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May 29, 2008

Dr. Xavier Swamikannu
Stormwater Permitting
Los Angeles Regional Water Quality Control Board
320 4th Street, Suite 200
Los Angeles, CA 90013
by email: XSwamikannu@waterboards.ca.gov and 3rdddraftVCMS4@waterboards.ca.gov

Subject: Draft MS4 NPDES Permit for the Ventura Countywide Stormwater Quality Management Program

Dear Mr. ~~Swamikannu~~ *Xavier*

Thank you for the opportunity to again provide comments on the Draft NPDES Permit (Permit) for the Ventura Countywide Stormwater Quality Management Program. We originally submitted comments on the first draft Permit with our letter of March 7, 2007. As we noted previously, this Permit does not directly pertain to State Highways; however, we have an interest because portions of the Permit may be referenced in our statewide Stormwater Management Plan (SWMP) and the upcoming renewed Caltrans Statewide Stormwater NPDES Permit.

As we noted in our previous letter, the Department has experience implementing stormwater controls throughout the state. In addition, our research program for stormwater has resulted in a comprehensive database on best management practice (BMP) performance and runoff water quality, which provides a basis for assessing the proposed Permit requirements. Using this data, we have developed the following comments. We have focused on the municipal action levels (MALs), which are used to determine if maximum extent practicable (MEP) pollutant controls according to the proposed permit are being implemented. Many of our comments on this draft are similar to our comments from March of last year.

1. *Natural variability in stormwater runoff precludes the use of fixed action levels (MALs) based on median runoff concentrations and an arbitrary multiplier for the coefficient of variation.*

Pollutant concentrations in stormwater runoff from state highways vary by orders of magnitude. Much of this variation is independent of standard BMPs for existing roadways but rather is affected by such factors as proximity to open land (dust), traffic volume, traffic controls (e.g., stops, access ramps), traffic congestion, age of roadway, period between storms, strength and duration of storms, etc. This extreme variation persists even though the Department implements a consistent statewide program. As a result, we do not understand the technical basis for linking the definition of MEP to any specific concentration of pollutants in the runoff.

The MALs in the Permit were obtained by multiplying median values (based on nationwide Phase I MS4 monitoring data) with 2X the coefficient of variance. While 2X the CV allows a better

range for assessing compliance than the *IX* used in the 2006 draft, this approach is still inappropriate, because the resulting MALs

- Do not recognize variability due to natural factors
- Are not related to protection of beneficial uses
- Have not been linked to demonstrated performance, i.e., the Permit has not shown that exceedance of a MAL is related to inadequate management of stormwater

As an alternative, we propose that Permit compliance be based on measures of program performance, such as the performance measures developed by CASQA, as well as implementation of controls to address total maximum daily load (TMDL) allocations.

2. *The proposed numeric levels have never been applied to MEP.*

When Congress amended the Clean Water Act in 1987 to regulate stormwater, it made a clear distinction between industrial stormwater discharges and discharges from MS4s. Congress applied a technology-based effluent limitation of MEP to municipal stormwater discharges. The State Water Resources Control Board, Office of Chief Counsel, defined MEP in a February 11, 1993 legal opinion, as an iterative process. This process involves choosing effective BMPs that are technically feasible and where the costs has a reasonable relationship to the pollution control benefits to be achieved. MEP as presently interpreted allows the discharger flexibility in determining, which technically feasible and cost-effective BMP to utilize. This is particularly important to the Department due to limited right-of-way and other constraints in operating within transportation facilities. Setting strict numeric limitations will restrict the Department's options in its selection of BMPs. This could limit options including source control and Low Impact Development BMPs.

3. *Treatment BMP performance may not be achievable.*

The Permit identifies BMP performance criteria based on nationwide data:

The treatment control BMP performance standards were developed from the median effluent water quality values of the 3 highest performing BMPs, per pollutant, in the stormwater BMP database (<http://www.bmpdatabase.org>, last visited August 15, 2007.)

A few of these values are shown in the table below:

Pollutant	Suspended Solids (mg/L)	Total Cu (µg/L)	Total N (mg/L)
Concentration Effluent	10.85 – 25.81	3.35 – 7.49	0.74 – 1.62

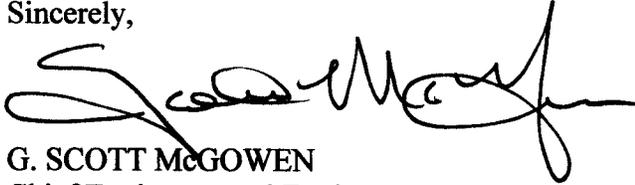
We believe that the nationwide data on BMP performance does not necessarily represent the BMP performance attainable in California because of our state's relatively unique rainfall seasons. In addition, in many situations, not all BMPs can be implemented. Thus, selecting the three highest performing BMPs may not be appropriate, since they may not be usable in the particular location

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with runoff. We suggest that these proposed numbers be specifically assessed against BMP results achieved in California (the Department has BMP data posted). In addition, it might be better to tie performance requirements to specific BMPs, rather than to apply them to all BMPs.

Again, we thank you for this opportunity to submit our comments. If you have any questions, please contact Joyce Brenner at (916) 653-2512.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Scott McGowen". The signature is fluid and cursive, with a large initial "G" and a long, sweeping underline.

G. SCOTT MCGOWEN
Chief Environmental Engineer

cc: Bruce Fujimoto, SWRCB, bfujimoto@waterboards.ca.gov