

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

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**TENTATIVE RESOLUTION NO. R9-2017-0006**

**A Resolution Designating San Diego Metropolitan Transit System In The San Diego Region As A Regulated Small Municipal Separate Storm Sewer System, Subject To State Water Resources Control Board Order No. 2013-0001-DWQ, National Pollutant Discharge Elimination System Permit No. CAS000004**

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WHEREAS, the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) finds that:

*Authority*

1. In 1972, Congress amended the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (CWA)) to prohibit the discharge of any pollutant to waters of the United States from a point source unless the discharge is authorized by a National Pollutant Discharge Elimination (NPDES) permit.
2. In 1987, the amendments to the CWA added section 402(p), which established a framework for regulating storm water discharges from municipal separate storm sewer systems (MS4s) under the NPDES Program. A MS4 is a conveyance or system of conveyances that is: (1) owned by a state, city, town, village, or other public entity that discharges to waters of the United States; (2) designed or used to collect or convey storm water (including storm drains, pipes, ditches, etc.); (3) not a combined sewage and storm water system; and (4) not part of a Publicly Owned Treatment Works or sewage treatment plant.
3. In 1990, the United States Environmental Protection Agency (USEPA) promulgated regulations establishing NPDES regulations for MS4s serving "medium" and "large" MS4s of 100,000 population or greater. These regulations, known as Phase I regulations, require operators of medium and large MS4s to obtain and comply with NPDES storm water permits to reduce or eliminate the discharge of pollutants.
4. On December 8, 1999, USEPA promulgated regulations, known as Phase II regulations, requiring operators of Small MS4s to obtain and comply with NPDES storm water permits for Small MS4s under the authority of the CWA section 402(p)(6).
5. Title 40 of the Code of Federal Regulations (40 C.F.R.) section 122.26(b)(16) defines Small MS4s as those MS4s not defined as "large" or "medium" MS4s under

40 CFR section 122.26(b)(4) or (b)(7) or designated under 40 C.F.R. section 122.26(a)(1)(v). Small MS4s may also include systems such as military bases, large hospitals or prison complexes, and highways and other thoroughfares (40 C.F.R. section 122.26(b)(16)(ii) and (iii)). These latter types of Small MS4s are referred to as “Non-traditional Small MS4s.” Non-traditional Small MS4s discharge the same types of pollutants that are typically associated with urban runoff, but operate at a separate campus or facility and may have a different management structure and legal authorities than a municipality.

6. On February 5, 2013, the State Water Resources Control Board (State Water Board) adopted Water Quality Order No. 2013-0001-DWQ, NPDES General Permit No. CAS000004, *Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems* (Phase II General Permit) to comply with CWA section 402(p)(6). The Phase II General Permit became effective on July 1, 2013.
7. The Phase II General Permit is only applicable to a particular subset of Small MS4s known as “Regulated Small MS4s<sup>1</sup>.” The State Water Board determined which Small MS4s are Regulated Small MS4s in accordance with the designation criteria in 40 C.F.R. 122.32. The State Water Board designated the following Small MS4s as Regulated Small MS4s automatically: Small MS4s located in urbanized areas<sup>2</sup> (UAs) and Small MS4s located outside of UAs that have high population and population density or discharges to an Area of Special Biological Significance.<sup>3</sup>
8. The Phase II General Permit identified categories of dischargers that the State Water Board considers to be Non-traditional Small MS4s, including but not limited to: community services districts, fairgrounds, higher education institutions, ports, state parks, school districts K-12, state vehicle recreation areas, water agencies, and transit agencies.<sup>4</sup>
9. The Phase II General Permit authorizes the Regional Water Boards to designate additional Regulated Small MS4s on a case-by-case basis during the permit term. Designations must be “based on the potential of a Small MS4’s discharges to result in exceedances of water quality standards, including impairment of designated uses,

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<sup>1</sup> A Regulated Small MS4 refers to a Small MS4 that discharges to a water of the United States (U.S.), or to another MS4 that must obtain an NPDES permit. The State Water Board or Regional Water Board may designate a Small MS4 as Regulated Small MS4 consistent with the criteria specified in findings 19-25 of the Phase II General Permit. The State Water Board may also designate a Small MS4 as a Regulated Small MS4 in response to a petition received under 40 C.F.R. 122.26(f).

<sup>2</sup> A densely settled core of census tracts and/or census blocks that have population of at least 50,000, along with adjacent territory containing non-residential urban land uses as well as territory with low population density included to link outlying densely settled territory with the densely settled core.

<sup>3</sup> Findings 19 and 23 of the Phase II General Permit.

<sup>4</sup> Id. at Phase II General Permit Fact Sheet p. 6

or other significant water quality impacts, including habitat and biological impacts.” Such designations may be approved by the Regional Water Board following public review and comment.<sup>5</sup>

10. If a Regional Water Board designates additional Regulated Small MS4s, the Executive Director of the State Water Board is authorized to amend Phase II General Permit Attachment A, Traditional Permittees, or Attachment B, Non-traditional Permittees, consistent with designation criteria in the Phase II General Permit.<sup>6</sup>
11. From July 2013 to October 2013, the San Diego Water Board designated nine Small MS4s including a transit district, two military bases, a state prison, a state fairgrounds, a large hospital, and three universities as Regulated Non-traditional Small MS4s subject to the NPDES permitting program. The State Water Board included these Non-traditional Small MS4s in Attachment B of the Phase II General Permit.
12. This Resolution designates San Diego Metropolitan Transit System (MTS) as a Regulated Non-traditional Small MS4 subject to the NPDES permitting program.
13. Newly designated Regulated Small MS4s must apply for coverage under the Phase II General Permit or an individual NPDES permit within 180 days of notice of designation (40 C.F.R. 122.33(c)(2)).

#### *MTS Operations*

14. The San Diego Metropolitan Transit System (MTS) was established as a special district in California in 1975 and is authorized to operate public mass transit within the San Diego Water Board Region specifically within the Cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, Santee, as well as within all unincorporated areas of the County of San Diego not served by the North San Diego County Transit Development Board (NCTD). MTS also owns the San Diego & Arizona Eastern (SD&AE) Railway which includes 39 miles of railway. MTS ridership generates 88 million annual passenger trips or 285,000 trips each weekday. This provides approximately 1.9 million hours of service across 24 million miles each year.
15. MTS service area covers about 570 square miles of the urbanized areas of San Diego County as well as the rural parts of East County (3,240 square miles). MTS provides bus and rail services to approximately 3 million people. The properties and facilities within MTS' jurisdiction include:

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<sup>5</sup> Id. at Finding 24 and section G.

<sup>6</sup> Id. at Fact Sheet, p. 17

- a. 103 miles of light rail,
  - b. 53 stations for light rail (including parking lots with more than 5000 parking spaces),
  - c. Approximately 4200 bus stops,
  - d. 3 maintenance facilities for light rail maintenance (each 1 to 2 acres in size),
  - e. 5 bus maintenance facilities (each between 1 and 2 acres in size),
  - f. 39 miles of the SD&AE railway located within the metropolitan area, and
  - g. Future Construction – Mid-Coast Light Rail Trolley (LRT) including 11 miles of LRT and 9 stations.
16. MTS owns and maintains many of the parking lots at its light rail trolley and bus rail trolley facilities. However, where parking facilities are located on property other than that owned by MTS, the facilities are generally maintained by that property owner unless maintenance agreements are in place that indicate otherwise.
17. MTS bus operations include five fleet operating divisions: Imperial Avenue Division (IAD); Kearny Mesa Division (KMD); South Bay Bus Maintenance Facility (SBMF); East County Bus Maintenance Facility (ECBMF); and Copley Park Maintenance Facility (CPMF). Industrial activities from these operations are regulated under the *General Permit for Storm Water Discharges Associated with Industrial Activities* (“IGP”) as described below and include operations, maintenance, and fueling functions.
- a. IAD is an 86,300 square-foot facility in downtown San Diego and houses a working division, with almost 200 buses and fueling capabilities for CNG, diesel and gasoline. IAD is enrolled under the IGP.
  - b. KMD is a 54,166 square-foot division in Kearny Mesa which houses more than 100 buses and includes diesel and CNG fueling stations, as well as a body and paint shop. KMD is enrolled under the IGP.
  - c. SBFM is a 48,000 square-foot facility and has a capacity of up to 250 CNG buses. SBFM has a Non-Exposure Certification (“NEC”).
  - d. ECBMF is a 57,500 square-foot facility and is currently being expanded and improved to accommodate 120 buses, and will include a new CNG fueling station. ECBMF has an NEC.
  - e. CPMF operates fixed-route mini-buses on lower-volume routes. CPMF is enrolled under the IGP.

*MTS Discharges*

18. MTS discharges include storm water and non-storm water discharges generated from:
- a. Bus stops;

- b. Light rail, railway, and rail stops;
- c. Bus and rail car maintenance facilities;
- d. Fueling stations; and
- e. Parking lots associated with bus, light rail, and railway stops.

MTS discharges either directly to surface waters or indirectly through municipal storm water conveyance systems. These surface waters include creeks, rivers, reservoirs, wetlands, lagoons, estuaries, bays, and the Pacific Ocean and tributaries thereto, some or all of which are waters of the United States as defined in 40 C.F.R. section 122.22.

19. Storm water and non-storm water discharges from MTS facilities discharge to or have the potential to discharge to receiving waterbodies or tributaries thereto in the following watersheds which are in close proximity to MTS bus and rail operations, maintenance facilities, and other associated facilities.

- a. San Dieguito Hydrologic Unit
- b. Los Penasquitos Hydrologic Unit
- c. San Diego River Hydrologic Unit
- d. Pueblo San Diego Hydrologic Unit
- e. Sweetwater Hydrologic Unit
- f. Otay Hydrologic Unit
- g. Tijuana Hydrologic Unit

20. Total Maximum Daily Loads (TMDLs) and pollutant categories for impaired waterbodies have been established for the waterbodies to which MTS discharges or has the potential to discharge. The adopted TMDLs for waterbodies MTS discharges to or has the potential to discharge to, are listed below.

- a. Indicator Bacteria Project I – Twenty Beaches and Creeks in the San Diego Region (Including Tecolote Creek)
- b. Sediment - Los Penasquitos Lagoon
- c. Chollas Creek –Diazinon
- d. Chollas Creek – Dissolved Copper, Lead, and Zinc

21. Sediment is an urban runoff pollutant resulting from excessive soil erosion. It can transport other pollutants that are attached to it including nutrients, trace metals, and hydrocarbons. Sediment is the primary component of turbidity, total suspended solids, and suspended sediment concentration. Sediment resulting from erosion enters receiving waterbodies primarily through storm water runoff from the Small MS4 system. Discharges of sediment from MTS operations into inlets and culverts along railway and light rail right of way and at bus and light rail transit facilities can cause or contribute to pollutant discharges to receiving waters some of which are impaired for sediment.

22. When natural vegetated pervious ground cover is converted to impervious surfaces such as paved bus and rail stops, parking lots, streets, maintenance yards, rooftops, and walkways, the natural absorption and infiltration abilities of the land are lost. Therefore, runoff leaving developed urban area may be significantly greater in runoff volume, velocity, and peak flow rate than pre-development runoff from the same area. The increased volume, velocity, and rate of runoff can greatly accelerate the erosion of downstream natural channels. The greater the impervious cover, the greater the significance of the degradation. As a result, the runoff leaving the MTS developed areas may be greater in pollutant load causing or potentially contributing to exceedances of water quality standards and higher in flow velocity than the pre-development runoff from the same area causing or contributing to impairment of designated beneficial uses or other significant water quality impacts.
23. Dissolved minerals (i.e. salinity) and nutrients are pollutants in urban runoff resulting from over-irrigation and vehicle washing among other activities. Wash water from MTS washing operations is captured, treated, and reused or discharged as waste water to the sanitary sewer. MTS does irrigate its landscaped areas with potable water at its stations and transit centers. MTS takes efforts to control irrigation to minimize over-irrigation, however, because there are so many locations where irrigation occurs throughout MTS's service area there is a potential for over-irrigation and pollutant laden discharges to the MS4 and receiving waters. Over-irrigation at MTS facility locations can also cause and contribute to discharges of dissolved minerals, salinity, pesticides, and nutrients in watersheds with receiving waters impaired for salinity and nutrients.
24. MTS transit centers, bus and trolley stations, and maintenance facilities include trash collection and handling activities. Trash handling can increase the potential for discharges of bacteria from MTS facilities to the MS4 or receiving waters during both dry and wet weather. Discharges of bacteria can be a significant source of pathogens to the storm drain system causing or contributing to exceedances of water quality standards. Based on the number and distribution of MTS facilities throughout multiple watersheds where receiving waters have been identified as impaired for bacteria, discharges from MTS facilities have the potential to cause or contribute to exceedances in water quality standards and further impair receiving water designed beneficial uses.

*Public Participation*

25. The San Diego Water Board first notified MTS of its intent to designate MTS as a Regulated Small MS4 during the February 5, 2013 adoption of the Phase II General Permit. Although the San Diego Water Board identified MTS for designation, final adoption of the Phase II General Permit did not include MTS in Attachment B as a Regulated Non-traditional Small MS4. Because the Phase II General Permit did not include MTS, the San Diego Water Board sent MTS a letter on March 25, 2016 notifying it of the San Diego Water Board's intent to designate MTS as a regulated Small MS4.

26. By electronic mail dated Friday, December 9, 2016, the San Diego Water Board also notified interested persons of this proposed Resolution to 1) designate MTS as a Regulated Small MS4 subject to the NPDES permitting program and 2) request that the State Water Board amend Attachment B of the Phase II General Permit to add MTS as a Non-traditional Small MS4. Written comments were accepted during a 30-day public comment period from Friday, December 9, 2016 to Monday, January 9, 2016.
27. The State Water Board circulated this proposed Resolution concurrently with the San Diego Water Board public comment period. The Executive Director of the State Water Board will consider for approval the requested amendment to Attachment B of the Phase II General Permit to designate MTS in accordance with this Resolution. The public notice and opportunity to comment provided for this Resolution shall also function as the notice and comment period for the decision by the Executive Director of the State Water Board to amend Attachment B of the Phase II General Permit. The State Water Board will not provide a separate public comment period prior to making its determination, but will review the proceedings before the San Diego Water Board, including any written comments.
28. The San Diego Water Board heard and considered all comments pertaining to the designation at a public hearing on February 8, 2017.

*California Environmental Quality Act*

29. Issuance of this Resolution is exempt from the provisions of the California Environmental Quality Act (pub. Resources Code, section 21000 et seq.) ("CEQA") pursuant to Water Code section 13389 because the adoption or modification of an NPDES permit for an existing source is statutorily exempt and this Resolution only serves to implement an NPDES permit (Pacific Water Conditioning Association, Inc. v. City Council of City of Riverside (1977) 73 Cal.App.3d 546, 555 556).

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. The San Diego Water Board designates MTS as a Regulated Small MS4 subject to the NPDES permitting program.
2. The San Diego Water Board requests that the Executive Director of the State Water Board amend Attachment B of the Phase II General Permit to include MTS as a Non-traditional Small MS4 in accordance with this Resolution.
3. MTS must apply for coverage under the Phase II General Permit or an individual NPDES permit within 180 days after the effective date of this Resolution.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on February 8, 2017.

\_\_\_\_TENTATIVE\_\_\_\_\_

DAVID W. GIBSON  
Executive Officer