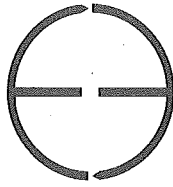


Walter McGuire
CHAIRMAN
Jose Mejia
VICE-CHAIRMAN
Gerald D. Secundy
PRESIDENT
William J. Quinn
CHIEF OPERATING OFFICER
Steve Gross
TREASURER
Randy Fischback
SECRETARY



California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, CA 94105 • (415) 512-7890 • FAX (415) 512-7897

Public Comment
Draft Phase II Small MS4 General Permit
Deadline: 7/23/12 by 12 noon

July 23, 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 – 2nd Draft Phase II Small MS4 General 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 Second Revised Draft Tentative Order for the National Pollutant Discharge Elimination System (NPDES)/Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4) (draft Permit).

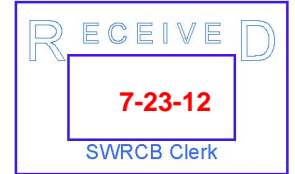
CCEEB's recommendations for revisions to the draft Permit are provided below.

Post-Construction Best Management Practices (BMPs)

Because of the nature of linear underground/ overhead projects (LUPs), the SWRCB's Storm Water Construction General Permit (CGP) exempts these types of project from post-construction BMPs, such as SUSMPs, LID and hydromodification. We believe that the draft Permit also needs to include that exemption. As written, this draft permit does not clearly state that linear underground/overhead projects are not subject to post-construction BMPs and needs to be revised to be consistent with Finding 76 in the Construction General Permit.

We recommend, at a minimum, the following revisions be made to provide this clarity:

- Finding 41 - Add a second sentence that states:
"Consistent with the SWRCB's Construction General Permit, linear underground/overhead construction projects are not subject to post-construction requirements."
- Glossary Definitions for "New Development" and "Redevelopment" – Add the following statement to these definitions:
"Linear underground/overhead construction projects are not considered New Development or Redevelopment."
- Revise the first sentence of Section E.12.b. Hydromodification to state:



BOARD OF DIRECTORS

Linda Adams
Bob Antonoplis
William T. Bagley
Robert Balgenorth
Michael Barr
Jack Bean
Mike Beasley
Ed Bedwell
Joseph C. Bellas
Russ Burns
Steve Burns
Ken Casarez
John Chillemi
Michele Corash
Tim Cremins
Hal Dash
Bill Devine
Cesar Diaz
Greg Feere
Randy Fischback
Steve Gross
Michael Hertel
Fred John
James (J.P.) Jones
Kenneth L. Khachigian
John T. Knox
Kristen Korbus
Kirk Marckwald
Walter McGuire
Sunne McPeak
Jose Mejia
Cindy Montanez
Richard Morrison
Cressey Nakagawa
Joe Nuñez
George Plantka
Art Pulaski
Matt Rezvani
Mike Roos
Lanny Schmid
Gerald D. Secundy
Dan Skopec
Don Solem
Katherine Strehl
Minnie Tsunozumi
Victor Weisser

CONSULTANTS

Kendra Daijogo
THE GUALCO GROUP, INC.

Jackson R. Gualco
THE GUALCO GROUP, INC.

Robert W. Lucas
LUCAS ADVOCATES

Gov. Edmund G. "Pat" Brown
FOUNDING CHAIRMAN 1973

www.cceeb.org



“All permittees shall implement post-construction hydromodification measures for new development and redevelopment and comply with the following sections....”

Non-Storm Water Discharges

Section B. of The Findings (Discharge Prohibitions p.15) states that certain non-storm water discharges are authorized under this permit and under separate NPDES permits (“Discharges of material other than storm water to waters of the U.S. or another permitted MS4 shall be effectively prohibited, except as allowed under this Provision or as otherwise authorized by a separate NPDES permit). However, this distinction is not carried out through the entire draft Permit. In many cases, the permit only references “non-storm water” and the need to terminate the discharge. For example:

- Section E.6.a.ii.a states: “Prohibit and eliminate non-storm water discharges to the MS4.”
- Section E.9 states: “The Permittee shall develop an Illicit Discharge Detection and Elimination program to detect, investigate, and eliminate non-storm water discharges, including illegal dumping, into its system.”

In several sections, the draft Permit explains that it is addressing “prohibited non-storm water discharges.” For example:

- Section E.9.d.i. states: “The Permittee shall develop written procedures for conducting investigations into the source of all identified *prohibited non-storm water discharges*, including approaches to requiring such discharges to be eliminated, and procedures to implement corrective actions (e.g., BMPs).” (Emphasis added.)
- Section E.9.d.ii states “At a minimum, the Permittee shall conduct an investigation(s) to identify and locate the source of any *prohibited non-storm water discharge* within 72 hours of becoming aware of the prohibited non-storm water discharge.”(Emphasis added.)

Each section of the draft Permit that addresses non-storm water discharges needs to be revised to clarify that is addressing: 1) all non-stormwater discharges; 2) authorized non-stormwater discharges (i.e., see Section B.3 and NPDES and WDR discharges); or prohibited non-stormwater discharges.

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 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, consistent with the State Water Board’s March 2012 “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 (Finding and Exception language) to provide for the continued discharge of non-storm water in compliance with a NPDES permit to Small MS4s that discharge to an ASBS.

Without such a finding and other appropriate language being included 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.

Following is proposed language to be included as a finding:

“The ASBS exception 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 substructures, construction groundwater dewatering, and hydrostatic test water), the State Water Board authorizes their discharge to MS4 systems that discharge to ASBS.”

The language in Attachment C (Special Conditions (Specific Provisions) for Traditional and Non-Traditional Small MS4 ASBS Discharges) of the draft Permit is missing language that was contained in the ASBS exception adopted in March, 2012 (see draft Permit Section I.A.1.e.). Specifically, it omits the language from the Exception Attachment B, Section I.A.1.e.2.ii (page 2) that states:

“An NPDES permitting authority may authorize non-storm water discharges to an MS4 with a direct discharge to an ASBS only to the extent the NPDES permitting authority finds that the discharge does not alter natural ocean water quality in an ASBS.”

CCEEB urges the State Water Board to reinsert this language into the draft Permit exactly as it is in the Exception (i.e., with the same meaning).

Further, CCEEB urges the SWRCB to add the following statement to draft Permit Attachment C, Section I.A.1.e.:

“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 substructures, construction groundwater dewatering, and hydrostatic test water), the State Water Board authorizes their discharge to MS4 systems that discharge to ASBS.”

Erosion & Sediment Control Plans

Section E.10 addresses the implementation of the Small MS4 construction program. We have the following comments on the requirements of this section:

- Section E.10.b.ii.a. requires preparation and submittal of an erosion and sediment control plan for each project prior to a permittee issuing the applicant a grading permit or building permit.
- Linear projects subject to the State Water Board’s Stormwater Construction General Permit (CGP) are required to prepare a Storm Water Pollution Prevention Plan (SWPPP), which is developed by certified Qualified SWPPP Developers. These projects should not be required to obtain further review and authorization from the small MS4 permittee. The draft Permit should be revised to state that the SWPPP satisfies this erosion and sediment control plan requirement and a separate plan is not required. Typical linear underground/overhead project construction does not

include grading, conforms to pre-existing contours and, within urban areas, is conducted in existing paved areas (e.g., streets). Further, trenches and excavations are closed up, covered or otherwise protected from erosion and sediment runoff at the end of each working day. Linear projects not subject to the CGP implement standard construction BMPs and should not require an erosion and sediment control plan. We recommend that this section include a paragraph that states:

“Projects subject to the CGP are not required to develop and submit an erosion and sediment control plan separate from their SWPPP. Linear underground/overhead projects not subject to the CGP are not subject to the requirement to develop and submit a sediment and erosion control plan but are required to implement appropriate BMPs, as applicable on their projects, to control erosion and sediment runoff.”

- Section E.10.b.ii.b. requires the erosion and sediment control plan to include the rationale used for selecting or rejecting BMPs. These erosion and sediment control plans are developed by trained professionals using their best professional judgment in determining the specific BMPs to be implemented. There is no value in providing an explanation of why all other BMPs have not been selected. This requirement would only add to the burden, time and cost of developing the erosion and sediment control plans. We recommend this section be revised to state:
“Require that the erosion and sediment control plan include the rationale used for selecting BMPs, including supporting soil loss calculations, if necessary.”
- Section E.10.b.ii.c. requires erosion and sediment control plans to list all applicable permits (including CWA Section 404 and 401 permits, CA Department of Fish & Game Permits). Large projects may require numerous permits, both significant (e.g., Waste Discharge Requirements, NPDES, CWA Section 404 and 401, and Department of Fish & Game) and less significant permits (e.g., traffic control plans, encroachment permits, etc.). It should not be a requirement to list all of the permits in the erosion and sediment control plan. This requirement should be limited to those federal and state permits which are not under the control of the local MS4. Further, this section requires that all permits be must be obtained prior to commencing soil disturbing activities. Obviously, all permits must be obtained prior to conducting work for which the permits are required. However, linear underground/ overhead projects can span a number of miles and not all permits for the entire project may be necessary to be obtained prior to commencing dirt disturbing activities. For example, a traffic control permit (or other permit) for a section of a project that is not scheduled to begin for six months after the project starts should not be required to be obtained prior to soil disturbing activities on the beginning portion of the project. Therefore, we request that the last sentence in this section be deleted.

Other Comments

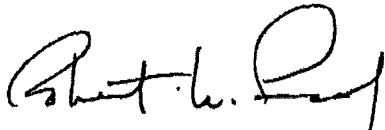
Section E.6.a.ii.g specifies the MS4 have the authority to require information to assess compliance with the permit, including requiring “...other information deemed necessary to assess compliance with this order.” This reference to “other information” is vague and should be revised to be more specific so as to be able to understand what information this could include. Further, it should be clarified that information subject to federal and/or state security laws, such as the Homeland Security Act, should be exempt from this requirement, similar to the condition placed in the State Water Board Storm Water Construction General Permit.

Section E.9.c.ii.b. contains action level concentrations. However, the draft Permit, including the Fact Sheet, does not provide a basis or support for the concentrations for the indicator parameters. What is the basis for these indicator parameters and their concentrations?

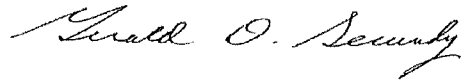
Section E.10.c.i. & ii. specify requirements for conducting inspections on construction projects. These sections should also state that the MS4 permittees work with other permitting agencies with NPDES or MS4 permitting authority to coordinate inspections so that construction projects are not needlessly inspected multiple times by different agencies. This will streamline the inspection process and reduce the cost to the MS4s.

CCEEB welcomes the opportunity to provide comments to SWRCB. 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
Gordon Burns, Undersecretary for Cal/EPA
Michael Lauffer, Chief Counsel, SWRCB
Jonathan Bishop, Chief Deputy Director, SWRCB
Jackson Gualco, The Gualco Group, Inc.