

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENVIRONMENTAL ANALYSIS, MS 27
1120 N STREET
P. O. BOX 942874
SACRAMENTO, CA 94274-0001
PHONE (916) 653-7507
FAX (916) 653-7757
TTY 711



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January 29, 2009

Ms. Lauren Clyde
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

Re: Basin Plan Amendment to Establish Exception Criteria to the Point Source Waste Discharge Prohibitions by Revising the Action Plan for Stormwater Discharges and Adding a New Action Plan for Low Threat Discharges

The California Department of Transportation (Caltrans) appreciates the opportunity to comment on the above referenced proposed Basin Plan Amendment. Caltrans stormwater discharges and non-storm water discharges are subject to a statewide MS4 permit or to the statewide General Construction Permit. These permits require Caltrans to comply with water quality standards including those established by Regional Boards. The MS4 permit currently exempts certain non-storm water discharges from regulation and conditionally exempts others. The proposed Basin Plan amendment will subject the exempt discharges to extensive regulatory burdens inconsistent with Caltrans current MS4 permit or the equally applicable statewide General Construction Permit.

With these points in mind, Caltrans offers the following suggestions:

1. Exempt storm water and non-storm water discharges, covered under an existing NPDES permit, from the Basin Plan's current prohibitions on point source discharges. Enforcement of the current NPDES permits should be sufficient to protect water quality and beneficial uses, will avoid duplicative regulatory schemes and thus further the legislative intent, as expressed in Water Code Section 13001, of a "unified and effective water quality control program in the state."
2. If the first suggestion is not possible, then seriously consider exempting certain nonstorm water discharges from the prohibition. These discharges, listed in Section B.2 of Caltrans current MS4 permit, include flows from riparian habitats or wetlands, diverted stream flows, springs, rising ground waters, and uncontaminated ground water infiltration. These discharges are exempt from the permit unless identified as sources of pollution to receiving waters. For Caltrans, examples of these discharges are:

- Hillside seepage from natural and cut slopes;
- Intermittent natural drainage through ravines and other ephemeral watercourses that may pass through right-of-way drainage facilities;
- Upgradient discharges (natural and manmade) into Caltrans facilities. For example, historical agricultural runoff is exempt from the NPDES program but may enter the roadway drainage system when these flows are located upgradient. Caltrans cannot block these flows without jeopardizing the physical integrity of the right-of-way or in many cases without violating surface water laws and incurring claims for inverse condemnation due to flooding.
- Underpasses: certain underpasses require pumping to prevent flooding during storms or due to rising groundwater. (Alternative discharge and minimization options are often limited. It is not appropriate or environmentally beneficial to direct clean groundwater to a POTW).
- Other drains to reduce hydrostatic pressure against surface and subsurface structures, for example weep holes from a retaining wall.
- Discharges by others: drinking water transport and transmission systems sometimes discharge during emergencies and for maintenance purposes within the right-of-way.

The proposed action plans will adversely impact Caltrans ability to effectively drain the highway system without unscheduled and potentially costly structural modifications to evaluate, control and or treat these naturally occurring non-storm water sources. Furthermore, these discharges are frequently not a threat to water quality, are not within the legal control of Caltrans in most cases, and are not under Caltrans physical control and yet they pose significant challenges to provide adequate and necessary drainage of the state highway system. The proposed Basin Plan amendment, requiring Caltrans to implement a general management program to eliminate or minimize non-storm water discharges into surface waters, may not be economically or technically feasible in all cases.

3. Exempt groundwater that contains high levels of naturally occurring pollutants from the prohibition. This assumes the groundwater is not contaminated with manmade substances and it should be exempt if it would otherwise enter the receiving water at the same rate of discharge and if it would only be *intercepted* by the MS4 facility. For example, an underpass drainage system will typically intercept groundwater, which is hydraulically connected and moving toward the down gradient waterway. The discharge of the intercepted flow directly to the waterway has no environmental consequence, since the groundwater would have entered the waterway regardless due to natural processes. However, if the extracted water would not otherwise enter the adjacent waterway, and if

the constituents are of significant concern, then site-specific risks will need to be determined.

Another issue arises when no other discharge options are available. For example, underpass dewatering often is a permanent ongoing function. Discharge could not occur based on the proposed amendments if the flow is not eligible for the low-threat exception. Permittees may be able to truck or pipe flow to a publicly owned treatment works (POTW) but at significant expense, and possibly with limited environmental benefits. Ideally, the amendments would not result in the ban of necessary discharges, and these discharges could be assessed on a site and constituent-specific basis.

Finally, on a couple of procedural notes, page 11 of the Staff Report indicates Caltrans MS4 permit covers all Caltrans discharges from construction sites and indicates Caltrans is not subject to the general construction permit. In fact, Caltrans MS4 permit incorporates the substantive provisions of the general construction permit by reference. The only exception is that Caltrans is not required to file Notices of Intent to Comply with the general construction permit, but instead files Notices of Construction with the Regional Boards. Otherwise, the compliance requirements are the same.

In closing, while Caltrans appreciates the opportunity to comment on the proposed Basin Plan amendments, I would like to remind the Board of the Water Code Section 13240 requirement to "consult and consider the recommendations of affected state and local agencies" during the process of promulgating and adopting regional Basin Plans. This requirement reasonably applies to sweeping and substantive amendments to the same. I am certain the Board would extend all reasonable courtesies to another state agency and look forward to working with you and your staff to assure protection of water quality and beneficial uses. If you have any questions, please contact Joyce Brenner of my office at (916) 653-2512

Sincerely,



SCOTT McGOWEN
Chief Environmental Engineer
Division of Environmental Analysis

cc: JGrewal, JBrenner