



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

SEP 19 2011

Jeanine Townsend
Clerk of 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 August 18, 2011. We also note that the Board is only requesting comment on those aspects of the draft permit which have been revised from the previous draft which was circulated for review on January 7, 2011. In a letter to the Board dated March 14, 2011, Region 9 provided comments on the January 7, 2011 version of this permit. We believe the August 18, 2011 draft permit is a significant improvement over the January 7, 2011 draft and we appreciate the efforts of State Board staff in this regard. We offer the following comments on the latest version of the permit.

A. *Low Impact Development (LID) Requirements*

In our March 14, 2011 letter, we recommended clear, measurable post-construction requirements for the Caltrans permit which would be comparable to Low Impact Development (LID) requirements included routinely in recent MS4 permits adopted by the State's Regional Boards. Nine such permits have been issued in roughly the last three years with generally consistent requirements among the permit. As a representative example, we suggested consideration of the LID requirements of permit No. CAS618030 adopted by the Santa Ana Regional Board in 2009 for North Orange County. The January 7, 2011 draft permit for Caltrans only required that general LID principles be incorporated into the design of new projects; the many MS4 audits which Region 9 has conducted since 2001 have repeatedly shown the need for clearer, more measurable requirements to ensure an effective and enforceable permit.

While the August 18, 2011 draft permit for Caltrans seems to include numeric sizing criteria for LID requirements similar to the recently renewed Regional Board MS4 permits noted above, the terminology used in the draft permit creates uncertainty over how these requirements apply. Section 2.d.1.a establishes "Post-Construction Stormwater Treatment Controls" (emphasis added). We'd recommend revising the use of the term "treatment controls" in this section of the draft permit. Several Regional Boards have adopted MS4 permits which distinguish between post-construction LID BMPs and post-construction

treatment control BMPs. These permits typically refer to those controls relying on infiltration, harvest/use, and evapotranspiration as “LID BMPs,” while physical treatment technologies such as oil/water separators and proprietary filter systems are referred to as “treatment control BMPs.” The August 18, 2011 draft permit calls for the use of “flow-through treatment systems” when the entire runoff volume from an 85th percentile 24-hour storm cannot be addressed. We’d suggest that the permit language be revised to clearly distinguish between post-construction LID BMPs and post-construction flow-through treatment control BMPs. These revisions should be made throughout section 2.d.1.a. For example, in section 2.d.1.a.v, Alternative Compliance should be required when LID BMPs are infeasible onsite, and should consist of equivalent offsite use of LID BMPs.

Section 2.d.1.a.i.3 establishes a procedure for a waiver of post-construction controls. This provision should be deleted unless clear criteria are added to define what a “minimal impact on water quality” is, and to enable Executive Officers to make definitive conclusions that a project will have such a minimal impact.

Section 2.d.1.a.ii states that excess volume not addressed by LID “may be” treated by flow-through treatment systems. This should be revised to “shall be.”

Section 2.d.1.a.v notes that Alternative Compliance is not applicable if a project is subject to waste load allocations (WLAs). It’s unclear what options are available if it’s not technically feasible to implement LID at such a project. It’s our recommendation that when it’s technically infeasible to implement LID at a project site, treatment control BMPs should be required to address any excess flows, and an offsite LID project should also be required within the same subwatershed whether or not a project is subject to WLAs.

The Hydromodification flow chart on page 44 refers to “NPDES Water Quality Requirements” and a “Permanent BMP Flow Chart.” It’s unclear what these refer to. In terms of “NPDES Water Quality Requirements” it should be made clear that even when there is not a hydromodification threat, post-construction LID BMPs must be implemented.

Finally, due to workload concerns for the Regional Boards, we would suggest that rather than having LID infeasibility determinations submitted to the Regional Boards for review and approval, the permit could provide expectations for considerations that should be made in order to demonstrate infeasibility and that any such determinations be based on a rigorous feasibility analysis which would be endorsed by a professional engineer, certified engineering geologist or other appropriate state-certified professional.

B. Total Maximum Daily Load (TMDL) Requirements

Our March 24, 2011 letter recommended that the permit include a complete list of applicable numeric WLAs and other deliverables related to TMDLs; the January 7, 2011 draft permit had indicated that only a partial list was included in the permit and that Caltrans was expected to local any missing TMDLs and correctly interpret all applicable requirements

within the many applicable TMDLs. We noted this would not be consistent with our objective of improving the clarity and enforceability of MS4 permits.

We are pleased to see that the Board has included all known TMDLs with requirements applicable to Caltrans in the August 18, 2011 draft permit, and we believe this is a significant improvement over the previous draft.

To better support numeric WLAs in the permit, we also recommended in our March 24, 2011 letter that Findings 34 and 35 be rewritten, and we provided proposed language for the revised Findings. We note that the Findings related to TMDLs were revised somewhat for the August 18, 2011 draft permit, and although our precise language may not have been adopted, we believe the Board's revisions make the appropriate points.

We also recommended revised language for the last sentence of the first paragraph of section E.4.a of the January 7, 2011 draft permit to strengthen the permit requirements related to compliance with WLAs. We note the sentence in question was removed and that new similar language has been included in section E.4.c of the August 18, 2011 draft. However, we continue to believe our recommended sentence for section E.4.a would be appropriate to include in the introduction to the TMDL portion of the permit overall.

In our March 24, 2011 letter, we also reviewed several example TMDLs to determine whether an adequate level of detail was being included in the permit to ensure consistency and full implementation of the TMDLs. We noted that in some cases, important requirements had been omitted. Using these examples again, we offer the following comments:

1. Lower Eel River Sediment TMDL

Our March 24, 2011 letter had noted several inconsistencies between the requirements of the January 7, 2011 draft permit and the actual requirements of the TMDL. One concern was the absence of the WLAs for roads and we are pleased to see these numeric WLAs incorporated into the August 18, 2011 draft. However, we also suggested the permit specify a 15-year rolling average in determining compliance with the WLAs, consistent with the TMDL itself. We did not find this provision in the August 18, 2011 draft and we suggest it be included.

We had also pointed out that the January 7, 2011 draft permit appeared to be misinterpreting several of the EPA-established sediment TMDLs for the North Coast Region. For the Albion River TMDL (and several others), the draft permit indicated that the WLA for point sources was set to "zero net increase." However, the WLA was set to zero since there were no significant point sources identified in the TMDL analysis; only nonpoint sources were identified which were assigned load allocations (LAs). We believe this issue has been appropriately addressed with the revisions incorporated into the August 18, 2011 draft permit.

2. Ballona Creek Metals TMDL

In our March 24, 2011 letter, we noted that the Regional Board's Resolution No. R2007-015 included a final compliance deadline of January 11, 2021, along with interim compliance deadlines, which had been omitted from the draft permit of January 7, 2011. The deadlines have been included in the August 18, 2011 draft, and we consider this issue to be resolved.

3. Ballona Creek Estuary Toxic Pollutants TMDL

This TMDL was another example where final compliance deadlines for the WLAs had been omitted from the January 7, 2011 draft permit. We note that the appropriate deadlines have now been included in the August 18, 2011 draft.

4. Los Angeles River Trash TMDL

In our March 24, 2011 letter, we recommended the permit require the implementation report which is described in Attachment A to the Regional Board's Resolution No. R4-2007-012, which is due within six months of the effective date of the TMDL. We are pleased to see this requirement has been included in the August 18, 2011 draft.

We also noted the January 7, 2011 draft had omitted the provision in the TMDL for determining compliance, i.e., the use of a rolling average. This provision is still missing from the August 18, 2011 draft and we again recommend it be included.

5. Chollas Creek Metals TMDL

Our March 24, 2011 letter had pointed out that the numeric WLAs had been omitted from the January 7, 2011 permit, and we are pleased to see that they have now been included in the August 18, 2011 draft. However, we also noted that various special studies were mandated by the TMDL which had also been omitted. We did not find these study requirements in the August 18, 2011 draft and we continue to recommend they be included to ensure consistency with the TMDL.

Unfortunately, we were unable to review Attachment IV for consistency with every applicable TMDL. Based on review of selected TMDLs, it appears the Board has made substantial progress in ensuring consistency with applicable TMDLs, but we would nevertheless recommend the Board conduct a thorough consistency review for all the TMDLs for the final permit.

C. Other Issues Raised on Our March 24, 2011 Letter

1. United States v. California Department of Transportation (No. 97-0037-EIG)

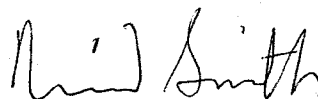
We requested that the fact sheet or the Findings for the permit describe how the permit would ensure consistency with the understandings we reached with Caltrans in concluding the above litigation, or alternatively, that the permit include appropriate provisions to ensure consistency. Finding 42 for the January 7, 2011 draft permit claimed the permit was consistent, but no information was provided supporting this claim. The August 18, 2011 draft permit, rather than providing the requested information, deletes Finding 42. As such, we again recommend the fact sheet or Findings for the final permit describe how the permit would be consistent.

2. Maintenance and Construction Activities not Subject to the Construction General Permit (CGP)

Region 9 had suggested a revision of section E.2.f.2 of the January 7, 2011 permit to enhance the enforceability of the permit for certain roadway and parking lot repaving and resurfacing activities which may not be subject to the CGP. The August 18, 2011 draft permit was not revised in this regard and we reiterate, as follows, our suggested language: "The Department is required to implement BMPs to reduce the discharge of pollutants in stormwater to the MEP, for all roadway and parking lot repaving and resurfacing activities not subject to the CGP."

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

Sincerely,

A handwritten signature in black ink, appearing to read "David Smith".

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

cc: Walt Shannon, Chief of the Municipal Stormwater Unit