

Public Comment  
Caltrans - MS4 Permit  
Deadline: 3/14/11 by 12 noon

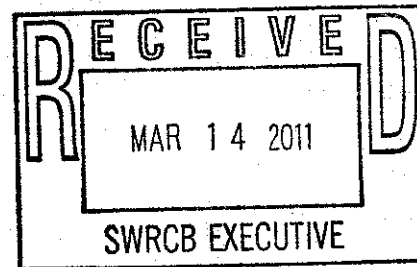
Eugene "Mitch" Mitchell  
Vice President  
State Governmental Affairs

925 L Street, Suite 650  
Sacramento, CA 95814

(916) 492-4245  
emitchell@semprautilities.com

**VIA E-mail: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)**

March 14, 2011



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

**Re: Comment Letter – Draft Statewide National Pollutant Discharge Elimination system (NPDES) Permit for the Discharge of Storm Water Runoff from the California Department of Transportation’s (Department) Municipal Separate Storm Sewer System (MS4)**

Dear Ms. Townsend:

Sempra Energy’s regulated utilities, San Diego Gas & Electric Company and Southern California Gas Company (collectively, the “Utilities”), appreciate this opportunity to provide the State Water Resources Control Board (“SWRCB”) with comments on the 2011 Draft Statewide National Pollutant Discharge Elimination System (“NPDES”) Permit for the Discharge of Storm Water Runoff from the California Department of Transportation’s (“Department”) Municipal Separate Storm Sewer System (“MS4”) (“Draft Permit”).

Delivery of essential public services requires routine and emergency construction, operation, inspection, maintenance, repair and replacement of utility and other linear infrastructure. A primary mandate to utilities and other entities with linear facilities regulated by the California Public Utilities Commission and/or other state and federal regulatory agencies is to provide safe and reliable service. Since the Utilities have thousands of miles of linear facilities throughout southern California, to accomplish this mandate they each need an efficient and timely process to obtain any required permits and authorizations for their work. These operations and activities often cross Department rights of way.

The Draft Permit would establish requirements for Department and non-Department construction and non-construction activities within the Department’s rights of way. Non-Department Activities are defined as “Third party activities that are primarily controlled by encroachment permits, leases, and rental agreements. They include both construction activities and non-construction activities”. The Draft Permit would impose requirements on the Utilities activities that occur within the Departments rights of way.

The Utilities offer the following comments and urge the SWRCB to revise the Draft Permit consistent with them to provide consistency between NPDES permit programs and with NPDES regulations.

**The Draft Permit should not subject Linear Underground/Overhead Projects (LUPs) to post-construction requirements.** State Water Resources Control Board Order 2009-0009-DWQ (National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities or “CGP”) states in Finding 76 that “LUP projects are not subject to post-construction requirements due to the nature of their construction to return project sites to preconstruction conditions”. However, the Draft Permit would apply its “Project Planning and Design” Section (Section E.2.d.) requirements to all non-Department development and redevelopment projects (See Section E.2.d.1.a.i.2.b). This establishes a conflict with those LUPs subject to and constructed pursuant to the CGP within the Department’s

rights of way. The same rationale used in the CGP to not require post-construction requirements for LUPs should also apply to LUPs that are not subject to the CGP (i.e., less than an acre of soil disturbance) and to other projects and activities not defined as construction activity or otherwise not subject to the CGP. **The Utilities urge the SWRCB to modify Section E.2.d. to clarify that it does not apply to LUPs and to other projects and activities not defined as construction activity or otherwise not subject to the CGP.**

**Conditionally exempt non-storm water discharges should be allowed if they have not been identified as significant sources of pollutants or, if they have been identified as significant sources of pollutants, they have implemented BMPs to effectively reduce the pollutants so they are no longer a significant source of pollutants.**

Provision B.2. of the Draft Permit addresses "Conditionally Exempt Non-storm Water Discharges" and states that the listed non-storm water discharges are conditionally exempt from Prohibition 1 unless:

"...the Department, State Water Board Executive Director, or the appropriate Regional Water Board Executive officer identifies them as sources of pollutants to receiving waters. For discharges identified as sources of pollutants, the Department shall either eliminate the discharge or otherwise effectively prohibit the discharge." (Emphasis added)

California Water Code, Chapter 5.5 contains requirements for the State of California's implementation of the federal NPDES program. These requirements provide that NPDES program requirements established by California pursuant to its authorization from the federal government need to be consistent with federal NPDES regulations. (Water Code §§ 13370(c), 13372(a) (Chapter 5.5 to be consistent with the federal program)). The requirements in the Draft Permit for non-storm water discharges are not consistent with NPDES regulations. Code of Federal Regulations, title 40, section 122.34(b)(iv) requires a MS4 to "address" the non-storm water discharges when they are "significant sources" of pollutants. It does not require a discharge prohibition of these sources if they are not significant sources or if BMPs have been implemented that reduce the pollutants to a state of insignificance. **The Utilities urge the SWRCB to revise the Draft Permit in Provisions B.2-5 and other sections of the Draft Permit to allow the discharge of non-storm water discharges that have not been identified as significant sources of pollutants or, if they have been identified as significant sources of pollutants, they have implemented BMPs to effectively reduce the pollutants so they are no longer a significant source of pollutants.**

The above comments and requested changes are made with citations to specific sections in the Order, but are also equally applicable to the balance of the Draft Permit (e.g., Fact Sheet, Appendices, Attachments, etc.).

**The Utilities urge the SWRCB to make the enclosed requested revisions to the Draft Permit (i.e., to all applicable sections of the Draft Permit).**

Please feel free to contact Fred Jacobsen (San Diego Gas & Electric Company) at 858-637-3723 if you have any questions concerning the enclosed comments.

Sincerely,

*Mitch Mitchell*