Public Comment
Phase II Small MS4 General Permit
Deadline: 9/8/11 by 12:00 noon

These comments are being submitted by a citizen and working professional - Bruce H. Lund, CISEC 0497, CSwI 3051. I have more than 30 years of erosion and sediment experience beginning with a tour in the US ACE (548th Engineering Battalion) in the 1970s when the CWA was being rolled out, 2 years with State lands Commission & 12 years with NOAA/National Ocean Service doing tidal, shoreline and estuary work including erosion mapping, 5 years in vineyard work including erosion control consulting, 3 years with the "Left Bank" residents working to effect positive changes to the St Helena flood control project on the Napa River and continuing to work with Napa RCD on erosion projects in the back country, and on top of or around these other activities - 20 odd years in State Parks doing erosion and sediment control related work.

The comments below are arranged in the order of subjects presented in the Draft Order, the Fact Sheet (which seem to parallel each other), Table 1, and the Annual Reporting Requirements. The comments are being offered from the point of view a person consulting with a New or Non-Traditional Small MS4.

Background – Stakeholder Process:

The process seems to be flawed in that the stakeholder audience does not appear to have included any permittees or active storm water professionals from the private sector? It seems only prudent to have each of the classes of permitted jurisdictions listed in Table 1 present during the design of the new permit – or at least during final shaping and editing.

There are just too many things about how some of these jurisdictions operate that must be unknown to the parties in the original closely held stakeholder process. Having the Regional Boards and the Office of Water Projects act as surrogates for all classes of permittees and the commercial storm water sector is inappropriate. It seems that much of the language of the permit will have to be partially re-tooled with the help of impacted stakeholders or private sector consultants to meet the needs of the various classes of permittees.

That is not to say that the intent of any one section of the draft permit should be shelved, but that there is room for clarification and detail tuning that will help the local jurisdictions get to the desired end result.

Calculating effective populations for New and Non-Traditional Small MS4s:

The draft permit is unclear or possibly wrong on how populations should be determined? Schools usually have their population in place between say 6:30AM and 4:00PM. Some Colleges and Universities have night and weekend classes, but they are fraction of the general population on a daily basis. Parks, Beaches, and Recreation Areas have much of their population as "day users" with day passes and the like. Some of these sites allow some camping, so the "overnight" population is a subset of the whole visitor load.

The Board should consult with Reagents, School Administrators and Directors of Park Departments to determine reasonable language to create a ***Population Factor*** for these sites. Total enrollment or ticket sales divided by calendar days is wholly inadequate to model the actual human activity foot-print at most of these sites. Some of these sites don't have gates and don't have a way of counting who is where at any given moment (uncontrolled day use or primitive camping w/o designated sites). This must be reworked back through the expanded stakeholder process. I could see a consultation with say East Bay Regional Parks as a good surrogate for this category of jurisdiction.

Post Construction Storm Water Management for New Development and Re-development:

From the standpoint of many Parks and Recreation Areas, there are significant historic properties involved in many of these settings. It is understandable that the Board will want old and inefficient water management measures done away with or modified, but this cannot happen without the full buy-in of the State Historic Preservation Officer (SHPO) in addition to the effects on education and interpretation of the historic settings, features and landscapes.

Many of these sites have a wide ranging educational roll. This is an ideal place where cooperative projects between the Water Boards and the local site can demonstrate the "old ways" and the new better approaches. In many cases the "old ways" can be left in place as mitigation and for interpretation while demonstrating how new approaches benefit all parties.

Even if sites undertake disguised measures, the construction costs will be much higher than typical developer locations. Some of these costs will have to be borne by alternate funding with the support of the State and Regional Boards. This should be mentioned in the permit document – at least footnoted. The draft language is long on supporting cooperating agreements between regional players for other subjects. In this case the Permit should state that the Water Boards will assist the site owner in getting to the desired goals within listed historic properties.

Language must be added to the permit recognizing Federally and State Listed historic properties as separate and distinct from modern urban landscapes. Historic landscapes – urban or rural – must be allowed to remain and be measured by modified standards. MEP should mean something different for listed historic sites and properties. It might be that solution implementation might be allowed a little longer, or that such projects will receive written support in searching for alternative funding, or the like.

Large historic town sites should be directed to inventory all the water management features with annotation as to whether they are primary historic

feature for interpretation or not. That information should be uploaded to SMARTS so all interested parties can see the need and intent in any upgrade or modification. And then the storm water mitigation plans should be submitted to SHPO for consultation. Only after receiving by-in from SHPO, should working drawings an project budget be considered. Up to that point there are still too many unknowns.

Total Maximum Daily Load (TMDL) – Federal Waste Load Allocation:

The comment that [permitees] "do not exhibit the rational for BMP selection or draw connections between those BMPs selected and eventual waste load reduction" is offensive and dismissive. No professional in this business selects BMPs based on whimsy. They are always selected with the concepts of reduced output or containment of the constituent of concern. It is true that in some cases, inexpensive or less-effective BMPs are selected and installed because that is what is in on hand or affordable with the working budget. Often, the site operator will evaluate the failure rate of these lesser BMPs before approaching the budget folks to get the needed finances to install more effective BMPs. But that is a iterative approach taught by all past practices of the Water Boards, US EPA, and other oversight agencies and is required before the jurisdictions coffers will supply the needed resources for the more permanent or effective installation. Please rewrite this section to take these factors into account.

XII. Storm Water Management Program for Non-Traditional MS4s:

Construction Site Run-off Control ...:

Parklands and Recreation Areas (all types) often have "*in-holdings*" and may be approached by some classes of developers to do things like extract geo-thermal energy, mine minerals (if the mine predates the Park or recreation Area formation), extract oil& gas, and the like. Some parks are the size of small counties. Taking away the ability to issue storm water permits for these activities while still being the "receiving property" makes the park lands the worst possible scenario – they essentially become treatment areas for someone else's commercial activity added to their own effluent budget. They will be exploited and become dumping grounds.

Parks and Recreation Areas must have the full ability to sub-permit within their jurisdiction for storm water management within their borders, whether it's for a new cabin on a family owned in-holding, or a new geo-thermal well being drilled adjacent to a park feature, or part of the "Smart Grid" crossing the previously pristine landscape (who's service roads and pads will be the biggest erosion problem out there).

This function of all traditional MS4s is a place where these public entities should partner with the County or the Regional Board for permit issuance and follow-up.

Most of these jurisdictions have Rangers who can enforce state and local laws and ordnances. Add that backing to shared inspection and it is doable. It is added workload, but the cost should be borne by the commercial interest trying to "exploit" the resources inside a Park or Recreation Area. Carving them out and denying this enforcement ability while still making them the run-on receiving properties for these development sites harms everyone and ties the hands of local land manager. Please re-think this?

Standard Provisions

4. Enforcement:

e. The water board should not direct a permittee on what constitutes a "***defense***" for purposes of an enforcement action. That seems to be between the permittee and their attorney and may be carried out, not only in the court of public opinion, but within the halls of the legislature. Many of the Non-Traditional MS4s in Attachment C cannot sign onto the non-defense clause since their actions in operating their facilities were authorized by some public administrative body. For State Agencies, that authorization came from the Legislature in law, same as the water code. Shutting down operations will have to be negotiated on a case by case basis and may not get the desired result. Once operations cease, so do revenues and therefor the ability to budget mitigation. You may end up with another kind of a mess and a political backlash. Please strike this sub-section entirely.

E.4.b. Statement – co-signed by the jurisdictions attorney? Does this permit intend to make the jurisdictions attorney part of Legally Responsible Persons group? Does the Water Board plan on taking action directly against the attorneys? Where does client privilege and confidentiality come in here?

I think you are asking that these jurisdictions get a legal opinion stating that they have the authority to meet 40 CFR 122.26(d)(2)(i)(A-F). Seems that should be a separate filing than the annual report. Why is it buried in the annual reporting section? If it's a condition of the permit, just say it up front in the order. Seems odd burred in annual reporting.

Conclusion: I think this permit is generally workable. I do think it is overly cumbersome and obscures the intent here and there. I also think it gets too much into picking and choosing winners and losers in the development arena, especially on public lands or within historic sites or landscapes. Since this permit will affect the majority of small towns and rural setting with collections of residents, it will touch most Californians in some way. It seems that it could do so in a more positive way by helping to protect our "special places" and work

more closely with SHPO and the administrators of large public landscapes to actually benefit those operations and get to clean water?