



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
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Public Workshop
 Revised Draft Phase II Small MS4 Permit
 Deadline: 12/17/12 by 12 noon

December 14, 2012



2012

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

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Tom Radulovich
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Subject: BART Comment Letter – Revised Draft Phase II Small
 MS4 General Permit

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This letter contains the comments of the San Francisco Bay Area Rapid Transit District (BART) to the State Water Resources Control Board (State Board), regarding the revised draft National Pollutant Discharge Elimination System General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s), released on November 16, 2012 (Revised Draft Permit).

Comment 1

BART appreciates the revision in the Revised Draft Permit, section F.2, adding transportation agencies to the list of permittees exempt from reporting requirements that could pose a security risk and/or compromise facility security.

Comment 2

The Revised Draft Permit includes several new provisions on coordination between non-traditional small MS4 permittees and adjacent Phase I MS4 permittees, e.g., section F.5.b.1(iii) (education and outreach programs) and sections F.5.d and d(i) (developing illicit discharge detection programs and implementing outfall data collection). However, it is not clear whether such coordination is an option or a requirement; e.g., section F.5.b.1(iii) provides that: “Some level of coordination of education and outreach efforts with an adjacent Phase I MS4 Permittee is recommended/anticipated for watershed/region-wide consistency” (emphasis added). Moreover, coordination would not always be helpful or in the public interest. Where appropriate, coordination with adjacent Phase I MS4s can enhance consistency and efficiency, for example, with some non-traditional categories, such as community colleges and prisons that are adjacent to or surrounded by a single Phase I MS4, where coordinated activities would be relatively simple and cost-effective. However, BART and other transit agencies are adjacent to an impractically large number of different Phase I MS4s along different segments of their extended systems. Requiring coordination with multiple adjacent MS4s would lead to inefficiency, inconsistency and potentially higher and



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redundant costs, e.g., if transit agencies are called on to contribute funding to education programs conducted by each of the neighboring operators. The permit should therefore clarify that coordination with adjacent Phase I MS4s is an optional recommendation where it is beneficial, but is not required or “anticipated” of all non-traditional permittees.

Comment 3

As BART previously commented, the State Board cannot require permittees to certify that they have legal authority which is beyond the scope of their legal powers. This limitation is now acknowledged in the Revised Draft Permit (p. 23), which clarifies that permittees are not required to demonstrate legal authority which is beyond that allowable under state and local law – but this clarification found in section E applies to only *traditional* small MS4s:

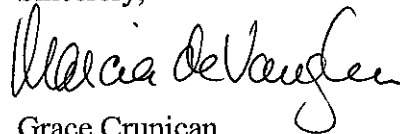
Within the second year of the effective date of the permit, the Permittee shall review and revise relevant ordinances or other regulatory mechanisms, or adopt any new ordinances or other regulatory mechanisms, to obtain adequate legal authority, to the extent allowable under state or local law, to control pollutant discharges into and from, as applicable, its MS4, and to meet the requirements of this Order.

Revised Draft Permit, section E.6.a(i) (underlining indicates new text in the November 16, 2012 revision).

The same clarification should be provided in section F.5.a(ii) with respect to non-traditional categories. Indeed, it is even more necessary for the non-traditional permittees, many of which are limited by their authorizing legislation to narrower legal powers than those of traditional permittees such as municipalities.

Thank you for considering BART’s comments. Please contact me if you have any questions or wish any further information regarding our comments.

Sincerely,



Grace Crunican
General Manager