

Response to Comments - Low Threat Discharge Permit

Written comments on the draft General NPDES Permit/Waste Discharge Requirements for Low Threat Discharges to Surface Waters in the North Coast Region (Order No. R1-2009-0045) were received from:

- A. Janice Gilligan, Sonoma County Permit and Resource Management Department, by emails dated May 12 and 13, 2009
- B. Frank Dane, Forestville citizen, by letter dated May 13, 2009
- C. Fred Krieger, by email dated May 17, 2009
- D. Miles Slattery, City of Eureka, May 20, 2009 telephone message
- E. Miles Ferris, City of Santa Rosa, by letter dated June 4, 2009

Following are Regional Water Board staff responses to comments provided by the above commenters. The responses indicate whether or not changes were made to the permit in response to the comments.

A. Janice Gilligan, Sonoma County Permit and Resource Management Department, May 12 and 13, 2009 emails

Comment A.1. What are the differences between the Basin Plan Amendment for Low Threat Discharges (exemptions) and the NPDES General Permit for Low Threat Discharges to Surface Waters. Don't both of these cover the same issues? What exactly would the County need to get a permit for if they are exempt under another program?

Response A.1. The proposed Basin Plan Amendment contains two different action plans: one to address planned discharges (Low Threat Action Plan) and one to address unplanned incidental discharges (Storm Water Action Plan).

The proposed Low Threat Action Plan provides exceptions to the seasonal discharge prohibition and one-percent discharge limitation. The Basin Plan amendment does not change these point source prohibitions in any way, but it does provide a process by which exceptions to the prohibitions can be granted. These exceptions are not automatically allowed. The Low Threat General Permit requires the submittal of an NOI that must contain information about the discharge, receiving water, evaluation of discharge alternatives, BMP plan, etc. this information will be used by staff to determine if a discharge qualifies for enrollment under the proposed Low Threat General Permit and whether an exception to the Basin Plan seasonal discharge prohibition or one-percent discharge limitation can be granted (if requested).

For proposed low threat discharges to storm drain systems that are regulated under an MS4 permit that have an approved BMP program, the discharge may be covered under the applicable MS4 permit or they can enroll under the Low Threat General Permit. But any proposed low threat discharge, subject to NPDES permitting, to an area that is not covered under an MS4 permit would need to apply for enrollment under the proposed Low Threat General Permit.

No changes were made to the proposed permit in response to this comment.

Comment A.2. I think I understand now. The draft WDR for low threat discharges to surface waters is a follow-up to Appendix A of the Basin Plan Amendment, while Appendix B of the Basin Plan amendment – incidental low-threat non-storm water discharges – is not subject to a WDR.

Response A.2. The commenter is correct in her observation that the proposed Low Threat General Permit implements Appendix A (Low Threat Action Plan) of the Basin Plan Amendment. However, her second observation, that incidental non-storm water discharges are not subject to a WDR, is not entirely correct. Incidental non-storm water discharges are subject to the requirements of storm water NPDES permits, in particular MS4 permits but also construction and industrial storm water permits. Appendix B (Storm Water Action Plan) requires that MS4 permittees develop management programs to address non-storm water discharges to regulated MS4 storm drain systems in order to get permit coverage for incidental non-stormwater discharges.

No changes were made to the proposed permit in response to this comment.

B. Frank Dane, Forestville Citizen, May 13, 2009 letter

Comment B.1. Commenter is concerned about the impact of the Low Threat General Permit upon small homeowners. He is concerned that the permit could require him and other small homeowners or people living on private roads to incur costs related to the permit that they cannot afford.

Response B.1. Discharges of pollutants from point sources to waters of the US are subject to permitting under provisions of the federal Clean Water Act. The adoption of this permit does not alter the regulations regarding discharges needing these types of permits. The proposed Regional Water Board action is to renew an existing construction dewatering permit to cover other types of regulated discharges in order to streamline the permitting process for low-threat discharges needing permit coverage.

No changes were made to the proposed permit in response to this comment.

C. Fred Krieger, May 17, 2009 email

Comment C.1. “If a roadway has a continuously discharging dewatering system from a hillside cut, (there are thousands) does it need to implement the full MRP: BOD, TSS, turbidity 4x/day etc? Plus 4x/day receiving water monitoring.”

Response C.1. It is unclear from the comment whether these “hillside cuts” meet the federal criteria for NPDES permitting. See Response E.4 below regarding the applicability of the permit to subterranean seepage dewatering projects done by small homeowners.

Section VII.B of the permit has been modified to give the Executive Officer the authority to modify the monitoring and reporting program to reduce monitoring frequency and/or eliminate a monitoring parameter if it can be demonstrated that such reduction in monitoring frequency will not compromise water quality.

Comment C.2. Commenter requests more time to review the permit due to its major implications.

Response C.2. The proposed permit was circulated for the standard 30-day public comment period required by statute. (40 CFR §124.10.) The public notice was placed in four major newspapers in the Region (Santa Rosa – Press Democrat, Eureka – Times Standard, Yreka – Siskiyou Daily News, Crescent City – Daily Triplicate, and circulated to a broad audience (over 2000 individual notices mailed). No other requests for additional review time were received.

No changes were made to the proposed permit in response to this comment.

D. Miles Slattery, City of Eureka, May 20, 2009 telephone message

Comment D.1. What kinds of comments is the Regional Water Board receiving on the proposed Low Threat General Permit and how hard will the process be for finalizing?

Response D.1. A copy of this Response to Comments document will be sent to Mr. Slattery.

Comment D.2. What effect will the proposed Low Threat General Permit have on the City's municipal operations?

Response D.2. The City may need to apply for coverage under the proposed Low Threat General Permit for any proposed discharge that requires NPDES permit coverage and is identified in Section I.B, Eligible Discharges of the proposed General Permit. If an eligible discharge is proposed for discharge to the City's municipal storm drain system, the discharge may be regulated under the City's Phase II MS4 permit, after the City develops a management program that is subsequently approved by the Regional Water Board Executive Officer.

No changes were made to the proposed permit in response to this comment.

E. City of Santa Rosa. June 4, 2009 letter

Comment E.1. Eligibility Criterion C.2.a and Discharge Prohibition D are unnecessarily restrictive and ambiguous. The permit is too restrictive by requiring that each low threat discharge must meet water quality objectives and criteria at the point of discharge. It is ambiguous in that some water quality objectives are expressed as an allowable

receiving water quality change relative to ambient conditions (e.g., turbidity, temperature) meaning that compliance cannot be assessed in the discharge alone. The City proposes revisions to Eligibility Criterion C.2.a, Discharge Prohibition D, Attachment A (NOI) Section G.

Response E.1. Due to the broad nature of this general permit, the determination of low threat must be clear cut and not subject to lengthy evaluations or uncertain conclusions. Therefore, the Notice of Intent is structured to obtain a concise set of information and data that will allow Regional Water Board staff to evaluate each application in a consistent manner. Water quality data submitted by each applicant will be evaluated to determine if pollutant concentrations in the discharge will meet water quality objectives and criteria and will not cause, or have a reasonable potential to cause, a discharge to exceed a water quality objective or receiving water limitation. If staff's evaluation determines that reasonable potential exists for exceedance of any water quality objective or receiving water limitation, the Executive Officer may deny coverage under the Low Threat General Permit. In some cases, applicants may be able to qualify for a dilution credit (in accordance with the State Implementation Plan for the California Toxics Rule). However, due to the detailed data collection and review associated with these cases as well as the need for more specific permit language necessary to allow such mixing zones, it is not appropriate to cover these discharges under the General Permit. The proposed Low Threat General Permit recognizes the fact that a public hearing may be required to determine whether or not to allow coverage under the proposed Low Threat General Permit, and where coverage under the Low Threat General Permit is not appropriate because the discharge cannot meet the requirements, the discharger may apply for coverage under an individual permit.

No changes were made to the proposed permit in response to this comment.

Comment E.2. The permit should clarify the relationship between the proposed [Low Threat] Permit and MS4 permits

- a. City points out that at the January 8, 2009 public workshop staff explained that the general Low Threat General Permit is intended to apply to activities occurring outside the area covered by municipal separate storm water system (MS4) permits, but that neither the Fact Sheet nor the proposed low threat general permit refers explicitly to MS4 permits. Section II Application/Enrollment Requirement D.2 refers to issuance of an individual NPDES permit or WDR as a basis for termination of coverage under the general [low threat] permit. Is the reference to NPDES permits under D.2 intended to include MS4 permits?
- b. City objects to the notion that an MS4 permit is a preferred regulatory mechanism and requests that the general order be clarified to state that all discharges meeting eligibility criteria should be regulated under the general permit regardless of MS4 permit coverage.

Response E.2.a. We appreciate the City identifying this need for clarification. Sections I.B of the proposed Permit and Fact Sheet have been modified to explain the relationship between the proposed low threat general permit and MS4 permits.

Response E.2.b. MS4 permits identify specific categories of non-storm water discharges that may be addressed under an MS4 permit with an approved management plan, including, but not limited to, water line flushing, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, water from crawl space pumps, residential car washing, and dechlorinated swimming pool discharges. Regional Water Board staff believe that with an appropriate management plan developed by the MS4 permittee that the MS4 permit is the most efficient and effective means to regulate these non-storm water discharges in many, if not most, cases. In some cases, the MS4 may want to use local ordinances to prohibit all or some of these non-storm water discharges. This Regional Water Board action is not intended to limit the authority of an MS4 permittee to prohibit non-storm water discharges to their system. Regional Water Board staff also realize that there are situations when a proposed low threat discharge to a permitted MS4 system might be more effectively covered under the proposed Low Threat General Permit. These determinations are best made on a case-by-case basis. Again, the Fact Sheet has been modified to explain the relationship between the proposed Low Threat General Permit and MS4 permits.

Comment E.3. The permit should clarify the relationship between the proposed [Low Threat] permit and other NPDES permits. The City proposes that Section II Application/Enrollment Requirement D.2 be modified to clarify that NPDES permits that address discharges covered by the general permit automatically terminate coverage under the general permit and provides suggested language to address this concern.

Response E.3. Staff agrees that the recommended clarification would be helpful and has modified Section II.D.2 of the proposed permit to read as follows:

“When the Regional Water Board issues an individual NPDES permit or Waste Discharge Requirements (WDRs) with more specific requirements to a Discharger for a discharge that is otherwise covered by this Order, the applicability of this General Permit to that Discharger is automatically terminated on the effective date of the individual permit or WDRs.”

Comment E.4. Permit should clarify regulation of subterranean seepage dewatering. The City requests clarification of how the permit will regulate small discharges by homeowners/property managers who don't know about the permit (e.g. dewatering basements).

Response E.4. Small discharges of subterranean seepage dewatering into municipal storm systems within areas covered by a Phase 1 or Phase 2 MS4 permit would be regulated under these storm water permits. Municipalities permitted under the MS4 permit program are required to develop and implement programmatic best management programs to ensure that all categories of non-storm water discharges to the permitted storm drain systems are not discharging pollutants that threaten water quality.

Low threat point source discharges to surface waters that meet federal criteria for NPDES permit coverage are subject to permitting, regardless of size. Regional Water Board staff will need to work with local planning departments to ensure that projects that include a subterranean seepage dewatering project are designed in a manner to avoid the need for NPDES permitting or that they are conditioned to require contact with the Regional Water Board to determine if enrollment under the Low Threat General Permit is required. Regional Water Board staff will also identify for local planning agencies methods to: (1) reduce or eliminate the need for permitting these smaller projects through the implementation of BMPs that eliminate or reduce the need for these smaller subterranean seepage dewatering projects (e.g., careful site selection, proper design of structures, proper grading); (2) methods to eliminate the need for a surface water discharge from subsurface seepage dewatering projects, such as discharge to land; and (3) properly install and operate subsurface seepage dewatering projects so that they are protective of water quality. Coverage under this Low Threat General Permit would not be necessary if care is taken to eliminate the need for a subsurface seepage dewatering project or to not discharge subterranean seepage water through a point source, rather to discharge it to land.

No changes were made to the proposed permit in response to this comment.

Comment E.5. Tables E-2 and E-3 list effluent and receiving water monitoring requirements, but since these tables are not cited in the text, their context and applicability is unclear.

Response E.5. Sections IV.A.1 and VIII.A.1 of the Monitoring and Reporting Program have been modified to cite Tables E-2 and E-3, respectively.

Comment E.6. The City feels that effluent and receiving water monitoring requirements listed in Tables E-2 and E-3 are not relevant for some discharges and requests that the permit allow all dischargers to develop a project-specific sampling and analysis program. The City uses the specific example that monitoring chlorine residual in untreated groundwater should not be required.

Response E.6. Effluent and receiving water monitoring requirements specified in the Monitoring and Reporting Program (Tables E-2 and E-3) are generally applicable as a means for a discharger to demonstrate that the discharge continues to pose a low threat to water quality. The following paragraphs explain why each parameter is included in the standard monitoring and reporting program. Sections VII.B.2 and VII.B.5 of the Fact Sheet have been modified to further clarify the need for these parameters.

For longer term low-threat discharges, the BOD and TSS monitoring requirements will ensure that the discharge is a high quality water that does not contain any degradable wastewater or is not discharging effluent that has unacceptable levels of TSS that could result, for example, from algae growth in an effluent.

Chlorine residual monitoring requirements only apply to discharges that have been chlorinated (see Footnote 7 to Table E-2).

Temperature, turbidity, pH, specific conductance, dissolved oxygen, and visual observations apply to all low threat discharges to ensure that effluent and receiving water limitations specified in the general permit are complied with.

In addition, Tables E-2 and E-3 allow the Regional Water Board Executive Officer to stipulate additional monitoring requirements when granting authorization to discharge under the Low Threat General Permit. Footnote 10 to Tables E-2 and E-3 identifies examples that include monitoring for naturally occurring metals in a groundwater discharge or monitoring for trihalomethanes in a discharge that originates from a potable water supply that has been chlorinated.

After reviewing the City's comment, staff modified Section VII.B of the permit and added a new paragraph at the beginning of the MRP (second paragraph) to give the Executive Officer the authority to modify the monitoring and reporting program to reduce monitoring frequency and/or eliminate a monitoring parameter if it can be demonstrated that such reduction in monitoring frequency will not compromise water quality.