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January 11, 2013

Mr. Wayne Chiu, P.E.
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

VIA E-Mail: wchiu@waterboards.ca.gov

2013 JAN 11 P 1:45
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

Re: Comment – Tentative Order No. R9-2013-0001, Regional MS4 Permit, Place ID: 786088Wchiu

Dear Mr. Chiu and Board Members:

The San Diego Gas & Electric Company (SDG&E) provides transmission and distribution of natural gas and electricity throughout San Diego County and southern Orange County. Delivery of these essential public services requires routine and emergency construction, operation and maintenance of its linear utility infrastructure. A primary mandate to utilities and other entities with linear facilities regulated by the California Public Utilities Commission and/ or other state and federal regulatory agencies is to provide safe and reliable service. The above-referenced draft MS4 permit (draft Permit) would impact SDG&E facilities in our service territory, which is located primarily within Region 9.

Our comments and recommended revisions to specific issues in the draft Permit are provided below.

<u>Non-Storm Water Discharges</u>

There is still confusion in the draft Permit regarding which non-storm water discharges are effectively prohibited and must be eliminated and those that are authorized. The draft Permit both states that it authorizes and prohibits non-storm water discharges but it is not always clear which are authorized and which are prohibited. In multiple locations (e.g. Finding 15), the draft Permit states that non-stormwater discharges into the MS4s must be "effectively prohibited" or eliminated. These sections conflict with other sections (Section II.A.1.b., for example), which state, consistent with EPA's regulations, that non-stormwater discharges authorized by a NPDES permit are authorized to be discharged to the MS4 system. One change that would help to clarify this issue would be to revise Finding 15 as follows:

> **Non-Storm Water and Storm Water Discharges.** Non-storm water discharges from the MS4s are not considered storm water discharges and therefore are not subject to the MEP standard of CWA section 402(p)(3)(B)(iii), which is explicitly for "Municipal ... *Stormwater Discharges* (emphasis added)" from the MS4s. Pursuant to CWA 402(p)(3)(B)(ii), non-storm water discharges into the MS4s must be effectively prohibited. ***However, consistent with EPA's regulations, the draft Permit authorizes discharges of non-storm water to MS4s that are either authorized by a separate NPDES permit, or the discharge is a category of non-storm water discharges or flows that must be addressed pursuant to Provisions <u>E.2.a.(1)-(5)</u> of this Order.***

Prohibition of Non-Storm Waters

Section E.2.a.6. would prohibit any category of non-stormwater under Section E.2.a.1-4. if it is found by the co-permittee or the Regional Board to be a source of pollutants to receiving waters. We recommend that this section be revised to also allow the co-permittees to designate different and/ or additional BMPs to be implemented as opposed to prohibiting the category of non-stormwater and suggest the following language:

> If the Copermittee or San Diego Water Board identifies any category of non-storm water discharges listed under Provisions E.2.a.(1)-(4) as a source of pollutants to receiving waters, the category must be prohibited through ordinance, order, or similar means and addressed as an illicit discharge. ***Alternately, the Copermittee can designate different and/ or additional BMPs to be implemented as opposed to prohibiting the category of non-stormwater.***

Building Fire Suppression System Maintenance Discharges

Section E.2.a.5.a.1. would require the co-permittees to treat building fire suppression system maintenance discharges (e.g., sprinkler line testing and flushing) as an illicit discharge. These discharges have historically been allowed under existing MS4 permits and municipal ordinances with the use of appropriate BMPs. These activities are mandated by code and insurance companies and are essential to maintain a safe and reliable fire water delivery system. Changing existing systems to discharge to the sewer may not be feasible and/ or be expensive due to the existing plumbing configurations. These discharges should continue to be authorized with the implementation of appropriate BMPs as determined by the MS4. If existing BMPs are found to be inadequate, different and/ or additional BMPs could be required to be implemented by the MS4.

Discharges to Areas of Special Biological Significance

The draft Permit should clarify that non-storm water discharges (e.g., potable hydrotest dewatering, groundwater dewatering discharges, etc.) made pursuant to NPDES permits to MS4 systems that discharge to Areas of Special Biological Significance (ASBS) are authorized. These types of discharges are critical to on-going infrastructure development, maintenance and operation and the State Water Board's March 2012 "Exceptions to the Ocean Plan for Discharges to Areas of Biological Significance" provides that the NPDES permitting authority can authorize these discharges to ASBS by making an appropriate finding in the applicable MS4 permit. **We urge the RWQCB to include the following language as part of Finding 32:**

> ***"The ASBS exception authorizes the discharge of non-stormwater to a MS4 when an NPDES permitting authority finds that the discharge does not alter natural ocean water quality in the ASBS. Accordingly, the RWQCB finds that since NPDES permits for non-stormwater discharges contain conditions and requirements to protect water quality and many of these permits are for short-term and/ or intermittent discharges (e.g., discharges from utility vaults and underground structures, construction groundwater dewatering, hydrostatic test water discharges, potable water discharges), these discharges will not alter natural ocean water quality and herein authorizes their discharge to MS4 systems that discharge to ASBS."***

Further, the following Sections need to be revised to ensure consistency and support the above finding:

- Section II.A.1.d.:

  "Storm water discharges ***and non-stormwater discharges made pursuant to NPDES permits*** from the City of San Diego's MS4 to the San Diego Marine Life Refuge in La Jolla, and the City of Laguna Beach's MS4 to the Heisler Park ASBS are authorized under this Order subject to the Special Protections contained in Attachment B to State Water Board Resolution No. 2012-0012 applicable

to these discharges, included in Attachment A to this Order. All other discharges from the Copermittees' MS4s to ASBS are prohibited."

- Section 2.I.A.1.e.2.ii. in Attachment A needs to be revised to reference the above finding:

  "An NPDES permitting authority may authorize non-storm water discharges to an MS4 with a direct discharge to an ASBS only to the extent the NPDES permitting authority finds that the discharge does not alter natural ocean water quality in the ASBS ***(see Permit Finding 32)***."

Non-stormwater Action Levels

The draft Permit should not subject non-stormwater discharges made pursuant to NPDES permits to action levels. Section II.C.1. would subject non-stormwater discharges to action levels. However, non-stormwater discharges that have NPDES permits are subject to their own discharge requirements. Setting additional, perhaps conflicting, requirements on these discharges is unnecessary and will lead to confusion. **We therefore urge the RWQCB to revise the draft Permit to clarify that the proposed non-stormwater action levels are not applicable to non-stormwater discharges that have NPDES permits.**

Development Planning

The draft Permit should not subject linear underground/ overhead (utility) projects (or LUPs) to permanent post-construction requirements. Section E.3. requires permanent BMPs for all development projects. LUP construction projects are regulated pursuant to the State Water Board's Stormwater Construction General Permit (CGP). Finding 76 in the CGP specifically excludes LUPs from permanent post-construction requirements due the nature of their construction. For consistency with the CGP, the draft Permit needs to clarify that Section E.3. is not applicable to LUPs as defined in the CGP. **We urge the RWQCB to make the following revisions:**

- Finding 10

  Pollutants Generated by Land Development. Land development has created and continues to create new sources of non-storm water discharges and pollutants in storm water discharges as human population density increases. This brings higher levels of car emissions, car maintenance wastes, municipal sewage, pesticides, household hazardous wastes, pet wastes, and trash. Pollutants from these sources are dumped or washed off the surface by non-storm water or storm water flows into and from the MS4s. When development converts natural vegetated pervious ground cover to impervious surfaces such as paved highways, streets, rooftops, and parking lots, the natural absorption and infiltration abilities of the land are lost. Therefore, runoff leaving a developed area without BMPs that can maintain pre-development conditions will contain greater pollutant loads and have significantly greater runoff volume, velocity, and peak flow rate than pre-development runoff from the same area. ***The nature of linear underground/ overhead projects (LUPs) is to return project sites to pre-construction conditions. Therefore, consistent with Finding 76 in the SWRCB's Storm Water Construction General Permit[1], LUPs are not subject to post-construction requirements.***

  [1] ***Order 2009-0009-DWQ, as amended by Orders 2010-0014-DWQ and 2012-0006-DWQ, contains the definition of Linear Underground/ Overhead Projects.***

Administrative Record Page No. 008339

- Definition of "Development Project"

  "**Development Projects** - Construction, rehabilitation, redevelopment, or reconstruction of any public or private residential project, industrial, commercial, or any other projects. ***Development Projects do not include linear underground/ overhead projects as defined in the SWRCB Storm Water Construction General Permit (Order 2009-0009-DWQ, as amended by Orders 2010-0014-DWQ and 2012-0006-DWQ).***

The enclosed comments are in reference to the actual draft Permit language. We request that revisions consistent with these comments also be made to the draft Permit's Fact Sheet/ Technical Report.

Please call Fred Jacobsen at 858-637-3723 if you have any questions regarding our comments.

Thank you for this opportunity to provide you with our comments.

Sincerely,

Susan M Hector

Susan M. Hector
Environmental Programs Manager