



Public Comment  
Draft Phase II Small MS4 General Permit  
Deadline: 7/23/12 by 12 noon

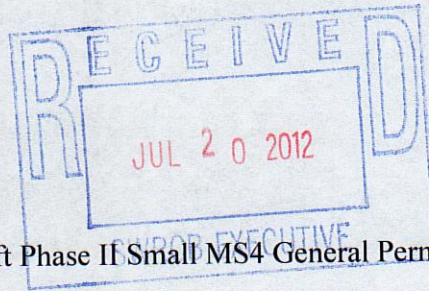
# CITY OF DALY CITY

Department of Water and Wastewater Resources  
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Patrick Sweetland, Director

July 17, 2012

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> floor,  
Sacramento, CA 95814



Subject: Comment Letter – 2<sup>nd</sup> Draft Phase II Small MS4 General Permit

Dear Ms. Townsend,

The City of Daly City appreciates the opportunity to comment on the 2<sup>nd</sup> Draft Phase II Small MS4 General Permit. Although the City of Daly City will not be directly subject to this permit, it is our agency's understanding that current language contained in Provision D will likely become precedential for future permit renewals and hence our interest to comment now.

At issue is last year's 9<sup>th</sup> Circuit Court of Appeal decision (*NRDC v. County of Los Angeles*) holding a municipality strictly liable for violations of its permit if its discharges cause or contribute to an exceedance of a water quality standard in the receiving waters. The ruling eliminates previous interpretative guidance (State Board Policy WQ 99-05) historically provided on discharge exceedances to municipal discharges enabling the implementation of an "iterative process" to identify the pollutant, review and select control measures to address the pollutant, and prepare a schedule for addressing the discharge. The allowance acknowledged that stormwater pollution is not created by municipal discharges, nor is it completely within the municipality's control, thus the need for an adaptive or iterative process with the permit to address the pollutants. Unless corrective action is taken by the State Board, this decision potentially places every municipal stormwater discharge within California at risk for immediate non-compliance with their NPDES permit.

The City of Daly City respectfully requests that the State Board amend Provision D to incorporate the California Stormwater Quality Association (CASQA) Receiving Water Limitations language. Daly City concurs with CASQA Chair Richard Boon when he noted "the existing receiving water limitations provisions found in most municipal permits needs to be modified to create a basis for compliance to provide sufficient rigor in the iterative process to ensure diligent progress in complying with water quality standards but also allows the municipality to operate in good faith with the iterative process without fear of unwarranted third party action". CASQA's suggested language could be used as a model when amending other stormwater permits and is attached to this letter.

Thank you, Ms. Townsend, for your attention of consideration of these comments.

Sincerely,

Patrick Sweetland, Director  
Daly City Department of Water and Wastewater Resources

L12-114 {Attachment}



## CASQA Proposal for Receiving Water Limitation Provision

### D. RECEIVING WATER LIMITATIONS

1. Except as provided in Parts D.3, D.4, and D.5 below, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of any applicable water quality standard.
2. Except as provided in Parts D.3, D.4 and D.5, discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause a condition of nuisance.
3. In instances where discharges from the MS4 for which the permittee is responsible (1) causes or contributes to an exceedance of any applicable water quality standard or causes a condition of nuisance in the receiving water; (2) the receiving water is not subject to an approved TMDL that is in effect for the constituent(s) involved; and (3) the constituent(s) associated with the discharge is otherwise not specifically addressed by a provision of this Order, the Permittee shall comply with the following iterative procedure:
  - a. Submit a report to the State or Regional Water Board (as applicable) that:
    - i. Summarizes and evaluates water quality data associated with the pollutant of concern in the context of applicable water quality objectives including the magnitude and frequency of the exceedances.
    - ii. Includes a work plan to identify the sources of the constituents of concern (including those not associated with the MS4 to help inform Regional or State Water Board efforts to address such sources).
    - iii. Describes the strategy and schedule for implementing best management practices (BMPs) and other controls (including those that are currently being implemented) that will address the Permittee's sources of constituents that are causing or contributing to the exceedances of an applicable water quality standard or causing a condition of nuisance, and are reflective of the severity of the exceedances. The strategy shall demonstrate that the selection of BMPs will address the Permittee's sources of constituents and include a mechanism for tracking BMP implementation. The strategy shall provide for future refinement pending the results of the source identification work plan noted in D.3. ii above.
    - iv. Outlines, if necessary, additional monitoring to evaluate improvement in water quality and, if appropriate, special studies that will be undertaken to support future management decisions.
    - v. Includes a methodology (ies) that will assess the effectiveness of the BMPs to address the exceedances.
    - vi. This report may be submitted in conjunction with the Annual Report unless the State or Regional Water Board directs an earlier submittal.



- b. Submit any modifications to the report required by the State or Regional Water Board within 60 days of notification. The report is deemed approved within 60 days of its submission if no response is received from the State or Regional Water Board.
  - c. Implement the actions specified in the report in accordance with the acceptance or approval, including the implementation schedule and any modifications to this Order.
  - d. As long as the Permittee has complied with the procedure set forth above and is implementing the actions, the Permittee does not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the State Water Board or the Regional Water Board to develop additional BMPs.
4. For Receiving Water Limitations associated with waterbody-pollutant combinations addressed in an adopted TMDL that is in effect and that has been incorporated in this Order, the Permittees shall achieve compliance as outlined in Part XX (Total Maximum Daily Load Provisions) of this Order. For Receiving Water Limitations associated with waterbody-pollutant combinations on the CWA 303(d) list, which are not otherwise addressed by Part XX or other applicable pollutant-specific provision of this Order, the Permittees shall achieve compliance as outlined in Part D.3 of this Order.
5. If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with Parts D.1 and D.2 above, unless it fails to implement the requirements provided in Parts D.3 and D.4 or as otherwise covered by a provision of this order specifically addressing the constituent in question, as applicable.