



# California Regional Water Quality Control Board

## San Diego Region

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Public Comment  
Phase II Small MS4 General Permit  
Deadline: 9/8/11 by 12:00 noon



Edmund G. Brown, Jr.  
Governor

Matt Rodriguez  
Secretary for  
Environmental Protection

TO: Jeanine Townsend  
Clerk to the Board  
**STATE WATER RESOURCES CONTROL BOARD**

FROM:   
David T. Barker, P.E.  
Branch Chief, Surface Waters Basins Branch  
**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
SAN DIEGO REGION**



DATE: September 8, 2011

SUBJECT: Comment letter on Phase II Small MS4 General Permit.

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), appreciates the opportunity to comment on the Phase II Small MS4 General Permit, Tentative Order No. XXXX-XXXX-DWQ (Draft Order). Some of the comments that the San Diego Water Board provided previously (comment letter dated March 11, 2011) remain unaddressed in this Draft Order. The San Diego Water Board respectfully submits the following unaddressed comments, along with additional comments, numbered and organized by section for your review and response.

### Findings

1. On Finding 6, we recommend providing examples of measures that can be more efficiently incorporated during the planning stages of a project, such as hydromodification, LID, and pollutant load reducing BMPs.
2. Finding 11 briefly defines a "medium" and "large" MS4s. We recommend a parallel construction of Finding 13 to briefly define a "small" MS4 or as an alternative, move Finding 13, defining "small MS4", to follow Finding 11.
3. In support of Finding 14, we recommend another finding clearly stating that the State Water Resources Control Board is the NPDES permitting authority and the legal basis behind the authorization by USEPA.
4. In Finding 21(d), we support the inclusion of areas providing or known to provide habitat for endangered species. We recommend stating that the endangered species include "but are not limited to" the chinook and coho salmon and steelhead. We also recommend including areas designated with the RARE beneficial use in Basin Plans.

5. Finding 29 does not include water districts, sanitation authorities, transportation districts, or other quasi-municipal entities. In our experience, these quasi-municipal districts have MS4s, areas and activities that contribute pollutants to receiving waters.
6. We recommend a finding that incorporates the fact sheet, attachments, and cited regulatory and legal references in support of the requirements of the Permit.
7. We recommend a finding that pollutants in runoff can threaten and adversely affect human health.
8. We strongly recommend a finding stating that non-storm water (dry weather) discharge from the MS4 are not considered a storm water (wet weather) discharge and therefore is not subject to regulation under the Maximum Extent Practicable (MEP) standard from CWA 402(p)(3)(B)(iii), which is explicitly for "*Stormwater Discharges*" from the MS4. Non-storm water discharges, per CWA 402(p)(3)(B)(ii), are to be effectively prohibited. This is consistent with Order WQ-2009-0008 (*SWRCB/OCC FILE A-1780*). Although Order WQ-2009-0008 was remanded in Court for procedural reasons; the court did not evaluate or rule upon the substantive findings and reasoning set forth in the Order.
9. We recommend a finding that historic and current development makes use of natural drainage patterns and features as conveyances for runoff. Hence, urban streams used in this manner are part of the municipalities' MS4, regardless of whether they are natural, anthropogenic, or partially modified features. In these cases, the urban stream is both an MS4 and receiving water.
10. We recommend a standard finding that the draft Order does not constitute an unfunded local government mandate subject to subvention.
11. We recommend a finding that runoff treatment must occur prior to the discharge of runoff into receiving water and under no circumstances may treatment BMPs be constructed in waters of the U.S. or State. Federal regulations at 40 CFR 131.10(a) state that in no case shall a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S. Authorizing the construction of an runoff treatment facility within a water of the U.S., or using the water body itself as a treatment system or for conveyance to a treatment system, would be tantamount to accepting waste assimilation as an appropriate use for that water body. Furthermore, the construction, operation, and maintenance of a pollution control facility in a water body can negatively impact the physical, chemical, and biological integrity, as well as the beneficial uses, of the water body. Without federal authorization (e.g., pursuant to Clean Water Act Section 404), waters of the U.S. may not be converted into, or used as, waste treatment or conveyance facilities. Similarly, waste discharge requirements pursuant to California Water Code Section 13260 are required for the conversion or use of waters of the State as waste

treatment or conveyance facilities. Diversion from waters of the U.S./State to treatment facilities and subsequent return to waters of the U.S. is allowable, provided that the effluent complies with applicable NPDES requirements.

#### **A. Application Requirements for Both Traditional and Non-Traditional MS4s**

12. Section A.3, the second sentence implies that once a Small MS4 submits certification, then the Order's requirements are immediately and effectively waived. We recommend the following change to the second sentence, "In order to seek a waiver of requirements, ..."
13. We recommend including a condition in section A.4 that waiver certification is in effect upon review and acceptance by the jurisdictional Regional Water Board.

#### **B. Discharge Prohibitions**

14. We strongly recommend that Directive B.4 be clarified that non-incident runoff is a prohibited non-storm water discharge. Non-incident runoff is described in the second sentence of directive B.4 as water leaving an intended use due to facility design, excessive application, intentional overflow or application, or negligence. In addition, this directive needs to clarify what are "potable and recycled water use areas". We believe that this term "incident runoff" may be referring to landscape irrigation but as worded may be interpreted very broadly to include sources other than landscape irrigation. Also, the term "small amounts (volume)" is subjective and open to broad interpretation as to what constitutes a "small amount". Such vague language opens the permit to confusion and possible abuse by the regulated parties.

#### **C. Effluent Limitations**

15. We recommend that the permit include effluent limitations for non-storm water (dry weather) discharges from the MS4. The 2006 Blue Ribbon Storm Water Panel report, titled 'The Feasibility of Numerical Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial, and Construction Activities', did not examine the feasibility of effluent limitations for non-storm water discharges.
16. We recommend that the permit include action levels for storm water (wet weather) discharges from the MS4 as recommended by the 2006 Blue Ribbon Storm Water Panel report.

#### **D. Receiving Water Limitations**

No comments on this section

#### **E. Provisions for both Traditional and Non-traditional Small MS4s**

17. In Directive E.4.a.(i), we recommend that the adequate legal authority is to implement *and comply* with the requirements of this Order.
18. In directive E.6.d)(ii)(b), we recommend including a condition that the citizen advisory group hold public meetings semi annually regarding the development and implementation of the community's storm water program.
19. In directive E.7.a.(ii), we recommend inclusion of MS4 inlets and connections with other MS4s as part of the Permittee's MS4 map. This level of detail will assist the Permittee with investigating, identifying, and resolving illicit discharges into the MS4.
20. In directive E.7.b.(ii)(a), we recommend providing guidance on what defines an area with older infrastructure. We also recommend providing guidance on what defines a sensitive water body; and we recommend including areas that drain to outfalls greater than 36 inches that directly discharge to a 303(d) listed waterbody and/or a waterbody with a TMDL.
21. In directive E.7.c.(iii) Field Screening to Detect Illicit Discharges, Reporting, we recommend that the monitoring data be uploaded into the California Environmental Data Exchange Network (CEDEN).
22. In directive E.8.c.(ii)(b)(5), we recommend that the Permittee inspect all projects (not just the specified 10%) to ensure final stabilization and temporary measures are removed. This final inspection is a normal process of permit closeout for Permittees.
23. In directive E.8, we recommend that the Permittees limit grading to a maximum threshold during the wet season unless the construction site's engineer certifies that adequate erosion and sediment BMPs are in place to protect water quality.
24. In directive E.9.a.(ii), Inventory of Permittee-owned and operated facilities, we recommend that both active and closed landfills be inventoried. We also recommend inventorying any land application sites, municipal airfields, recreation facilities, and regularly planned special events or festivals.
25. In directive E.9.b., Map of Permittee-owned or operated facilities and storm water controls, we recommend that the map be GIS.
26. In directive E.9.h.(ii)(a), Permittee Activities and Operations, we recommend that the Permittee include power washing activities in their assessment.
27. In directive E.9.i, Incorporation of Water Quality and Habitat Enhancement Features in Flood Management Facilities, we ask that you consider including improvements to flood management facilities that infiltrate to ground water.

28. In directive E.11.a.(ii)(b)(1), Industrial/Commercial Inventory, we recommend that landscaping services be included in the inventory. We support the inclusion of landscape supply operations. Our experience is that landscaping services can cause significant pollution through their daily activities and their associated storage facilities. We also recommend the inclusion of private cemeteries in the inventory because their daily landscaping activities and maintenance facilities also have the potential to produce pollutants. We also recommend the inclusion of plumbing services in the inventory.
29. In Directive E.13.b)(iv) Table B – Table B is missing Footnote 46 reference. Please provide relevant reference.
30. We strongly support directive E.12.a. Permittees located within a Phase I MS4 permit area. We recommend including a map or definition of the Phase I MS4 permit areas within California.
31. Directive E.14.c.c)(i) requires a report that identifies storm water retrofit opportunities. We strongly recommend a more robust and prescriptive requirement to retrofit existing development including assessment, evaluation, prioritization and implementation. Previous practices and implementation of treatment BMPs only in post-construction are insufficient to protect and improve water quality as evidenced by the ever increasing list of 303(d) waterbodies and the current rate of redevelopment. When applied appropriately, retrofitting is required to meet the maximum extent practicable standard.

## **Section F. Regional Water Board Authorities**

No comments on this section.

## **Attachments**

### **Attachment C**

32. Revised Attachment C – New Non-Traditional Small MS4 Permittees. The list of Small MS4 Permittees is incomplete. Please add the entities below to the table under Region 9 in Attachment C:

#### **Colleges and Higher Education**

- a. Southwestern College  
8100 Gigantic Street, San Diego, CA 92154
- b. Point Loma Nazarene University  
3900 Lomaland Dr, San Diego, CA 92106
- c. Alliant International University  
10455 Pomerado Rd, San Diego, CA 92131
- d. University of San Diego  
5998 Alcalá Park, San Diego, CA

33. The addresses for Department of Defense Naval properties under Region 9 at 33000 Nixie Way Bldg 50, Suite 326, San Diego, 92147-5110 is not current.

Please replace the old address with the following current address:

- a. 937 N Harbor Dr.  
San Diego, CA 92132

34. Upon renewal of NPDES permits for Navy discharges in Region 9, MS4 Phase II requirements will be incorporated into the individual NPDES permits. We recommend removing these Department of Defense Naval entities from the revised Attachment C since they will already be covered under reissued NPDES permits that will enforce Small MS4 Phase II requirements.

#### **Attachment D & H**

35. Areas of Special Biological Significance – Southern California needs to include San Diego – Scripps ASBS, Heisler Park ASBS, and Crystal Cove ASBS, and any associated entities authorized to discharge to these ASBS.

#### **Attachment E**

36. In Attachment E – K-12 Public School Districts, the list of school district permittees in Region 9 is incomplete. It is unclear how these school districts were selected amongst the other districts within Region 9. The San Diego County Office of Education (SDCOE) represents all school districts and charter schools in San Diego County. SDCOE voiced their concern that if Regional Board 9 designates one school district, they would need to designate all of them. There are several small school districts that have a very small population (less than 200 staff and students combined). It is recommended that these small school districts seek a waiver that exempts them from the requirements of this General Small MS4 Phase II permit.

#### **Attachment G**

37. In Attachment G we recommend including as a pollutant of concern any pollutant for which the tributary water body is on the 303(d) list and any pollutant for which a TMDL has been adopted for the tributary waterbody.

38. Attachment G, TMDL Table, does not include adopted TMDLs within the San Diego Region. Please see the following website for specific information regarding adopted TMDLs within the San Diego Region:

[http://www.waterboards.ca.gov/sandiego/water\\_issues/programs/tmdls/index.shtml](http://www.waterboards.ca.gov/sandiego/water_issues/programs/tmdls/index.shtml)

39. Region 9 submits implementation requirements to the State Water Board for applicable TMDLs which are summarized in Enclosure 1.

Ms. Victoria Whitney  
Comments on Tentative Order No. XXXX-XXXX-DWQ

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September 8, 2011

If you have any questions regarding these comments or require further information, please contact Mr. Eric Becker at 858-492-1785 or [ebecker@waterboards.ca.gov](mailto:ebecker@waterboards.ca.gov).

Region 9 San Diego Regional Water Quality Control board TMDLs				
TMDL Effective Date/BPA/Res. No.	Municipality	Impaired Water body	Deliverables/Actions Required/Waste Load Allocations	Compliance Due Dates
<p>Effective: April 4, 2011</p> <p>Revised Total Maximum Daily Loads for Indicator Bacteria, Project I – Twenty beaches and Creeks in the San Diego Region (Including Tecolote Creek)</p> <p>Resolution No. R9-2010-0001</p>	<p>Table of municipalities, impaired waterbody, and WLAs on page A25-A35 in Resolution R9-2010-0001</p>	<p>Table of municipalities, impaired waterbody, and WLAs on page A25-A35 in Resolution R9-2010-0001</p>	<p>“If the receiving water limitations (based on the numeric targets) are met in the receiving waters, the assumption will be that the Phase II MS4s have met their WLAs. If, however, the receiving water limitations are not being met in the receiving waters and one or more Phase II MS4 dischargers are identified as sources of bacteria causing exceedances, the specific Phase II MS4s will be responsible for reducing their bacteria loads and/or demonstrating that controllable anthropogenic discharges from those specific Phase II MS4s are not causing the exceedances.”</p> <p>Table of WLAs on page A25-A35 in Resolution R9-2010-0001</p>	<p><b>Compliance with implementation provisions:</b></p> <p>5 years to achieve 50% exceedance frequency reduction for all dry and wet weather in priority 1 waterbodies, 6 years to achieve 50% exceedance frequency reduction for all dry and wet weather in priority 2 waterbodies, 7 years to achieve 50% exceedance frequency reduction for all dry and wet weather in priority 3 waterbodies, and 10 years to achieve 50% exceedance frequency reduction for all dry and wet weather in all waterbodies.</p> <p>The Compliance</p>



				<p>schedule begins after OAL approval on April 4, 2011.</p> <p>“Prioritized List of Impaired Waters for TMDL Implementation” is located in the Resolution No. R92010-0001</p>
				<p><b>Compliance with waste load allocations:</b></p>

**Draft Phase II Small MS4 General Permit**  
**Attachment G – REGION SPECIFIC REQUIREMENTS**  
**Regional Water Board Approved TMDLs**  
 Where urban runoff is listed as a source