

**Comments Received on draft Ventura County MS4 Permit
December 27, 2006**

**From: Ray Tahir
Environmental Compliance Services (TECS)**

To: RWQCB-LA

Date: March 2, 2007



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March 2, 2007

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CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD
LOS ANGELES REGION

Xavier Swamikannu
California Regional Water Quality Control Board
Los Angeles Region
320 West 4th Street - Suite 200
Los Angeles, CA 90013

Subject: Comments Regarding Draft Ventura MS4 Permit

Dear Dr. Swamikannu:

TECS Environmental is pleased to submit for your consideration comments regarding the Ventura County MS4 NPDES on several municipal Permittees.¹ Please note that these comments may also be submitted to you by individual Permittees as well.²

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1. Atmospheric Deposition

The draft Ventura Permit (DVP) contains a reference to atmospheric deposition under the findings section. Its effect on Permit regulatory requirements, however, is unclear. Given that the DVP calls for infiltration, which should be sufficient to address atmospherically deposited pollutants, there does not appear to be a need to deal with atmospheric deposition at all. It should also be mentioned that neither the draft North Orange County MS4 Permit nor the San Diego MS4 Permit references atmospheric deposition. In the case of Los Angeles MS4 Permittees, atmospheric deposition needs to be de-referenced because a number of municipalities are looking into funding an atmospheric deposition study as a means of reducing the WLA for metals. Since infiltration is going to be the structural control of choice, atmospheric deposition should be a non-issue.

¹Azusa, Baldwin Park, Carson, Cerritos, Commerce, Compton, Claremont, Duarte, Gardena, Inglewood, Irwindale, Lomita, San Dimas, San Gabriel, South Pasadena, Whittier, and Vernon.

Recommendation: Delete reference to atmospheric deposition.

2. Small Linear Underground/Overhead Construction Projects General Permit (LUP)

The LUP is extremely complicated, which may explain why San Diego County does not have an equivalent requirement in its recently adopted MS4 Permit and why the San Diego Regional Board has not proposed it for the North Orange County MS4 Permit, which is scheduled for renewal. Beyond this, it is unnecessary -- at least for municipalities.

This proposed Permit addition would: (1) subject municipalities to LUP requirements; and (2) compel municipalities to enforce LUP requirements on behalf of the Regional Board. The LUP seems superfluous for municipalities given that: (1) a GCASWP can also address removing or relocating lines and facilities; and (2) activities that have the potential for generating pollutants can be covered by specific BMPs in the public (municipal) agency program.

It is also worth noting that according to the LUP fact sheet, municipalities covered under an MS4 Permit may not even require compliance with the LUP. Because the GCASWP is significantly less complicated than the LUP, a GCASWP should be allowed for non-municipal dischargers. Or, perhaps minimum BMPs for LUP projects should be prescribed by municipalities.

Recommendation: Remove the LUP requirement to make it consistent with the San Diego and North Orange County MS4 Permits.

3. State Conformity Requirements

The DVP proposes to condition the issuance of grading, encroachment, demolition, building, electrical, or construction permit by requiring a GCASWP or a Small LUP. This requirement is unclear as to intent and purpose. While it makes sense to require evidence of having applied for a GCASWP or a Small LUP as a condition for a grading permit, it is not clear as to why the issuance of an encroachment, demolition, building, or construction permit would need this condition. If soil disturbance is the determinant, which is the case for the GSCAWP and LUP, then simply make it so.

Recommendation: Retain conditioning grading permit issuance on GCASWP or LUP application, but eliminate such condition for the other permit types.

4. Mandatory Installation of Catch Basin Debris Excluders

The DVP calls for the installers of trash excluders, or similar devices on catch basin inlets to prevent discharge of trash to the storm drain system on all catch basin inlets, no later than 180 days from Permit adoption. Because of the cost associated with this requirement, and because not all watershed areas of Ventura County are subject to a trash TMDL, perhaps it would be more prudent to require debris excluders only for those catch basins that are situated within a watershed area that is subject to a trash TMDL.

Beyond this, provide a schedule for installing the devices over a 5 year period instead of 180 days. 180 days is not enough time to install these controls, which for some municipalities could range from several hundreds to several thousands. It should be noted that not every catch basin can be retrofitted with a debris excluder. A field evaluation will need to be conducted to determine which ones can be. Then there is time needed to budget for the expenditure and select a vendor. Once the vendor is selected, installing the controls will depend on the number of catch basins and whether the vendor has the capability of installing them within a time frame that will be significantly less than 180 days. Further, given that there aren't too many catch basin debris excluder manufacturers to begin with, it is highly doubtful that the vendor(s) would be able to install debris excluders for all Ventura municipalities within this time frame.

Recommendation: Please address/discuss this issue with Permittees.

5. Absence of SUSMP Under Planning and Land Development Program

SUSMP is only mentioned under the findings section of the DVP. Nowhere, however, is it mentioned under the Planning and Land Development Program (the equivalent to the Los Angeles County MS4 Permit's Development Planning Program). Does this mean that the SUSMP has been eliminated – or is this just an accidental omission? It should be noted that the proposed North Orange County MS4 Permit and the San Diego MS4 Permit clearly call for a SUSMP under their development planning programs.

Recommendation: Please explain why SUSMP is no longer a Planning/Land Development sub-set.

6. Development Planning/Land Use Program: Infiltrate Only?

The development planning program contains language relating to treatment controls for subject development/re-development projects. Under 4.E, Planning and Land Development Program, all new development and re-development projects must, among other things: (1) *minimize pollutants emanating from impervious surfaces by reducing the percentage of effective impervious area*; and (2) *minimize the percentage of impervious surfaces on development lands to support the percolation and infiltration of storm water into the ground*. However, under Post-Construction Storm Water Mitigation Criteria (III.2.a) projects disturbing land areas less than 50 acres are required to install post-construction treatment BMPs, consistent with Part 4.E.1 (viz., the infiltration requirement). This requirement appears to be in conflict, however.

Part 4.E.1 essentially calls for infiltration. But section III.2.a calls for post-construction treatment controls, which it says -- in parenthesis -- to "infiltrate, filter, or treat." This means that non-infiltrative controls such as concrete detention basins, catch basin inserts, storm water interceptors, and other manufactured controls that filtrate runoff before discharging the clarified effluent to the MS4 are acceptable. The question is which requirement prevails?

This issue is also being raised because the Los Angeles Regional Board recently has been issuing notices of violations (NOVs) to subject planning priority projects (basically the same projects specified in the DVP) for not including infiltration as a post-construction pollution mitigation measure -- despite the fact that the MS4 clearly allows infiltration, filtration, or treatment.

Recommendation: Resolve conflict. Also define "land area." Is it the same soil as disturbance by grading, clearing, and/or excavating?

7. Development Planning/Land Use Program: Infiltration and Groundwater Contamination

The DVP has the potential to require widespread infiltration controls. However, nothing in it warns against siting infiltration controls in areas where there is the potential for infiltration to contaminate groundwater. The Regional Board has taken the position that a 10 foot distance between the infiltration control and water table is sufficient to bio-remediate contaminants. This is not mentioned in the DVP. Given the Regional Board's recent paradigm-shift from manufactured treatment to infiltration the potential impact infiltration can have on groundwater should be addressed. Subject projects should be evaluated for their potential to discharge pollutants to the sub-surface by non-stormwater runoff and

stormwater runoff that could contaminate groundwater. There should also be some discussion on how to deal with impermeable soil.

Recommendation: Do not mandate LID as a means of achieving infiltration. Instead, make it a strategy for so doing. In other words, it should be a means to an end instead of an end in itself.

8. Low Impact Development is Excessive

In addition requiring infiltration under the development planning/land use program, the DVP proposes to require all development and redevelopment projects to integrate Low Impact Development (LID) principles into project design. LID represents a viable strategy that Permittees should consider in meeting post-construction pollution mitigation requirements – not to mention certain TMDLs as well. Nevertheless, LID seems to have the potential to go beyond the basic purpose of the development planning/land use program, which is to reduce pollutants in post-construction runoff – a requirement that is already covered under the infiltrate, filtrate, or treat provision. Further, some requirements associated with LID have nothing to do with runoff quality. Techniques to minimize land disturbance and conversation appear to be among them. This is not to criticize the concept of LID. Indeed, LID offers several aesthetic and environmental benefits, but each community must decide whether it is appropriate.

Recommendation: Allow Permittees to use LID as an optional means of meeting infiltration requirements, to the extent feasible, and to meet certain TMDLs.

9. Trash Receptacle Deployment

The DVP proposes to require the installation of trash receptacles at all transit stops in commercial areas and near schools, no later than 6 months from the Order's adoption. Given that the DVP also calls for the installation of debris excluders for all catch basins, deploying trash receptacles as well seems superfluous. Further, providing 6 months to deploy trash receptacles is not sufficient time to budget and procure them.

Recommendation: Eliminate the trash receptacle deployment requirement or allow a Permittee to substitute a trash receptacle for a catch basin debris excluder. Extend the trash receptacle deployment deadline to one year from the adoption of the next Permit, provided that it is adopted 4 months before the Permittee's next budget is approved.

10. Treatment for Streets, Roads, Highways, and Freeways

This requirement calls for runoff treatment from streets, roads, highways, and freeways over 5,000 square feet. It is not clear, however, what treatment means here. Does it mean infiltration, filtration, or street sweeping? If it means infiltration, more discussion will be needed. There are definite disadvantages to infiltrating runoff into a street, not the least of which include injecting into sub-surface metals such as lead from vehicle emissions and hazardous materials releases caused by an accident.

Recommendation: Please clarify.

11. Trash Receptacle Deployment

The DVP proposes to require the installation of trash receptacles at all transit stops in commercial areas and near schools, no later than 6 months from the Order's adoption. Given that the DVP also calls for the installation of debris excluders for all catch basins, deploying trash receptacles as well seems superfluous.

Recommendation: Require either trash receptacles or debris excluders, but not both in the same areas.

12. Projects Disturbing Land Area 50 Acres or Greater

It is unclear as to why a separate category for projects 50 acres or greater requiring post-construction pollution mitigation is needed and why such projects must be:

Designed using an appropriate public domain hydrodynamic model (such as Storm Water Management Model (SWMM) 5 or Hydrologic Engineering Center – Hydrologic Simulation Program – Fortran (HEC-HSPF); and incorporate the following: (A) Rainfall intensity based on hourly rainfall records; (B) An adjustment factor for within hour rainfall variability; and (C) Hydraulics of BMP Performance.

Recommendation: Explain the rationale for creating a separate development planning/land use post-construction treatment requirement for projects 50 acres or greater (why 50 acres?). Also explain the need for hydrodynamic modeling.

13. Illegal Discharge Definition

This definition is exactly the same as an *illicit discharge*. Further, there is no reference to illegal discharge in federal stormwater regulations.

Recommendation: Explain the need to have a definition for illegal discharge given that they appear to be the same.

14. Illicit Connection Definition

The definition of illicit connection raises a couple of issues. First, as it is written, this definition could be interpreted to mean that even if an illicit discharge is released to the MS4 through an engineered conveyance it would be permissible as long as such conveyance is a "permitted connection" to the storm drain or has been authorized by a municipality. This is a separate and apart from the second part of the definition which is: *It also means any engineered conveyance **through which** discharges of pollutants to the separate storm drainage systems, which are not composed entirely of storm water or are not authorized by an NPDES permit.*

It is understood that legal authority is needed in the stormwater permit to force the removal of unauthorized or unpermitted connections to the storm drain – regardless of whether they are used, ultimately, to convey illicit discharges. But placing it under the definition of an illicit connection would only confuse matters. Instead, unpermitted or unauthorized connections should be dealt with under a separate definition called "**illegal connection**," which would mean: *any connection that causes an illicit discharge.*

Recommendation: Consider creating an illegal connection category that address unpermitted or unauthorized connections and revise the definition of illicit connection to be any connection that conveys an illicit discharge.

15. Illicit Disposal Definition

Illicit disposal means "any disposal, either intentionally or unintentionally of material or waste that can pollute storm water." The problem is that it is only referenced in the definition section of the DVP. Not only is its purpose unclear, but it seems to operate in the same manner as an illicit discharge. From an enforcement perspective this definition could pose a problem because of the issue of "intent."

Recommendation: Delete definition of illicit disposal or explain its relevance.

16. Pollutants of Concern Definition

Although Pollutants of Concern (POC) is referenced in several places in the DVP, there is no tangible definition of it. Clearly a definition would be helpful in determining what specific type of control technology would be required to meet the SUSMP (provided that it will be included in the Ventura Permit), a TMDL, or a numeric limit for a specific pollutant.

Recommendation: Provide a definition of POC or explain why one is not needed.

17. Reimbursement for Industrial Inspections

Under the current and proposed Ventura MS4 Permit, Permittees are required to inspect industrial facilities identified in Code of Federal Regulations 40, CFR 122.26(c). These facilities are required to obtain coverage under the General Industrial Activity Storm Water Permit (GIASWP) Program are obligated to annual permit fees. Since industrial permittees are required to pay a fee to the State Water Resources Control, which presumably includes the cost of inspection, the City should be entitled to a portion of the GIASWP fee to defray its inspection costs.

Recommendation: Consider reimbursing Permittees for inspections at a rate of \$300 per facility.

18. Reimbursement for Monitoring

Each Permittee pays an annual MS4 Permit Fee that amounts to several thousands of dollars, based on population. The fee also includes a surcharge. Permittees should be entitled to a portion of the annual fee to pay for Permit-related requirements such as monitoring.

Recommendation: Consider sharing annual MS4 Permit fees.

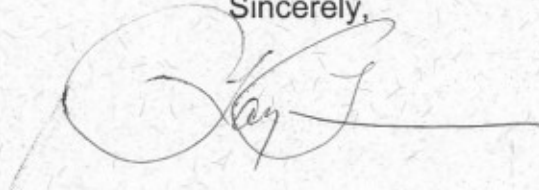
19. Increase De Minimus Municipal Water System Discharges

The DVP proposes to allow the discharge of 100,000 gallons to the MS4 per year without having to apply for a general NPDES discharge permit. The volume is too low and should be based on the size of a municipality's water system and its discharge needs. Further, a provision should be made for discharges that are made to spreading grounds and other unlined conveyances.

Recommendation: Invite further discussion of this matter and include municipal water producers.

TECS Environmental appreciates the opportunity to provide comments on the DVP, which I hope you find constructive, and looks forward presenting them at the April 5th workshop. In the meantime, should you have any questions please call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ray Tahir', with a long horizontal flourish extending to the right.

Ray Tahir