



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

JUN 25 2012

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



Re: Draft MS4 Permit for Caltrans (Permit No. CAS000003)

Dear Ms. Townsend:

The following are EPA Region 9's comments on the draft NPDES permit (permit No. CAS000003) for the municipal separate storm sewer system (MS4) operated by the State of California Department of Transportation (Caltrans), which the State Water Board released for public comment on April 27, 2012. In letters dated December 10, 2010, March 24, 2011, September 19, 2011 and in an email dated April 27, 2012, we provided comments on earlier versions of this draft permit. We continue to have certain concerns about the latest draft of April 27, 2012 as discussed below.

A. Total Maximum Daily Load (TMDL) Requirements

In our emailed comments of April 27, 2012, we recommended the Caltrans permit address TMDLs in a manner similar to most, if not all, other MS4 permits recently adopted in the State, i.e., incorporation of applicable wasteload allocations (WLAs) directly into the permit. This appeared to be the approach the Board would adopt for Caltrans when the August 2011 draft permit was released, and we encouraged the Board to continue with this approach. Instead, the April 2012 draft reverses course and asks the Regional Boards to develop appropriate permit requirements within one year of the effective date of the permit which would then be incorporated into the permit via a reopener. These procedures will seriously and needlessly delay implementation of the TMDLs and the environmental benefits that would otherwise accrue. We recommend the permit be revised to incorporate all applicable WLAs at this time as the necessary information should already be available with the Regional Boards.

We recognize that Caltrans is subject to a large number of TMDLs and this complicates the task of incorporating appropriate requirements into the permit. However, we would note that the number of TMDLs applicable to the State's Phase II MS4s is also substantial, but that appropriate requirements for most TMDLs have been incorporated into the Board's latest draft general permit of May 2012 for these MS4s. We see no reason why the same cannot be done for the Caltrans permit.

B. *Low Impact Development (LID) Requirements*

In our emailed comments of April 27, 2012, we expressed general support for the LID requirements of the April 2012 draft permit for Caltrans, noting that numeric sizing criteria comparable to other recent MS4 permits in the State had been included in the Caltrans permit. We also recommended a number of clarifications and other edits which we believed would improve the permit, but which were not incorporated into the April 2012 draft; these comments are repeated below:

Section E.2.d.2.a.iii of the April 2012 permit (section E.2.d.1.a.i.3 in the August 2011 draft) provides for waivers of post-construction requirements for projects with a "minimal impact on water quality." In our September 2011 comments, we recommended this provision be deleted unless clear criteria are provided concerning what a "minimal impact" would be. For the April 2012 permit, we again found no such guidance and we reiterate our previous recommendation.

We recommend section E.2.d.2.b.ii (second paragraph) in the April 2012 draft be revised to replace "may be" with "shall be" with regards to the treatment of excess volume. This is a reiteration of our comment on section E.2.d.1.a.ii of the August 2011 draft permit.

Our September 2011 letter had recommended the permit more clearly distinguish between requirements for "treatment" BMPs and LID requirements. We reiterate this recommendation throughout section E.2.d.2 of the April 2012 draft permit.

Finally, section E.2.d.2.b of the April 2012 draft permit includes a new provision which provides that "Design Pollution Prevention BMPs" may be used to comply with the treatment requirements of this section. The term "Design Pollution Prevention BMP" is not defined in the permit, but appears to refer to a category of BMPs in section 4.3 of Caltrans' 2003 stormwater management plan (SWMP) where the term is also found. The 2003 SWMP refers to the BMPs as nontreatment controls which would not seem to fit within section E.2.d.2.b.ii of the draft permit (which prescribes treatment requirements). We recommend additional clarification of this matter, or deletion of the last sentence of the first paragraph of this section.

C. *Dispute Resolution*

We recommend that section E.12 of the draft permit (Dispute Resolution) be removed. This section seems to set up a special enforcement mechanism for this particular permit which we believe is inappropriate and unnecessary.

D. SWMP Review

Section E.1.g of the draft permit notes that public comment would be solicited for revisions to the SWMP which require Executive Director approval. Section E.1.a also requires that an entirely new SWMP be submitted for Board review and approval within one year of the effective date of the permit. We presume that proposed Board action on this SWMP would also be public noticed and public comment would be solicited, but this is not entirely clear at the moment, and we believe this matter should be clarified.

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

Sincerely,

A handwritten signature in black ink, appearing to read "David Smith". The signature is fluid and cursive, with a large initial "D" and "S".

David Smith, Manager
NPDES Permits Office (WTR-5)

