

# Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: August 18 - 19, 2021

From: MITCH WEISS, Executive Director

Reference Number: 4.33, Information Item

Prepared By: Timothy Sobelman  
Chief Engineer

Published Date: August 12, 2021

Subject: Submittal of comment letter on the Draft Statewide Construction Stormwater General Permit

## Summary:

At the June 2021 California Transportation Commission (Commission) meeting, the Commission delegated the authority for Commission staff to submit a comment letter on the Draft Statewide Construction Stormwater General Permit and report back to the Commission at the August meeting. Attached is the comment letter submitted to the State Water Resources Control Board by the August 13, 2021 deadline.

## Background:

The Statewide Construction Stormwater General Permit or National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance (Order No 2009-0009-DWQ amended by 2010-0014-DWQ and 2012-0006-DWQ) went into effect July 1, 2010 and is currently under consideration by the SWRCB for renewal.

Commission staff in coordination with impacted stakeholders assessed potential impacts of the draft permit including how the new requirements may affect projects under various funding programs, including the State Highway Operation and Protection Program, Senate Bill 1 competitive and formulaic programs, and the State Transportation Improvement Program, as well as other projects on the state highway system. The Statewide Construction Stormwater General Permit impacts all construction projects throughout California.

Attachment: Statewide Construction Stormwater General Permit Comment Letter

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SENATOR JOSH NEWMAN, Ex-Officio

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## CALIFORNIA TRANSPORTATION COMMISSION

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August 12, 2021

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[Commentletters@waterboards.ca.gov](mailto:Commentletters@waterboards.ca.gov)

RE: Comment Letter – Proposed Construction Stormwater General Permit Reissuance

Dear Board Members:

The California Transportation Commission (Commission) recognizes the importance of clean storm water and appreciates the opportunity to provide comments on the draft Construction Stormwater General Permit (Permit) (NPDES No. CAS000002). Based on our review of the draft Permit and input from California Department of Transportation (Caltrans) and other transportation agencies and stakeholders, the Commission is concerned the proposed revisions may significantly increase project costs, delay ongoing construction projects, and impact the ability to start projects that are expecting to be funded in the coming years.

As background, the Commission is an independent state body responsible for programming and allocating funds for the construction of transportation improvements throughout California. Recently, the Road Repair and Accountability Act of 2017 (Beall, Senate Bill 1, 2017) provided a critical increase in funding for multimodal transportation projects statewide and has resulted in an increased number of transportation projects moving through the project development process. These projects are essential to meeting the state's safety, mobility, environmental sustainability, economic vitality, and quality of life goals. Even with the recent increase in funding, the needs of California's transportation system are still underfunded. It is imperative the State Water Resources Control Board (State Board) consider the impacts of the Permit on project costs and delivery schedules to ensure the proposed changes protect water quality; ensure the state continues to make progress towards its other coequal goals; and provides the least impact to transportation project delivery. The new Permit requirements are expected to increase the cost of compliance by as much as 50 percent for Caltrans' portfolio of projects. It is reasonable to expect a similar magnitude cost increase for projects undertaken by regional transportation agencies, especially those in areas affected by the new Total Maximum Daily Load requirements.

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Given the potentially significant impacts on transportation projects and programs under the Commission's purview, the Commission requests the State Board respond to the following questions:

1. Transportation projects can take up to a decade or longer to plan and build. Depending upon the funding source, implementing the new Permit requirements could significantly impact the ability to: (1) complete construction for projects already underway or (2) finalize projects that are currently in the environmental review or project design phase. Will the State Board allow projects currently in construction, environmental review, or design phase to be grandfathered under the existing Permit?
2. What performance measures are built into the Permit to determine whether the requirements of the Permit have met the intent to protect water quality? How are benefits measured and compared against costs to determine the "return on investment"?
3. The proposed Permit has increased oversight requirements by qualified stormwater professionals. Has the State Board considered the availability of these professionals? Are there enough personnel qualified throughout the state to meet the requirements? If not, will the State Board coordinate with the Workforce Development Board to identify recruitment and training opportunities that increase the pool of qualified professionals?
4. Small and rural transportation agencies face unique challenges in funding and constructing implementing transportation projects. For example, many rural agencies have significant lane miles compared to a relatively small population tax base. Has the State Board considered the cost implications to small, rural, and/or underserved local agencies to implement the new Permit requirements?
5. Several stakeholders have raised concerns regarding the proposed Permit requirements related to numeric effluent limits for metals (e.g., copper and zinc) where major transportation projects are planned and underway. Given that copper and zinc are common to break-pad dust and could be found on nearly all roadways, will all transportation projects subject to copper and zinc numeric effluent limits be in violation of the proposed limits and be subject to fines and penalties or third-party litigation?
6. With the low discharge limits proposed for certain pollutants, has the State Board identified available best management practices that will assure compliance? Have cost implications and availability of these practices been identified and shared with stakeholders? Please post any best management practices that support compliance to the State Board's website.
7. A distinguishing characteristic of transportation construction sites is that a project footprint can change dramatically when construction enters a new phase. Under the current draft Permit, all obligations and costs carry over from phase to phase without the possibility of a reevaluation of the project Risk Level based on the evolution of the project footprint. Will the State Board consider adding the ability to reevaluate the Risk Level into the Permit?

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The Commission appreciates the opportunity to provide comments. If you have any questions, please do not hesitate to contact Tim Sobelman, Chief Engineer, at (916) 653-0218 or [timothy.sobelman@catc.ca.gov](mailto:timothy.sobelman@catc.ca.gov).

Sincerely,

MITCH WIESS  
Executive Director

c: Mr. E. Joaquin Esquivel, Chair, State Water Resources Control Board  
Ms. Dorene D'Adamo, Vice Chair, State Water Resources Control Board  
Mr. Sean Maguire, Board Member, State Water Resources Control Board  
Ms. Laurel Firestone, Board Member, State Water Resources Control Board  
Ms. Nichole Morgan, Board Member, State Water Resources Control Board  
Ms. Eileen Sobek, Executive Director, State Water Resources Control Board.  
Mr. Toks Omishakin, Director, California Department of Transportation  
Mr. Michael Keever, Acting, Chief Deputy Director, California Department of Transportation  
Ms. Janice Benton, Acting, Chief Engineer, California Department of Transportation  
Mr. Philip Stolarski, Division Chief of Environmental Analysis, California Department of Transportation