Floor, Sacramento, CA 95814 (hand-delivery)

Comment letters may be submitted electronically, in pdf text format (if less than 15 megabytes in total size), to the Clerk to the Board via e-mail at: commentletters@waterboards.ca.gov. If the file is greater than 15 megabytes in total size, then the comment letter may be submitted by fax at (916) 341-5620. Please indicate in the subject line: **“Comment Letter – Proposed Construction Stormwater General Permit Reissuance.”**

Note: Due to COVID-19, all persons hand delivering submittals must first schedule an appointment with staff by contacting Brandon.Roosenboom@waterboards.ca.gov. All hand delivered submittals must arrive and be date and time stamped prior to **12:00 noon on Friday, ~~July 30~~August 13, 2021**.

The State Water Board will not accept any additional written comments after the public comment deadline.

FUTURE NOTICES

Any person desiring to receive future notices concerning the proposed Construction Stormwater General Permit reissuance, including any changes to the format, location, date or time of the public hearing or public workshops, must sign up for the Lyris e-mail list as follows:

- (1) Access the [State Water Board email subscription web page](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml) (www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml)
- (2) Click the “Water Quality” tab
- (3) Check the box for “Stormwater Construction Permitting Issues”
- (4) Fill in the required signup details, and
- (5) Press the “Subscribe” button

ACCESSIBILITY

Telecommunications Device for the Deaf (TDD) users may contact the California Relay Service at (800) 735-2929 or voice line at (800) 735-2922.

ADDITIONAL INFORMATION

Please direct questions about this notice or requests for a paper copy of the draft Construction Stormwater General Permit to Brandon Roosenboom at Brandon.Roosenboom@waterboards.ca.gov.

June 9, 2021

Date

SIGNATURE ON FILE

Jeanine Townsend
Clerk to the Board