



The Port of  
**LONG BEACH**  
*The Green Port*  
December 17, 2012



Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
101 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Subject: Port of Long Beach Comments on the Revised Draft Phase II  
Small MS4 Permit

Dear Ms. Townsend and Members of the Board:

The Port of Long Beach (POLB or Port) appreciates the opportunity to provide comments regarding the revised Phase II Small Municipal Separate Stormwater Sewer System (MS4) Permit (draft Phase II Permit or Permit). The Port is committed to the protection and improvement of harbor waters as exemplified when the Port, working with Port of Los Angeles, the Los Angeles Regional Water Quality Control Board (LARWQCB), the Environmental Protection Agency (EPA), and other stakeholders adopted the Water Resources Action Plan (WRAP). This voluntary, proactive action taken by both ports reinforced existing programs and put in motion many additional programs, best management practices (BMPs), and pollution control measures that will be needed to meet many of the requirements of the Phase II Permit when adopted.

The stakeholder process for the Phase II Permit was initiated on June 7, 2011, when the first draft of the Permit was released, however the Port was not designated as a named non-traditional MS4 permittee until the third iteration of the draft permit was released on November 16, 2012. The Port has clearly not been allowed adequate time to review the draft Permit and prepare comments, and has not been given the opportunity to meaningfully participate in the stakeholder process. Due to this recent designation, some of the Port's comments may address some of the non-redline portions, since the Port has not had the opportunity to comment on those sections previously.

The Port would also like to emphasize that it is difficult to fully comment on the draft permit at this time because it is unclear how this designation will impact the Port's award winning Industrial Stormwater Program. It had been our understanding through the WRAP process and subsequent discussions with the agencies that the current Port Master Stormwater Program has been considered an effective strategy for addressing stormwater impacts. We are unsure, however, what implications the designation will have on the structure of our current program. There are a variety of unique compliance and engineering challenges associated with industrial operations within a port complex, particularly related to the relative size and impervious nature of marine terminals, their close proximity to the receiving waters, and the interconnected and comingled storm drain infrastructure. The Port currently manages the entire Port Harbor District under a single

WDID Number, and divides permit responsibilities with the individual industrial tenant facilities. The Port conducts annual compliance evaluations of tenant facilities, provides training to tenant facilities, conducts a regional stormwater monitoring program, and submits the annual report to the LARWQCB. The Port fears that an unintended consequence of designating the Port under this permit would be to undermine the structure of this successful and effective program. Without clear guidance from the regulatory agencies on how port industrial facilities will be permitted under this new designation, the Port cannot fully provide comments on the draft Phase II Permit.

To the extent possible given the very limited time allotted, the Port has provided the following initial comments on the draft Phase II Permit. The Port reserves the right to supplement and amend this comment letter, and respectfully requests an extension to the comment period to allow us time to fully understand the implications and impacts the Phase II permit will have on the POLB Master Stormwater Program.

### **1. Inadequate Time Allotted for Review of the Draft Phase II Permit**

The Port was designated under the third iteration of the draft Phase II Permit, released on November 16, 2012, as a Non-Traditional Phase II permittee. The Port was not designated as a permittee covered by this Permit in all former drafts. The first iteration of the draft Phase II Permit was released by the State Water Board for public comment on June 7, 2011. The Port was not notified by the State or Regional Water Board of the change and only became aware of this designation on November 29, 2012. As stated above, the Port has clearly not been allowed adequate time to determine the wide range of impacts this designation will have on the Port's highly successful Master Stormwater Program, or to meaningfully participate in the stakeholder process.

*Recommendation: Extend the comment period 60 days to allow the Port adequate time to review the draft Phase II Permit and comment, and allow time to meet with Regional Board staff and discuss the potential implications.*

### **2. Industrial Facility Enforcement**

If it is the intention of the State and Regional Water Boards to use this permit as a mechanism for the Port to extend enforcement authority over industrial port tenant facilities covered by the Industrial General Permit (IGP) in the Harbor District, this creates a serious conflict of interest. The Port of Long Beach is a landlord Port which competes with other port facilities, both domestic and international, to attract marine terminal operators (MTOs) to the Port. These MTOs lease terminal space, and these leases are the Port's primary source of income, which makes our tenants business partners. It is not in the Port's interest to levy fines and enforcement actions on our business partners, and it is not appropriate for the Port to be placed in the role of enforcer against our business partners. Accordingly, the Port of Long Beach strongly objects to taking an enforcement role for its industrial tenants covered under the IGP.

*Recommendation: The Los Angeles Regional Water Quality Control Board would be the most appropriate agency to be responsible for enforcement of stormwater regulations for Port industrial facilities covered under the IGP, or as an alternative, the City of Long Beach could act in this capacity as well.*

#### **4. Receiving Water Limitation Language**

The Receiving Water Limitations Provision (Provision D, pages 19-20) is an important and relevant issue for all permittees within the State. While the revised order does not modify Provision D per se, it addresses the issue (see Finding #38, page 38; Provision I, page 140; and the Fact Sheet, pages 25-26) by creating a reopener clause. The Port believes that this important issue should be addressed now, and the State Water Board should not defer this issue until a later date (by the use of a reopener clause). The Port understands that CASQA offers its support and assistance to the State Water Board to address this issue.

*Recommendation: Work with CASQA to revise the Receiving Water Limitation Language in Provision D now and not defer to a later point in time.*

#### **5. Public Outreach**

F.5.b.2 indicates that the public for a Non-Traditional MS4 Permittee includes visitors, if applicable. The provision later states [F.5.b.2.(ii)(b)] that permittees shall gauge awareness in target audiences and effectiveness of education tasks. Attempting to gauge awareness and effectiveness of a transient population such as visitors is not an effective or fruitful use of permittee resources.

*Recommendation: Add "as feasible" to the end of F.5.b.2.(ii)(b): Implement BMPs that gauge level of awareness in target audiences and effectiveness of education tasks, as feasible.*

#### **6. Illicit Discharge Detection and Elimination**

The term "outfall" should be linked to the definition provided in Attachment I.

*Recommendation: Add footnote to F.5.d(i) that directs the reader to Attachment I for a definition of outfall: The Permittee shall maintain an up-to-date and accurate outfall<sup>41</sup> map.*

*41: See Attachment I for definition of outfall*

Under F.5.d(ii)(b), redline language states that "Submerged outfalls or other outfalls that may pose a threat to public safety are not required to be inventoried." This language does not clearly state that this also applies to field sampling.

*Recommendation add language to F.5.d.(ii)(b): Submerged outfalls or other outfalls that may pose a threat to public safety are not required to be inventoried or sampled."* Sampling should not be required for known discharges (springs, piped streams, etc.). In order to make effective use of permittee resources, this requirement should be modified to state that sampling only occur at unknown discharges.

*Recommendation: Add the following language to F.5.d.1.(i):...the Permittee shall sample any outfalls that are flowing or ponding with unknown discharges more than 72 hours after the last rain event.*

## **8. Post-Construction Stormwater Management Program**

The Port will have difficulty implementing onsite retention requirements due to the unique nature of the Port's setting. At the Port, it is common to have a site that has a high groundwater table (less than 5 feet to surface), tidal influence, soil contamination, groundwater contamination, and heavy industrial land uses. In addition, all stormwater from the Port is discharged directly from an MS4 into the receiving water and there is no danger of stream bank or riverbed erosion. Unlike Traditional Permittees, many Nontraditional Permittees, such as the Port, own much of the land that drains to their MS4. Given the combination of challenging site constraints combined with land ownership, the Port has the opportunity to identify the most effective and feasible locations for stormwater treatment and retention within our MS4.

Language should make the establishment of an offsite mitigation program an option available as an alternative to onsite retention. Additionally, language should be flexible so that permittees such as the Port have the ability to implement an offsite mitigation framework that works best in the context of their unique needs (i.e., language should not constrain the ability to set up a program that utilizes a crediting system versus an in lieu fee).

*Recommendation: Include the following language:*

### F.5.g.3 Alternative Compliance

#### a) Alternative Compliance Measures

When a Permittee determines a project has demonstrated that it is technically infeasible to retain 100 percent of the numeric sizing criteria onsite as specified in F.5.g.2.b, the Permittee may allow the use of infiltration or bioretention BMPs to intercept the volume of stormwater runoff not retained onsite at an approved offsite project; or

#### b) Regional Storm Water Mitigation Program

A Permittee may implement a regional stormwater mitigation program to substitute in part or wholly for New and Redevelopment requirements for the area covered by the regional stormwater mitigation program. Implementation of the program must retain the runoff and the numeric sizing criteria as specified in F.5.g.2.b and result in improved stormwater quality.

## **9. Region 3 Requirements**

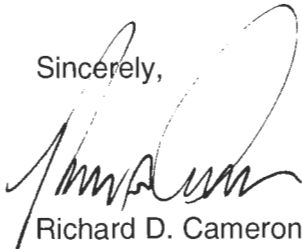
The Port is also concerned about the inclusion of Region 3 requirements into the Draft Phase II Permit. By appending the Central Coast requirements as Attachment J and stating in a footnote on page 39 of the Fact Sheet, "the Water Board expects to amend this Order to incorporate similar requirements for Permittees in the remainder of the State," the Water Board has introduced a new set of rules with insufficient time for the Port to fully evaluate the potential impacts of these standards. The Port requests that permittees be allowed a full permit term to incorporate the requirements of Section F.5.g before adding to or creating a whole new set of requirements.

*Recommendation: Delete direct references to the Central Coast Post-Construction Requirements, including Attachment J and the footnote on page 39 of the Fact Sheet, from the Draft Phase II Permit.*

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The Port of Long Beach appreciates the opportunity to provide our comments and asks that the Board consider them and our suggested revisions. In addition, the Port respectfully requests to continue discussions which began during the WRAP process with the State and Regional Water Boards, regarding the optimum stormwater permitting scenario for the Long Beach Harbor District. If you have any questions, please contact James Vernon or Matt Arms at (562) 283-7100.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard D. Cameron". The signature is fluid and cursive, with a large loop at the top.

Richard D. Cameron  
Director of Environmental Planning

JBV:s

cc: Sam Unger, LARWQCB