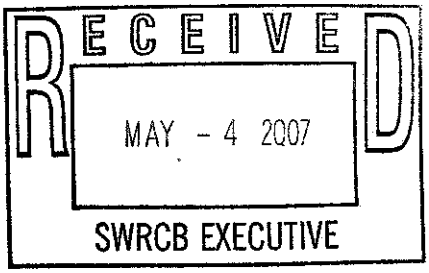
Construction General
Permit – Stormwater
Deadline: 5/4/07 5pm

BAYWOOD LAND MANAGEMENT COMPANY
4061 Port Chicago Highway, Concord, Ca 94520
Phone 925-682-6419 • Fax 925-689-2600



May 4, 2007

Ms. Song Her, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: COMMENT ON PROPOSED REVISIONS TO NPDES DRAFT CONSTRUCTION GENERAL PERMIT

Reference: National Pollutant Discharge Elimination System, Draft General Permit for Stormwater Discharges, Associated Construction and Land Disturbance Activities, dated March 2, 2007

To Whom It May Concern:

We are writing to express concern regarding a number of the proposed revisions to the above referenced draft General Permit currently being considered by the State Water Resources Control Board. Most importantly, we are concerned that the draft Permit de-emphasizes the use of erosion and sediment "source" controls that were emphasized in the 1999 Permit, instead placing the onus mainly on active treatment. By requiring active treatment systems at nearly all sites through the use of the risk-based categories, the proper use of source controls is de-emphasized and treatment controls (active treatment) are emphasized. Because of the vast strides that have been made in erosion control technologies in the last decade, it is our opinion that these technologies should not be dismissed, and should remain as the main emphasis of the Permit and at construction sites in general. It is our opinion that if these source controls are implemented properly, active treatment systems should not be required, except if downstream conditions warrant their use.

The new draft Permit requires an excessive amount of sampling, active treatment and paperwork without providing a technical basis for how the new requirements will benefit waters of the state. It appears that the preparers of the Permit had the best intentions to find ways to reduce pollutant transport from construction sites; however, the revisions were made in a way that are not easily implemented in the field and are not practical. The revisions to the Permit will create much more bureaucracy and paperwork for local governments and the regulated community attempting to comply with EPA standards without necessarily improving benefits to waters of the state. The inflexibility of the proposed revisions will detract from the regulated community's ability to appropriately select, implement and modify effective site control measures in order to avoid construction-related discharges to downstream receiving waters.

The remainder of this letter provides more detail in our areas of concern regarding the revisions to the draft Permit, including site risk categories, active treatment, permitting and reporting, sampling and hydromodification requirements. We summarize our concerns as follows:

1. Site Risk Categories:

All construction sites have some potential discharge risk, and therefore BMP implementation should be emphasized at all sites. The concept of assigning risk categories to sites conceptually provides a benefit; however, the application of the point system will assign most sites as high-risk. The attempt to categorize sites into low-, medium- or high-risk sites seems overly burdensome and unnecessary for the regulated community. During construction, the potential discharge risk will vary significantly across many projects depending on the timing of the construction activity (winter vs. summer), the type of activity (grading vs. vertical construction), as well as the site topography (flat vs. steep). The preparer of the stormwater pollution prevention plan (SWPPP) and the owner should have the flexibility to implement BMPs that are most appropriate for a given project without using a "one-size-fits-all" approach, especially on large scale projects with a long construction time-frame. This will reduce excessive cost in implementing unnecessary high-risk measures in sites that are predominantly low risk.

We are also concerned that the risk-based category does not consider receiving water characteristics. Receiving water characteristics (i.e. 303(d) listed streams for sedimentation) should be an important factor in determining the level of erosion and sediment control required for a site. Some natural stream systems have high sediment-capacity carrying loads while other naturally have low sediment loads; therefore, construction sites that discharge into these varying types of systems clearly must be treated differently in terms of discharge effluent requirements. The risk category point system should subtract risk points for commitment to proper implementation of erosion control measures, participation in regional solutions and third party inspection commitment.

2. Active Treatment Systems:

Active treatment systems should only be required if recommended by an erosion control specialist who is specifically familiar with the site, or by the preparer of the SWPPP. Active treatment should only be required if triggered by turbidity readings discharging from the site, as compared with background sample turbidity readings. If active treatment is required for nearly all sites, this may be seen as the "easy way out" for site operators in that less source control erosion protection may be used on construction sites since the ATS is expected to reduce turbidity in site runoff. Our opinion is that source controls, which have proven to provide great benefit when used properly, should be emphasized over treatment controls (i.e. active treatment).

Because the ATS requirement is based mostly on grain-size distribution, our opinion is that a better explanation is warranted in regard to the "10% by weight" of fines threshold determined for the ATS requirement. Because the grain size distribution of soils does not necessarily correlate with the capacity for erosion controls to be used and implemented successfully on site, this does not seem

like an appropriate measure for requiring ATS. As an alternative, ATS should be required when sensitive receiving water conditions warrant their use, or if BMPs are not being implemented properly on specific sites or are likely to fail due to site conditions.

We also are concerned with the NEL required for ATS effluent of 10 NTU. Considering the natural turbidity levels in some streams, this may be "too clean", which could cause detrimental impacts such as severe erosion in the downstream receiving waters. Sediment can be beneficial to streams by preventing erosion, providing nutrients, and providing cover in Delta environments. Our opinion is that the ATS requirement should largely be based on receiving water conditions and natural background conditions of the site. Using chemical flocculants or other active treatment may have unforeseen side effects on receiving waters, and is not practical or beneficial for all sites.

3. Permitting and Reporting Requirements:

The new permitting and reporting requirements under the proposed Permit are excessive, and generally unnecessary. While the additional regulations have the intent of better controlling and regulating construction discharges, the net effect is that they will complicate the approval process and prevent SWPPPs from being implemented or modified for many construction activities in a timely fashion. Generally Regional Water Boards are significantly understaffed for the multitude of regulations they are attempting to implement, and permitting approval backlog is often a very significant issue. The additional review requirements will burden the staff greatly and cause implementation delays for construction erosion control measures. Even with the current level of regulation and review, the regulated community is often unable to implement erosion control measures before rainfall begins due to excessive review delays.

In particular, the Rain Event Action Plan (REAP) will require an exorbitant amount of paperwork that could likely be managed with less reporting. The REAP should be part of the SWPPP (similarly to pre-storm rain inspections) as an active document to be amended an updated as site conditions change. We suggest that the trigger for a REAP be changed at least 0.2 inches of rain expected with at least 40% probability. Or, the requirement could be changed so that only one REAP be required for distinct project phases, i.e. clearing, grading, trenching, paving, vertical construction, etc.

4. Sampling Requirements:

The 1999 Permit allowed more trust between construction site developers and regulators in terms of BMP implementation, reporting discharges, etc. In the 1999 permit, sampling was required only when triggered by visual inspection or required on a site-specific basis by the RWQCB or a local municipality, and only field-based tests were required. The new Permit will require virtually all sites to conduct sampling, since the low-risk category will only apply to a very small percentage of construction sites in California. Our opinion is that sampling should be required on a performance basis, not simply because a site is pre-determined as medium or high risk. This gives the regulated

community more of an incentive to properly install erosion control and sediment control protection. If, for some reason, the BMPs in place do not comply with Permit standards, then monitoring and sampling plans should be considered on a site-by-site basis as previously done, with numeric limits set based on background sampling and turbidity levels. Sampling requirements should be field testing only, as it is imperative to obtain results immediately to effectively implement source control measures.

Additionally, it is our opinion that action levels (ALs) and numeric effluent limits (NELs) have been set without providing adequate technical basis or scientific study. The determination for these limits should be described in the Permit, and should be evaluated further, especially since appropriate levels would likely vary throughout the state.

5. *Hydromodification Requirements:*

Proposed hydromodification requirements in the draft Permit include maintaining site recharge rates, drainage patterns, time-of-concentration, among other factors. Hydromodification requirements will be addressed for many sites through Provision C.3 or other regional permits and therefore need not be made a part of the Construction General Permit. Maintaining site hydrology characteristics is an extremely difficult task, as can be seen from the many requirements and site controls used such as detention facilities, etc. Trying to maintain site hydrology during construction is unnecessary and infeasible due to the constantly changing nature of a construction site. Our opinion is that these requirements should be removed completely from the Construction General Permit.

Sincerely,

Julie Young
Baywood Land Management Company

cc: SWRCB – email (commentletters@waterboards.ca.gov)