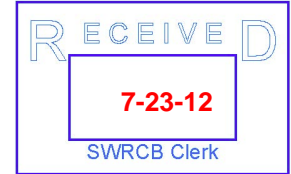




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July 23, 2012

By Electronic Mail and Facsimile Transmission
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Subject: Comments on the 2nd Draft Phase II Small MS4 General Permit

Dear Ms. Townsend and Members of the Board,

Thank you for the opportunity to provide comments on the subject 2nd Draft Phase II Small MS4 General Permit (Draft Phase II Permit). The County of Orange (County) appreciates the efforts of the State Water Resources Control Board (SWRCB) to receive written comments as well as hold staff workshops on this latest draft. While the County is authorized to discharge stormwater runoff by two separate Phase I MS4 Permits and will not be directly subject to this Permit, multiple Non-traditional Small MS4 Permittees discharge their stormwater into the County's MS4. The County submits the following comments for your consideration:

- 1) Section A.1.b 3) (a)** implies that the County, as a Phase I Permittee, must also become a Phase II Permittee due to the identification in Attachment A, of two urbanized areas within County jurisdiction (Coto de Caza and Ladera Ranch) as Census Designated Places. These unincorporated communities have been and continue to be incorporated into the County's Phase I Stormwater Program. The SWRCB has previously recognized this as the case in the context of the post-construction requirements required by the California Statewide Construction General Permit (see the following map on the SWRCB website):
http://www.swrcb.ca.gov/water_issues/programs/stormwater/docs/constpermits/guidance/susmpupdate2.pdf

Recommendation: Remove Coto de Caza and Ladera Ranch from Attachment A, since these communities are subject to an approved Stormwater Management Plan implemented by a Phase I Permittee (County).

- 2) Section B.3.n** does not prohibit "incidental runoff" where it is not allowed. This creates a potential conflict for Phase II Permittees within the area of south Orange County subject to the Phase I MS4 Permit issued by the San Diego Regional Water Quality Control Board (Order No. R9-2009-0002), which expressly prohibits the discharge of irrigation runoff to the MS4. Additionally, under **B.4.d**, a Permittee who discharges large volumes of ponded recycled water is required to first contact the applicable Regional Board, but not the owners/operators of the downstream MS4, who would be directly impacted by the discharge.

Recommendation: Revise the language in **B.3.n** to require prohibition of incidental runoff such as irrigation runoff where it is not allowed by a Phase I MS4 Permit or the owner/operator of the downstream MS4, and revise **B.4.d** to require Phase II Permittees to notify the owner/operator of the downstream MS4 prior to discharging large volumes of recycled water.

- 3) **Section D** contains proposed language on Receiving Water Limitations. The County strongly supports the position taken by the California Stormwater Quality Association (CASQA) in its comment letter on this matter. In summary, in wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself. No one reasonably expects any Phase II or indeed Phase I Permittee to realize this goal at the moment of permit adoption; and no regulatory purpose is served by establishing immediate non-compliance for Permittees.

Recommendation: Revise **Section D** receiving water language to correspond to the recommendations provided by CASQA.

- 4) **Section F.1** identifies Non-traditional Small MS4 Permittees by reference to **Attachment B**. For Orange County, Doheny State Beach and San Clemente State Beach are not located in Region 8, but rather Region 9.

Recommendation: Correct **Attachment B** as noted above.

- 5) **Section F.5.b** includes the option for a Non-traditional Small MS4 Permittee to fulfill education and outreach requirements within their jurisdictional boundaries on their own. Within Orange County, the Phase I MS4 Permittees, led by the County as the Principal Permittee, implement a robust community-based social marketing (CBSM) public education and outreach program, with a consistent pollution prevention message that has been nurtured for more than a decade. While the County supports development of public education and outreach programs by Non-traditional Small MS4 Permittee in Orange County, failure to coordinate with the countywide program that is being implemented could lead to inconsistencies and conflicts in terms of the messages and other information that is developed.

Recommendation: Revise the language in **F.5.b** to require Non-traditional Small MS4 Permittees surrounded by a Phase I MS4 Program who elect to develop their own jurisdictional public education and outreach program, to coordinate with the Phase I Permittees on some level so that there is consistency within the region.

- 6) **Section F.5.d** requires Non-traditional Small MS4 Permittees to maintain an up-to-date and accurate outfall map using a geographical information system (GIS). In Orange County, most Non-traditional Small MS4 Permittees will discharge runoff from their MS4 into an MS4 owned and operated by the County or one of the cities. Understanding where these Small MS4s tie into the regional MS4 will provide the Phase I Permittees with a greater ability to understand contributions of stormwater runoff on a sub-watershed scale.

Recommendation: Revise language in **F.5.d** to encourage Non-traditional Small MS4 Permittees surrounded by a Phase I MS4 Program to provide their GIS outfall data to the owner/operator of the MS4 which they discharge to.

- 7) **Section F.5.d.1.(ii)(a)** requires Non-traditional Small MS4 Permittees to develop their own illicit discharge detection and elimination (IDDE) program. Where there is an existing Phase I IDDE Program surrounding the Small MS4 Permittee (as is the case in Orange County), the permit language should allow for cooperation, coordination, and collaboration with the regional Phase I program in lieu of development of a separate program. The table of Action level concentrations for Indicator Parameters in **F.5.d.1.(ii)(b)** bear no relation to Non-Stormwater Action Levels in the Phase I MS4 Permit for south Orange County (Order No. R9-2009-0002). Given the current language of this Permit, non-stormwater discharges could be deemed by the Small MS4 Permittee as below any prescribed action level, while the County or city which owns and operates the regional MS4 would be required to investigate the very same discharge as a potential illegal discharge or illicit connection.

Recommendation: Revise language to require Non-traditional Small MS4 Permittees surrounded by a Phase I MS4 Program to cooperate/coordinate/collaborate with the existing IDDE program(s) being conducted by the Phase I Permittees.

- 8) **Section F.5.d.2.(ii)(a)** requires Non-traditional Small MS4 Permittees to prioritize source investigations of non-stormwater discharges by investigating first (within 72 hours) non-stormwater discharges suspected of being sanitary sewage and/or significantly contaminated. There is no requirement in this section to notify and coordinate with the owners/operators of the downstream and/or regional MS4 that would be most impacted. **F.5.d.2.(ii)(c)** requires notification to the local Health Department, but in the case of Orange County, it is the Phase I MS4 Permittees who are required to immediately respond to any potential threats to their MS4.

Recommendation: Revise the language in **F.5.d.2** to require Non-traditional Small MS4 Permittees to immediately notify the owners/operators of the downstream and/or regional MS4 any time a non-stormwater discharge suspected of being sanitary sewage and/or significantly contaminated is identified.

- 9) **Section F.5.f.9.(ii)(b)(4)** requires Non-traditional Small MS4 Permittees to minimize irrigation run-off, but not outright elimination where it is expressly prohibited from entering the MS4, as is the case in south Orange County (see comment number 2).

Recommendation: Revise the language in **F.5.f.9.(ii)(b)(4)** to require prohibition of irrigation runoff where it is not allowed by a Phase I MS4 Permit or the owner/operator of the downstream MS4.

- 10) **Section F.5.g Footnote 29** requires Non-traditional Small MS4 Permittees located within a Phase I MS4 Permit boundary with a Regional Board approved Hydromodification Plan to implement that plan's requirements for "region-wide hydromodification consistency". At the same time, **Section F.5.g.2.** requires no similar "region-wide consistency" with respect to Low Impact Development (LID) Runoff Standards. In the case of Orange County, the hydromodification plan and low impact development (LID) runoff standards are inextricably linked as one Regional Board approved plan (Model Water Quality Management Plan for Orange County). There literally is no means of coordinating on one without coordinating on the other.

Recommendation: Revise language in **F.5.g** to require Non-traditional Small MS4 Permittees within a Phase I MS4 Permit boundary to implement the Regional Board

approved plan for land development for region-wide consistency in both hydromodification and LID.

- 11) With respect to **Section F.5.g**, the County wishes to clarify that in Orange County, municipalities do not have legal authority to issue building and/or grading permits to school districts. Therefore, should a school district be identified as a Non-traditional Small MS4, requiring their new development/redevelopment projects to comply with the Regional Board approved plans for hydromodification and LID for the surrounding Phase I MS4 program, as discussed in comment 10 above, would fall under the responsibility of the Division of the State Architect, the State agency which provides design and construction oversight for K-12 schools and community colleges throughout the State of California.

Recommendation: **Section F.5.g** should be revised to note that for certain Non-traditional Small MS4 Permittees such as school districts, implementation of the post-construction stormwater management program will involve coordination with the Division of the State Architect.

- 12) **Section F.5.g.2.(ii)(2)** requires Non-traditional Small MS4 Permittees to implement "stream setbacks and buffers...tree planting and preservation...porous pavement (and) green roofs...shall be used...to the extent technically feasible". There is an enormous gap between what is technically feasible and what is practicable and financially feasible. This language is unlike that in **F.5.g.1.(ii)**, which allows for "one or a combination" of these same measures.

Recommendation: Revise language to require Non-traditional Small MS4 Permittees to perform "one or a combination" of those items listed under **Section F.5.g.2.(ii) (2)**.

- 13) **Section F.5.g.4 (ii)(b)** requires Non-traditional Small MS4 Permittees to notify vector control agencies of installed stormwater runoff treatment systems and hydromodification management controls but not owners/operators of the downstream MS4.

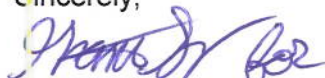
Recommendation: Revise language **F.5.g.4 (ii)(b)** to require Non-traditional Small MS4 Permittees to notify the downstream/surrounding owners/operators of the MS4 of installed stormwater runoff treatment systems and hydromodification management controls.

- 14) **Section F.5.1** references **Attachment G** for applicable TMDLs, but Attachment G contains none of the TMDLs for Orange County.

Recommendation: Correct Attachment G as noted.

If there are any questions concerning this correspondence, please contact the County's Stormwater Program Manager, Grant Sharp, at (714) 955-0674.

Sincerely,



Chris Crompton, Manager
Environmental Resources