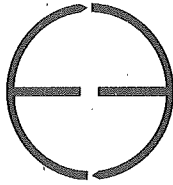


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California Council for Environmental and Economic Balance

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September 8, 2011

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



VIA E-MAIL

RE: Comments and Recommendations Regarding the Draft National Pollutant Discharge Elimination System (NPDES) and Waste Discharge Requirements for Small Municipal Separate Storm Sewer Systems (Order)

Dear State Water Resources Control Board Members:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit coalition of business, labor and public leaders that works to advance policies that protect public health and the environment while expanding economic opportunities for all Californians.

The Small Municipal Separate Storm Sewer Systems (MS4) permit would impact many facilities of the CCEEB membership. The proposed permit would impose significant new requirements upon these facilities that would inhibit our ability to operate in a cost effective manner and keep utility rates in the state at a competitive level. Our linear construction projects that occur within the jurisdiction of certain small MS4s would also be impacted if the current draft is promulgated as written.

Our primary concerns are two-fold; first, that many of the sections of the permit are overly burdensome and place unattainable requirements not only on the permittees, but also on the businesses that are located within the permittees' jurisdiction; and second, many of the sections are vague and lack clarity, leaving it up to the individual municipalities to interpret their meaning. Given that there are potentially over a thousand impacted MS4s, these sections could have multiple interpretations. Our comments are provided below.

Sections That Lack Clarity

Section E.10.ii.b. (p.54) requires small MS4s to require installation of trash capture structural controls at commercial sites. However, the glossary section of the draft permit does not define "trash capture structural controls." The permit needs to include a definition of "trash capture structural controls" and to identify what facilities are subject to this requirement. Without this additional information it is not possible to evaluate this section.

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Section E.11.a.ii.a. (p.56) requires MS4s to inventory and describe industrial and commercial sites, including a description of SIC codes for the site that best reflects the principal products or services provided by each facility. As written, it appears that this section requires the permittee to determine the SIC code for a facility. Rather the permittee should use the primary SIC code that best represents the primary business function that is provided by an industrial or commercial site.

Section E.11.a.ii.b.3. (p.57) requires MS4s to identify facilities that are "tributary" to impaired waterbodies. However, there is no definition of tributary in the permit's glossary. We recommend that, similar to the Construction General Permit Order 2009-009-DWQ, this permit should define facilities that are considered tributary to an impaired water body segment as those that are located within the same sub-watershed as the impaired water body segment and that are upgradient of and drain to the impaired water body segment, unless an EPA approved TMDL provides direction otherwise.

Section E.11.a.ii.b.4. (p.57) requires small MS4s to identify facilities that contribute a "significant pollutant load" to the small MS4. We recommend that the glossary section of the draft permit include a definition of "significant pollutant load."

Section E.11.a.ii.e. (p.57) and Section E.11.c.ii.b. (p.61) requires that small MS4s categorize facilities into high, medium and low priorities, but the permit does not provide an objective means to do so. This will cause confusion for the permittees and inconsistencies between the MS4s; the lack of a clear priority determination process and the subsequent lack of consistency among the MS4s will be a problematic for the regulated facilities. Further, Section E.11.a.ii.g. (p. 58) would require an annual prioritization of the inventory for said facilities and again does not provide an objective means for categorizing the inventory of these facilities.

Section E.11.b.ii.a. (p. 58) would require minimizing the exposure of "...material storage areas." This section does not recognize the fact that certain products are manufactured to be used outdoors and needs to be revised to exclude those products from this requirement.

Section E.11.b.ii.f. (p.60) would require commercial and industrial facilities to "...reduce stormwater runoff to minimize pollutants in discharges." This section needs to clarify that it applies only to new facilities that are subject to post-construction best management practices and due to the difficulties in retrofitting, existing facilities should be exempt from this requirement.

In the current Construction General Permit Order 2009-009-DWQ, linear utility projects are exempt from post-construction requirements because they do not result in permanent water quality impacts. In certain sections of E.12., (p.64) some permittees must comply with the post-construction requirements in 2009-009-DWQ (CGP) (sections b., d., and f.) but sections a., c., and e. do not contain similar language, instead stating that the permittee shall comply with the "all the requirements in this Section" (a. and e.), while section c. must meet "the minimum standards of this Section [,]" without ever defining those minimum standards. We recommend that all compliance tiers clearly state that linear utility projects are exempt

from any post-construction requirements set forth in the Small MS4 permit. Further, we also recommend that the permit clarify that linear utility projects are exempt from water quality runoff standards as described in Section E.12.b.3. (p.66).

Section E.12.b.3. (p.66) requires all projects fitting specific category descriptions to capture, infiltrate, and evapotranspire the runoff from the 85th percentile storm event to the maximum extent practicable; when not feasible, other requirement apply. This section needs to clarify that it does not apply to linear utility projects.

Section E.12.b.3.i. (p.67) defines “regulated projects.” This section also needs to clarify that linear utility projects that are part of a “regulated projects” are exempt.

Section E.12.b.3.i.a.5 (p.68) would establish treatment thresholds for applicable (includes commercial and industrial developments, mixed use and public projects) new development and redevelopment projects. These treatment standards are problematic on several grounds, primarily, that the smaller the initial concentration, the more expensive and difficult it is to meet the percent removal threshold. This requirement can result in having to treat for pollutant levels that are at a concentration less than the associated water quality objective. This can become incredibly expensive and does not contribute to water quality.

Sections That Are Overly Burdensome

Section E.8.b.ii.b. (p.40) requires a project’s erosion and sediment control plan to provide the rationale used for selecting **and rejecting** Best Management Practices (BMPs). These erosion and sediment control plans will be developed by trained professionals using their best professional judgment in determining what BMP to implement. We recommend that this section require only the rationale for why specific BMPs were selected. There is little value in providing an explanation of why one is not using all other BMPs and only adds to the burden, time and cost of developing the erosion and sediment control plan.

Section E.8.c.ii.b.1. (p.42) requires that MS4s to inspect projects before construction starts. We recommend that this requirement be deleted as it would delay the start of projects and does not serve to improve or protect water quality. Further, no other MS4 permit requires this level of oversight for construction projects.

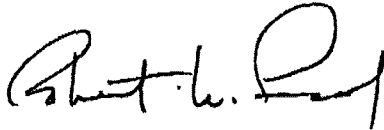
Section E.11.b.ii.h. (p.60) requires all facility employees who work in areas where industrial materials or activities are exposed to storm water to be trained. From the way that this section is currently written, all facility employees, from administrative assistants to janitorial staff, would be required to complete storm water training. Rather, this requirement should be limited to those employees that are responsible for implementing stormwater requirements.

Section E.11.b.ii.j. (p.60) requires all dumpsters to be covered. This section should be revised to clarify that dumpsters may be uncovered during operating hours unless there is precipitation.

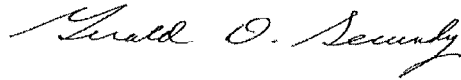
Section E.12.b.5. (p.72) requires MS4s to develop and implement hydromodification numeric criteria. This will likely result in inconsistencies between small MS4s, make it difficult for project planning, and make it difficult to track and participate in the MS4s' development of these numeric criteria.

CCEEB is a unique organization that represents a broad cross-section of the covered entities in California. As such, CCEEB is in a position to represent diverse industry sectors and would like to assist the State Water Resources Control Board in developing these ideas further. We welcome the opportunity to provide you and staff with these comments, which we hope that staff will consider when developing the next draft of the Small MS4 Permit. We also look forward to staff's response to these and all of the other comments put forth by the stakeholders. If there are any questions please call Robert Lucas at (916) 444-7337.

Sincerely,



Robert W. Lucas
Waste & Water Quality Project Manager



Gerald D. Secundy
President

cc: The Gualco Group, Inc.