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September 23, 2010

Summary of New California Storm Water Permit

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Introduction

Pursuant to the federal Clean Water Act, as well as California regulations, the California State Water Resources Control Board (“SWRCB”) requires certain construction projects to obtain a “Construction General Permit” for storm water discharges. The Permit generally governs practices related to controlling the discharge of storm water runoff from projects, and monitoring that runoff. Recently, the SWRCB revised the Permit to impose significantly stricter and more burdensome requirements.

Certain key aspects of the revised Permit are discussed below, but there are many other far-reaching aspects that any owner and its contractor should be aware of before even planning for work potentially covered by the Permit.

Applicability

The revised Permit went into effect on July 1, 2010. It is applicable to projects that disturb one or more acres of soil, or less than an acre if part of a larger common development that in total disturbs one or more acres. Construction activity subject to the Permit includes clearing, grading, and disturbances to the ground such as stockpiling or excavation. It generally does not apply to routine maintenance to restore grade.

Prevention Plan

The central mechanism of the Permit is the required “Storm Water Pollution Prevention Plan” (“SWPPP”). The Permit requires development and implementation of an SWPPP by a certified individual, and it is subject to SWRCB approval. The SWPPP should contain site maps that include storm water collection and discharge points. The SWPPP must list the Best Management Practices (“BMPs”) that the owner will implement at the project. Certain aspects of the BMPs are now mandatory as required by the Permit. The SWPPP must also contain the monitoring program for the discharges, including measuring turbidity and performing chemical tests for non-visible pollutants.

Risk Levels

The Permit categorizes projects according to three “Risk Levels” that depend on the site’s soil conditions and the quantity and nature of expected discharges. The greater the

Risk Level, the more onerous the discharge control and monitoring requirements that are imposed. Most construction sites that commenced prior to July 1, 2010 are grandfathered in at the least restrictive “Risk Level One.”

Numeric Effluent Limits

As mentioned, the revised Permit imposes increased monitoring requirements on most projects. It also for the first time includes “numeric effluent limits” and “actions levels” for turbidity and pH. For turbidity, the action level is 250 Nephelometric Turbidity Units (“NTU”) and the effluent limit is 500 NTU. Storm water discharges that exceed the effluent limits constitute a Permit violation, as well as a possible violation of the Clean Water Act and state regulations. Under the Clean Water Act, this can result in penalties of up to \$37,500 per violation per day. Discharges that exceed the action level may require a revision of the BMPs.

Electronic Reporting

The significant discharge events must be regularly reported through the SWRCB electronic database called “SMART.” Any discharges that exceed the action levels or numeric effluent limits must be immediately reported. Furthermore, there is a comprehensive annual reporting requirement.

Rain Event Action Plan

The Permit requires preparation of a Rain Event Action Plan at least 48 hours in advance of any date where the NOAA predicts a 50% or greater chance of precipitation. The plan must be site and storm specific, and correspond with each phase of construction.

Training Certification

As mentioned, the Permit requires that key personnel at the construction project, including SWPPP preparers and BMPs inspectors, must have sufficient training and certification to ensure familiarity with Permit compliance. The necessary training is available through SWRCB sponsored courses.

Conclusion

The revised Permit has a significant impact on most large construction projects in California, public and private. While it will likely improve the water quality in California, project owners, including Water Districts, need to plan in advance to ensure compliance with the Permit’s complicated regimen. They must also ensure that sufficient funds are allocated to compliance, because the discharge control and monitoring requirements are not cheap. However, compliance certainly costs less than the steep penalties that may be imposed on a daily basis for any violation.