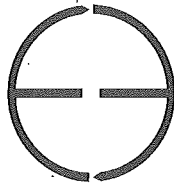


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September 19, 2011

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

VIA E-mail: commentletters@waterboards.ca.gov



**Re: Comment Letter – Caltrans MS4 Permit
August 18, 2011 Tentative Order No. 2011-XX-DWQ NPDES No. CAS000003
National Pollutant Discharge Elimination System (NPDES) Statewide Storm
Water Permit Waste Discharge Requirements (WDRS) for State of California
Department of Transportation**

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.

CCEEB appreciate this opportunity to provide the State Water Resources Control Board ("SWRCB") with comments on the August 18, 2011 Tentative Order No. 2011-XX-DWQ NPDES No. CAS000003 National Pollutant Discharge Elimination System (NPDES) Statewide Storm Water Permit Waste Discharge Requirements (WDRS) for State of California Department of Transportation ("Draft Permit").

CCEEB is focused on two specific issues:

- ◆ **The need to revise the Draft Permit to specifically exempt utility linear activities from post-construction requirements consistent with Finding 76** that "LUP projects are not subject to post-construction requirements due to the nature of their construction to return project sites to preconstruction conditions" in the SWRCB's Order 2009-0009-DWQ (National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities or "CGP").
- ◆ **The need to revise the Draft Permit's requirement to only prohibit Conditionally exempt non-storm water discharges when they are determined to be "significant sources of pollutants" (rather than "sources of pollutants), consistent with NPDES regulations (see Code of Federal Regulations, Title 40, Section 122.34(b)(iv)).**

Neither of these changes was made to the Draft Permit. Gas and electric utilities construct, operate and maintain transmission and distribution facilities within the Department's rights of way. These revisions are still pertinent and significant and need to be made. Unfortunately no explanation was provided with the Draft Permit to explain why these changes were not made. Consequently it is unclear whether the requested changes were rejected (and why) or if they were just overlooked. **We urge the SWRCB to make these changes before the Draft Permit is adopted.**

We also have the following additional comments to the revised Draft Permit:

- ◆ Section A.6. of the Draft Order (p. 18) would prohibit the discharge of biological and residual pesticides and their breakdown byproducts to waters of the U.S. that are impaired by the pesticides used, or to drainages tributary to those waters. Some drainages that are tributary to impaired water could be many miles (e.g., 30-40 miles upstream of the actual impaired water body making it an insignificant risk to the impaired water. This section should be revised so that a discharge of biological and residual pesticides and their breakdown byproducts are prohibited only when: 1) it is prohibited by a USEPA approved Total Maximum Daily Load; or 2) the discharged is made directly to the impaired water of the U.S. or to a drainage located upgradient to the impaired water and within the same hydrological unit at the site¹ level.
- ◆ Section E.2.c.2.a.iv.2. of the Draft Order (p.28) states that the test endpoint data from chronic toxicity tests are to be analyzed using a t-test as described in EPA's test method manuals or using "...EPA's NPDES Test of Significant Toxicity Implementation Document (June 2010)." Since the SWRCB is still considering and has not yet approved its proposed Toxicity Policy which may authorize the use of EPA's NPDES Test of Significant Toxicity Implementation Document (June 2010), it is inappropriate to include at this time this data analysis method in the Draft Permit. Therefore, reference to the Test of Significant Toxicity Implementation Document should be deleted from the permit.

CCEEB urges the SWRCB to make the enclosed requested revisions to the Draft Permit (i.e., to all applicable sections of the Draft Permit).

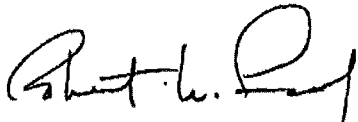
Additionally CCEEB has overlying concerns with the concurrent development of this permit and several others that all lack economic and environmental analyses. Caltrans and other stakeholders estimate this permit will cost the State of California taxpayers over \$600 million annually. The SWRCB and staff have not presented any evidence or justification that would demonstrate a significant benefit to water quality that would justify such expense. CCEEB asks that the SWRCB look at the overall impact of these concurrently developing permits and

¹ Natural Resources Conservation Service watershed boundary designation (see <http://cain.ice.ucdavis.edu/calwater/wbdcodes.html>)

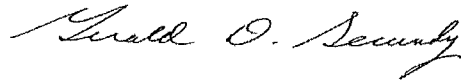
policies in order to quantify impacts to sectors of California's economy, the taxpayer, and the environment. Without this analysis the SWRCB is proceeding without knowing if the ends justify the means.

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 SWRCB 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 NPDES Statewide Storm Water Permit Waste Discharge Requirements for State of California Department of Transportation. 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: Matt Rodriguez, Secretary for Environmental Protection
Michael Lauffer, Chief Counsel/SWRCB
Jackson Gualco, The Gualco Group, Inc.