



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

JUL 19 2017

Public Comment
Small MS4 Permit Amendment
Deadline: 7/20/17 by 12 noon



Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Re: Proposed Amendment to Small MS4 General Permit to Incorporate TMDL Requirements

Dear Ms. Townsend:

The following are EPA Region 9's comments on the proposed amendment to general NPDES permit (NPDES permit No. CAS000004) for small municipal separate storm sewer systems (MS4s) located within the State of California, that the State Board released for public comment on May 31, 2017. The proposed amendment would incorporate revisions (and certain new requirements) to Attachment G to the general permit that was adopted by the State Board in February 2013. Attachment G is intended to set forth requirements consistent with the assumptions and requirements of wasteload allocations (WLAs) and load allocations (LAs) applicable to the small MS4s that are found in approved total maximum daily loads (TMDLs).

During the development and issuance of NPDES permit No. CAS000004, Region 9 submitted comments on several drafts of the permit; among other issues, our comments addressed the proposed TMDL-related requirements. We generally supported the TMDL provisions that were proposed in the draft permits, and adopted in the final permit.

Federal regulations at 40 CFR 122.44(d)(1)(vii)(B) provide that water quality-based effluent limitations in NPDES permits must be consistent with the assumptions and requirements of any applicable WLAs. When feasible, applicable WLAs should be incorporated into MS4 permits as numeric effluent limits, since this is the surest way of ensuring consistency with the WLA. It is also consistent with our objective of ensuring clear, measurable and enforceable permit requirements in MS4 permits. However, WLAs may also be expressed as best management practices (BMPs) in cases where numeric limitations are infeasible, provided a quantitative demonstration is provided in the fact sheet showing that the BMPs will be sufficient to comply with the WLAs (see 40 CFR 122.44(k)(2) and "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs' ", November 26, 2014)¹. Applicable compliance deadlines and appropriate monitoring requirements for measuring compliance must also be included in the permit.

¹ Available at https://www.epa.gov/sites/production/files/2015-10/documents/epa_sw_tmdl_memo.pdf

We generally support the permit amendment that the State Board has proposed, since we find it consistent for the most part with the basic principles for TMDL incorporation discussed above. We have not reviewed the proposed requirements for all 73 TMDLs that are applicable. However, in the attachment to this letter, we offer comments and suggested revisions for some selected TMDLs that we reviewed.

The proposed permit amendment does not currently include any requirements related to TMDLs that may be approved during the term of the permit. To expedite implementation of additional controls that may be necessary for compliance with such TMDLs, we recommend the permit include a provision similar to section O of the 2012 MS4 permit for the City of Salinas (permit No. CA0049981) issued by the Central Coast Regional Board. The Salinas permit requires development and submittal within one year of final TMDL approval of a plan for complying with newly approved TMDLs. This is preferable to waiting for the next permit renewal to incorporate newly approved TMDLs.

For some TMDLs, Attachment G notes that the TMDL specifies a certain compliance deadline, only implying that the deadline is also included in the permit (e.g., Clear Lake Nutrients TMDL and certain others). For greater clarity, we recommend that the permit consistently use language such as found in Attachment G for the Los Angeles Regional Board TMDLs where the permit clearly states that compliance shall be achieved by the indicated date.

Lastly, the proposed amendment consistently incorporates by reference WLAs found in the fact sheet into Attachment G to the permit. This may be due to the extensive details of some WLAs and a desire to avoid repeating such detailed requirements. Despite this concern, for added clarity, we recommend that the State Board consider including the specific requirements of the WLAs in Attachment G as well as the fact sheet.

We appreciate the opportunity to provide our views on the proposed permit amendment. If you have any questions regarding this matter, please contact Eugene Bromley of the NPDES Permits Section at (415) 972-3510.

Sincerely,



David Smith, Manager
NPDES Permits Section (WTR-2-3)

Attachment

Attachment: Comments Concerning Individual TMDL Implementation Provisions

1. *North Coast Regional Board Shasta River Watershed Temperature & Dissolved Oxygen TMDL*

The fact sheet indicates that this TMDL does not include a numeric WLA for the one permittee (City of Yreka) subject to the TMDL; the fact sheet should describe what the TMDL does require for the City of Yreka, which is the development and implementation of a plan to minimize pollutants of concern. This would then explain the basis for the requirement in Attachment G that the permittee develop and implement such a plan, which is otherwise unclear.

The fact sheet also indicates that the plan is to be submitted for approval by the Regional Board. Attachment G, however, indicates that the plan has been approved by the Regional Board and seems inconsistent with the fact sheet in this regard. The fact sheet and Attachment G should also identify the plan that was approved and the date of approval by the Board, if it has been approved.

The TMDL notes that monitoring may be required by responsible parties such as the City of Yreka if directed to do so by the Regional Board. The fact sheet should clarify whether any monitoring requirements have been established by the Regional Board and if so, they should be included in Attachment G.

Finally, the TMDL approved by the Regional Board in 2006 required that the permittee begin implementation of the plan by January 2012. Attachment G requires that the permittee begin implementation by July 1, 2017; the fact sheet should explain the basis for this alternate deadline.

2. *San Francisco Bay Regional Board Napa River Sediment TMDL*

This TMDL sets a WLA of 800 metric tons/year for sediment discharges covered by the small MS4 general permit, and a LA of 27,000 metric tons/year for sediment discharges from roads not covered by NPDES permits. The fact sheet notes the WLA of 800 metric tons/year (corrected from 600 metric tons/year in the 2013 permit), but the WLA is omitted from Attachment G. For compliance with the WLA, the permittees are only required to implement the construction and maintenance requirements of the small MS4 general permit, sections E.10 and E.11, which focus on construction and municipal maintenance activities. This is apparently due to the fact that the small MS4 WLA does not require a reduction in the existing load and that continuation of existing practices is expected to ensure compliance with the WLA; if so, this should be explained in the fact sheet. Further, although sections E.10 and E.11 are the provisions of the permit most relevant for ensuring compliance with the WLA, other sections of the permit could also be relevant such as section E.6 and E.12.

As such, we suggest that the permit simply require continued implementation of all existing permit requirements.

Attachment G includes a LA of 27,000 metric tons/year of sediment from roads and a corresponding road-related sediment delivery rate of less than or equal to 500 cubic yards/mile per 20-year period. However, suitable monitoring requirements to measure compliance are lacking and need to be added. For unpaved roads, section B.i (first bullet) in Attachment G appears to only require a continuation of existing BMPs. The 2009 Basin Plan Amendment, however, requires an upgrade of existing practices to meet the LA. The third bullet in the section requires BMP upgrades for road crossings/culverts but lacks appropriate requirements for unpaved roads; the Board's 2009 Staff Report for the TMDL had noted that unpaved roads were a significant source of sediment, and should be addressed in Attachment G consistent with the Basin Plan Amendment.

Although Attachment G indicates that the TMDL did not include a compliance deadline (and therefore a deadline was not included), the permit should at least require that compliance be achieved in the shortest practicable time period for consistency with 40 CFR 122.47. The 2009 Staff Report notes that typical timeframes for achieving compliance for sediment WLAs are 3-5 years for plan development, followed by 10-20 years for implementation. We recommend that the Board consider including deadlines such as these in the permit.

3. Central Coast Regional Water Board

The fact sheet indicates that the Central Coast Regional Board has developed its own systematic approach for TMDL implementation called the Wasteload Allocation Attainment Program. The fact sheet also describes the elements of the program which Region 9 generally agrees are appropriate. We would note, however, that Attachment G consistently requires a quantitative analysis demonstrating that proposed BMPs would be sufficient to comply with applicable WLAs. We support this requirement and it should be included in the description of the Wasteload Allocation Attainment Program in the fact sheet.

Morro Bay Sediment TMDL

The fact sheet indicates that the TMDL calls for a 50% reduction in sediment discharges by responsible entities including one permitted small MS4, which is the County of San Luis Obispo. The fact sheet should also clarify that the sediment that is targeted is sediment from roads within the watershed. The BMP implementation requirements in Attachment G (somewhat generic at the moment) should focus on reducing sediment from this specific source.

The WLA for San Luis Obispo County is 5,137 tons/year. However, it is not clear in Attachment G how compliance with this WLA would be determined. The TMDL intends that compliance would be determined by various receiving water conditions that are not found in Attachment G; accordingly, we recommend that the relevant receiving water conditions be included in Attachment G. The monitoring requirements in Attachment G should also be geared toward monitoring the receiving water conditions used as compliance indicators by the TMDL.

Finally, the fact sheet should explain the origin of the December 2053 final compliance deadline. This appears to be derived from the estimated amount of time thought to be necessary to achieve compliance in the TMDL implementation plan.

4. *Los Angeles Regional Water Board*

When the general permit was issued in 2013, TMDL requirements applicable to small MS4s in the Los Angeles Regional Board had not yet been prepared, and are only now being proposed. The permittees are given two options: (1) enter into a cooperative agreement with Phase I MS4s that are currently implementing an approved watershed management program (WMP) or an enhanced WMP (EWMP), or (2) develop their own programs to meet WLAs for approval by the Regional Board,

Region 9 generally supports the proposed approach which is used consistently for all the TMDLs, but we offer the following comments. First, although deadlines are proposed in Attachment G for the permittee actions described above (deadlines that we consider to be reasonable), the deadlines should also be noted and explained in the fact sheet. Second, if a permittee selects the first option of entering into a cooperative agreement in the implementation of a WMP or EWMP, it must be the WMP/EWMP that covers the geographic area in which the permittee is located.

5. *Central Valley Regional Water Board Clear Lake Nutrients TMDL*

For this TMDL, the small MS4s are subject to an aggregate WLA for phosphorus of 2,000 kg/yr (five year rolling average). Attachment G indicates that the WLA is to be achieved via implementation of various BMPs. To provide greater assurance that the BMPs will be sufficient to attain compliance, we recommend that the permit require the submittal of a quantitative analysis to the Regional Board demonstrating the BMPs contemplated by the permittees would be sufficient. Model permit language for consideration can be found in the implementation requirements for the Central Coast Regional Board's TMDLs.

Attachment G also includes the WLA compliance deadline of June 19, 2017, consistent with the 2006 Basin Plan Amendment. The fact sheet explains that WLAs are

effective immediately if their compliance deadlines have passed, as is the case here. The fact sheet also notes that permittees may request a time schedule order from the Board in such circumstances, but that deadlines should not be extended via the provisions of a permit. For this TMDL, however, the fact sheet indicates that one compliance option for permittees is the submittal of a management plan by September 21, 2018. Absent additional explanation and justification of this option, we recommend that permittees seek a time schedule order as described in the fact sheet if they wish to obtain an extended deadline.

**6. *Lahontan Regional Water Board
Middle Truckee River Sediment TMDL***

This TMDL calls for an overall sediment loading reduction of 20% in the affected watershed. Although mass-based WLAs were developed for urban and non-urban areas, the 2008 Basin Plan Amendment indicates that compliance with the TMDL would be assessed through compliance with a target water column concentration for suspended sediment (90th percentile value less than or equal to 25 mg/l) for protection of aquatic life.

Attachment G in the 2013 permit had included the above suspended sediment concentration as the measure of TMDL compliance, but it has been removed from in proposed Amendment. It appears to Region 9 that it is the most appropriate means for assessing compliance and should be retained in the permit. We would point out that the permit only applies to Placer County and the City of Truckee, while the mass-based WLAs were derived for these permittees, along with Nevada County and Sierra County. It's not clear what fraction of the mass-based WLAs should be assigned to the permittees, nor does the permit include a means for assessing compliance.

Table 4.13-TR-4 of the 2008 Basin Plan Amendment calls for, at a minimum, once/month suspended sediment concentration monitoring at Farad. This monitoring requirement is missing and should be included in Attachment G.

The proposed Attachment G includes BMP requirements that are generally consistent with the TMDL. However, we would point out that Placer County's map of its permit area in its stormwater management program (available on the County's website) includes the entire Truckee River Watershed, including ski areas. If this is consistent with the Board's understanding, we recommend that an additional BMP be included that would require Placer County at least provide assistance in the implementation of the ski-area BMP requirements. Such a requirement would be consistent with the public education and outreach requirements of the permit and the targeting of appropriate audiences within the permitted area.

**7. *San Diego Regional Water Board
Bacteria Project I – Twenty Beaches and Creeks TMDL***

While the proposed Attachment G generally includes requirements consistent with this TMDL, we recommend clarification of the compliance deadline. Attachment G provides an alternate compliance deadline of April 4, 2031 (rather than April 4, 2021) if the SWPPP addresses pollutants other than bacteria. The fact sheet needs additional explanation of this alternate deadline. It apparently results from the provision in the TMDL for an extended compliance deadline for permittees that develop a Comprehensive Load Reduction Plan (CLRP) that would address bacteria and other pollutants of concern; the SWPPP is apparently being considered the equivalent of a CLRP, but this is not clear from the fact sheet or the permit. Moreover, section F.5.f.4 of the permit indicates that SWPPPs are intended only for “hotspots and high priority sites” and may not fully capture the intent of the TMDL for a CLRP. The fact sheet for the permit notes that although stormwater management programs are not required by the permit, some sort of overall guidance document would still be expected to serve as a roadmap for permittees in complying with the permit. Such a guidance document would likely be more comprehensive than a SWPPP, and provided it met the intent of the TMDL for a CLRP, may be more appropriate than the SWPPP to cite as a possible avenue for obtaining for the extended compliance deadline.

