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SAN DIEGO REGIONAL  
WATER QUALITY  
CONTROL BOARD

September 14, 2012

California Regional Water Quality Control Board  
San Diego Region  
Ms. Laurie Walsh  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4340

VIA E-Mail: [lwalsh@waterboards.ca.gov](mailto:lwalsh@waterboards.ca.gov)

**RE: Comments and Recommendations Regarding the National Pollutant Discharge Elimination System (NPDES) Permit and Waste Discharge Requirements for Discharges from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds within the San Diego Region (Tentative Order No. R9-2012-0011, NPDES No. CAS0109266)**

Dear Ms. Walsh and Board Members:

The San Diego Gas & Electric Company (SDG&E) provides transmission and distribution of natural gas and electricity throughout San Diego County and southern Orange County. Delivery of these essential public services requires routine and emergency construction, operation and maintenance of its linear utility infrastructure. A primary mandate to utilities and other entities with linear facilities regulated by the California Public Utilities Commission and/ or other state and federal regulatory agencies is to provide safe and reliable service. The above-referenced draft MS4 permit (draft Permit) would impact SDG&E facilities in our service territory, which is located primarily within Region 9.

Our primary concern with the draft Permit is that in certain respects it contains language that is not consistent with the General Construction Permit (NPDES NO. CAS000002 ORDER NO. 2009-0009-DWQ), EPA regulations nor the State Water Board’s March 2012 “Exceptions to the Ocean Plan for Discharges to Areas of Biological Significance” findings. As written, the draft Permit would detrimentally impact the construction, maintenance and operations of our linear facilities. Our comments and recommended revisions to the draft Permit on specific issues are provided below.

**Illicit Discharges vs. Non-Storm Water Discharges**

**The draft Permit appears to use the terms “illicit discharges” and “non-storm water discharges” interchangeably throughout the draft Permit. These terms have different meanings and cannot be used interchangeably.** The draft Permit’s definition of illicit discharges excludes discharges subject to NPDES permits and discharges resulting from firefighting activities. That is, non-storm water discharges made pursuant to NPDES permits and discharges resulting from firefighting activities are not illicit discharges.

However, Finding 7 of the draft Permit states:

The federal regulations [40 CFR 122.26(d)(2)(iv)(B)] require the Copermittees to have a program to prevent all types of non-storm water discharges, *or illicit discharges*, from entering the MS4. **[emphasis added.]**

This finding appears to equate non-storm water discharges and illicit discharges and, as such, it is inconsistent with federal regulations [40cfr122.26(d)(2)(iv)(b)], which requires that the Copermittees have a program to:

“...detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate NPDES permit for) *illicit discharges* and improper disposal into the storm sewer.”  
[*emphasis added.*]

So under federal regulation, the Copermittees’s program must address illicit discharges (which do not include discharges made pursuant to NPDES permits and discharges resulting from firefighting activities) as opposed to “all types of non-storm water discharges” as stated in Finding 7.

This confusion is exacerbated by the draft Permit’s definition of “non-stormwater discharges,” which states:  
All discharges to and from a MS4 that do not originate from precipitation events (i.e., all discharges from a MS4 other than storm water). Non-storm water includes illicit discharges *and NPDES permitted discharges.* [*emphasis added.*]

Including “NPDES permitted discharges” in the definition of “non-stormwater” leads to the incorrect conclusion that, because the draft Permit prohibits discharges of non-stormwater to MS4s, NPDES permitted discharges are also prohibited. **We urge the RWQCB to revise the draft Permit to eliminate this confusion.**

#### **“Source of Pollutants” vs. “Significant Source of Pollutants”**

**The draft Permit is inconsistent with EPA regulations regarding the standard for when certain categories of illicit discharges need to be addressed.** Finding 7 of the draft Permit states:

The federal regulations [40 CFR 122.26(d)(2)(iv)(B)] require the Copermittees to have a program to prevent all types of non-storm water discharges, or illicit discharges, from entering the MS4. The federal regulations, however, allow for specific categories of non-storm water discharges or flows to be addressed as illicit discharges only where such discharges are identified as *sources of pollutants* to waters of the U.S. [*emphasis added.*]

The quoted federal regulation requires the Copermittees to address the listed illicit discharges when they are found to be a “significant source” of pollutants; however the draft Permit finding states this is required when the MS4 finds the discharge to be a “source” of pollutants. **We urge the RWQCB to revise this language (and Section E.2.a.3, E.2.a.6 and any other section based on 40 CFR 122.26(d)(2)(iv)(B)) to be consistent with the federal regulations.**

#### **Discharges to Areas of Special Biological Significance**

**The draft Permit should clarify that non-storm water discharges (e.g., potable hydrotest dewatering, groundwater dewatering discharges, etc.) made pursuant to NPDES permits to MS4 systems that discharge to Areas of Special Biological Significance (ASBS) are authorized.** These types of discharges are critical to on-going infrastructure development, maintenance and operation and the State Water Board’s March 2012 “Exceptions to the Ocean Plan for Discharges to Areas of Biological Significance” provides that the NPDES permitting authority can authorize these discharges to ASBS by making an appropriate finding in the applicable MS4 permit. **We urge the RWQCB to include the following language as part of Finding 30:**

“The ASBS exception authorizes the discharge of non-stormwater to a MS4 when an NPDES permitting authority finds that the discharge does not alter natural ocean water quality in the ASBS. Since NPDES permits for non-stormwater discharges contain conditions and requirements to protect water quality and many of these permits are for short-term and/ or intermittent discharges

(e.g., discharges from underground utility substructures, construction groundwater dewatering, and hydrostatic test water), the RWQCB authorizes their discharge to MS4 systems that discharge to ASBS.”

Further, Section 2.I.A.1.e. in Attachment A (non-storm water discharges to MS4s that discharge to ASBS) is missing language that was included in the adopted exception. **We urge the RWQCB to revise Section 2.I.A.1.e. in Attachment A (non-storm water discharges to MS4s that discharge to ASBS) to be consistent with the language adopted into the ASBS exception, as follows:**

e. Non-storm water discharges are prohibited except as provided below:

(1) The term “non-storm water discharges” means any waste discharges from a Municipal separate storm sewer system (MS4) or other NPDES permitted storm drain system to an ASBS that are not composed entirely of storm water.

(2)(i) The following non-storm water discharges are allowed, provided that the discharges are essential for emergency response purposes, structural stability, slope stability or occur naturally:

(a) Discharges associated with emergency fire fighting operations.

(b) Foundation and footing drains.

(c) Water from crawl space or basement pumps.

(d) Hillside dewatering.

(e) Naturally occurring groundwater seepage via a storm drain.

(f) Non-anthropogenic flows from a naturally occurring stream via a culvert or storm drain, as long as there are no contributions of anthropogenic runoff.

(ii) An NPDES permitting authority may authorize non-storm water discharges to an MS4 with a direct discharge to an ASBS only to the extent the NPDES permitting authority finds that the discharge does not alter natural ocean water quality in the ASBS.

(3) Authorized non-storm water discharges shall not cause or contribute to a violation of the water quality objectives in Chapter II of the Ocean Plan nor alter natural ocean water quality in an ASBS.

#### **Non-stormwater Action Levels**

**The draft Permit should not subject non-stormwater discharges made pursuant to NPDES permits to action levels.** Section II.C.1. would subject non-stormwater discharges to action levels. However, non-stormwater discharges that have NPDES permits are subject to their own discharge requirements. Setting additional, perhaps conflicting, requirements on these discharges is unnecessary and may lead to confusion. **We therefore urge the RWQCB to revise the draft Permit to clarify that the proposed non-stormwater action levels are not applicable to non-stormwater discharges that have NPDES permits.**

#### **Development Planning**

**The draft Permit should not subject linear underground/ overhead (utility) projects (or LUPs) to permanent post-construction requirements.** Section E.3. requires permanent BMP for all development projects. Construction of LUPs are regulated pursuant to the State Water Board’s Stormwater Construction General Permit (CGP). Finding 76 in the CGP specifically excludes LUPs from permanent post-construction requirements due the nature of their construction. For consistency with the CGP, this draft Permit needs to be revised to clarify that Section E.3. is not applicable to LUPs (including associated unpaved roads) as defined in the CGP. **We urge the RWQCB to make this revision.**

**BMP Operation and Maintenance for Roads**

Section E.5.c.4.b. requires the Copermittees to "...implement procedures during the operation and maintenance of public streets, unpaved roads, paved roads, and paved highways and freeways...". In order to be consistent with 40 CFR 122.26.d.iv.2.A.3., this section needs to clarify that these requirements are not applicable to private roads. This same issue was addressed during the adoption process for the MS4 permit for southern Riverside County (Order R9-2010-0016) and the language was revised to clarify that these requirements were applicable only to Copermittee maintained roads. **We urge the RWQCB to revise this language to be consistent with Order R9-2010-0016 and 40 CFR 122.26.d.iv.2.A.3., and state that the requirements are applicable only to public Copermittee maintained roads.**

Please call Fred Jacobsen at 858-637-3723 if you have any questions regarding our comments.

Thank you for this opportunity to provide you with our comments.

Sincerely,



Susan M. Hector  
Environmental Programs Manager