

PORT OF STOCKTON

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State Water Resources Control Board
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VIA EMAIL to commentletters@waterboards.ca.gov

Subject: Comment Letter – Revised Draft Phase II Small MS4 Permit

The Port of Stockton (“Port”) appreciates the opportunity to comment on the revised Phase II Small Municipal Separate Storm Sewer System (“MS4”) Permit (“Permit”). While the Port will not be a permittee subject to this Permit, key provisions contained in this Permit may be deemed precedential for other future storm water permits in California, including the Port’s current MS4 Permit. Thus, the Port provides the following comments on two of the Permit’s key provisions.

Receiving Water Limitations Language

As stated in the Port’s previous letter sent for the State Water Board’s Receiving Water Limitations Workshop held on November 20, 2012, the Port strongly urges the State Water Board to address the Permit’s Receiving Water Limitations (“RWL”) Provision (Provision D, pages 19-20) on a global, state-wide basis before incorporating RWL language into this Permit. The RWL provisions are extremely important and relevant to all stormwater permittees within the State.

The revised order does not modify previous RWL language contained in the Permit, but instead kicks the issue down the road by merely inserting a reopener clause. (See Finding #38, page 38; Provision I, page 140; and the Fact Sheet, pages 25-26). Because the Small MS4 permittees will be subject to enforcement actions for alleged violations of the RWL language in the interim before a reopener can be effectuated, the Port requests that the State Water Board defer adoption of the Permit, or defer the effective date of the Permit, until the State Water Board has adequately addressed the RWL issue on a state-wide basis in the form of a new Policy on RWLs in stormwater permits.

During the November 20, 2012 Workshop, the Port provided the State Water Board with language that was adopted into the Port's permit in 2011 that was not appealed by environmental organizations and was not vetoed by U.S. E.P.A. Therefore, the Port's RWL language represents a good template for use in other storm water permits. As evidenced at that same workshop, CASQA offered its support to the State Water Board for similar language to be used in permits such as the Small MS4 Permit, the Caltrans Permit, and large MS4 permits state-wide.

For these reasons, the Port urges the State Water Board to direct staff to work to revise the RWL Language in Provision D of the Permit to be consistent with the language contained in the Port's MS4 permit. Alternatively, the State Water Board should defer the adoption of the Permit, or defer the effective date of the Permit, until the State Water Board takes action to adopt consistent RWL language state-wide.

Attachment J – Central Coast Post-Construction Requirements

The Port also has concerns over the post-construction requirements contained in Attachment J. Primarily, the Port is concerned that these new policies are being adopted into permits without adequate environmental review under the California Environmental Quality Act ("CEQA"). These new policies are essentially being imposed on a permit-by-permit basis without any analysis of how these requirements might affect the environment either positively or negatively. In addition, these policies keep getting more detailed and prescriptive without an analysis of the costs and/or benefits of such requirements. This lack of a consistent and fully analyzed approach to the imposition of post-development standards creates an uneven playing field for communities and developers across the State.

For example, no environmental benefit has been demonstrated from retaining a 95th percentile storm event on small projects (15,000 sf and greater) in urban areas. Furthermore, there has been absolutely no analysis of the potential detriments to water quality, water rights/quantity, or to aquatic life from reducing flows in area creeks and rivers as a result of the combined affects of this post-construction policy. These benefits and impacts must be analyzed to avoid unintended consequences.

For these reasons, and the reasons provided in comments made by CASQA and others, the Port urges the State Water Board to halt the use of Post-Construction Requirements in stormwater permits, including Attachment J proposed for the Draft Permit, until such time that the environmental benefits and detriments have been fully explored and vetted.

Thank you for your consideration of our concerns.

Yours sincerely,



Jeff Wingfield
Port of Stockton