



County of San Diego



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July 19, 2017

Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Electronic Submission: commentletters@waterboards.ca.gov

Dear Ms. Townsend:

COUNTY OF SAN DIEGO COMMENT LETTER – SMALL MS4 PERMIT AMENDMENT

The County of San Diego (County) appreciates the opportunity to comment on the Proposed Amendment to the General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Small MS4 General Permit), implementing region-specific total maximum daily load (TMDL) requirements. Specific to the San Diego Region (Region 9), the County understands that the intent of the Proposed Amendment is to incorporate revisions to the Small MS4 General Permit to implement the San Diego Region Twenty Beaches and Creeks Indicator Bacteria TMDL (Bacteria TMDL), which lists Phase II Permittees as responsible parties.

Comments are organized according to the structure of the Proposed Amendment, and are intended to ensure consistency with how the Bacteria TMDL is addressed in the San Diego Region MS4 Permit (Order No. R9-2013-0001 as amended by Orders No. R9-2015-0001 and R9-2015-0100).

GENERAL COMMENTS

Comment 1: Replace the term "WLA" with "Water Quality Based Effluent Limit (WQBEL)" when referring to a numeric or BMP-based effluent limitation that must be met by the MS4s.

Throughout the Proposed Amendment, the term wasteload allocation (WLA) is used to describe the point source allocation assigned to the MS4s as defined within the TMDL as well as the effluent limitations incorporated into the Small MS4 General Permit. However, for the following reasons, the County recommends that the term "WLA" be revised to "Water Quality Based Effluent Limit (WQBEL)" when referring to a numeric or BMP-based effluent limitation that must be met by the MS4s. In essence, the Small MS4 General Permit should include WQBELs to implement the TMDL WLAs assigned to the Small MS4s.

This modified terminology will ensure that the WLAs will be incorporated into the Small MS4 General Permit with the flexibility that is inherent to how WQBELs may be expressed (as numeric values or BMP-based effluent limitations) and will be consistent with the approach used in the San Diego Region MS4 Permit.

- Finding 5 (San Diego Region MS4 Permit) - Where a TMDL has been approved, National Pollutant Discharge Elimination System (NPDES) permits must contain effluent limitations and conditions consistent with the requirements and assumptions in the TMDL. (40 CFR 122.44(d)(1)(vii)(B)) This approach is affirmed in USEPA's Permit Writer's Manual, which states, "[w]here there is a pollutant with a WLA from a TMDL, a permit writer must develop WQBELs or other permit requirements consistent with the assumptions of the TMDL."¹
- WQBELs may be expressed as numeric effluent limitations or as a best management practice (BMP) program of expanded or better-tailored BMPs.² WQBELs provide the necessary flexibility to address the range of WLAs in TMDLs that have been developed throughout the state. Notably, WLAs in TMDLs may be expressed several different ways - depending on the nature of the pollutant and its impacts on receiving waters and beneficial uses. For example, they may be expressed as the number of allowable exceedance days that a water body may exceed the Basin Plan water quality objectives (WQOs), as receiving water conditions, or as values equivalent to the Basin Plan WQOs as measured at the discharge/outfall.
- In the context of MS4 discharges, WQBELs in NPDES permits may be expressed in the form of either numeric limitations or, where authorized by the applicable basin plan, best management practices (BMPs). [40 CFR 122.44(k)]

Recommendation

Replace the term "WLA" with "Water Quality Based Effluent Limit (WQBEL)" when referring to a numeric or BMP-based effluent limitation that must be met by the MS4s.

I. FACT SHEET

Comment 2: Modify Discussion of Bacteria TMDL

The Fact Sheet discussion includes a number of statements that are inconsistent with the Bacteria TMDL.

1. On page 124, the second paragraph under the Bacteria TMDL heading includes a reference to shellfish harvesting. The Bacteria TMDL is specific to the recreation beneficial use and the reference to shellfish harvesting should be removed. Additionally, the County is participating in studies to improve the Bacteria TMDL to better address the risk to human health. The studies have provided information that demonstrates human sources of bacteria are more directly linked to human health risks and that indicator bacteria in the absence of human sources

¹ NPDES Permit Writers' Manual, September 2010, Section 6.3.3

² November 26, 2014 Memorandum from the USEPA, Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs"

may not be as correlated with risk in the San Diego Region. As a result, the County is providing requested modifications to the paragraph to better reflect the Bacteria TMDL and the findings of the studies.

2. On page 125, the Fact Sheet includes a list of Phase II entities that are considered responsible parties to the TMDL. However, this list is inconsistent with the listing of Small MS4s provided in Appendix Q of the Bacteria TMDL that are considered responsible parties to the TMDL. The list of responsible parties should be modified for consistency with Appendix Q of the TMDL.
3. On page 125 and 126, Table 1 is provided as an excerpt of the WLAs from the Bacteria TMDL. The excerpt is missing a key footnote from the TMDL that describes the allocations and the way in which the allocations should be split between Phase I and Phase II MS4s. This footnote should be included in the Fact Sheet.
4. The listing of deliverables/actions required on page 126 includes requirements for Phase I MS4s and Caltrans. Requirements for Phase I MS4s and Caltrans should not be included in the Small MS4 General Permit. The Phase I MS4s and Caltrans have their own permits with deliverable/action requirements based on the Bacteria TMDL. The County requests that references to the Phase I MS4s and Caltrans be removed from the table.
5. The Fact Sheet includes two conflicting discussions of how compliance with the Bacteria TMDL will be determined. The first paragraph on page 127 states that compliance is based on monitoring data and attempts to restate in a summary form the notes to the implementation actions table above the paragraph. The paragraph discussion is confusing and incomplete as compared to the notes and inconsistent with the discussion on page 124 of the Fact Sheet, which states that Phase II MS4s will be in compliance if they implement a Storm Water Pollution Prevention Plan (SWPPP). Therefore, the County recommends the paragraph be deleted.
6. The discussion on page 124 outlines requirements for Phase II dischargers "identified as a significant source of bacteria as discussed below". However, significant sources of bacteria are not discussed further in the section. Per the TMDL, Phase II MS4s that are determined to be a significant source of bacteria are required to participate in receiving water monitoring programs. "Phase II MS4s, agricultural dischargers, and other sources that are identified as significant sources (i.e., causing or contributing to exceedances in the receiving waters) will also be responsible for monitoring the receiving waters." This requirement should be included in the Fact Sheet and Attachment G.
7. The Fact Sheet should include a discussion of all methods of compliance that are allowed for Phase II Small MS4s under the TMDL, not just implementing the SWPPP. This includes meeting the numeric targets in the receiving water, demonstrating allocations are being met at the point of discharge, and showing that exceedances are caused by natural sources.

Recommendations

- 1. Modify page 124, second paragraph under Bacteria TMDL heading as follows:**
The greatest causes of waterbody impairments in the San Diego Region in 2002 were elevated bacteria levels and subsequent beach closures. The presence of pathogens and the probability of disease are directly correlated with the presence of human waste sources and currently measured by the density of indicator bacteria (fecal coliform, total coliform, and enterococcus) in waters used for shellfish harvesting or recreation. When the Bacteria I TMDL wasteload allocations (WLAs) for ~~indicator bacteria~~ are achieved, health risks associated with pathogens are expected to be minimal. (page 124)
- 2. Modify the list of responsible dischargers on page 125 to be consistent with Appendix Q of the Bacteria TMDL.**
- 3. Add the following footnote from the Bacteria TMDL to Table 1 on page 125 and 126 of the Fact Sheet:**
“Because there are no Phase II MS4s enrolled under the State General Permit for Small MS4s, discharges from Phase II MS4s are not permitted (i.e., WLA = 0) and Municipal Dischargers are only the Phase I MS4s in this Implementation Milestone item. When a Phase II MS4 is enrolled under the State General Permit for Small MS4s or issued an individual NPDES permit, the Municipal Dischargers will be both the Phase I MS4s and Phase II MS4s in this Implementation Milestone item.”
- 4. Remove Phase I and Caltrans from the list of Responsible Parties in the table of implementation actions on page 126.**
- 5. Delete the following paragraph on page 127 that discusses determination of compliance with the Bacteria TMDL.**
Compliance with the TMDL is based on the frequency of which concentrations of bacteria (total coliform, enterococcus, and fecal coliform) in the discharge are below the wet and dry allowable exceedance day and exceedance percentages according to the TMDL schedule.
- 6. Include a requirement for Phase II MS4s that are identified as significant sources of bacteria to participate in the receiving water monitoring program for the TMDL.**
- 7. Include the following paragraph from the Bacteria TMDL describing options for determining compliance in addition to the implementation of the SWPPP.**
“If the receiving water limitations (based on the numeric targets) are met in the receiving waters, the assumption will be that the Phase II MS4s have met their WLAs. If, however, the receiving water limitations are not being met in the receiving waters and one or more Phase II MS4 dischargers are identified as sources of bacteria causing exceedances, the specific Phase II MS4s will be responsible for reducing their bacteria loads and/or demonstrating that controllable anthropogenic discharges from those specific Phase II MS4s are not causing the exceedances.

II. ATTACHMENT G

Comment 1: Clarify the Incorporation of WLAs and determining compliance for the Bacteria TMDL

For the Bacteria TMDL, the language in Attachment G should be modified to be consistent with the edits requested in the Fact Sheet in Comment #3 and Comment #1. Specifically, the County requests that the references to "WLA" be removed and replaced by "WQBEL" that is clearly set equal to the implementation of a SWPPP, consistent with the language in the TMDL. Additionally, compliance pathways beyond just implementation of SWPPP should be included for consistency with the TMDL. The list of responsible Phase II Permittees should be updated to be consistent with Appendix Q of the Bacteria TMDL. Finally, for Phase II dischargers identified as a significant source of bacteria, include a requirement to participate in the receiving water monitoring.

Recommendation

Modify the Attachment G requirements for the Bacteria TMDL as follows:

Phase II Entities	Deliverables/Actions Required
<p>22nd District Agricultural Association</p> <p>California State University at San Marcos</p> <p>Marine Corps Air Station Miramar</p> <p>Marine Corps Base Camp Pendleton</p> <p>North County Transit District</p> <p>San Diego State University</p> <p>San Diego Veterans Administration Medical Center</p> <p>University of California San Diego</p>	<p>Requirements for Implementing the Bacteria Project I – Twenty Beaches and Creeks TMDL</p> <p>The Phase II entities identified in this TMDL section (hereinafter referred to as Permittees in this TMDL section) must take the following actions to meet the requirements of this TMDL:</p> <ol style="list-style-type: none"> 1. Develop and implement the Storm Water Pollution Prevention Plan (SWPPP) as required by section F.5.f.4 of this Order including additional measures necessary to achieve reductions in fecal coliform, enterococcus, and total coliform by the final compliance dates as required by the TMDL. The SWPPP must include short term and long term Best Management Practices (BMPs) strategies appropriate for the prioritization schedule in Attachment A pages A-63 through A-65 of Resolution No. R9-2010-0001. 2. By [Hard Date: 3 months from adoption date] monitor discharges from their facilities including MS4 discharge locations to demonstrate progress towards compliance with final waste load allocations. The monitoring and assessment results must be submitted as part of the Annual Reports required under section E.16 of this Order. 3. <u>Permittees identified as significant sources of bacteria, participate in receiving water monitoring program for waterbodies to which discharges occur.</u> 4. The Permittees are encouraged to collaborate and coordinate with Phase I MS4s and other responsible parties to the Bacteria I TMDL using an adaptive framework approach as part of the waste load reduction planning and implementation strategies in the required SWPPP pursuant to section F of this Order. Coordinated efforts by all responsible parties will accomplish the waste load reductions required in the TMDLs faster and achieve the ultimate goal of improving water quality as soon as possible. <p>The wasteload allocations (WLAs) identified in the Fact Sheet of this Order are incorporated by reference.</p> <p><u>The WQBELs consistent with the assumptions and requirements of the Bacteria TMDL waste load allocations (WLAs) are set equal to the development and implementation of a SWPPP that prevents human sources of bacteria from being discharged to the receiving water. Compliance with the WQBELs and effluent limitations in Provision C.2 of this Order associated with the applicable WLAs, on or after the final attainment deadline, may be demonstrated by any one of the following methods:</u></p> <ol style="list-style-type: none"> 1. <u>Implementation of the BMPs consistent with an approved SWPPP; OR</u> 2. <u>Receiving water monitoring and/or other information, as authorized by the Regional Water Board Executive Officer, that reasonably demonstrates attainment of numeric targets in the receiving water (Permittee's MS4 did not cause or contribute to an exceedance in the receiving water); OR</u> 3. <u>No discharges from the Permittee's MS4 to the applicable water body during the relevant time period; OR</u> 4. <u>Demonstration that controllable anthropogenic loads from the MS4 are not contributing to receiving water exceedances</u> <p>The TMDL specifies that the final Dry Weather WLAs are to be achieved by April 4, 2021. The TMDL also specifies that the final Wet Weather WLAs are to be achieved by April 4, 2031 (April 4, 2021 if SWPPP does not contain load reduction programs for other pollutants).</p>

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Thank you for providing the opportunity to comment on the Proposed Amendment. If you have any questions or require additional information, please contact Jo Ann Weber, Planning Manager, at (858) 495-5317 or e-mail at JoAnn.Weber@sdcounty.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Todd Snyder". The signature is written in a cursive style with a large initial "T" and "S".

TODD E. SNYDER, Manager
Watershed Protection Program