



July 23, 2012

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Comments on Proposed Municipal General Permit for Phase II Entities

The Port of Oakland is a Non-Traditional MS4 Phase II jurisdiction and is expected to be listed as such under the proposed MS4 Permit by the San Francisco Bay Area Regional Water Quality Control Board. Under the Tidelands Trust Act, the Port owns waterfront land serving as Marine Terminals, owns and operates Oakland International Airport, and develops property along the Oakland Estuary. Much of the land has already been developed and is paved for dedicated transportation-related purposes.

The Port supports the efforts of the State Water Resources Control Board to control pollution from non-point sources such as storm water runoff. We recognize the difficulty in standardizing detailed requirements across many jurisdiction entities. Ports offer their own regulatory challenges. To allow the Permit to better address Port operations, we present the following comments:

1. *Photographing and inspecting outfalls F.5.d.(ii)(b) and F.5.d.1:* At Port of Oakland marine terminals and along the Oakland Estuary, storm drain outfalls typically drain into the Bay while fully submerged. Most outfalls are only visible at minus tides and many emerge under wharfs and piers, making access difficult and dangerous. In addition, tides can flow up the pipes for hundreds of yards and flow out again as the tide recedes.

Recommendation: : We propose that normally submerged outfalls be exempt from photography, sampling and regular inspection.

2. *Triggers for treatment and Low Impact Design:* The Port is built on historic fill, which is subject to subsidence, and damaged areas, which could exceed 10,000 square feet, are regularly stripped of pavement, leveled, and repaved. Much of the paved surface at the Port is far removed from a point of discharge into a storm drain system. As written, we believe this activity would trigger various aspects of LID and post-construction treatment in locations where LID and treatment is infeasible or of *de minimus* water quality benefit.

Recommendation: As an alternative, we propose that an equivalent area be mitigated off-site and that the owner be allowed to bank treatment credits when mitigation projects larger than the required area are undertaken. We further propose that land be assigned a value for treatment, for example, 2% of project costs, which could be banked and accumulated and used for larger mitigation off-site. A “banking” system would allow better and more predictable budgetary control for both maintenance and capital projects. In summary:

1. Provide allowance for offsite mitigation of an equivalent existing impermeable area.
2. Allow banking of mitigation credits.
3. Determine a standard value for post construction treatment and LID construction and allow banking of those costs toward a mitigation project for retrofitting existing impermeable surfaces.
4. To the extent exemptions cannot be undertaken on the basis of infeasibility, the permit needs to include an express option for obtaining RWQCB concurrence with alternative compliance or exemptions.

3. *Hydromodification, F.5.g.3(ii):* Historically, the Port of Oakland has generally not been subject to stormwater hydromodification requirements because the majority of our outfalls flow directly into San Francisco Bay, typically under water. There is no danger of erosion or other damage to waterways. In addition, infiltration can mobilize stable subsurface contaminants that could eventually reach waterways. We propose that hydromodification requirements not apply to these situations since the requirements offer no water quality benefit.

Recommendation: Provide exemptions from hydromodification requirements where they provide no water quality benefits, such as in the examples, above.

4. *Redundancy between MGP and IGP, F.5.f.1. & F.5.f.5:* The requirements for inspection of Permittee owned and operated facilities are redundant with the Industrial General permit.

Recommendation: MS4 -owned/operated facilities covered by the Industrial General Permit should be exempted from MGP oversight/inspection requirements because they are redundant with the IGP, creating unnecessary recordkeeping and reporting obligations, and providing no incremental improvement to water quality. Alternatively, such facilities could be covered by the MGP and exempted from IGP requirements through an IGP modification.

5. *Security*: Airport and seaports need to keep storm drain maps confidential for security reasons.

Recommendation: Security exemptions should be added to F.2. (p. 77). Suggested language could be: "When storm drains could allow unauthorized access into facilities regulated under Federal security rules, e.g., airports and seaports, storm drain maps are exempt from public posting, but must be made available to Board staff upon request."

6. *Industrial Inspections*: As part of their obligation to inspect industrial facilities, non-traditional MS4s should not be made responsible for identifying applicable SIC codes or ensuring IGP compliance, because disagreements about to which facilities the Permit applies are expected.

Recommendation: Questions of applicability, when they occur, should be better referred to the Regional Board.

7. *Public Education, E.7.a. (p 24)*: A feasibility exemption is needed for measuring and/or documenting changes in behavior or increases in awareness resulting from public education. For example, the large population traveling through airports is transient, and there is no way to ascertain whether educational efforts resulted in changed behavior or increased awareness. Under such circumstances, it is more appropriate to exempt transient populations from requirements to quantify the effectiveness of education, and to allow the MS4 to focus more productively on the non-transient population, in this case, airport workers.

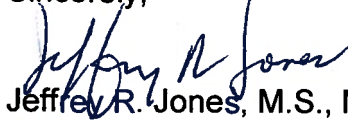
Recommendation: The MS4 should have the discretion to identify their appropriate target audience, including, when appropriate, exclusion of "school-age children." A seaport, airport or hospital, for example, does not normally have an audience of school-age children that would enable them to "conduct stormwater education" in other than passive ways (signage).
E.7.a. (p. 25.)

8. *Habitat Enhancement, E.11.i*: The permit requires habitat enhancement features in the design of "all new & rehabilitated flood management projects".

Recommendation: While we are unsure if this provision applies to non-traditional MS4s, it is important that there be an exemption when creating habitat that attracts wildlife poses a significant threat to public safety, such as the hazard to aviation posed by birds at airports.

Thank you for your consideration. If you any questions regarding stormwater pollution prevention at the Port of Oakland or ports in general, please contact me at 510-627-1360 or jjones@portoakland.com.

Sincerely,



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