

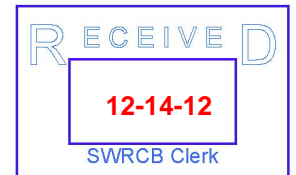
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December 17, 2012

VIA EMAIL and US MAIL

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov



Re: Comment Letter – Revised Draft Phase II Small MS4 Permit

Dear Ms. Townsend:

On behalf of the Mosquito and Vector Control Association of California (MVCAC), we are very pleased to see the incorporation of the California Department of Public Health’s 2012 guidance manual, “Best Management Practices for Mosquito Control in California” (BMP), in the Revised Draft National Pollutant Discharge Elimination System (NPDES) Permit for the discharge of stormwater from Phase II Small Municipal Separate Storm Sewer Systems (Phase II Small MS4 Permit). We have two main suggestions for improvement, the first to clarify use of the BMP manual, and the second to ensure regulatory clarity and consistency with statute.

A. References to Best Management Practices Developed by CDPH

The BMP manual was developed in July 2012 by the California Department of Public Health in collaboration with MVCAC to promote mosquito control in California and enhance early detection of West Nile virus. As you may be well aware, deaths from West Nile virus reached an all-time high of 236 this year across the nation. Sixteen deaths and 429 total cases have been reported in California. The BMP document contains many low-cost, effective tools and techniques for reducing the risk of mosquito-borne diseases such as West Nile virus. It guides permittees on how to work with local mosquito and vector control agencies to develop and implement site-specific Integrated Pest Management (IPM) strategies that maximize the efficacy of chemical control measures, decrease total pesticide use, and successfully reduce or eliminate mosquito breeding sites.

We are very appreciative of the references to the BMP manual included in footnote 27 to section E.12.g.(ii)(b) and footnote 45 to section F.5.g.3(ii)(b). We would recommend referencing the BMP manual in one additional location, specifically paragraph 50 of the Findings. In all three instances, we recommend minor revisions to the language to clarify how

permittees may best coordinate with mosquito and vector control agencies and utilize the BMP manual. The suggested edits to the three sections are provided below, shown in underline and ~~strikeout~~.

1) Section E.12.g

Operation and Maintenance of Post-Construction Storm Water Management Measures

(b) Coordination with the appropriate mosquito²⁷ and vector control agency with jurisdiction to establish a protocol for notification of installed treatment systems and hydromodification management controls, and review and incorporate, where appropriate, the best management practices identified by the California Department of Public Health.²⁷ On an annual basis, before the wet season, prepare a list of newly installed (installed within the reporting period) storm water treatment systems and hydromodification management controls to the local mosquito and vector control agency and the appropriate Regional Water Board. This list shall include the facility locations and a description of the storm water treatment measures and hydromodification management controls installed.

²⁷ California Department of Public Health. (2012). *Best Management Practices for Mosquito Control in California*. See, <http://www.cdph.ca.gov/HealthInfo/discond/Documents/BMPforMosquitoControl07-12.pdf>. ~~Additional resources at Retrieved on July 20, 2012 from~~ <http://www.westnile.ca.gov/resources.php>. Please see Table 1 for a list of California mosquito control agencies, or visit <http://mvccac.org>.

2) Section F.5.g.3

Operation and Maintenance (O&M) of Post-Construction Storm Water Management Measures

(b) Coordination with the appropriate mosquito⁴⁵ and vector control agency with jurisdiction to establish a protocol for notification of installed treatment systems and hydromodification management controls, and review and incorporate, where appropriate, the best management practices identified by the California Department of Public Health.⁴⁵ On an annual basis, before the wet season, prepare a list of newly installed (installed within the reporting period) storm water treatment systems and hydromodification management controls to the local mosquito and vector control agency and the appropriate Regional Water Board. This list shall include the facility locations and a description of the storm water treatment measures and hydromodification management controls installed.

⁴⁵ California Department of Public Health. (2012). *Best Management Practices for Mosquito Control in California*. See, <http://www.cdph.ca.gov/HealthInfo/discond/Documents/BMPforMosquitoControl07-12.pdf>. ~~State Properties~~ are available from the California West Nile virus website at <http://www.westnile.ca.gov/resources.php>. Please see Table 1 for a list of California mosquito control agencies, or visit <http://mvccac.org>.

3) Paragraph 50, Findings

(50) Certain BMP implemented or required by Permittees for urban runoff management may create a habitat for vectors (e.g., mosquitoes and rodents) if not properly designed or maintained. Close collaboration and cooperation among the Permittees, local vector control agencies, Regional Water Board staff, and the California Department of Public Health is necessary to identify and implement appropriate vector control measures that minimize potential nuisances and public health impacts resulting from vector breeding. Permittees should review and incorporate, where appropriate, the best management practices identified in the California Department of Public Health's 2012 guidance manual, "Best Management Practices for Mosquito Control in California."^{Footnote}

^{Footnote} California Department of Public Health. (2012). "Best Management Practices for Mosquito Control in California. See. <http://www.cdph.ca.gov/HealthInfo/discond/Documents/BMPforMosquitoControl07-12.pdf>. Please see Table 1 for a list of California mosquito control agencies, or visit <http://mvacac.org>.

B. Ensure Regulatory Clarity and Consistency with Statute

Public health concerns relating to mosquito-borne diseases such as West Nile virus are heightened when mosquitoes are allowed to breed and multiply within stormwater management infrastructure. To effectively control these mosquitoes, the California Legislature has recognized that pesticides may need to be applied. Below we suggest a minor revision to ensure that this permit is consistent with the statute.

The California Legislature has sanctioned public health pesticide applications for the purpose of protection of public health where local mosquito and vector control agencies are signatory to, and in compliance with, agreements approved by the California Department of Public Health. Section 13050 (p)(2)(B) of the California Water Code excludes from the definition of "hazardous substance" and hence the prohibition on discharge to waters of the state, "[a]ny pesticide which is applied for agricultural purposes or is applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, and is not discharged accidentally or for purposes of disposal, the application of which is in compliance with all applicable state and federal laws and regulations." Similarly, pesticides applied pursuant to a cooperative agreement with the Department of Public Health are excluded from the definition of "petroleum product" and the prohibition on discharge to waters of the state. California Fish and Game Code, Section 5655(e)(1).

The California Legislature has determined that public health pesticide applications, made under the review and in compliance with the requirements prescribed by the California Department of Public Health, are necessary to protect the public health and do not constitute an illegal discharge to waters. Thus, the Phase II Small MS4 Permit should be revised to cross-reference this important statutory requirement. Below is a minor addition to section B.3 to add the proper reference, shown below in underline.

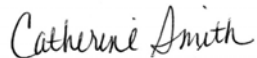
Section B(3)

(3) Discharges through the MS4 of material other than storm water to waters of the U.S. shall be effectively prohibited, except as allowed under this Provision, under cooperative agreements pursuant to Section 116180 of the Health and Safety Code, or as otherwise authorized by a separate NPDES permit. The following non-storm water discharges are not prohibited provided any pollutant discharges are identified and appropriate control measures to minimize the impacts of such discharges, are developed and implemented under the Permittee's storm water program. . . .

On behalf of the over 60 local government agencies that MVCAC represents, we thank you for incorporating the BMP manual into the Phase II Small MS4 Permit, and your consideration of the suggested minor clarifying changes noted above. These minor revisions will help ensure that we can meet the goals of improving water quality and protecting the public health of California's citizens.

Thank you for your time and consideration.

Most sincerely,



Catherine Smith, CAE.
Executive Director