

DEPARTMENT OF PUBLIC WORKS

FLOOD CONTROL • LAND DEVELOPMENT & CONSTRUCTION • OPERATIONS
SOLID WASTE MANAGEMENT • SURVEYOR • TRANSPORTATION



COUNTY OF SAN BERNARDINO

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GERRY NEWCOMBE
Director of Public Works

December 17, 2012

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



File #: 10(MOJ)-1.01.01

RE: THIRD DRAFT GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR THE DISCHARGE OF STORM WATER FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4S) COMMENT LETTER

Dear Ms. Townsend and Members of the Board:

The County of San Bernardino (County) appreciates the opportunity to comment on the Third Draft Tentative Order for the Phase II Small MS4 General Permit (Draft Permit). The County represents unincorporated areas within the Mojave River Watershed Group which have coverage under the current Phase II Small MS4 General Permit (Renewal Traditional Small MS4), as well as the Census Designated Places (CDPs) of Oak Hills, Phelan, and Spring Valley Lake, which are identified as New Traditional Small MS4s in the Draft Permit.

The County acknowledges the effort that State Board staff has put into responding to comments on the Second Draft and developing the Third Draft Permit. Furthermore, we appreciate the State Board's dedication to improving water quality. However well-intentioned though, the proposed Draft Permit will impose significant hardships on the Permittees, which we believe will not be commensurate with the water quality benefits achieved. Our primary comments are summarized in this letter, with specific comments and recommendations attached as the enclosed comment matrix.

SUPPORT FOR THE PROPOSED CHANGES IN THE CASQA COMMENT LETTER

The California Stormwater Quality Association (CASQA), Phase II MS4 Permit subcommittee has continued to review, assess, and determine the feasibility of implementing the proposed Draft Permit. This subcommittee consists of a broad representation of Phase II Traditional, Non-Traditional, new and existing Permittees, who have developed comments and recommendations for revising the Draft Permit. In general, the County supports CASQA's proposed changes to the Draft Permit, which we understand will address Hydromodification Language in Attachment J, specificity with respect to SWAMP Updates, and various deadline and timeline issues that relate to implementation of the Draft Permit once adopted.

RECEIVING WATER LIMITATION LANGUAGE

While Board staff has inserted a welcome commitment to reopen the Receiving Water Limitation (RWL) section of the Draft Permit, the County respectfully disagrees with the staff response to our July 23, 2012 comment letter regarding the RWL language. Pending some potential future outcome from the November 20, 2012 Board RWL Workshop and December 4, 2012 United States Supreme Court hearing¹, the State

¹ Natural Resources Defense Council, Inc., et al., v. County of Los Angeles, Los Angeles County Flood Control District, et al. (NRDC v. County of LA)

GREGORY C. DEVEREAUX
Chief Executive Officer

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Board has already adopted Order No. 2012-0011-DWQ, a Caltrans MS4 Permit with what we view as an explicit iterative management approach. Without fully reiterating our comments on this issue, we request the State Board to provide local municipalities with similar protection to that granted the State Department of Transportation. Otherwise, we believe that the Draft Permit contains RWL language that may potentially likewise expose Permittees statewide to challenge by third parties.

TIMELINE

The December 4, 2012 Response to Comments, summarizes our July 23, 2012 comments regarding the number of reports due at the conclusion of the second year, with an apparently generic assertion that the State Board "considered the implementation schedule and revised dates accordingly." However, there now appear to be two dozen significant milestones required by the end of the second year, including:

- Developing and implementing a receiving water monitoring program
- Completing and submitting a Program Effectiveness Assessment and Improvement Plan
- Implementing a comprehensive stormwater public education and outreach program
- Inventorying all outfalls and mapping associated drainage areas
- Inventorying of Permittee-owned or operated facilities that may impact stormwater
- Assessing and prioritizing all catch basins
- Submitting a landscape design and maintenance program to reduce contaminated runoff
- Requiring projects that create or replace 5,000 square feet of impervious cover to implement LID
- Implementing an Operations and Maintenance Verification Program for regulated projects

We request relief in the spacing of these significant and divergent milestones. It is doubtful that the County will have adequate time, resources, or expertise to simultaneously achieve all of these objectives.

ECONOMIC CLIMATE AND UNFUNDED MANDATES

Our July 23, 2012 comment letter noted the financial difficulties that local agencies are encountering and our opinion that many of the Draft Permit requirements appear to be significant and new unfunded state mandates. The December 4, 2012 Response To Comments, referencing the availability of state grants, seems less than useful to local agencies hard pressed to operate under existing furloughs, layoffs, and/or hiring freezes. Similarly, the State Board has repeatedly asserted that no new unfunded mandate exists, sometimes to eventually be rebuffed by the State Commission on Mandates. With these facts in mind and cognizant of the generic reply provided by Board staff, the County would like to reiterate and reassert our prior comments and encourage the Board's full consideration of our dire local financial straits.

SIGNIFICANT CHANGES IN THE THIRD DRAFT WARRANT FURTHER STAKEHOLDER REVIEW

There have been many significant changes to the Third Draft Permit, which was already a very complex and wide ranging regulatory document. The magnitude and number of changes warrants that the document receives a longer review period. Otherwise, the County recommends that a Fourth Draft be issued for public comment. An additional review is also warranted in that the Board is imposing a significantly increased exposure risk and additional implementation costs on the many financially challenged Permittees. Due to its significant implications, this document must be well written and clear.

REPORTING TO STORMWATER MULTI APPLICATION REPORT TRACKING SYSTEM (SMARTS)


The Draft Permit now requires that most of the required reports be submitted through SMARTS. While this change could be beneficial for both the Permittees and Board, without knowing the format that will be used, this requirement could also result in an overly complex or fallible system. The Construction General Permit SMARTS NOI Application and Annual Report processes, have become unexpectedly challenging

and complex as a result from automated error checking that responds with unclear error messages and submissions that do not always accurately convey the project's information submission and report completion status. Permittees have filed documents or even "placeholders", which were not compliant with Permit requirements, but were accepted and used by in the decision making portion of SMARTS to make a compliance determination. The County would encourage the Board to direct its staff to work cooperatively with CASQA during the Phase II Small MS4 General Permit SMARTS development effort.

We appreciate the opportunity to provide comments on the Draft Permit. However, as evident by our comments above and in the enclosed comment matrix, we have considerable concern regarding the permit as currently structured. We strongly urge the State Board to reconsider its approach and work with Phase II communities, CASQA, and other relevant stakeholders to produce a more reasonable Phase II Small MS4 General Permit, one that will lead to improved water quality without introducing necessary enforcement risks or an unbearable burden on the County.

If you have any questions regarding the County's comments and concerns, please contact Gia Kim at (909) 387-8145 or myself at (909) 387-8112.

Respectfully,


for **GERRY NEWCOMBE**
Director

GN:GK:MR:nh/Comments - 3rd Draft NPDES Permit MS4S

Third Draft Phase II Small MS4 General Permit Review Comment Matrix County of San Bernardino

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Findings			
1	Paragraph 6	6	Suggest changing "A higher percentage of impervious area in urban areas..." to "The higher percentage of impervious areas within urban areas..."
2	Footnote 2	8	Change "less than" back to "under."

**Third Draft Phase II Small MS4 General Permit Review Comment Matrix
County of San Bernardino**

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Discharge Prohibitions			
3	Allowable Non-Stormwater Discharges – Section B.3	17	<p>Section B.3 lists allowable non-stormwater discharges. Non-stormwater discharges, allowed in other Municipal NPDES Permits, that should be included are:</p> <ol style="list-style-type: none"> 1. Street wash water 2. Waters not otherwise containing wastes as defined in CWC Section 13050(d) <p>The list of allowable discharges has two items "b", one on page 17 (<i>individual residential car washing</i>) and the second on page 18 (<i>diverted stream flows</i>).</p>
4	Discharges of Incidental Runoff – Section B.4.a	18	<p>Rephrase from "Detect leaks (for example, from broken sprinkler heads) and correct the leaks within 72 hours of learning of the leak," Suggest rephrasing to "Correct detected leaks (for example, a broken sprinkler) within 72 hours," .</p> <p>The correction of detected leaks within 72 hours may not be reasonable. Once a leak or release is detected, a responsible party must first be identified. Then a Permittee would follow its enforcement procedures to initiate corrective actions. This process will likely take more than 72 hours to achieve the desired results, especially in circumstances where the responsible party will not cooperate or lacks the financial means to address the detected leak. It is recommended that this provision be modified to require the Permittee to demonstrate the initiation of enforcement and/or corrective actions within 72 hours.</p>
5	Discharges of Incidental Runoff – Section B.4.c	18	<p>This would seem to be a water conservation, rather than water quality issue. We suggest it be addressed by water conservation ordinances, while remaining a prohibited discharge under section B.3.n.</p> <p>During rain events the availability of Permittee resources are limited due to flood operation, maintenance, and protection activities. Although Permittees can require responsible parties to not irrigate during precipitation events, the enforceability of this provision is not realistic and renders it ineffective. It is suggested that this provision be deleted.</p>

Third Draft Phase II Small MS4 General Permit Review Comment Matrix County of San Bernardino

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Program Management Element			
6	Legal Authority, Implementation Level – Section E.6.a.(ii).(b)	24	It is recommended that Permittees not be required to provide adequate legal authority to address discharges from charity car washes, mobile cleaning, and pressure wash operations. Regulating charity car washes is unrealistic given its transitory nature and ad hoc organizational strategy. Most of these events occur on weekends when Permittee resources are limited. Similarly, regulating mobile cleaning and pressure wash operations are unrealistic and unenforceable since these types of businesses typically do not register for business licenses and are transitory in nature.
7	Certification, Reporting – E.6.b.(iii)	25	Section E.6.a.(i) allows two years to obtain adequate legal authority to control pollutant discharges into and from the MS4. However, Section E.6.b.(iii) requires that Permittees submit certification of legal authority to do so during the first year Annual Report, which may not be known until the ordinances have been prepared. The latter provision should be revised to coincide with the signed statement to be provided in the second year Annual Report.

**Third Draft Phase II Small MS4 General Permit Review Comment Matrix
County of San Bernardino**

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Education and Outreach Program			
8	Public Education and Outreach, Implementation Level – Section E.7.a.(ii).(k), (l), and (m)	30	Sections E.7.a.(ii).(l) and (m), appear to be significantly duplicative with section (k). Suggest combining them into a single paragraph. Paragraph (m) does not indicate the kind of message to be developed.

**Third Draft Phase II Small MS4 General Permit Review Comment Matrix
County of San Bernardino**

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Illicit Discharge Detection and Elimination			
9	Illicit Discharge Detection and Elimination Program – Section E.9	36	Costs associated with an Illicit Discharge Detection and Elimination (IDDE) Program is prohibitive for Phase II entities. According to the Center for Watershed Protection <i>IDDE A Guidance Manual for Program Development and Technical Assessments</i> , the average startup cost for a Phase II IDDE Program is \$62,300 and the annual implementation costs average \$84,750 per year. The IDDE Program should eliminate requirements associated with costly program elements such as sample analysis, program administration and reporting. Define what is considered "older infrastructure."
10	Outfall Mapping, Implementation Level – Section E.9.a.(ii).(c).(1)	37	
11	Outfall Mapping, Implementation Level – Section E.9.a.(ii).(c).(6)	37	Define what are considered "upstream of sensitive water bodies." This definition should include a distance from the priority area to the sensitive water bodies.
12	Illicit Discharge Source/Facility Inventory, Implementation Level – Section E.9.b.(i).(c)	38	Permittees could electronically refer Industrial General Permit non-filers to the State Water Resources Control Board using the reporting form at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/honfiler_form.shtml , however the Permittees should not be responsible for determining whether a facility requires coverage under a State Board Permit.
13	Field Sampling to Detect Illicit Discharges, Task Description – Section E.9.c.(i)	39	Sampling all outfalls that are flowing more than 72 hours after the last rain event and at locations identified as priority areas will be too costly. Permittees do not have the resources available to fund an elaborate dry weather sampling program. Dry weather field screenings should be limited to visual observations similar to those already required under Phase I Permits. Should pollutants be observed or suspected in a dry weather illicit discharge, then upstream source tracking should be performed to find and eliminate the source. It is recommended that requirements for an analytical monitoring program be removed.
14	Illicit Discharge Detection and Elimination Source Investigations and Corrective Actions, Implementation Level – Section E.9.d.(ii).(e)	42	Requiring dischargers to eliminate illicit discharges within 72 hours of notification is unrealistic. Once a leak or release is detected, a responsible party must first be identified. Then a Permittee would follow its enforcement procedures to initiate corrective actions. This process will likely take more than 72 hours to achieve the desired results, especially in circumstances where the responsible party will not cooperate or lacks the financial means to address the detected leak. It is recommended that this provision be modified to eliminate the required compliance timeframe. Phase I Permits currently require illicit discharges to be eliminated or permitted within 120 to 180 days of discovery. It is suggested that this provision be revised to be consistent with other current Phase I Permit requirements.

**Third Draft Phase II Small MS4 General Permit Review Comment Matrix
County of San Bernardino**

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Pollution Prevention/Good Housekeeping for Permittee Operations Program			
15	Facility Assessment, Task Description – Section E.11.c.(l)	50	Either the term “hotspots” should be defined or replaced by “priority sources of high pollutant loads.”
16	Incorporation of Water Quality and Habitat Enhancement Features in New Flood Management Facilities, Task Description – E.11.i.(i)	56	Requiring the retrofit of existing flood management facilities to incorporate water quality and habitat enhancement features is excessive. Existing flood management facilities may be undersized or at capacity to handle required design storms. The incorporation of water quality and habitat enhancement features may reduce facility capacity and/or restrict the operation and maintenance of the facility due to the creation of endangered species habitat and other regulatory obstacles. It is recommended that this requirement be revised to only require water quality and habitat enhancement features for new flood management facilities, where feasible, and remove the term “and rehabilitated” from the requirement.

**Third Draft Phase II Small MS4 General Permit Review Comment Matrix
County of San Bernardino**

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Post Construction Storm Water Management Program			
17	Site Design Measures, Task Description, Section E.12.b.(i)	60	A 2,500 square feet impervious surface threshold is lower than in current Phase I Permits. There is great potential for single family residences (with patios, driveways, and walkways) to exceed the minimum criteria. It is recommended that the trigger for site design measures be 5,000 square feet or more. Requiring the builder of a single family home to utilize a construction calculator or hire an engineer is unlikely to achieve positive results.
18	Regulated Projects, Implementation Level – Section E.12.c.(ii).(d).(1)	64	Define what is considered “new streets or roads?” Does this include highways and alleys?
19	Regulated Projects, Implementation Level – Section E.12.c.(ii).(d).3	64	The specific exclusions are very limited and should be expanded to include protection of source water, potential for pollutant mobilization, clay and impermeable soils, land use concerns, impairment of beneficial uses, conflict with water conservation goals, and lack of demand for harvested stormwater.
20	Planning and Development Review Process, Implementation Level – Section E.12.i.(ii).(a)	80	Requiring Permittees to modify the landscape code within a year of the effective date of this Order is infeasible. Coordination, review, and commenting on proposed code modifications, regulations, standards, and/or specifications may take well over a year. It is recommended that Permittees be given at least two years to comply with this provision.

**Third Draft Phase II Small MS4 General Permit Review Comment Matrix
County of San Bernardino**

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Water Quality Monitoring			
21	Receiving Water Monitoring – Section E.13.a	84	A receiving water monitoring program was never anticipated under the Federal Phase II Rule. This section should be removed from this permit.
22	Receiving Water Monitoring at Urbanized/Rural Interface, Table 3 – Section E.13.a.1	86	The permit should only determine water quality parameters to measure, not identify the analytical methods or detection limits. Those issued should be addressed during Board review and approval of the Monitoring Plan and Quality Assurance Project Plan.

**Third Draft Phase II Small MS4 General Permit Review Comment Matrix
County of San Bernardino**

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Provisions			
23	Program Management Element, Reporting – Section F.5.a.1.(iii)	101	The requirement to include a statement signed by both the Permittee's legal counsel and an authorized signatory by the first year of the Annual Report, should be changed to the second year of the Annual Report to be consistent with Section F.5.a.1.(ii).
24	Illicit Discharge Detection and Elimination Program, Field Sampling to Detect Illicit Discharges, Task Description – Section F.5.d.1.(i)	108	Sampling all outfalls that are flowing 72 hours after rainfall concludes, will be costly. Dry weather field screening should be limited to visual observations similar to those already required under Phase I Permits. Should pollutants be observed or suspected in a dry weather illicit discharge, then upstream source tracking should be performed to find and eliminate the source. It is recommended that this section be removed.
25	Post Construction Storm Water Management Program, Site Design Measures, Task Description – Section F.5.g.1.(i)	122	A 2,500 square feet impervious surface threshold is lower than in current Phase I Permits. There is great potential for single family residences to exceed the criteria. It is recommended that the trigger for site design measures be 5,000 square feet or more.

**Third Draft Phase II Small MS4 General Permit Review Comment Matrix
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Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Dispute Resolution			
26	Dispute Resolution – Section H	139	This paragraph is a welcome addition to the draft, but should be modified to indicate that disputes can often be best resolved at that Staff, Supervisor, or Chief level, rather than immediately raising the issue to the Regional Board Executive Officer level. This section also appears to unintentionally preclude the Water Code process of filing a Petition, regarding adoption of the Permit, with the State Board. There should be a limit (e.g., 30 day) on how long an Executive Officer may take in developing a decision. The number of days to appeal an Executive Officer's Decision should be more than ten days.

**Third Draft Phase II Small MS4 General Permit Review Comment Matrix
County of San Bernardino**

Comment No.	Permit Element/Section	Page No.	Comment/Suggested Revision
Attachments			
27	Attachment A – Traditional Small MS4 Designation and Monitoring Matrix	5	The City of Barstow should be added to Page 5 as a "New" Traditional Small MS4 Permittee. Bloomington CDP is already within a Phase I MS4 Permit Area and should be moved to the deleted list, which starts on Page 9. However, for further clarity, the deleted list should start at the top of page 10, following a page break.
28	Attachment A – Traditional Small MS4 Designation and Monitoring Matrix	11	Suggest deletion of the last 8 rows of data, which appear to be a reminder to the author of needed changes that have been accomplished.
29	Attachment H – Acronyms & Abbreviations	1	Revise the acronym for QSP from "Qualified SWPPP Preparer" to "Qualified SWPPP Practitioner."
30	Monitoring Flowchart	1	The two left most light blue diamonds (yes/no statements) relating to Attachment G should be combined, and replaced with "Does TMDL Attachment G, require Water Quality Monitoring by your Agency?"