



GAIL FARBER, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
<http://dpw.lacounty.gov>

Public Comment
Draft Phase II Small MS4 General Permit
Deadline: 7/23/12 by 12 noon

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

July 19, 2012

IN REPLY PLEASE

REFER TO FILE: **WM-9**

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95812



Dear Ms. Townsend:

COMMENT LETTER – 2ND DRAFT PHASE II SMALL MS4 GENERAL PERMIT

Thank you for the opportunity to comment on the proposed draft General National Pollutant Discharge Elimination System Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems. We hereby submit the enclosed comments on behalf of the Los Angeles County Flood Control District.

We look forward to your consideration of these comments. If you have any questions, please contact me at (626) 458-4300 or ghildeb@dpw.lacounty.gov or your staff may contact Ms. Angela George at (626) 458-4325 or ageorge@dpw.lacounty.gov.

Very truly yours,

GAIL FARBER
Director of Public Works

GARY HILDEBRAND
Assistant Deputy Director
Watershed Management Division

RW:jtz

P:\wmpubl\Secretarial\2012 Documents\Letter\LACFCD Comment on 2nd Draft Phase II Small MS4 General Permit.docx\C12180

Enc.

**COMMENTS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ON
THE SECOND DRAFT GENERAL NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMIT FOR STORM WATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS**

The Los Angeles County Flood Control District (LACFCD) appreciates the opportunity to review and comment on the second Draft General National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) (herein referred to as Draft Permit).

The Los Angeles County Flood Control Act was adopted by the State Legislature in 1915, after a disastrous regional flood took a heavy toll on lives and property. The Act established the LACFCD and empowered it to provide flood protection, water conservation, recreation, and aesthetic enhancement within its boundaries. The LACFCD is governed, as a separate legal entity, by the County of Los Angeles Board of Supervisors.

While the LACFCD is not designated as a permittee under the Draft Permit, a key provision will likely be precedential for future permit renewals and consequently we are compelled to comment on the Draft Phase II Permit. Furthermore, the LACFCD is directly affected because it is regulated under the Los Angeles County Municipal Stormwater Permit (Los Angeles Regional Water Quality Control Board Order No. 01-182, NPDES Permit No. CAS004001) and receives the majority of urban and stormwater runoff in Los Angeles County, including those from small traditional- and nontraditional-MS4s.

Receiving Water Limitations Language

The LACFCD believes that Provision D of the Draft Phase II Permit is contrary to the historical interpretation of established State Water Board policy and will create an inability for a regulated entity to comply. In wet weather, multiple constituents in stormwater runoff from urban areas may exceed receiving water quality standards, thereby creating the potential for stormwater discharges to cause or contribute to exceedances of standards in the receiving water itself.

Previously, municipal stormwater permittees have presumed that permit language, like that expressed in Provision D, in conjunction with Board Policy (WQ 99-05) established an iterative management approach as a basis for compliance. However, on July 13, 2011, the Ninth Circuit Court of Appeals in NRDC vs. County of Los Angeles / Los Angeles County Flood Control District found the defendants had caused or contributed to an exceedance of a water quality standard and therefore violated the Receiving Water Limitations, irrespective of the application of the iterative process. More recently, the City of Stockton was engaged in a good faith iterative process per the terms of its permit, but was nonetheless challenged by a third-party on the basis of the Receiving Water Limitations language.

If Provision D is not changed, all discharges to receiving waters will likely need to meet water quality standards to avoid being in violation of the permit. The LACFCD certainly recognizes the importance of attaining water quality standards. At the same time, however, no one reasonably expects any Phase II or indeed Phase I entity to immediately realize this goal at the moment of permit adoption. Indeed, this reality is reflected by the hundreds of TMDLs across the State that specifically recognize that current water quality standards cannot be readily attained and can only be addressed by regulation that supports implementation of an adaptive program over an extended period of time.

The LACFCD recognizes the need to continue to make measurable progress toward attainment of water quality standards. However, we also believe that no regulatory benefit ensues from the State establishing permit provisions, such as Provision D, that result in the potential of immediate non-compliance for Permittees. For these reasons, the LACFCD requests revision of Provision D to incorporate the iterative process/adaptive management language that will enable regulated entities to focus and prioritize their resources on critical water quality issues and achieve environmental outcomes that are meaningful to the communities we serve. Importantly, it will also help ensure that good faith compliance is not the subject of undue legal liability and lawsuits.

K-12 Schools and Community Colleges Designation

The decision by the Ninth Circuit Court of Appeals found that the LACFCD is responsible for pollutants detected at mass emissions stations in the Los Angeles and San Gabriel Rivers, regardless of the source of pollutants. In light of this decision, the LACFCD strongly believes that small traditional- and non-traditional MS4s must be held to the same standards as the large MS4s, including receiving water limitations, outfall monitoring, and TMDLs. It is also imperative that all potential pollutant sources, including K-12 schools and community colleges, be designated as Regulated Small MS4 Permittees under the Draft Permit.

In its comments on the June 2011 draft, the Coalition for Practical Regulation (CPR) explained why they believed K-12 schools and community colleges should be designated as Small MS4 Permittees. Like the cities, the LACFCD has no authority to review or approve plans for new school facilities, nor can the LACFCD compel implementation of stormwater quality BMPs in the design or construction of new schools.

In response to CPR's comment, State Water Board staff noted that K-12 schools, County Offices of Education, and Charter Schools, in many cases, are unlikely to pose a significant threat to water quality because they are usually small single buildings in very discrete areas. This assertion is questionable because many schools, especially in suburban neighborhoods, encompass multiple buildings and large impervious areas such as school quads, parking lots, and basketball courts. Schools also have landscaped or grassy areas such as sports fields that require irrigation and fertilization.

Runoff from both the impervious and grassy areas may contain pollutants such as trash, bacteria, fertilizers, herbicides, and pesticides.

While the Draft Permit leaves the designation of K-12 schools and community colleges to the discretion of each Regional Board, this approach is unacceptable because it would result in more regulatory inconsistency, as it is highly unlikely that the Regional Boards will approach this uniformly. Instead, the State Water Board should take an equitable approach to stormwater regulations by revising the Draft Permit to designate all K-12 school districts and two-year community colleges as new Regulated Small MS4s.