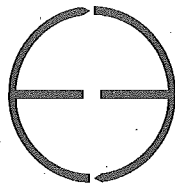


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Public Comment
Caltrans MS4 Permit
Deadline: 6/26/12 by 12 noon

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June 26, 2012

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

VIA E-MAIL: commentletters@waterboards.ca.gov

RE: Comment Letter – Caltrans MS4 Permit

Dear State Water Resources Control Board:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit coalition of business, labor and public leaders that advances strategies for a strong economy and a healthy environment. On behalf of CCEEB, we want to thank the State Water Resources Control Board (SWRCB) for this opportunity to comment on the State of California Department of Transportation (Department) Municipal Separate Storm Sewer System (MS4) Permit Second Revised Draft Tentative Order (draft Permit).

CCEEB's recommendations for revisions to the draft Permit are highlighted below. Further detailed comments are provided in attached Table.

Implementation of Requirements for Areas of Special Biological Significance

The permit needs to be revised to be clear that non-storm water discharges made pursuant to NPDES permits to MS4 systems that discharge to Areas of Special Biological Significance (ASBS) are authorized by the draft Permit. The draft Permit is the first opportunity for the State Water Board to include language to authorize non-storm water discharges made pursuant to NPDES permits to MS4 systems that discharge to ASBS since the adoption last March by the State Water Board of the Exceptions to the Ocean Plan for Discharges to Areas of Biological Significance. As such, it is important and necessary that this permit contain the appropriate language to provide for the continued discharge of non-storm water in compliance with their NPDES permit to a Caltrans MS4 that discharges to an ASBS.

Without such a finding being made in the draft Permit, the affected NPDES dischargers are going to have to request this determination on a case-by-case basis from the Regional Water Boards via a yet to be defined process. This would be an unworkable approach. The attached table proposes language to be included in the draft Permit prior to its adoption.



The structure of Section B.4 of the draft Permit is not consistent with the adopted ASBS exception language and we are concerned that, as it is written, it could be interpreted to mean that the exception for non-storm water discharges covered by a NPDES permit only applies “when the discharge is essential for emergency response purposes, structural stability, slope stability, or occurs naturally.” The structure of Section B.4 is contrary to the ASBS exception which makes the language regarding authorization of non-stormwater discharges by a NPDES permitting authority separate and distinct from the above criteria. The attached table proposes language to be included in the draft Permit prior to its adoption.

Post-construction BMPs

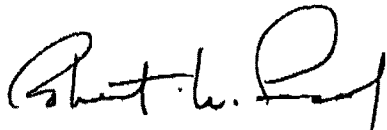
The SWRCB’s Construction General Permit is clear that linear underground/ overhead projects (LUPs) are not subject to post-construction BMPs, such as SUSMPs, LID and hydromodification, and the draft Permit needs to also provide that clarity. As written, this permit does not provide clarity that linear underground/overhead projects (LUPs) are not subject to post-construction BMPs and needs to be revised to be consistent with Finding 76 in the Construction General Permit. Also, consistent with this request, the definition of “Redevelopment” needs to include the statement that Redevelopment does not include trenching and/or resurfacing associated with utility work; resurfacing and reconfiguring surface parking lots and existing roadways; and routine replacement of damaged pavement, such as pothole repair” as is included in other MS4 permits.

Toxicity Testing

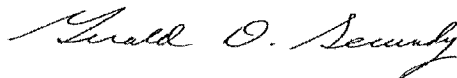
It is premature and inappropriate for this permit to mandate the use of the Test of Significant Toxicity (TST) protocol, since the use of this protocol is the subject of a yet to be adopted State Water Board Toxicity Policy. We request the use of the Protocol be removed until if, and when, it is adopted for use by the State Water Board.

CCEEB welcomes the opportunity to provide SWRCB with these comments. If you wish to discuss this matter further, please contact Bob Lucas at 916-444-7337.

Sincerely,



Robert W. Lucas
Waste & Water Quality Project Manager



Gerald D. Secundy
President

cc: Matt Rodriguez, Secretary for California Environmental Protection Agency
Michael Lauffer, Chief Counsel, SWRCB
Jackson Gualco, The Gualco Group, Inc.

Attachment

California Council for Environmental and Economic Balance
 Comments on Tentative Order No 2012-XX-DWQ, NPDES No. CAS000003
 NPDES Statewide Storm Water Permit

Waste Discharge Requirements for State of California Department of Transportation

Page	Reference	Subject	Comment/Note
6	Finding 6	Non-stormwater discharges to the MS4	<p>This Finding contains the sentence that states:</p> <p>“Non-storm water discharges that are regulated by a separate NPDES permit are not subject to the discharge prohibition.”</p> <p>CCEEB concurs with this statement as the use of NPDES permits are imperative for construction and operations and contain their own requirements to protect water quality.</p>
11	Finding 22	ASBS	<p>This finding states:</p> <p>“The Ocean Plan prohibits waste discharges into ASBS. The Ocean Plan allows the State Water Board to grant exceptions to this prohibition, provided that: (1) the exception will not compromise protection of ocean waters for beneficial uses, and (2) the public interest will be served. The Department has applied for and been granted an exception under the General Exception for Storm Water and Non-Point Source Discharges to ASBS. The exception allows the continued discharge into ASBS provided the Department complies with the special protections specified in the General Exception.”</p> <p>To be consistent with the general exception adopted by the SWRCB for discharges to an ASBS (Resolution 2012-0012- Attachment B.I.A.1.e.2.ii), CCEEB requests the following language be added to this paragraph:</p> <p>“The exception also 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. Since non-stormwater NPDES permits 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 underground utility structures, construction groundwater dewatering, hydrotest water), the State Water Board authorizes their discharge to MS4 systems that discharge to ASBS.</p>

California Council for Environmental and Economic Balance
 Comments on Tentative Order No 2012-XX-DWQ, NPDES No. CAS000003
 NPDES Statewide Storm Water Permit

Waste Discharge Requirements for State of California Department of Transportation

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17-18	Order A.2	ASBS	<p>This section states: “Discharges to Areas of Special Biological Significance (ASBS) are prohibited except as follows”:</p> <p>This mis-quotes the language contained in exception Policy adopted by the State Water Board on March 20, 2012. Attachment B.I.A.1 .a of the exception Policy states: “Existing <i>storm water discharges</i> into an ASBS are allowed only under the following conditions:” (<i>emphasis added</i>).</p> <p>As proposed, the draft Permit would inappropriately broaden the exception Policy requirements from “storm water discharges” to “discharges” and change the requirements of the exception Policy.</p> <p>CCEEB requests that the draft Permit be revised to be consistent with the exception Policy and clarify this section applies to “storm water” discharges. Additional comments regarding the inclusion of the exception Policy language into this permit are provided below.</p>
19	Order B.2	Non-storm water	<p>The draft Permit states: “The following non-storm water discharges are conditionally exempt from Prohibition B.1 unless the Department or the State Water Board Executive Director identifies them as sources of pollutants to receiving waters. For discharges identified as sources of pollutants, the Department shall <u>either eliminate the discharge or otherwise effectively prohibit</u> the discharge.” (<i>emphasis added</i>)</p> <p>This language does not appear to be consistent with 40 CFR 122.26(d)(2)(iv)(B)(1) which states: “...the following category of non-storm water discharges or flows shall be <i>addressed</i> where such discharges are identified by the municipality as sources of pollutants to waters of the United States...” (<i>emphasis added</i>) EPA’s regulations provide for reviewing and making changes to the category of discharge that has been identified as a “source of pollutants” so that the category can continue to be conditionally exempt, rather than</p>

California Council for Environmental and Economic Balance
 Comments on Tentative Order No 2012-XX-DWQ, NPDES No. CAS000003
 NPDES Statewide Storm Water Permit
Waste Discharge Requirements for State of California Department of Transportation

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20	Order B.4	ASBS	<p>eliminating or prohibiting the discharge. This approach should be reflected in the draft Permit.</p> <p>CCEEB requests that the draft Permit be revised to clarify that when a particular non-point source discharge is determined to be a source of pollutants, it can continue to be considered conditionally exempt as long as effective measures are taken to reduce and/or minimize the discharge of pollutants. This approach is consistent with Section B.7.</p> <p>This section of the draft Permit states:</p> <p>“Non-storm water discharges to ASBS are prohibited except that the following non-storm water discharges are allowed, provided that the discharges are essential for emergency response purposes, structural stability, slope stability, or occur naturally:</p> <ul style="list-style-type: none"> a. Discharges associated with emergency fire fighting operations. b. Foundation and footing drains. c. Water from crawl space or basement pumps. d. Hillside dewatering. e. Naturally occurring groundwater seepage via a storm drain. f. Non-anthropogenic flows from a naturally occurring stream via a culvert or storm drain, as long as there are no contributions of anthropogenic runoff. <p>Non-storm water discharges to a segment of the Department’s MS4 with a direct discharge to an ASBS are allowed only to the extent the relevant Regional Water Board finds that the discharge does not alter natural ocean water quality in the ASBS.</p> <p>Authorized non-storm water discharges shall not cause or contribute to a violation of the water quality objectives in Chapter II of the Ocean Plan or alter natural ocean water quality in an ASBS.”</p> <p>This section has two problems: First, it is inconsistent with the language in the State Water Board’s exception Policy. Second it lacks the authorization for non-storm water discharges to MS4s which was provided for in exception Policy.</p>

California Council for Environmental and Economic Balance
 Comments on Tentative Order No 2012-XX-DWQ, NPDES No. CAS000003
 NPDES Statewide Storm Water Permit

Waste Discharge Requirements for State of California Department of Transportation

Page	Reference	Subject	Comment/Note
			<p>First, in Attachment B, Section I.A.1.e. of the exception Policy, sub-section 2 is sub-divided into two parts (i and ii). In the draft Permit, these two sub-sections, along with the last paragraph (i.e., "Authorized non-stormwater discharges shall not ...") are combined and as a consequence it inappropriately modifies the State Water Board's exception Policy. As stated, it could be inferred by the structure of Section B.4 that unless a non-storm water discharge is essential for emergency response purposes, structural stability, slope stability, or occurs naturally, the exception does not apply to NPDES discharges that do not meet these criteria. This is contrary to the exception Policy which makes the "NPDES discharge" exception language independent of the above criteria.</p> <p>CCEEB requests that this language be revised to be consistent with and maintain the integrity of the exception Policy and not make authorized non-storm water discharges subject to the criteria in Attachment B, Section I.A.1.e.2.i of the exception Policy.</p> <p>Second, this language is inconsistent with the ASBS exception language in Attachment B, Section I.A.1.e.2.ii that states:</p> <p><i>"(ii) An <u>NPDES permitting authority</u> may <u>authorize</u> non-storm water discharges to an MS4 with a direct discharge to an ASBS only to the extent <u>the NPDES permitting authority finds</u> that the discharge does not alter natural ocean water quality in the ASBS." <u>(emphasis added)</u></i></p> <p>This language was included in the exception Policy so that the State Water Board or a Regional Water Board could authorize non-stormwater discharges to MS4s that subsequently discharge to an ASBS. Since this is a statewide NPDES permit, this permit is the appropriate venue for the State Water Board to include this authorization. This authorization is of significant importance to utilities that provide essential public services such as gas, electric and telecommunication services.</p> <p>Since NPDES permits that cover 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 underground utility substructures, construction groundwater</p>

California Council for Environmental and Economic Balance
 Comments on Tentative Order No 2012-XX-DWQ, NPDES No. CAS000003
 NPDES Statewide Storm Water Permit

Waste Discharge Requirements for State of California Department of Transportation

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			dewatering, hydrotest water), the State Water Board should specifically authorize their discharge in this permit. CCEEB recommends that the this paragraph be revised to state: “Since discharges of non-storm water covered by NPDES permits are subject to the conditions and requirements of the NPDES permit for the purpose of protecting water quality, this permit authorizes these discharges to MS4s that discharge to ASBS.
20	Order B.6	Non-storm water	See comment regarding for non-storm water in Section B.2 on draft Permit p.19
36	Order E.2.c.6.d.ii	Toxicity Testing	This section states: “ii) For the Department’s discharges, the In-stream Waste Concentration (IWC) is 100 percent (i.e., either is 100 percent storm water or 100% non-storm water). To calculate either a Pass or Fail of the effluent concentration chronic toxicity test at the IWC, the instructions in Appendix A in the National Pollutant Discharge Elimination System <i>Test of Significant Toxicity Implementation Document</i> (EPA/833-R-10-003) shall be used. A Pass result indicates no toxicity at the IWC, and a Fail result indicates toxicity at the IWC. Results shall be reported as provided in provision E.2.c.5). (<i>emphasis added</i>). SWRCB is in the process of developing a toxicity policy that proposes to include the Test of Significant Toxicity (TST) protocol. SWRCB’s policy is still in development and therefore it is premature and inappropriate to start implementation of this component of the policy prior to its adoption by the SWRCB. CCEEB requests that reference to the TST protocol be removed from the draft Permit.
37	Order E.2.d	Post-Construction BMPs	Section E.2.d states: “Department and Non-Department projects that are new development or redevelopment shall comply with the standard project planning and design requirements for new development and redevelopment specified below. These requirements shall apply to all new and redevelopment projects that have not completed the project initiation phase on the effective date of this Order.” The State Water Board’s Stormwater Construction General Permit (CGP) exempts linear construction projects from post-construction Best Management Practices (BMPs) such as those project planning and design requirements described in this section. Finding 76 of the CGP

California Council for Environmental and Economic Balance
 Comments on Tentative Order No 2012-XX-DWQ, NPDES No. CAS000003
 NPDES Statewide Storm Water Permit

Waste Discharge Requirements for State of California Department of Transportation

Page	Reference	Subject	Comment/Note
38	E.2.d.2.a.ii.2	Post-Construction BMPs	<p>states: "LUP projects are not subject to post-construction requirements due to the nature of their construction to return project sites to preconstruction conditions" Consistent with the CGP, the draft Permit should also contain this exemption. CCEEB requests that the following language be added to this section: "Linear underground/ overhead projects are not subject to post-construction requirements due to the nature of their construction to return project sites to preconstruction conditions."</p>
8	Attachment VIII	Definition of Redevelopment	<p>This section states: "Non-Department development or redevelopment projects shall be subject to the same post-construction treatment control requirements as Department projects".</p> <p>Consistent with the comment above on Section Order E.2.d, CCEEB requests that the following language be added to this section: "Linear underground/ overhead projects are not subject to post-construction requirements due to the nature of their construction to return project sites to preconstruction conditions."</p> <p>Also, consistent with this request, the definition of "Redevelopment" needs to include the following statement that is included in other MS4 permits: "Redevelopment does not include trenching and/or resurfacing associated with utility work; resurfacing and reconfiguring surface parking lots and existing roadways; and routine replacement of damaged pavement, such as pothole repair."</p>