



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

APR 17 2013

W. Dale Harvey
Senior Engineer
Central Valley Regional Water Quality Control Board
1685 E. Street
Fresno, CA 93706

Re: Draft MS4 Permit for Fresno Area (Permit No. CA0083500)

Dear Mr. Harvey: *Dale*

The following are EPA Region 9's comments on the draft NPDES permit (permit No. CA0083500) for discharges from the municipal separate storm sewer system (MS4) operated by the Fresno County Flood Control District and its co-permittees, which the Regional Board released for public comment on March 14, 2013. In an email dated February 28, 2013, we provided comments on an early version of this draft permit. Following below are our comments on the latest draft permit. With the clarifications and relatively minor revisions noted below, we believe the permit would be ready for adoption and we would support adoption at the Board's May 2013 meeting.

A. Total Maximum Daily Load (TMDL) Requirements

In our emailed comments of February 28, 2013, we noted there are no approved TMDLs with wasteload allocations (WLAs) applicable to the permittees covered by the draft permit. The fact sheet also indicates that the Regional Board may reopen the permit in the future to incorporate TMDLs with applicable WLAs that are approved during the term of the permit. To expedite implementation of such TMDLs, we had recommended the permit include a provision similar to Section O of the 2012 MS4 permit for Salinas (Permit No. CA0049981) issued by the Central Coast Regional Board that requires development and submittal within one year of final TMDL approval of a plan for complying with newly approved TMDLs. We are pleased to see the latest draft permit for Fresno includes such a provision.

We also believe the fact sheet discussion of TMDLs needs revision concerning two issues. First, the fact sheet indicates the State's 2010 Integrated Report has not been approved by EPA Region 9 and hence the 2006 Clean Water Act (CWA) Section 303(d) list of impaired waterbodies is still the current list. The 2010 CWA Section 303(d) list was approved by EPA Region 9 in October 2011; see: http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml. In addition, the fact sheet indicates the reach of the San Joaquin River from Friant Dam to Mendota Pool (which receives discharges from the Fresno MS4) is not on the 2006 CWA 303(d) list. However, this reach of the San Joaquin River is found on the 2006 list

and also the newly approved 2010 list. We recommend the fact sheet be revised accordingly. Further, the fact sheet should identify any other waterbodies receiving Fresno MS4 discharges that are also on the latest CWA 303(d) list.

B. *Low Impact Development (LID) Requirements*

In our emailed comments of February 28, 2013, we recommended the Board ensure that the LID requirements of the Fresno MS4 permit are generally consistent with other recent MS4 permits issued in California, while also recognizing the climatic differences around the State and the variations in stormwater management, such as the widespread use of retention basins in the Fresno area. We had also recommended the fact sheet for the Fresno permit explain in more detail how the Fresno permit would be consistent with other recent permits and ensure compliance with the CWA requirement to reduce pollutants from new development/redevelopment to the maximum extent practicable (MEP); we are pleased to see additional discussion of this matter in the latest fact sheet.

The fact sheet contends that the performance of the Fresno stormwater basins exceeds the performance of similar controls that would be required by the LID requirements of other recent California MS4 permits. As such, the existing controls should be considered compliance with MEP – essentially as regional controls, which are an LID compliance option provided by other MS4 permits and also accepted by State Board Order WQ 2000-11, establishing Standard Urban Runoff Mitigation Plans (SUSMP) treatment requirements. Although we would generally support the draft permit on the matter, the fact sheet seems to include different figures for the performance of the Fresno basins and we recommend it be clarified. For example, Section V of the fact sheet (page 7) indicates that 70 to 85% of all stormwater is recharged to groundwater with the remainder apparently discharged to surface waters. Section VII (page 22) notes that the basins are designed to store no less than 60% of average annual runoff; another figure of 90% can be found on page 22 for the fraction of annual runoff retained by the basins. Other recent California MS4 permits typically require on-site retention of the runoff from the 85%, 24-hour storm, which would translate into a requirement for retention of approximately 80% of average annual runoff using the measure of performance used in the Fresno fact sheet. Some MS4 permits (such as permit No. CAS004002 for Ventura County) also provide that the LID design storm may be based on 80% retention of average annual runoff. We recommend that the apparent inconsistencies noted above in the performance of the Fresno basins be addressed, and the fact sheet clearly demonstrate how the basins would exceed the LID requirements of other recent MS4 permits.

C. *Other Comments*

1. Permit Area

Finding #4 for the draft permit notes that the geographic area subject to the permit

can be found in Attachment A. The Board's intent appears to be to cover the Fresno urbanized area. We suggest this area be updated to cover, at a minimum, the urbanized area determined by the Census Bureau for the Fresno area from the 2010 census. A map of the 2010 urbanized area for Fresno can be found at:
<http://cfpub.epa.gov/npdes/stormwater/urbanmaps.cfm>

2. Reopener for Potential Revisions to State Board WQ Order 99-05

Section C of the Fresno draft permit includes receiving water limitations language consistent with State Board WQ Order 99-05, as do all other California MS4 permits. However, at a November 2012 workshop, the State Board indicated it may consider revising WQ Order 99-05, and recent MS4 permits (such as Permit No. CAS004001 for Los Angeles County) have been including a permit reopener to address potential revisions to WQ Order 99-05. We suggest a similar reopener for the Fresno permit (see Section VI.A.7.v of the Los Angeles permit).

3. EPA Audits of the Fresno Program

Finding #30 for the Fresno draft permit discusses EPA's 2009 audit of the construction component of the stormwater management program (SWMP) implemented by the Flood Control District, including the findings of the audit, the District's response and the permit provisions proposed to ensure the District's program is upgraded in response to the audit findings. While we agree with the new permit requirements addressing the audit, we suggest the fact sheet discuss the matter as well to increase its visibility. We recommend the fact sheet also include a discussion of EPA's 2005 audit, its findings and the response of the permittees to the findings.

4. Public Review of Updated SWMP

Section D.2 of the draft permit requires the submittal of an updated SWMP (for public review and comment, and for Board approval) addressing the new requirements of the draft permit. However, it's not entirely clear what procedures would be followed to provide for public review and comment. We recommend the fact sheet indicate that the Board will solicit public comment for a period such as 30 days, and consider public comments in its final decision to approve or disapprove the updated SWMP. This would ensure adequate public participation consistent with the 2005 decision by the Second Circuit Court in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486, and the 2003 decision by the Ninth Circuit Court in *Environmental Defense Center, Inc. v. EPA*, 344 F.3d 832.

5. Monitoring Program

The State Board is in the process of updating its indicator bacteria water quality standards to replace fecal and total coliform objectives with *E. coli* and enterococcus.

EPA recommends adding E. coli and/or enterococcus to the list of parameters to be monitored in order to be compatible with the upcoming water quality standards changes.

EPA and the Regional Board have expressed an interest in developing a San Joaquin River Regional Monitoring Program. This is anticipated to occur prior to the next renewal of this permit in five years. The Regional Board should consider adding reopener language to the permit to provide that the individual permit monitoring requirements may be replaced with Regional Monitoring Program requirements.

We appreciate the opportunity to provide our views on the draft permit. If you have any questions regarding this matter, please contact Eugene Bromley of the NPDES Permits Office at (415) 972-3510.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Smith', written in a cursive style.

David Smith, Manager
NPDES Permits Office (WTR-5)