State Water Resources Control Board

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TO: RWQCB Executive Officers

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DATE: DEC 26 2000

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SUBJECT: STATE WATER BOARD ORDER WQ 2000-11: SUSMP

On October 5, 2000, the State Water Resources Control Board (State Water Board) adopted a precedential decision concerning the use of Standard Urban Storm Water Mitigation Plans (SUSMPs) in municipal storm water permits. (Order WQ 2000-11; hereafter referred to as "the Order.") The Order arose from the municipal storm water permit in the Los Angeles region. As a precedential decision, the State Water Board has recognized that the decision includes significant legal or policy determinations that are likely to recur. (Gov. Code §11425.60.) The Regional Water Quality Control Board (Regional Water Board) orders must be consistent with applicable portions of the State Water Board's precedential decisions.

In the Order, the State Water Board considered SUSMPs related to new development and redevelopment. The SUSMPs include a list of best management practices (BMPs) for specific development categories, and a numeric design standard for structural or treatment control BMPs. The numeric design standard created objective and measurable criteria for the amount of runoff that must be treated or infiltrated by BMPs. The purpose of the SUSMPs is to control runoff both during and after construction.

Several of the conclusions reached in the Order are likely to recur, and future municipal storm water permits must be consistent with the principles set forth therein.[1] Pursuant to the Clean Water Act, municipal storm water permits must require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP). The Order finds that the provisions in the SUSMPs, as revised in the Order, constitute MEP. The Order also discusses areas where the Regional Water Boards may exercise more discretion.

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[1] The Order considered a Phase I storm water permit, applicable to urban areas with populations of 100,000 and greater. The State Water Board will soon embark on Phase II, which will include municipal permits for smaller municipalities. The Order did not address Phase II requirements, which may be different than Phase I requirements.

1. The Order finds that the design standard in the SUSMPs, which essentially requires that 85 percent of the runoff from specified categories of development be infiltrated or treated, reflects MEP. It is conceivable that the specific design standard could vary depending on such factors as rainfall and soil characteristics.

2. The Order determined that SUSMPs appropriately applied to the following categories of development: single-family hillside residences, 100,000 square foot commercial developments, automotive repair shops, restaurants, home subdivisions with 10 to 99 housing units, home subdivisions with 100 or more housing units, and parking lots with 5,000 square feet or more or with 25 or more parking spaces and potentially exposed to storm water runoff. Redevelopment projects that are within one of these categories are included if the redevelopment adds or creates at least 5,000 square feet of impervious surface to the original developments; if the addition constitutes less than 50 percent of the original development, the design standard only applies to the addition. The Order approved a waiver from compliance with the design standard where there is a risk of groundwater contamination because a known unconfined aquifer lies beneath the land surface or an existing or potential underground source of drinking water is less than 10 feet from the soil surface.

3. The Order allows broader discretion by the Regional Water Boards to decide whether to include additional types of development in future SUSMPs. These areas for potential future inclusion in SUSMPs include retail gasoline outlets, ministerial projects (only discretionary projects are included in the approved SUSMPs), and projects in environmentally sensitive areas. If Boards include these types of developments in future permits, the Order explains the types of evidence and findings that are necessary.

4. The Order encourages regional solutions. The Order endorses establishment of a mitigation fund or "bank" that could be funded by developers who obtain waivers from the design standards. The Order explains that such a funding mechanism must be developed after consultation with appropriate local agencies.

The SUSMPs as developed by the Los Angeles Regional Water Board resulted from a requirement in a municipal storm water permit to draft and submit a proposal. The Regional Water Board then made revisions to the SUSMPs, and the State Water Board made further revisions prior to approving the SUSMPs. In light of the specificity and detail in the Order, Regional Water Boards should simply incorporate SUSMP requirements for new development and redevelopment into new municipal permits, rather than adopting a process of submittal, review and revision of proposals. In adopting SUSMPs in permits, the requirements should be substantially similar to the SUSMPs approved in the Order. If, for example, the Regional Water Board determines that a different design standard than 85 percent of the runoff is appropriate, the permit findings should explain how the alternative design standard is generally equivalent to the standards approved in the Order, and why the alternative standard is appropriate to the area. The

general principles of the Order—that design standards for BMPs for new development and redevelopment are required—must be implemented.

cc: Edward C. Anton
Acting Executive Director