

Regional Board Perspective

April 15, 2010

Mark Smythe

Coastal Storm Water Section

Santa Ana RWQCB

Topics

- BMP Implementation
- Storm Water Enforcement
- Region 8 Implementation of New Construction General Permit

BMP IMPLEMENTATION

BMP Implementation Under 99-08

What Regional Board staff expected to see:

- An effective combination of erosion and sediment controls implemented and maintained
- An available, updated, certified SWPPP
- Protected inlets
- Maintained perimeter controls
- Run-on controls, where needed
- Concrete, stucco and trash management
- Only improved entrances in use
- Good housekeeping

Minimal Erosion Controls No Sediment Controls



No Erosion Controls Minimal Sediment Controls



No Erosion Controls No Sediment Controls



Sediment Discharge



Unprotected MS4 Inlet



Unprotected MS4 Inlet



Unprotected MS4 Inlet



Exposed Hydraulic Oil



Storm Water Enforcement

Inspections and Enforcement

- U.S. EPA
- Regional Water Quality Control Board
- City/County
- Owners/Developers/Contractors
- 3rd Party

Regional Board Enforcement

- Progressive Enforcement Tools
 - Informal Enforcement
 - Formal Enforcement
- Statewide Enforcement Policy
 - http://www.waterboards.ca.gov/water_issues/programs/enforcement/

Informal Enforcement

- Oral Warning
- Staff Enforcement Letter
- Notice of Violation (NOV)

Formal Enforcement

- Administrative Civil Liability (ACL)
- Notice of Non-Compliance (NNC)
- Mandatory Minimum Penalty (MMP)
- Others
 - Notice to Comply
 - Cleanup and Abatement Order
 - Cease and Desist Order

Administrative Civil Liability

(Water Code 13385)

- Maximum Penalties
 - \$10,000 per day per violation
 - \$10/gallon (after 1st 1,000 gallons) of discharge
- Additional Requirements
 - At a minimum must cover economic savings
 - Recovery of staff costs

Administrative Civil Liability

- Includes the right to a public hearing
- Five Specific Factors to be Considered:
 - Nature, Circumstances, Gravity of Violation
 - Culpability
 - Economic Benefit
 - Prior History of Violations
 - Ability to Pay and Continue Business
 - Other Factors as Justice may Require

Mandatory Minimum Penalty (Water Code 13399)

- Legislated to ensure Regional Boards take enforcement actions.
- Applies to individual NPDES permits and storm water general permits.
- For storm water:
 - Failure to File a Notice of Intent
 - Failure to Submit an Annual Report
 - Risk Level 3 sites with 4 Numeric Effluent Limit (NEL) violations in 6 months

MMP For Non-Submittal of NOI or Annual Reports

- An initial Notice of Non-Compliance (NNC) is sent to discharger.
- If after approximately 30 days there is no response, a second NNC is sent to discharger.
- If after 60 days from the date of the first NNC, compliance is not achieved, the Regional Board is required to issue a Mandatory Minimum Penalty (MMP).

Mandatory Minimum Penalty

- Failure to apply for coverage under the storm water General Permits
 - Mandatory Minimum Penalty - \$5,000
- Failure to submit an annual report or certification under the storm water General Permits
 - Mandatory Minimum Penalty - \$1,000
- Four Numeric Effluent Limit violations in a 6-month period at Risk Level 3 site
 - Mandatory Minimum Penalty - \$3,000

REGION 8's
IMPLEMENTATION OF
ORDER No. 2009-0009-DWQ

Region 8

- Grandfathered Sites – Risk Determination Exemption
- New Expectations During Site Inspections
- Qualified SWPPP Developers (QSD) and Qualified SWPPP Practitioners (QSP)
- Rainfall Erosivity Waivers

Grandfathered Sites

- Permit Required Documents (PRDs) must be submitted by July 1, 2010.
- The only Risk Level 1 PRD not required for grandfathered sites is the Risk Determination.
- SWPPP must meet new Risk Level 1 standards.

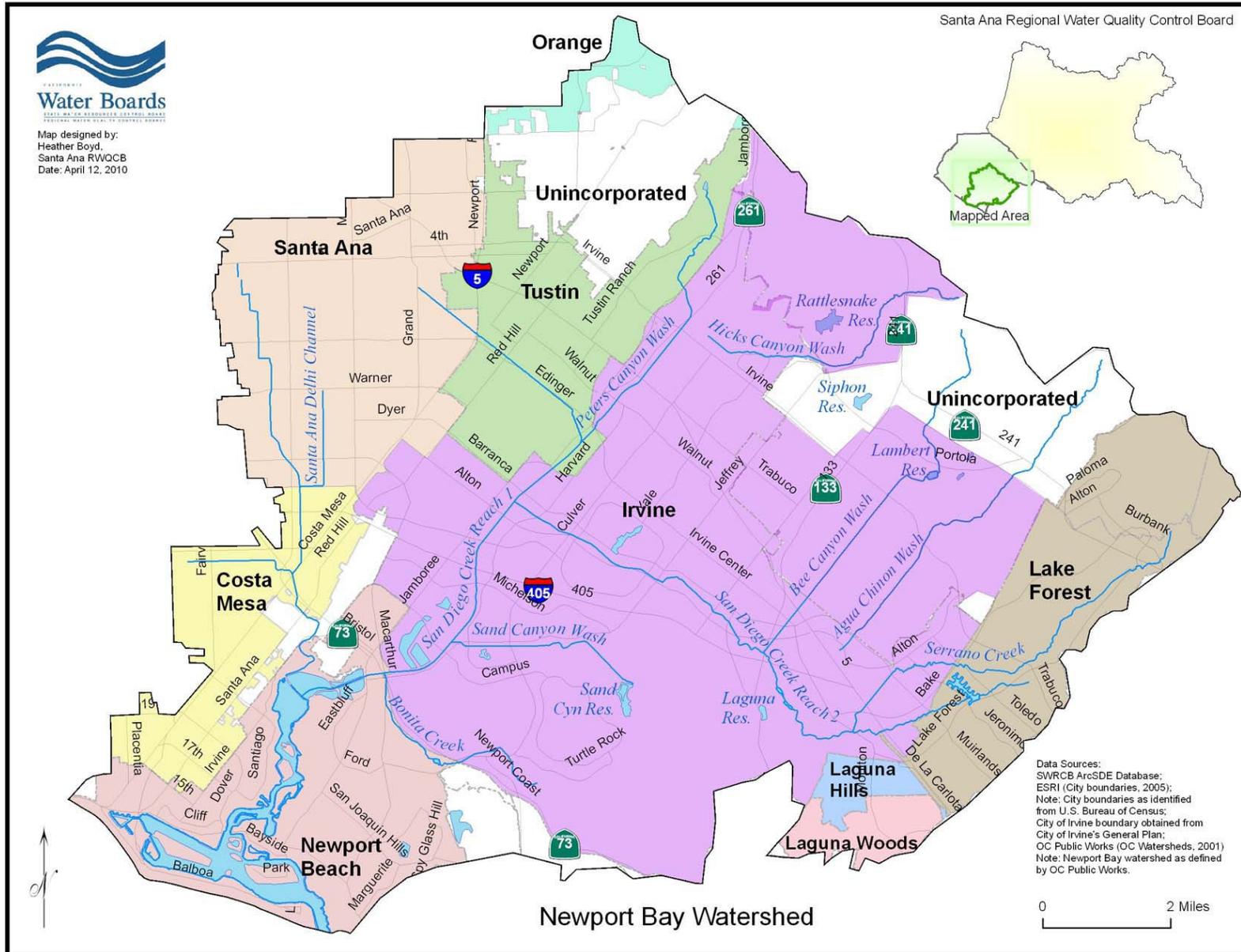
Risk Determination

- Combined Risk Levels 1-3 are based on the Sediment Risk Level and the Receiving Water Risk Level.
- The Receiving Water Risk Level is HIGH if the discharge from the disturbed area reaches a 303(d) (sediment) waterbody or a waterbody that has a US EPA approved TMDL implementation Plan.
- Big Bear Lake and Rathburn Creek are currently 303(d) listed and Newport Bay has an approved TMDL implementation Plan for sediment.



Map designed by:
Heather Boyd,
Santa Ana RWQCB
Date: April 12, 2010

Santa Ana Regional Water Quality Control Board



Data Sources:
SWRCB ArcSDE Database;
ESRI (City boundaries, 2005);
Note: City boundaries as identified
from U.S. Bureau of Census;
City of Irvine's General Plan;
OC Public Works (OC Watersheds, 2001)
Note: Newport Bay watershed as defined
by OC Public Works.

Risk Determination Exemption

- The Permit states that Regional Boards retain the authority to require an existing discharger to comply with the Section VIII risk determination requirements.
- The Fact Sheet specifically mentions a history of non-compliance or the site poses a significant risk of contributing to an exceedance of a water quality standard.

Risk Determination Requirements

- Region 8 staff will be reviewing past enforcement actions to see if it's appropriate to revoke a permittee's risk determination exemption.
- Region 8 staff will be reviewing projects in the 2 Risk Level 3 watersheds to see if it's appropriate to revoke a permittee's risk determination exemption.
- Sites receiving NOVs in Region 8, after July 1, 2010 will be evaluated and may have their risk determination exemption revoked.

BMP Implementation Under 09-09

What Regional Board staff expects to see:

- Everything we expected to see under 99-08
- All inactive areas have effective soil cover
- REAPs (Risk Level 2 and 3 sites)
- Weekly inspection checklists
- Extended rain event checklists
- Pre- and post- rain event reports
- Quarterly non-storm water monitoring reports

QSD/QSP

- Regional Board staff understand that the timing on availability of training and the deadlines for training may be tight.
- For this time period, Regional Board staff will be primarily looking to the quality of the PRDs and their implementation.

Rainfall Erosivity Waiver

- Regional Board staff will be watching these very closely.
- Failure to properly maintain waiver status and unauthorized discharges, including tracking and non-storm water discharges, will likely be dealt with through low level ACL actions.

Summary

While much of the permit remains the same, there are new requirements that if not followed carefully, may result in increased enforcement, particularly at Risk Level 2 and Risk Level 3 sites.

Regional Board and State Board staff are available to assist you in answering questions and in bringing your site into compliance.

Region 8 Contacts

- Orange County
 - Mary Bartholomew (951) 321-4586
 - Michael Kashak (951) 782-4469
- Riverside County
 - Michael Roth (951) 320-2027
 - Keith Elliot (951) 782-4925
- San Bernardino County
 - Muhammad Bashir (951) 320-6396
 - Maria Macario (951) 321-4583

All emails are first initial + last name @waterboards.ca.gov