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Subject: Proposed MS4 Permit for Santa Rosa
Attachments: venturaMS4LID.pdf

We have reviewed the draft MS4 permit for the City of Santa Rosa and its co-permittees (NPDES permit No. CA0025054) public noticed on September 9, 2008 and we would like to offer the following comments regarding three aspects of the permit.

In April 2007, EPA entered into an agreement with several national organizations to promote green infrastructure (which is very similar to low impact development (LID)) to improve stormwater quality management for MS4s. In January 2008, EPA also published an action strategy for the new initiative which is available at http://cfpub.epa.gov/npdes/whatsnew.cfm?program_id=6). The strategy encourages green infrastructure/LID requirements (such as bioretention, green roofs) in MS4 permits and we are trying to ensure that MS4 permits in Region 9 include appropriate requirements to promote green infrastructure/LID. The effectiveness of vegetation-based treatment for stormwater is superior* to conventional treatment (such as detention basins, drain inlet inserts) which is the focus of Part 5.5 of the permit; landscape-based treatment also has greater capacity to reduce the impact of spills. A wide range of other benefits of green infrastructure/LID was identified in our action strategy (such as energy efficiency, cleaner air and moderating climate change), and again we believe it is important that this be emphasized in permits.

1) Part 5 - New Development/Redevelopment Integrated Water Quality/Water Resource Plan

The green infrastructure/LID permit requirements should be as quantitative as possible to ensure clarity and enforceability. Some possible approaches (but not necessarily the only approaches) which have been suggested for quantitative requirements are the following:

Requirements similar to the draft Ventura County MS4 permit which includes a 5% limit on effective impervious area (EIA) for new development and redevelopment (Provision E.III.1.(a)). It may also be necessary to develop exceptions provisions for some projects such as found in Provision E.IV.4 of the draft Ventura County permit. The draft Ventura County permit is available on the Los Angeles Regional Board's website.

Requirements for LID management measures that address a particular design storm (such as the first 1" or rain), but with reduced requirements for certain types of projects such as brownfield developments, infill, or transit oriented developments.

Currently, the draft permit for the City of Santa Rosa and its co-permittees requires the utilization of LID principles in developments and redevelopments. However, in order to promote substantial benefits from the use of these principles, the permit should incorporate specific

LID performance requirements such as those described above. Similarly, the draft permit calls for the preparation of a hydromodification plan, but doesn't specify performance expectations. In order to promote substantive benefits, the permit should incorporate specific hydromodification performance requirements. For example, a quantitative approach could compare pre- and post-development conditions and limit the % of hydromodification that would be acceptable.

2) Discharges to Impaired Waterbodies and TMDL Requirements

The Findings (Findings 83-87) note that the Regional Board is currently in the process of developing TMDLs for a number of impaired waterbodies within permitted area, and that MS4 discharges may be contributing to some of the impairments. As you know, NPDES permits must be consistent with TMDL requirements after they are approved by EPA (40 CFR 122.44(d)(1)(vii)(B)). Although the TMDLs have yet to be approved, some (such as the Laguna de Santa Rosa) may be approved during the term of the permit. We recommend that the Findings note that the permit may be reopened during the term of the permit to incorporate requirements of TMDLs that are approved during the permit term (as was done in 2006 for the Los Angeles County MS4 permit to incorporate the Santa Monica Bay bacteria TMDL). This would provide advance notice to the permittees of such a possibility and would facilitate expedited implementation of applicable TMDL requirements for MS4 discharges. Authority to reopen the permit already exists in Standard Condition H of the permit.

With regards to impaired waterbodies with no approved TMDLs, Finding 91 notes that the permit requires the implementation of "all necessary control measures to reduce pollutants which cause or contribute to water quality impairments . . ." While the draft permit does have some requirements along these lines (such as Part 3.1.3(a) for commercial sources), a comprehensive strategy to minimize pollutants contributing to impairments seems lacking. As such, we recommend that the permit include a requirement for an action strategy which would fulfill the intent of Finding 91. Such an action strategy would identify pollutants of concern and an overall strategy to minimize the discharge of such pollutants; the strategy would be due to the Board within one year of permit adoption.

3) Part 3 - Controls for Industrial/Commercial Facilities

We recommend that the inventory of critical sources required by Part 3.2(a)(2) be revised to include all industrial facilities as defined at 40 CFR 122.26(b)(14), including those subject to the statewide general permit. We suggest requirements such as found in the 2007 San Diego County MS4 permit (Part D.3.b(1)). This would ensure that all potentially significant industrial sources are included in the inventory and inspected as appropriate.

Thank you for the opportunity to review and comment on the draft permit. If there are questions, please call me at (415) 972-3510.

*See for example the analysis prepared by Dr. Richard Horner entitled

"Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for Ventura County" submitted to the Los Angeles Regional Board by NRDC. This report is attached below:

(See attached file: venturaMS4LID.pdf)