



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

Public Comment
Draft Phase II Small MS4 General Permit
Deadline: 7/23/12 by 12 noon

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

July 19, 2012

IN REPLY PLEASE
REFER TO FILE: **WM-9**

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95812



Dear Ms. Townsend:

COMMENT LETTER – 2ND DRAFT PHASE II SMALL MS4 GENERAL PERMIT

Thank you for the opportunity to comment on the proposed draft General National Pollutant Discharge Elimination System Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems. We hereby submit the enclosed comments on behalf of the County of Los Angeles.

We look forward to your consideration of these comments. If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Angela George at (626) 458-4325 or ageorge@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Director of Public Works

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

RW:jtz

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Enc.

cc: Chief Executive Office (Dorothea Park)
County Counsel (Judith Fries)

**COMMENTS OF THE COUNTY OF LOS ANGELES ON THE
SECOND DRAFT GENERAL NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMIT FOR STORMWATER DISCHARGES
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS**

The County of Los Angeles (County) appreciates the opportunity to review and provide comments on the second Draft General National Pollutant Discharge Elimination System (NPDES) Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) (hereinafter referred to as Draft Permit).

I. The Draft Permit Should Not Designate Unincorporated County of Los Angeles as “New Traditional Permittees”

In the comment letter dated September 8, 2011 (attached), the County provided information as to why the Draft Permit should not designate the County as a “Renewal Traditional Permittee”. In response, State Water Board staff stated that they will discuss the issue with staff from the Lahontan Regional Water Quality Control Board (Region 6), but then specifically designated five of the County’s unincorporated areas (or Census Designated Places [CDP]), including Castaic and Stevenson Ranch in Region 4, and Quartz Hill, Sun Village, and Lake Los Angeles in Region 6, as “New Traditional Permittees”.

These designations are not appropriate for the same reasons we previously provided in September 2011. For those areas in Region 6, the Lahontan Regional Board declined to regulate the County under Order No. 2003-005-DWQ because the areas under the County’s jurisdiction do not discharge into a water of the United States as determined by the U.S. Army Corps of Engineers. Their position has not changed based on our recent communications with staff from the Lahontan Regional Board. We would welcome a conference call with your staff and staff from the Lahontan Regional Board to resolve this issue.

Regarding the areas under the County’s jurisdiction within Region 4, their designation as new traditional permittees is not appropriate because those areas are already covered under a Phase I NPDES Permit (Los Angeles Regional Water Quality Control Board Order No. 01-182, NPDES Permit No. CAS004001).

Therefore, the Draft Permit should be revised to remove the five aforementioned County CDPs in Region 6 and Region 4 from the table of Permittees (Draft Attachment A – Traditional Small MS4 Designation and Monitoring Matrix).

II. Designation of K-12 Schools and Community Colleges

In its comments on the June 2011 draft, the Coalition for Practical Regulation (CPR) explained why they believed K-12 schools and community colleges should be designated as Small MS4 Permittees. Like the cities, the County of Los Angeles has

no authority over schools to review or approve plans for new school facilities, nor can the County compel implementation of stormwater quality BMPs in the design or construction of new schools. Although the Division of the State Architect provides design and construction oversight for K-12 schools and community colleges throughout California, it has not emphasized stormwater quality in its Sustainable Schools program.

In response to CPR's comment, State Water Board staff noted that K-12 schools, County Offices of Education, and Charter Schools, in many cases, are unlikely to pose a significant threat to water quality because they are usually small single buildings in very discrete areas. This assertion is questionable because many schools, especially in suburban neighborhoods, encompass multiple buildings and large impervious areas such as school quads, parking lots, and basketball courts. Schools also have landscaped or grassy areas such as sports fields that require irrigation and fertilization. Runoff from both the impervious and grassy areas may contain pollutants such as trash, bacteria, fertilizers, herbicides and pesticides.

While the Draft Permit leaves the designation of K-12 schools and community colleges to the discretion of each Regional Board, this approach is unacceptable because it would result in more regulatory inconsistency, as it is highly unlikely that the Regional Boards will approach this uniformly. Instead, the State Water Board should take an equitable approach to stormwater regulations by revising the Draft Permit to designate all K-12 school districts and two-year community colleges as new Regulated Small MS4s.

III. Receiving Water Limitations

The County believes that Provision D of the Draft Phase II Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in *NRDC vs. County of Los Angeles / Los Angeles County Flood Control District* found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. More recently, the City of Stockton was engaged in a good faith iterative process per the terms of its permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language.

If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. The County certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize that current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

The County recognizes the need to continue to make measurable progress toward attainment of water quality standards. However, we also believe that no regulatory benefit ensues from the State establishing permit provisions, such as Provision D, that result in the potential of immediate non-compliance for Permittees. For these reasons, the County requests revision of Provision D to incorporate the iterative process/adaptive management language that will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of undue legal liability and lawsuits.

Lasso, Aracely

From: Jan Zimmerman [JZimmerman@waterboards.ca.gov]
Sent: Friday, August 26, 2011 4:12 PM
To: Lasso, Aracely
Cc: Alan Miller; Cindi Mitton; Lauri Kemper; Mike Plaziak; Patrice Copeland
Subject: Re: FW: Phase II MS4 Permit - LA County
Attachments: LACounty_Jan2005.pdf

Aracely,

Mike Plaziak is out of the office on an extended military leave. Attached is a copy of our original January 2005 response that are searching for. While we do not intend to require compliance with the Phase II MS4 permit for northern Los Angeles County at this time, we do have the discretion to exercise, in the future, our authority related to stormwater discharges under either the Clean Water Act or the California Water Code. Please keep in mind that in the Lahontan Region northern Los Angeles County is located within the Antelope Valley. The Antelope Valley groundwater basin is a closed basin, what goes in stays in, so it is important for the municipalities and development to manage stormwater in a way that is protective of water quality.

If you have any additional questions please do not hesitate to contact us.

Thank you.

Jan M. Zimmerman, PG
Engineering Geologist
Lahontan Regional Water Quality Control Board

Phone: 760/241-7376
Fax: 760/241-7308
jjzimmerman@waterboards.ca.gov

>>> "Lasso, Aracely" <ALASSO@dpw.lacounty.gov> 8/23/2011 2:12 PM >>>
Hello Jan,

I haven't received a response from Mike Plaziak regarding my request below, so I'm hoping you will be able to help me. Any information you can provide will be much appreciated. Thanks.

Aracely C. Lasso, P.E. | County of Los Angeles Dept. of Public Works
Watershed Management Division | 626.458.7146 | alasso@dpw.lacounty.gov

From: Lasso, Aracely
Sent: Monday, August 22, 2011 2:53 PM
To: MPlaziak@waterboards.ca.gov
Subject: Phase II MS4 Permit - LA County

Hello Mike,

I work for the County of Los Angeles Department of Public Works in the Watershed Management Division. I and my staff are currently reviewing the draft Phase II MS4 Permit prepared by the State Water Resources Control Board. We came across the attached e-mail (on which you were cc'd) that describes the decision made by the Lahontan Regional Board in 2004 regarding coverage of North Los Angeles County under an NPDES Permit. The new draft Phase II Permit currently names Los Angeles County as a renewal permittee. However, based on the Regional Board's 2004 decision,

the County does not require coverage. Is this still the position of the Lahontan Regional Board? The e-mail makes reference to an official letter stating this position, but I am not aware that it was ever sent out as we have not been able to find a copy.

We appreciate your attention to this matter, as it will affect how we comment on the draft Phase II MS4 Permit. If you are not the correct person to handle this inquiry, please let me know who at the Regional Board I may contact. Thank you in advance for time.

Aracely C. Lasso, P.E. | County of Los Angeles Dept. of Public Works

Watershed Management Division | 626.458.7146 | alasso@dpw.lacounty.gov



California Regional Water Quality Control Board

Lahontan Region



Alan C. Lloyd, Ph.D.
Agency Secretary

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
<http://www.waterboards.ca.gov/lahontan>

Arnold Schwarzenegger
Governor

January 18, 2005

Frank Noyes, Director of Public Works
Los Angeles County
Dept. of Public Works
900 S. Fremont Ave.
Alhambra, CA 91803

James R. Williams, Director of Public Works
City of Lancaster
44933 North Fern Ave.
Lancaster, CA 93534-2461

Michael J. Mischel, City Engineer
City of Palmdale
38250 N. Sierra Highway
Palmdale, CA 93550

DISPOSITION OF YOUR APPLICATION AND STORM WATER MANAGEMENT PLAN (SWMP) FOR PHASE II MS4S STORMWATER GENERAL NPDES PERMIT, STATE WATER RESOURCES CONTROL BOARD ORDER NO. 2003-0005-DWQ

In 2003 the Regional Board received your application and SWMP to obtain coverage under State Board Order No. 2003-0005-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s), referred to hereinafter as the General Permit. This letter is to inform you that the Lahontan Regional Water Quality Control Board (Regional Board) does not intend to regulate the City of Palmdale, City of Lancaster, or unincorporated portions of Los Angeles County within the Lahontan Region, under the General Permit, for reasons explained below. Therefore, we plan to take no further action on your respective applications, unless requested by you.

The General Permit applies to Small MS4s that discharge to waters of the United States. As explained in the Fact Sheet for the General Permit (p. 2, under "Entities Subject to this General Permit"), "This General Permit regulates discharges of storm water from 'regulated Small MS4s.' A 'regulated Small MS4' is defined as a Small MS4 that discharges to a water of the United States (U.S.) or to another MS4 regulated by an NPDES permit [emphasis added] . . ." General Permit Finding #7 states, "On December 8, 1999, the U.S. Environmental Protection Agency (EPA) promulgated regulations under authority of the Clean Water Act (CWA) section 402(p)(6). These regulations require SWRCB [State Water Resources Control Board] to issue NPDES storm water permits to . . . Small MS4s . . . that discharge to waters of the U.S. [emphasis added]."

The U.S. Army Corps of Engineers (USACE) completed a Non-Jurisdictional Determination for the Amargosa Creek watershed in June 2004 (File No. 2004-01295-AOA). The Non-Jurisdictional Determination finds that:

" . . . Amargosa Creek is [a] non-navigable isolated water body that does not exhibit substantial interstate commerce and, therefore, is no longer subject to the Corps jurisdiction with the SWANCC [Solid Waste Agency of Northern Cook County V. U.S. Army Corps of Engineers] Supreme Court decision. The Corps previously determined in March 2001 that Amargosa Creek was no longer subject to Corps jurisdiction with the SWANCC decision, in coordination with USEPA and Regulatory HQ . . ."

Frank Noyes
James R. Williams
Michael J. Mischel

- 2 -

On that basis, we find that stormwater discharges within the Amargosa Creek watershed generated by the three above-listed municipalities are not subject to the General Permit because they do not constitute discharges to waters of the United States. For that reason, we do not intend to regulate those municipalities under the General Permit, and we do not plan to take further action to process your applications for General Permit coverage.

We are aware that some municipal stormwater generated in unincorporated portions of Los Angeles County within the Lahontan Region may discharge to drainages (within the Neenach, Buttes, and Rock Creek Hydrologic Areas) other than Amargosa Creek. To our knowledge, USACE has not conducted jurisdictional determinations for those drainages. However, those drainages have characteristics and hydrology that are similar to Amargosa Creek. We do not intend to regulate discharges to those drainages under the General Permit, or to continue processing the SWMP submitted by the Los Angeles County Department of Public Works, unless specifically requested to do so by that agency.

Please be aware that the Regional Board could consider regulating stormwater discharges from storm sewer systems operated by these municipalities pursuant to Regional Board authorities granted under the Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq). At this time I do not intend to recommend that the Regional Board pursue regulation of stormwater discharges from your municipalities. At this time I do not intend to recommend that the Regional Board pursue regulation of stormwater discharges from your municipalities.

Please contact me at (530) 542-5412, or Jason Churchill, Environmental Scientist, at (530) 542-5571, if you have any questions concerning this matter.



HAROLD J. SINGER
EXECUTIVE OFFICER

cc: Regional Board Members
Bruce Fujimoto, SWRCB, Division of Water Quality
Frank Kuo, LA County DPW
Steve Dassler, City of Lancaster
Alexis Strauss, US EPA, Region 9
Mark Durham, US Army Corps of Engineers

JJC:dcc T:\nonjunsdictional letter.doc

California Environmental Protection Agency



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

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ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

September 8, 2011

IN REPLY PLEASE

REFER TO FILE: **WM-9**

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Dear Ms. Townsend:

COMMENT LETTER – PHASE II SMALL MS4 GENERAL PERMIT

Thank you for the opportunity to comment on the proposed draft General National Pollutant Discharge Elimination System Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems. We hereby submit the enclosed comments on behalf of the County of Los Angeles.

We look forward to your consideration of these comments. If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Angela George at (626) 458-4325 or ageorge@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Director of Public Works

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

RW:jtz

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Enc.

cc: Chief Executive Office (Dorothea Park)
County Counsel (Judith Fries)

**COMMENTS OF THE COUNTY OF LOS ANGELES ON THE
DRAFT GENERAL NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMIT FOR STORMWATER DISCHARGES
FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS**

The County of Los Angeles (County) appreciates the opportunity to review and provide comments on the Draft General National Pollutant Discharge Elimination System (NPDES) Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) (hereinafter referred to as Draft Permit). Based on our review of the Draft Permit, as well as other available records, we believe that the Draft Permit should not designate the County as a "Renewal Traditional Permittee" as currently indicated in Attachment A of the Draft Permit.

In 2003 the County submitted a Stormwater Management Plan as part of its application package to the Lahontan Regional Water Quality Control Board (Lahontan Regional Board) as required by the current Phase II Permit (Order No. 2003-005-DWQ). In a letter dated January 18, 2005 (see attached), the Lahontan Regional Board declined to regulate the County under Order No. 2003-005-DWQ because the areas under the County's jurisdiction in Region 6 do not discharge into a water of the United States as determined by the U.S. Army Corps of Engineers. The areas under the County's jurisdiction within the Los Angeles Region are covered under a Phase I NPDES Permit (Los Angeles Regional Water Quality Control Board Order No. 01-182, NPDES Permit No. CAS004001, amended on September 14, 2006, by Order R4-2006-0076; August 9, 2007, by Order R4-2007-0042; and December 10, 2009, by Order R4-2009-0130 and further amended on October 19, 2010, and April 14, 2011, pursuant to the peremptory writ of mandate in Los Angeles Superior Court Case No. BS122724).

In light of the Lahontan Regional Board's determination, we request that the State Water Resources Control Board staff revise the Draft Permit to remove the County from the table of Permittees (Attachment A – Renewal Traditional and Non-Traditional Small MS4 Permittees) of the Draft Permit.

Should the State Water Resources Control Board staff choose to decline to remove the County as a Permittee under the Draft Permit, the County would incorporate, by reference, comments on the Draft Permit being provided by the California Stormwater Quality Association.

RW:jtz

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Attach.



**California Regional Water Quality Control Board
Lahontan Region**



Alan C. Lloyd, Ph.D.
Agency Secretary

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
<http://www.waterboards.ca.gov/lahontan>

Arnold Schwarzenegger
Governor

File: 6B19MS40303

January 18, 2005

Frank Noyes, Director of Public Works
Los Angeles County
Dept. of Public Works
900 S. Fremont Ave.
Alhambra, CA 91803

James R. Williams, Director of Public Works
City of Lancaster
44933 North Fern Ave.
Lancaster, CA 93534-2461

Michael J. Mischel, City Engineer
City of Palmdale
38250 N. Sierra Highway
Palmdale, CA 93550

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" . . . Amargosa Creek is [a] non-navigable isolated water body that does not exhibit substantial interstate commerce and, therefore, is no longer subject to the Corps jurisdiction with the SWANCC [Solid Waste Agency of Northern Cook County V. U.S. Army Corps of Engineers] Supreme Court decision. The Corps previously determined in March 2001 that Amargosa Creek was no longer subject to Corps jurisdiction with the SWANCC decision, in coordination with USEPA and Regulatory HQ . . ."

Frank Noyes
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Michael J. Mischel

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We are aware that some municipal stormwater generated in unincorporated portions of Los Angeles County within the Lahontan Region may discharge to drainages (within the Neenach, Buttes, and Rock Creek Hydrologic Areas) other than Amargosa Creek. To our knowledge, USACE has not conducted jurisdictional determinations for those drainages. However, those drainages have characteristics and hydrology that are similar to Amargosa Creek. We do not intend to regulate discharges to those drainages under the General Permit, or to continue processing the SWMP submitted by the Los Angeles County Department of Public Works, unless specifically requested to do so by that agency.

Please be aware that the Regional Board could consider regulating stormwater discharges from storm sewer systems operated by these municipalities pursuant to Regional Board authorities granted under the Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq). At this time I do not intend to recommend that the Regional Board pursue regulation of stormwater discharges from your municipalities. At this time I do not intend to recommend that the Regional Board pursue regulation of stormwater discharges from your municipalities.

Please contact me at (530) 542-5412, or Jason Churchill, Environmental Scientist, at (530) 542-5571, if you have any questions concerning this matter.



HAROLD J. SINGER
EXECUTIVE OFFICER

cc: Regional Board Members
Bruce Fujimoto, SWRCB, Division of Water Quality
Frank Kuo, LA County DPW
Steve Dassler, City of Lancaster
Alexis Strauss, US EPA, Region 9
Mark Durham, US Army Corps of Engineers

JJC:dec T:\nonjurisdictional letter.doc