December 7, 2020

Los Angeles Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, CA 90013

RE: Comments on California Regional Water Quality Control Board - Los Angeles Region - Draft Regional Phase I MS4 Permit

The Stormwater Equipment Manufacturers Association (SWEMA) represents stormwater technology manufacturers as well as affiliated associate and professional members. Our members strongly support stormwater management strategies and regulations that incorporate advances in stormwater science, encourage innovation, and successfully protect and restore receiving waters at an affordable cost for our communities. As such, we have identified a number of areas in the Los Angeles Region Draft Phase I MS4 Permit that would benefit from further refinement. These areas are as follows:

1. **Section: III.C.2.b.i – Trash Control in Areas Not Covered by a Trash TMDL**

   We suggest clarifying that areas are not in compliance unless adequate operation and maintenance of full capture systems is provided.

2. **Section: IV.B.3.b.ii.a.2 – Partial Capture Devices**

   We suggest clarifying that areas are not in compliance and cannot be credited with partial trash removal unless adequate operation and maintenance records are provided.

3. **Section: IV.B.3.b.iv – Minimum Frequency of Assessment and Collection Compliance Approach**

   We suggest clarifying that only programs with local ordinances that require full retention of the design storm without discharge, without exception, be exempt from structural BMP performance requirements of the permit. Further, we suggest that "retain" be defined in the permit as "capture of runoff from the design storm without release as overland flow, piped effluent or other discharge. Runoff may be infiltrated, harvested for use on site, or evapotranspired."

4. **Section: VIII.F.3.a.i – Project Coordination**

   We strongly suggest that a detailed review of the blanket acceptance of non-proprietary compost-based biofiltration media for pollutants of concern including nutrients. Particularly, we question whether these practices are well suited for nutrient sensitive watersheds given the growing body of data demonstrating that they often serve as net exporters of nutrients.

   Additionally, we encourage the acceptance of TAPE approved BMPs approved under the Washington Department of Ecology's Technology Acceptance Program – Ecology (TAPE), which have been proven effective for the pollutants of concern. TAPE is a nationally recognized verification process and will be serving as the

foundation for the national verification program currently being developed by diverse industry stakeholders with support from USEPA.

5. Section: VIII.F.4.a-c – Ventura Permittee BMP Requirements

The permit states in subpart b that if retention is infeasible, "an on-site biofiltration system that achieves equivalent storm water volume and pollutant load reduction as would have been achieved by on-site retention shall satisfy the EIA limitation. An on-site biofiltration system that releases above the design volume shall achieve 1.5 times the amount of storm water volume and pollutant load reduction as would have been achieved by on-site retention and, thereby, shall satisfy the EIA limitation."

This requirement does not seem feasible or logical. If a biofilter "achieves equivalent storm water volume and pollutant load reduction as would have been achieved by on-site retention" it's not really a biofilter, it's a retention BMP. Influent loads for some pollutants, like nutrients and bacteria, for which there are multiple TMDLs in the Ventura region, which are not likely to be removed by conventional biofiltration at levels comparable to retention BMPs even when sized to treat 1.5x the design capture volume. In fact, nutrients are more likely to be exported than removed by conventional sand/compost biofiltration described in the current Ventura Technical Guidance Manual.

The meaning of the phrase "releases above the design volume" is not clear. It is also impossible for a biofiltration system to "achieve 1.5 times the amount of storm water volume and pollutant load reduction" as compared to retention BMPs.

This entire section should be removed. Instead, a simple requirement that retention of the design storm be required where technical feasible should be stated. Where full retention of the design storm is infeasible, BMPs with demonstrated effectiveness for the pollutants of concern on the project should be required. Evidence of nutrient removal should be demonstrated as a TAPE GULD for Phosphorus treatment. Bacteria removal evidence should be demonstrated as a TAPE GULD for Basic Treatment in a vegetated treatment system where biological processes can assist with bacteria removal between storm events. Conventional biofiltration systems using sand and compost should not be allowed in watersheds with nutrient TMDLs given their tendency to leach nutrients.

6. Section: VIII.F.5.c.i.a – Biofiltration Standards

"Biofiltration systems shall, at a minimum, meet design specifications provided in the Los Angeles County LID Manual."

This is preferable to the current process, but the LA County LID manual is outdated and some direction should be provided to LA County by the LA Water Board that innovative biofiltration systems must have a TAPE GULD for Basic Treatment as a minimum criteria for approval. Where pollutants of concern on a project include nutrients, metals or other pollutants, a TAPE GULD must be provided for the most appropriate corresponding treatment standards. This direction can happen in the permit, in the fact sheet, or can be in some other order.

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7. Section: VIII.F.5.c.i.b – Nutrient Reduction

"Biofiltration systems discharging to a receiving water that is included on the Clean Water Act section 303(d) list of impaired water quality-limited water bodies due to nitrogen compounds or related effects shall be designed and maintained to achieve enhanced nitrogen removal capacity."

We feel this language represents a good start but also encourage consideration of phosphorus removal capability in applicable watersheds. Conventional biofiltration as described in the current LA permit is ineffective for nutrient removal. It is more likely to result in a net increase of nutrient concentrations and loads. Conventional biofiltration utilizing compost should not be allowed where pollutants of concern on a project include phosphorus or nitrogen.

8. Section: VIII.F.5.c.ii – Flow-Based BMP Standards

"If a Los Angeles County Permittee determines that on-site biofiltration and off-site alternative compliance measures are not technically feasible, the Permittee may request the Executive Officer allow the use of on-site flow-based BMPs. In the request, Permittees must outline why none of the other alternative compliance measures are feasible. Approval will only be granted to areas where other alternative compliance measures are not feasible due to significant technical issues."

We appreciate that there is a pathway for compliance using on-site treatment systems, but feel additional clarity is needed regarding the performance standard that must be met for EO approval?
Rather than create another unclear and inefficient EO Approval process, why not just establish criterial for on-site treatment in these cases so that permittees can make the call?

9. Section: VIII.F.5.d – TAPE

"Each Los Angeles County Permittee may allow the project proponent to install flow-through modular treatment systems including sand filters, or other proprietary BMP treatment systems that are certified for "Basic Treatment" under the Washington State Department of Ecology's TAPE Program; or an appropriate future BMP certification developed by the State of California"

We offer our full support for the on-site use of TAPE Basic Treatment BMPs where off-site alternative compliance options are being pursued. We also suggest clarifying that GULD is required.

Thank you for the opportunity to comment on the proposed changes to the definition of the Waters of the United States Rule. SWEMA believes that reducing the reach of the water quality regulations currently in place will adversely affect our nation's water quality, the quality of life for all citizens, and the ability of our companies to support economic growth.

December 7, 2020

Sincerely,

Jay Holtz, PE
SWEMA Government and Regulatory Committee Chair

Derek Berg
SWEMA President