



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

MAR 14 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). On January 7, 2011, the State Water Board provided public notice that it was soliciting public comment on this draft permit. In a letter to the State Board dated December 10, 2010, Region 9 provided comments on a pre-notice version of this permit which the Board had distributed for a first round of comments. We are pleased to see the new draft permit of January 7, 2011 has been revised to address many of our comments on the pre-notice draft. However, we continue to have certain concerns with the new draft permit, and we believe the final permit should incorporate certain additional revisions, as discussed below.

P-1 → **A. *Low Impact Development (LID) Requirements***

In our December 10 letter, we expressed concern that the requirements of the pre-notice permit would result in a patchwork of differing LID requirements around the state depending on local MS4 requirements and whether there even were any local MS4 requirements. We are pleased to see this framework for LID requirements removed from the new draft permit. Unfortunately, however, and contrary to the recommendations in our letter, the new draft permit continues to lack the type of clear, measurable LID requirements which are being routinely included in MS4 permits adopted by the State's Regional Water Boards; we suggested consideration of the LID requirements of permit No. CAS618030 adopted by the Santa Ana Regional Board in 2009 for North Orange County. Instead, section E.2.d.1.d of the draft Caltrans permit only requires that general LID principles be incorporated into the design of new projects.

We recognize that the MS4 operated by Caltrans differs from the MS4s operated by other permittees such as cities and counties. However, permits such as the North Orange County permit also provide for alternate or in lieu requirements when the standard LID requirements are not feasible. The Caltrans permit could include its own special feasibility requirements reflecting the type of MS4 it operates and the challenges it may face in incorporating LID into its projects. As such, we continue to recommend that the Caltrans permit include quantitative LID requirements like the North Orange

County permit. Differences between the Caltrans MS4 and a county MS4 could be accommodated by differences in the feasibility criteria for LID.

B. Total Maximum Daily Load (TMDL) Requirements

Our December 10 letter expressed concern that only a partial list of applicable wasteload allocations (WLAs) and other deliverables related to TMDLs was included in the permit and that Caltrans was expected to find 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.

P-2 → We are pleased to see that more detailed requirements (including many numeric WLAs) have been included in the public notice version of the permit (Attachment IV) concerning what is required to comply with the WLAs. However, Attachment IV continues to indicate that only a partial list of applicable WLAs and other deliverables is included in column 2. We again recommend a full list be included in the permit.

P-3 → To better support numeric WLAs in the permit, we recommended in our December 10 letter that Findings 34 and 35 be rewritten, and we provided proposed language for the revised Findings. However, the Findings for the new permit were not revised and we reiterate our recommendation to revise Findings 34 and 35, as described in our December 10 letter.

P-4

P-5 → Our December 10 letter also included a suggestion for revised language for section E.4.a of the permit to strengthen the permit requirements related to compliance with WLAs. Again, we find the permit was not revised as recommended and we reiterate our December 10 recommendation.

In our December 10 letter, we also cited some examples of TMDLs where additional requirements should be added to ensure consistency with the WLAs. While additional requirements were added in many cases, using these examples again, we offer the following additional comments:

P-6 → **1. Lower Eel River Sediment TMDL**

Our December 10 letter noted that a numeric total allocation was established in the TMDL of 898 tons/mi²/year, and we recommended that Caltrans' allocation be incorporated into the permit. However, the new draft permit continues to lack the applicable numeric WLAs. This TMDL includes total allocations for roads (episodic and chronic) of 9 tons/mi²/year and 17 tons/mi²/year, respectively. For consistency with the TMDL, we recommend that the Caltrans permit require that Caltrans determine the fraction of the road network in the area covered by the TMDL which Caltrans operates, and then comply with WLAs based on that fraction of the total road allocations set by the TMDL. The TMDL also recommends a 15-year rolling average in determining

compliance with the WLAs and certain specific monitoring activities which we recommend be included in the permit.

We would also note that the new permit includes a TMDL referred to as “Eel River, Lower HA” which we presume is the Lower Eel River Sediment TMDL established by EPA in 2007 – this should be clarified. We would further note that since this TMDL was established in 2007, it was not covered by the Regional Board’s Resolution No. 2004-0087.

P-7 → We would also point out that Attachment IVb appears to be misinterpreting several of the EPA-established sediment TMDLs for the North Coast Region. For the Albion River TMDL (and several others), Attachment IVb indicates that the WLA for point sources is set to “zero net increase.” Actually, 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). As noted in EPA’s November 12, 2010 update to its November 22, 2002 memo concerning the incorporation of WLAs into stormwater permits, LAs become WLAs if a nonpoint source LA is subsequently subject to an NPDES permit – which is the situation here for the Caltrans roads.

P-8 → As in the case of the Lower Eel River TMDL, the Caltrans permit should require compliance with numeric WLAs based on the fraction of the total road network in the area covered by the TMDL which Caltrans operates and the total LA assigned to roads in the EPA-established TMDLs.

P-9 → **2. Ballona Creek Metals TMDL**

We are pleased to see the numeric WLAs for dry and wet weather discharges applicable to Caltrans included in the new draft permit, as well as a summary of other deliverables required by the TMDL. However, the Regional Board’s Resolution No. R2007-015 also includes a final compliance deadline of January 11, 2021, along with interim compliance deadlines, which were omitted from the draft and should be included.

P-10 → **3. Ballona Creek Estuary Toxic Pollutants TMDL**

Again, we are pleased to see the numeric WLAs for dry and wet weather discharges applicable to Caltrans included in the new draft permit, as well as summary information of other required deliverables. However, since there is a final compliance deadline for the WLAs, “none specified” should be deleted in the column labeled Compliance Due Date.

P-11 → **4. Los Angeles River Trash TMDL**

The new draft permit does include the applicable numeric WLAs for trash as we recommended. However, the permit omits the provisions in the TMDL for determining compliance, i.e., the use of a rolling average in determining compliance, which should

also be included in the permit. The permit should also 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 believe the implementation report is an important first step laying the groundwork for eventual compliance with the WLA.

P-12 → **5. Chollas Creek Metals TMDL**

Although some new requirements were added to the draft permit related to this TMDL, we believe additional requirements are necessary to ensure consistency with the applicable WLAs. Attachment IV includes the percentages by which a WLA may be exceeded during the time period provided to come into compliance, but the numeric WLAs themselves were omitted and should be included. Further, the new permit omits the special studies which are mandated by the TMDL, including studies to investigate excessive levels of metals in Chollas Creek, feasible management strategies to reduce metals loadings and additional monitoring to provide more accurate information on mass loadings; these studies should be added as requirements in the permit.

C. Other Issues Raised on Our December 10 Letter

P-13 → **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. Although Finding 42 was added which claims the permit is consistent, no information is provided supporting this claim. We recommend additional discussion in the Finding concerning the litigation and how the permit would ensure consistency.

2. Posting the Current Stormwater Management Plan (SWMP)

In our December 10 letter, Region 9 suggested requiring Caltrans to post its current SWMP (including all State-approved revisions) on the Internet by October 1st of each year. We indicated that given the iterative approach for implementing and updating the SWMP, this would result in a more thorough and accurate understanding of SWMP requirements by contractors, Regional Board staff and the public. We are pleased to see the addition of section E.1.g in the new permit which we believe appropriately addresses our comment.

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

P-14

→ In the December 10 letter, Region 9 had suggested a revision of section E.2.f.2 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 new draft permit was not revised 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."

4. Inspection Program

Our December 10 letter had recommended additional language in section E.2.b.5 of the permit for Caltrans' inspection program addressing documentation of field activities and enforcement response to violations. We also provided a suggestion for the specific permit language itself. We are pleased to see the additional language has been incorporated into the new draft permit.

5. Monitoring and Discharge Characterization Requirements

Our December 10 letter had requested the inclusion of material storage facilities, and roadway, sweeper and vactor waste storage and disposal sites on the Monitoring Site Selection candidate list in section E.2.c.2.a.viii of the permit. We are pleased to see the new draft permit has incorporated this recommendation.

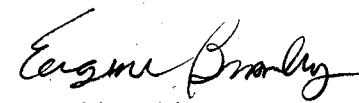
6. Maintenance Program Activities

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→ In our December 10 letter, we suggested that section E.2.h of the draft permit include a requirement to develop an inventory of road segments with slopes that are prone to erosion and sediment discharge, coupled with prescriptive annual inspection and stabilization requirements (i.e., % of erodible lane miles inspected/stabilized annually). We are pleased to see that the new draft permit includes a requirement for an inventory of vulnerable road segments; however, requirements for inspection/stabilization of a specific percent of such roads were not included, and we reiterate our suggestion for inclusion of such requirements in the permit.

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,


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

cc: Walt Shannon, Chief of the Municipal Stormwater Unit