



COALITION FOR PRACTICAL REGULATION

"Cities Working on Practical Solutions"

14 March 2011

State Water Resources Control Board
Attn: Jeanine Townsend
Clerk to the Board
1001 I Street 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov

Subject: Comment Letter – Caltrans MS4 Permit

Ms. Townsend:

On behalf of the Coalition for Practical Regulation (CPR), I would like to provide comments on the draft Order issued to the California Department of Transportation (Caltrans) on January 7, 2011 for the reissuance of the Department's Statewide National Pollutant Discharge Elimination System (NPDES) Stormwater Permit. CPR is an ad hoc group of 38 cities in Los Angeles County committed to implementing practical stormwater regulations.

We appreciate the opportunity to provide these comments. CPR's member cities are subject to multiple Total Maximum Daily Loads (TMDLs) that also involve Caltrans, and we are potentially impacted by Caltrans permit requirements. Through our work on the Los Angeles River Metals TMDL Coordinated Monitoring Program Steering Committee and two TMDLs involving Caltrans, we have had an opportunity to interact with representatives of the Department's Headquarters and District 7 and to gain at least a partial understanding of their operations and experience with stormwater quality.

CPR is pleased that the draft Caltrans permit recognizes that Clean Water Act section 402(p)(3)(B) requires MS4 owners and operators to reduce pollutant discharges from MS4s to the maximum extent practicable (MEP) and that the MEP standard involves applying BMPs that are effective in reducing or eliminating the discharge of pollutants to the waters of the United States. We are also pleased that the draft order acknowledges that MEP emphasizes pollutant reduction and source control BMPs to prevent pollutants from entering stormwater runoff and that it requires compliance with water quality objectives over time through an iterative process. In addition, we are pleased that the

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COMMERCE
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HAWAIIAN GARDENS
INDUSTRY
IRWINDALE
LA CAÑADA FLINTRIDGE
LA MIRADA
LAKEWOOD
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MONTEREY PARK
NORWALK
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SOUTH PASADENA
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WHITTIER

order does not preempt or supersede the authority of permitted municipalities to prohibit, restrict, or control discharges to storm drains or other watercourses within their jurisdiction as allowed by State and federal law and that Caltrans is required to coordinate with other MS4 stormwater management agencies as necessary or appropriate.

Missing Opportunity for a Paradigm Shift

The most disappointing element of the draft Caltrans Permit is that it merely increases monitoring and reporting requirements that probably will not significantly improve water quality. In reissuing the Caltrans Statewide Permit, the State Water Board has an opportunity to initiate a paradigm shift by issuing a permit that emphasizes true source control. The Caltrans Permit may be the ideal opportunity for initiating such a shift because the highway and freeway system is primarily a linear receptor for the pollutants from atmospheric deposition and the motor vehicles that traverse the system.

The research conducted through the Brake Pad Partnership demonstrated that within metropolitan areas, brake pads on cars and trucks contribute well over one-half of the copper that reaches the receiving waters. Motor vehicles are also major sources of cadmium, lead and zinc, as well as nitrogen and organic compounds such as PAHs. The local freeways also accumulate tons of litter and trash daily.

Freeways and highways accumulate these pollutants and provide conveyance mechanisms that assist in their transport to receiving waters when they are washed off during rain events. However the freeways and highways are not the sources of these and many other pollutants. Rather than focusing on operational source control and treatment control in the new permit, the State Water Board should restructure the permit to encourage Caltrans to focus on true source control, including product and material substitution.

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The Department already has experience with true source control. It funded at least \$200,000 of the research completed for the Brake Pad Partnership that led to the development and adoption of SB 346 in 2010. This landmark legislation was signed by the Governor on September 25, 2010 as Chapter 307 of the Statutes of 2010. Most brake pads sold in California will now be required to contain less than 5% copper by weight after January 1, 2021, and to contain less than 0.5% copper by weight after January 1, 2025. This phase out of copper in brake pads will solve Caltrans' problem with the discharge of copper. It will also assist municipalities across the state in meeting the waste load allocations in Copper TMDLs and comply with water quality objectives in Basin Plans.

Focusing the new Caltrans Permit on supporting true source control would have a significant impact on improving water quality statewide. It would also help reduce the waste of public resources by eliminating the need for future costly monitoring and

widespread installation of expensive treatment control devices of questionable effectiveness.

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In addition to focusing permit provisions on true source control, the State Water Board should include findings recognizing the importance of true source control and existing source control legislation such as SB 346, SB 757, and the 2007 Green Chemistry Initiative and legislation implementing the Initiative – AB 1879 and SB 509. The permit should also contain findings recognizing the importance of atmospheric deposition as an important source of water pollutants beyond the direct control of Caltrans and the potential for the Water Boards to use the authorities in California Water Code Sections 13146 and 13247, if necessary, to enforce compliance with stormwater quality control policy and adopted Water Quality Control Plans by the California Air Resources Board (CARB) and the air quality management/air pollution control districts. These findings could be based on language in State Water Resources Control Board Resolution No. 2008-046 approving the Los Angeles River Metals TMDLs.

Portions of the Monitoring Requirements in the Draft Permit are Excessive and a Probable Waste of Public Resources.

CPR agrees that a well-designed monitoring program with consistent sampling protocols and rigorous QA/QC is important, however, the January 7, 2011 Draft Permit contains excessive monitoring and reporting requirements that will likely divert money and staff time away from direct efforts to improve water quality.

One element of the proposed monitoring program is especially problematic. The “Monitoring and Discharge Characterization Requirements” (Provision E. 2. C.) require an expanded and burdensome Discharge Monitoring Program that will be a waste of money in two ways. First, it will merely demonstrate again what Caltrans and the State Water Board already know about discharges from Caltrans’ facilities. The Fact Sheet, on page 8 of 30, states, “It is the intent of this Order that the Department conduct an on-going compliance monitoring effort to identify and mitigate priority discharges.” However, both the Fact Sheet and the Draft Order acknowledge that Caltrans conducted a three-year characterization monitoring study. The results of this study presented the “Storm Water Monitoring & Data Management Discharge Characterization Study Report, Final Report, November 2003” were based on monitoring of over 60,000 data points from over 180 monitoring sites. We note that the California Stormwater Quality Association (CASQA) estimated that, depending on the need to conduct Toxicity Identification Evaluations (TIEs), the first-year costs for monitoring the first 100 sites required under the proposed Discharge Monitoring Program would be between \$2,500,000 and \$10,500,000. Using just a portion of this money for true source control research Caltrans MS4 Permit would be much more valuable than spending millions or tens of

millions of dollars re-confirming the results of the rigorous characterization study completed in 2003. The Department already knows the pollutants discharged on to its freeways and highways by atmospheric deposition and the vehicles (and occupants of the vehicles) traveling on the freeways and highways. However, like municipalities, Caltrans has little or no control over these sources of pollutants.

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→ The complex and expensive new monitoring program will provide little new information on the pollutants discharged on to and off Caltrans facilities. However, it will expose the Department to further third-party litigation. Despite the state's budgetary problems, Caltrans is still perceived as having deep pockets, and the new monitoring program will probably result in the Department diverting money away from efforts to improve water quality to efforts to defend the Agency from more lawsuits.

Instead of spending millions of dollars a year on more monitoring that will just verify what is already known about pollutant discharges from Caltrans facilities, Caltrans should be allowed, even encouraged, to spend money on true source control efforts. For instance, one metal that is a serious problem for Caltrans and for municipalities is zinc. We already have in place true source control measures to reduce copper and lead in the environment, but we have no such measures for zinc. Existing information indicates that galvanized metal and zinc in tires are major sources of the zinc that pollutes our waterways, but more research is needed to prioritize sources and to develop source control mechanisms. Research efforts by Caltrans to address just this one metal pollutant could do much more to improve water quality in the state than years of monitoring that will just replicate the results of the earlier characterization study. The long-term on-going monitoring program at fixed locations to assess long-term trends in stormwater quality is sufficient to monitor the results of the Caltrans program to address the true source of pollutants. Caltrans should be given the opportunity to substitute important research for the redundant monitoring proposed the draft permit.

Total Maximum Daily Load (TMDL) Requirements

CPR is pleased that the Findings section of the draft permit contains a series of findings that explain the TMDLs and their relation to the permit. We are particularly pleased that finding 34 acknowledges that 40 CFR 122.44(d)(1)(vii)(B) provides that water quality-based effluent limitations (WQBEL's) are to be consistent with the assumptions and requirements of TMDL waste load allocations and that, due to the nature of stormwater discharges, Federal regulations allow for the implementation of BMPs to control or abate the discharge of pollutants in stormwater. Caltrans is an MS4 permittee and, as such, its water quality improvement programs should be based on an iterative BMP approach and the assumptions and requirements of TMDL WLAs should be reflected in this permit as non-numeric WQBELs.

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However, Provision E.4.c could result in redundant efforts. It requires the Department to prepare a TMDL Compliance Plan for each TMDL listed in Attachment IV. To encourage coordination with municipal MS4 agencies, this requirement should be forgiven for a watershed or a portion of a watershed where Caltrans has supported development of a joint TMDL implementation plan. We have had great cooperation from Caltrans in our coordinated monitoring efforts and support for special scientific studies in our watersheds, included the Los Angeles River Metals TMDL Copper WER and Lead Recalculation Study. This cooperative effort facilitates community-based watershed planning efforts where all the effected stakeholders can address the practical difficulty of achieving current water quality objectives, and work to develop the best, affordable approaches for attaining and maintaining acceptable community water quality goals and objectives.

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Conclusion and Recommendations

Maria Contreas-Sweet, the Director of Business, Transportation and Housing, wrote to the State Board on May 10, 2000 requesting your assistance with the significant water quality policy questions facing Caltrans, local governments and the State regulators as we strive to meet water quality standards. These questions largely remain unanswered eleven years after this letter. The questions include "How can implementation of the state and federal clean water laws avoid becoming a watershed of litigation and enforcement activity? What is the best way for Californians to pay for these water quality investments? How can these needed investment be balanced with other community needs?"

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The re-issued Caltrans Statewide NPDES Stormwater Permit could be a valuable tool for improving stormwater quality in California, but, as written, it is not. The draft permit should be revised to 1) focus on true source control, 2) eliminate the expensive and redundant Discharge Monitoring Program, and 3) encourage cooperative efforts with municipalities to cost-effectively address TMDL requirements.

Thank you again for the opportunity to provide these comments.

Sincerely,



Kenneth C. Farfsing
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CPR Steering Committee