



CITY OF ESCALON

July 19, 2017



Via Electronic Submission to commentletters@waterboards.ca.gov

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

Re Comment Letter – Small MS4 Permit Amendment (City of Escalon)

The City of Escalon (“Escalon”) appreciates this opportunity to provide comments on draft Order WQ 2017-XXXX-DWQ Amending National Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems, Order NO. 2013-0001-DWQ. Escalon is committed to protecting our region’s waterways and submits these comments as part of its efforts to implement a robust and effective stormwater quality control program.

Escalon has been listed in the proposed amendments to Attachment G as a Phase II entity required to implement the TMDL for Lower San Joaquin River, San Joaquin River, Stockton Deep Water Ship Channel for Organic Enrichment and Low Dissolved Oxygen (the “San Joaquin River Dissolved Oxygen TMDL”). We believe that including Escalon in Attachment G is improper and respectfully request that the city of Escalon be removed from Attachment G. In the alternative, Escalon requests that it be exempt from the monitoring requirements listed in Attachment G and that Escalon be removed from Attachment G based on a demonstration its discharges do not exceed the dissolved oxygen / organic enrichment impairment present in the San Joaquin River.¹

1. Remove the City of Escalon from Attachment G

1.1. Escalon is not assigned a WLA in the San Joaquin River Dissolved Oxygen TMDL

The San Joaquin River Dissolved Oxygen TMDL does not allocate responsibility for excess net oxygen demand to Escalon. The TMDL prohibits any “increase in the discharge of oxygen demanding substances or their precursors into waters tributary to the Deep Water Ship Channel portion of the San Joaquin River ... after 28 January 2005.” It then allocates “relative responsibility for excess net oxygen demand” to three entities:

- “a) 30% as a wasteload allocation for the City of Stockton Regional Wastewater Control Facility.

¹ Escalon has also reviewed the comments submitted by the California Stormwater Quality Association (“CASQA”). Escalon supports and joins CASQA in the submission of those comments.

- b) 60% as a load allocation to non-point sources of algae and/or precursors in the watershed.
- c) 10% as a reserve for unknown sources and impacts, and known or new sources that have no reasonable potential to impact.”

Escalon is not allocated responsibility for excess net oxygen demand under provision (a) or (b) because it is not the City of Stockton Regional Wastewater Control Facility and it is not a non-point source of algae or precursors in the watershed. No data available when the San Joaquin River Dissolved Oxygen TMDL was developed and no data developed through studies conducted since its adoption provide any basis for allocating responsibility for excess net oxygen demand to Escalon. (See San Joaquin River Dissolved Oxygen Control Program Implementation Staff Report, January 2015, at 5 [“information gathered during these studies was not sufficient to reassign load allocations and waste load allocation originally adopted in the Control Program”].)

If Escalon’s stormwater discharges are considered part of the entities under provision (c), above, then the discharges “have no reasonable potential to impact” excess net oxygen demand and inclusion of Escalon in Attachment G is improper. As recently as 2014, the Central Valley Regional Water Quality Control Board determined that Escalon “is not subject to a TMDL” and does “not discharge to a CWA Section 303(d) listed water body with urban runoff listed as the source.” (Exhibit 1, Pamela Creedon, *Clarification on Water Quality Monitoring Tiers, NPDES General Permit for Waste Discharge Requirements for Storm Water Discharges From Small Municipal Separate Storm Sewer Systems*, June 12, 2014.)

It is inappropriate to subject Escalon to the San Joaquin River Dissolved Oxygen TMDL without evidence that the assumptions and data used to develop the allocation and implementation actions are scientifically sound as applied to Escalon.

1.2. Requiring immediate compliance with an attainment deadline after the deadline expired is an abuse of discretion

Escalon has never been subject to the San Joaquin River Dissolved Oxygen TMDL; however, the proposed amendments require Escalon to comply immediately with a wasteload allocation whose attainment deadline has already passed. (See Attachment G at p. 81 and Fact Sheet at p. 116.) Because the attainment date has passed, a time schedule order or other means of providing time to come into compliance with the wasteload allocation is unavailable. Thus, Escalon may be considered in immediate violation of the Permit without any evidence its discharges are a source of exceedances in the San Joaquin River, without ever having an obligation or opportunity to implement the San Joaquin River Dissolved Oxygen TMDL in the past, and without an opportunity to budget or plan for the costs of complying with the TMDL going forward.

It is inappropriate to require Escalon to comply immediately with a wasteload allocation whose attainment deadline has passed when that allocation has never been assigned to Escalon, and Escalon has never had an opportunity or obligation to attain that allocation.

Requested Revision 1: Remove “City of Escalon” from Attachment G.

2. If not removed, delete the requirement to conduct program effectiveness assessments and to monitor discharges

2.1. Remove requirement that Escalon conduct program effectiveness assessments on a program it has never been required to implement

Escalon respectfully requests that, if it is not removed from Attachment G, then it be removed from the requirement to conduct a Program Effectiveness Assessment on the effectiveness of BMPs to control the discharge of oxygen demanding substances and precursors. (Attachment G at p. 81.) The proposed modifications to Attachment G would require Escalon to “complete and submit a Program Effectiveness Assessment” in permit years three through five and to “use the information ... to improve their program and identify new BMPs or modifications of existing BMPs to ensure that they are meeting applicable [wasteload allocations].” Escalon has been enrolled under the Permit since 2013. Because Escalon has never been subject to the San Joaquin River Dissolved Oxygen TMDL, it has not conducted a Program Effectiveness Assessment of the BMPs designed to attain the TMDL. Further, because Escalon is not assigned a wasteload allocation as noted above, there is substantial uncertainty regarding what standards a Program Effectiveness Assessment would evaluate.

Requested revision 2.1: If Escalon is not removed from Attachment G, include a footnote beside “City of Escalon” and note stating, “Escalon is exempt from the requirement to conduct a Section E.14, Program Effectiveness Assessment on the BMPs to control the discharge of oxygen demanding substances and precursors.”

2.2. Remove requirement that Escalon engage in “Monitoring Provisions”

Escalon respectfully requests that, if it is not removed from Attachment G, then it be removed from the requirement to conduct monitoring. (Attachment G at p. 81.) The proposed modifications to Attachment G would require Escalon, as a new permittee, to either submit a Monitoring and Reporting Plan to the Regional Board for approval or, with Regional Board approval, participate in the Delta Regional Monitoring Program or other collective monitoring efforts. (*Ibid.*)

As noted above, the Regional Board determined that Escalon is not subject to a TMDL and does not discharge to a CWA Section 303(d) listed water body with urban runoff listed as the source. (Exhibit 1.) On this basis, Escalon has been exempt from monitoring requirements in the past. Only “if necessary to address water quality concerns” may the Regional Board require monitoring “pursuant to California Water Code section 13267 or 13383.” (*Ibid.*) The draft order is not issued pursuant to Water Code section 13267. Water Code section 13383 authorizes monitoring, but only as “reasonably required.” (Water Code, § 13383, subd. (b).) There is no basis in the record for the proposed amendments or in the record of the San Joaquin River Dissolved Oxygen TMDL to determine it is reasonable for Escalon to conduct monitoring for a TMDL that does not list Escalon’s urban runoff as a source.

Not only is a requirement to create an individual Monitoring and Reporting Plan unreasonable, participating in the Delta RMP is also unreasonable. Based on the Regional

Board's website on the Delta Regional Monitoring Program ("RMP"), the Delta RMP appears to be developing monitoring plans for mercury, pesticides, and nutrients and has studied pathogens and pesticides. None of these pollutants have been associated with discharges from Escalon's MS4. It is inappropriate for Escalon to contribute funding toward a program that does not test for the appropriate pollutants of concern.

Requested revision 2.2: if Escalon is not removed from Attachment G, include a footnote beside "City of Escalon" and a note stating "Escalon is not required to implement the Monitoring Provisions."

3. If not removed, allow Escalon to show it should be removed based on monitoring data

In light of the presentation above, Escalon also respectfully requests that, if it is not removed from Attachment G, and if it is required to conduct monitoring, that Escalon will be eligible for removal from Attachment G if the results demonstrate its discharges have no reasonable potential to cause or contribute to a negative impact on the dissolved oxygen / organic enrichment impairment.

The Water Quality Control Plan for the Sacramento River and San Joaquin River Basins provide that permit conditions for new or expanded point source discharges will be based on a demonstration that the discharge will have no reasonable potential to cause or contribute to a negative impact on the dissolved oxygen / organic enrichment impairment. (Regional Board Order No. R5-2005-0005, Attachment 1, Control Program.) If Escalon's monitoring demonstrates that its discharges have no potential to cause or contribute to a negative impact on the impairment, it is consistent with the assumptions of the TMDL to eliminate Escalon from Attachment G. (40 CFR 122.44(d)(1)(vii)(B).)

Requested revision 3: if Escalon is not removed from Attachment G and is required to implement the "Monitoring Provisions" include a footnote beside "City of Escalon" and a note stating that "The Regional Board may remove Escalon from Attachment G if monitoring results show its discharge have no reasonable potential to cause or contribute to a negative impact on the dissolved oxygen / organic enrichment impairment in the San Joaquin River."

4. Conclusion

Thank you for your consideration of these comments.

Sincerely,



Tammy Alcantor
City Manager

Attachment *Exhibit 1 Excerpts from Clarification on Water Quality Monitoring Tiers, NPDES
General Permit for Waste Discharge Requirements for Storm Water Discharges
From Small Municipal Separate Storm Sewer Systems, June 12, 2014*



Central Valley Regional Water Quality Control Board

12 June 2014

DISTRIBUTION LIST

CLARIFICATION ON WATER QUALITY MONITORING TIERS, NPDES GENERAL PERMIT FOR WASTE DISCHARGE REQUIREMENTS FOR STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

The *National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Order No. 2013-0001-DWQ* (the "Small MS4 General Permit") was adopted by the State Water Resources Control Board (State Water Board) on 5 February 2013, and became effective on 1 July 2013. Three (3) water quality monitoring tiers are described in the Small MS4 General Permit under Section E.13, as applicable to Small MS4 Permittees (Permittees) which lie within the Central Valley Water Board's jurisdiction:

- TMDL monitoring;
- Clean Water Act (CWA) Section 303(d) monitoring; and
- Receiving Water monitoring and Special Studies.

Section E.13 of the Small MS4 General Permit allows for Permittees to participate in regional monitoring programs to leverage resources and information. Permittees subject to the above monitoring tiers are strongly encouraged to participate in regional monitoring program efforts for conducting monitoring required by the Small MS4 General Permit.

In addition, sections E.13.b and c require Permittees potentially subject to TMDL or CWA Section 303(d) monitoring to consult with the Central Valley Water Board within one year of the effective date of the permit to assess whether monitoring is necessary and if so, determine the monitoring study design and a monitoring implementation schedule. Central Valley Water Board staff reviewed the permit requirements and applicability of those requirements to each Permittee in the Central Valley region. Based on this review, we are providing the following clarifications on monitoring tier applicability for Permittees.

- **Permittees Not Required to Monitor**

Table 1 (attached) lists non-traditional and traditional Permittees that are not subject to TMDL, CWA Section 303(d) Listed Water Bodies, or Receiving Water or Special Studies monitoring tiers described under Sections E.13 or F.15.i of the Small MS4 General Permit. These Permittees are not subject to a TMDL and do not discharge to a CWA Section 303(d) listed water body with urban runoff listed as the source. Also, these

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Permittees are not subject to Receiving Water monitoring and Special Studies permit requirements because their populations are less than 50,000 persons.

- **Traditional Permittees Subject to TMDL(s) Monitoring**

Section E.13.b of the Small MS4 General Permit describes requirements for Permittees subject to one or more TMDLs. Table 2 (attached) lists traditional Permittees and the TMDL(s) they are subject to. The current version of Attachment G of the Small MS4 General Permit does not specify what monitoring requirements apply to Permittees subject to the TMDLs. Therefore, revisions to Attachment G have been proposed, and are tentatively scheduled to be considered for adoption by the State Water Board in late summer or early fall 2014. The proposed revisions specify the monitoring requirements for Permittees subject to TMDLs.

For Permittees falling under this category, the Small MS4 General Permit requires consultation with Central Valley Water Board staff by 30 June 2014 to assess if monitoring is necessary and if so, to determine the monitoring study design and implementation schedule. However, because the monitoring requirements will not be applicable until after Attachment G is revised, no specific TMDL monitoring is required at this time. Furthermore, this letter serves as consultation with Central Valley Water Board staff for the purposes of satisfying the Small MS4 General Permit requirement for consultation on TMDL monitoring. Upon adoption of the proposed Attachment G revisions, Permittees will be given 4 months to submit a monitoring study design and implementation schedule for Executive Officer approval. The monitoring study design and implementation schedule should consider the items listed in the attached guidance document and the requirements of the revised Attachment G.

Communities listed as Census Designated Places (CDPs) in Table 2 will be covered under monitoring conducted by the respective county they are located in. Progress toward compliance with the waste load allocations must be documented in the Permittee's Annual Reports.

- **Traditional Permittees Subject to CWA Section 303(d) Listed Water Body Monitoring**

Section E.13.c of the Small MS4 General Permit requires monitoring for Permittees discharging to one or more CWA Section 303(d) listed water bodies (with urban runoff as the source). Traditional Permittees currently discharging to CWA Section 303(d) listed water bodies with the source listed as urban runoff are listed in Table 3 (attached).

For Permittees falling under this category, the Small MS4 General Permit requires consultation with Central Valley Water Board staff by 30 June 2014 to assess if monitoring is necessary and if so, to determine the monitoring study design and implementation schedule. Currently, only Placer County and City of Roseville are listed on Table 3. Central Valley Water Board staff has determined that both of these Permittees are required to conduct monitoring. Therefore, this letter serves as

consultation with Central Valley Water Board staff for the purposes of satisfying the Small MS4 General Permit requirement for consultation on 303(d) monitoring. The attached guidance document outlines items that should be considered in the monitoring study design and implementation schedule. Permittees that are subject to CWA Section 303(d) listed water body monitoring must submit a monitoring study design and implementation schedule for Executive Officer approval by 30 September 2014 to initiate monitoring during the 2014-15 wet weather season. CWA Section 303(d) list monitoring results must be included in the Permittee's Annual Reports.

- **Traditional Permittees Subject to Receiving Water Monitoring and/or Special Studies**

Permittees not subject to TMDL or CWA Section 303(d) list monitoring, yet with a population greater than 50,000 persons shall participate in receiving water monitoring or special studies as further described in sections E.13.d.1 and E.13.d.2 of the Small MS4 General Permit, respectively.

Table 4 (attached) lists traditional Permittees with a population exceeding 50,000 persons not subject to TMDL or CWA Section 303(d) listed water body monitoring, but are subject to the receiving water monitoring and/or special studies tier. The tasks, implementation level, and reporting requirements are specified under section E.13.d of the Small MS4 General Permit. Permittees that are subject to receiving water monitoring or Special Studies monitoring must submit a special study monitoring plan for approval by the Executive Officer by 30 June 2014 consistent with the requirements under section E.13.d.2(ii) of the Small MS4 General Permit.

Permittees are strongly encouraged to develop and/or participate in an existing regional monitoring program effort for receiving water monitoring. If Permittees choose to create a regional monitoring approach, Permittees should collectively submit a single regional monitoring study design and implementation schedule for Executive Officer approval instead of individual monitoring plans. For those Permittees located within areas that are already served by a Regional Monitoring Program or proposed program, such as the Sacramento-San Joaquin Delta, a letter of commitment to participate in the regional program may be considered in lieu of monitoring required under section E.13 of the Small MS4 Permit. If a Permittee would like consideration under this regional monitoring option, please contact the appropriate Central Valley Water Board staff below no later than 30 June 2014.

Finally, Table 1 lists Phase II Permittees that are not currently required to monitor. However, pursuant to California Water Code section 13267 or section 13383, these Permittees may be required to monitor in the future by the Executive Officer if necessary to address water quality concerns.

If you have any questions regarding this letter, please contact the appropriate Central Valley Water Board staff contact:

Fresno Office	Robert Lira	(559) 445-5548	Robert.Lira@waterboards.ca.gov
Rancho Cordova Office	Genevieve Sparks	(916) 464-4745	Genevieve.Sparks@waterboards.ca.gov
Redding Office	Scott Zaitz Counties: Butte, Glenn, Plumas, Tehama	(530) 224-4784	Scott.Zaitz@waterboards.ca.gov
	Dannas Berchtold Counties: Modoc, Lassen, Shasta, Siskiyou	(530) 224-4783	Dannas.Berchtold@waterboards.ca.gov



Pamela C. Creedon
Executive Officer

- Attachments: Table 1: Permittees Not Required to Conduct Monitoring
Table 2: Traditional Permittees Subject to TMDL(s) Monitoring
Table 3: Traditional Permittees Subject to CWA Section 303(d) Listed Water Body Monitoring
Table 4: Traditional Permittees Subject to Receiving Water Monitoring and/or Special Studies
Guidance for Preparing Monitoring Study Design and Implementation Schedule Submittals

cc: Eugene Bromley, United States Environmental Protection Agency, Region IX, San Francisco (electronic copy)
Diana Messina, State Water Resources Control Board, Sacramento (electronic copy)
All Dunn, State Water Resources Control Board, Sacramento (electronic copy)
Distribution List, Small MS4 Permittees, Central Valley Region

TABLE 1: SMALL MS4 PERMITTEES NOT REQUIRED TO CONDUCT MONITORING ⁽¹⁾

Enrollee	County
Amador County	Amador
Auburn	Placer
Calaveras County	Calaveras
California Exposition and State Fair	Sacramento
California Medical Facility	Solano
California State University, Sacramento	Sacramento
California State University, Stanislaus	Stanislaus
Chowchilla	Madera
Coalinga	Fresno
Contra Costa County Fairgrounds	Contra Costa
Cosumnes Community Services District	Sacramento
Correctional State Prison, Sacramento	Sacramento
Correctional State Prison, Solano County	Solano
Dinuba	Tulare
Dixon	Solano
Deuel Vocational Institution	San Joaquin
Elk Grove Unified School District	Sacramento
Escalon	San Joaquin
Exeter	Tulare
Farmersville	Tulare
Folsom State Prison	Sacramento
Grass Valley	Nevada
Kings County	Kings
Kingsburg	Fresno
Lemoore	Kings
Lincoln	Placer
Live Oak	Sutter
Loomis	Placer
Madera Acres CDP	Madera
Mendota	Fresno
Mountain House Community Services District	San Joaquin
Newman	Stanislaus
Oroville	Butte
Paradise Town	Butte
Parlier	Fresno
Placerville	El Dorado
Rancho Murieta Community Services District	Sacramento
Reedley	Fresno
Ridgecrest	Kern
Sacramento Medical Center at Mather	Sacramento
San Joaquin County Fairgrounds	San Joaquin
Sanger	Fresno
Selma	Fresno
Shasta Lake	Shasta
Solano County	Solano
Stanislaus County Fairgrounds	Stanislaus
Yuba Sutter County Fairgrounds	Sutter
Tracy Joint Unified School District	San Joaquin
Tehachapi	Kern
University of California, Davis	Yolo
Wasco	Kern
Yolo County Fairgrounds	Yolo

(1) Pursuant to California Water Code section 13267 or section 13383, these Permittees may be required to monitor in the future by the Executive Officer if necessary to address water quality concerns.