



CITY OF SANTA MARIA
UTILITIES DEPARTMENT

Business Services • Regulatory Compliance
Solid Waste Services • Water Resources

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



Via email to commentletters@waterboards.ca.gov

**SUBJECT: STATEWIDE DREDGED OR FILL PROCEDURES
WATER OF THE STATE/WETLAND JURISDICTIONAL POLICIES**

The City of Santa Maria ("City") operates a Municipal Separate Storm Sewer System ("MS4") that includes several ditches and detention basins. The City would like to perform maintenance on these MS4 facilities, but is concerned about potential Clean Water Act liability if these facilities were considered to be Waters of the United States ("WOTUS"), and State liability if this stormwater infrastructure is deemed Waters of the State ("WOTS") and must meet requirements in the new policy.

Discharges from these MS4 facilities to the Santa Maria River are covered by a National Pollutant Discharge Elimination System ("NPDES") permit, issued by the State Water Resources Control Board ("State Board") under Order No. 2013-0001-DWQ ("Phase II MS4 permit"), which includes the following requirements:

- P. 44, Section E.11.f ("the Permittee shall develop and implement procedures to assess and prioritize MS4 storm drain system maintenance, including but not limited to, catch basins, pipe and pump infrastructure, above-ground conveyances, including receiving water bodies within the Permittee's urbanized area and detention basins."); also see p. 89, Section F.5.f.6 (Storm Drain Assessment and Prioritization)
- P. 45, Section E.11.g.(ii)(b) ("Clean storm drains - Develop and implement a schedule to clean high priority catch basins and other systems. Cleaning frequencies shall be based on priority areas, with higher priority areas receiving more frequent maintenance."); also see p. 90, Section F.5.f.7(ii)(b) and (c)
- P. 45, Section E.11.g.(ii)(e) ("Develop and implement a procedure to dewater and dispose of materials extracted from catch basins. This procedure shall ensure that water removed during the catch basin cleaning process and waste material will not reenter the MS4."); also see p. 90, Section F.5.f.7(ii)(d)

- P. 53, Section E.12.e. (For most new development, “the Permittee shall require facilities designed to evapotranspire, infiltrate, harvest/use, and biotreat storm water” using volumetric (85th percentile 24-hour storm or 80 percent runoff capture), or flow (0.2 inches per hour or 2 times the 85th percentile hourly rainfall intensity).

In accordance with the requirements of the MS4 permit, the City has assessed and prioritized the areas for cleaning, and plans to perform maintenance each year before the rainy season to ensure that basins and ditches maintain designed capacity in order to function appropriately and not cause flooding or property damage.

The City realizes that capture and storage of even more stormwater may eventually require more detention basins that will be wetted lands. These areas are not the same as a “wetland” since any wetted areas in municipal detention basins are clearly a “stormwater detention basin” and, therefore, these areas should be deemed non-jurisdictional areas under the Clean Water Act and under this proposed policy. The City is currently working with the Army Corps of Engineers to confirm that these areas are indeed not jurisdictional WOTUS so that these important maintenance activities may proceed. The City is concerned, however, that similar and equally problematic requirements will come out of the new proposed state wetlands and dredge and fill policy proposed for adoption.

The 2015 final federal WOTUS rule, although currently being challenged in litigation and stayed, states in the preamble that this rule merely mirrored “the agencies’ longstanding practice...to view stormwater control measures that are not built in ‘waters of the United States’ as non-jurisdictional.” 80 Fed. Reg. 37054, 37100; also see 37059 (“exclusions for some waters that were identified in public comments as possibly being found as jurisdictional under the proposed [WOTUS] rule where this was never the agencies’ intent, such as stormwater control features, constructed to convey, treat, or store stormwater.”). Although, under the 2015 rule and common interpretation, these stormwater features would not be deemed WOTUS even if these often wetted areas meet other criteria or connect directly or through another waterway to a traditional navigable water (see 80 Fed. Reg. 37096), State Board staff said these features would not have similar exclusions under State law.

The new rule should have express exemptions for stormwater features such as MS4 ditches and detention basins covered by MS4 permit provisions. Exemptions should also exist for any waterways regulated by the Department of Fish and Wildlife Streambed Alteration Program to avoid duplicative and potentially contradictory regulatory requirements. These exemptions are vital as the City and other municipalities are proactively trying to incorporate resiliency and stormwater capture and reuse into its plans for future droughts.



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Director of Utilities

cc: City Attorney's Office