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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

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Darryl Lum
Engineering Section Supervisor
Clean Water Branch
State of Hawaii Department of Health
P.O. Box 3378
Honolulu, HI 96801-3378

Re: Draft MS4 Permit for Hawaii DOT
(NPDES Permit No. HIS000001)

Dear Mr. Lum:

The following are EPA Region 9's comments on the draft NPDES permit for discharges from the Municipal Separate Storm Sewer System (MS4) operated by the State of Hawaii Department of Transportation (HDOT) that Hawaii DOH released for public comment on May 31, 2013.

The draft HDOT permit is similar to the 2011 MS4 permit issued by DOH to the City and County of Honolulu (CCH) (permit No. HIS000002), which Region 9 supported, and we appreciate the effort DOH has invested in updating and improving the requirements in this permit, especially with regard to TMDL implementation. Nevertheless, we do have concerns regarding certain aspects of the latest draft HDOT permit, and reserve the right, pursuant to 40 CFR 123.44, to object to issuance of this permit if our concerns are not addressed.

A. Total Maximum Daily Loads (TMDLs)

Our comments below are based on our understanding that Hawaii DOH is directly implementing the TMDL wasteload allocations (WLAs) applicable to the MS4 as water quality-based effluent limits (WQBELs). The fact sheet should provide clarification of this matter.

Joint Implementation with CCH

Hawaii DOH needs to coordinate the TMDL requirements in the HDOT MS4 permit with those in the MS4 permit for CCH. For TMDLs with WLAs applicable to

both HDOT and CCH, the CCH permit requires that joint implementation and monitoring plans be developed by CCH and HDOT and submitted to DOH. All five TMDLs in the draft HDOT permit also include WLAs for CCH and thus joint implementation and monitoring plans are required by the CCH permit. The stormwater management program (SWMP) submitted to DOH in June 2012 by CCH notes that the HDOT permit is pending and thus development of the CCH plans for these TMDLs is on hold.

For consistency with the CCH permit, the HDOT permit should also require joint submittal by HDOT and CCH of the implementation and monitoring plans for the applicable TMDLs; the draft HDOT permit currently makes no mention of joint plans. The CCH permit requires submittal of the plans within one year of the issuance date of the HDOT permit, and this is consistent with the deadline in the draft HDOT permit. However, the HDOT permit includes additional compliance deadlines and it is unclear what the implications might be for the CCH permit. In addition to setting clear requirements for joint implementation of the TMDLs in the HDOT permit, the fact sheet also needs to fully explain how DOH intends these TMDLs to be implemented.

WLAs for 2% storms

It appears that some of the applicable requirements of the Kapaa and Kaneohe TMDLs have been omitted from the draft HDOT permit. These TMDLs specify WLAs for HDOT based on storms anticipated to occur 10% and 2% of the time during the dry and wet seasons. The draft HDOT permit only includes WQBELs consistent with the WLAs for the 10% storms. The fact sheet justifies this omission on the grounds that regulating the 10% storms would also ensure compliance with the WLAs for the 2% storms. However, the TMDLs include entirely separate WLAs for the 2% storms and it is not clear how compliance with the 10% storms would also ensure compliance with the 2% storms. Absent additional explanation in the fact sheet, we believe WQBELs consistent with the WLAs associated with the 2% storms should be included in the permit.

Waimanalo TMDL

For the Waimanalo Stream TMDL, necessary load reductions were calculated from flow and water quality data (wet season only) from the one monitoring station downstream of at least some urban land use. Given the lack of sufficient data for the dry season, the same reductions determined to be necessary for the wet season were prescribed for the dry season as well. However, since the dry season flows and pollutant loads would be lower, the same required load reductions may not be available. As such, for the dry season, DOH should require compliance with the dry season counterparts of the water quality standards used in Appendix A of the fact sheet to calculate the required wet season reductions; similar requirements were included in the 2011 permit for CCH for this TMDL.

Compliance Schedules

It is not clear that all of the compliance schedules for the WQBELs consistent with the TMDL WLAs meet the requirements of 40 CFR 122.47. The fact sheet needs to demonstrate that the compliance schedules will lead to compliance with the final

WQBELs “as soon as possible” and that the interim milestones are action-based and sufficient to ensure compliance at the end of the schedule. DOH needs to consider the specific steps needed to modify or install treatment facilities, operations or other measures and the time those steps would take. Each compliance schedule must ensure compliance with the final WQBELs by the end of the schedule.

Additionally, the permit needs clarification in order for the final WQBELs and final compliance deadlines to be enforceable. First, for some TMDLs (e.g., Kawa Stream) the permit includes the existing loads and required reductions, but does not include the actual WQBEL consistent with the WLA, i.e., the discharge authorized by the permit. Absent this information it is unclear how the permittee can demonstrate compliance with the permit. The final WQBELs need to be included in the permit. Second, Part F.3.c indicates that the permittee must demonstrate compliance with the WLAs “after” the last milestone in the compliance schedule. We presume this means compliance is required as of the deadline of the last milestone rather than some unspecified time “after” the last milestone; however, to avoid any future misunderstanding, this provision should be clarified in the final permit to require compliance with the final WQBELs consistent with the WLAs by the final compliance date.

Otherwise, we are pleased to see that like the 2011 CCH permit, the HDOT permit includes requirements for a robust analysis that the BMPs selected to comply with the TMDLs will be adequate to ensure compliance; we recommend these provisions be retained in the final permit.

B. Post-Construction Stormwater Management Requirements

The low impact development (LID) provisions of the HDOT permit (Part D.1.e) differ somewhat from the provisions in the CCH permit. For example, in the CCH permit LID refers to practices that manage stormwater onsite via infiltration, evapotranspiration, and harvesting/reuse. We support LID requirements defined in terms of these practices given their particularly high effectiveness in reducing pollutant discharges. Such LID requirements are also generally consistent with MS4 permits issued in other Region 9 states such as California and other guidance documents such as EPA’s Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act (available at: <http://water.epa.gov/polwaste/nps/upload/eisa-438.pdf>).

Part D.1.e.(1) of the draft HDOT permit expands the practices that would be considered LID and includes BMPs that store or detain stormwater. This could include BMPs such as detention basins which temporarily detain runoff from the design storm (and provide some pollutant reduction via settling), but then discharge the runoff and the remaining pollutants in the runoff. These practices are less effective in reducing pollutant discharges to receiving waters than LID as envisioned in the CCH permit which captures 100% of the pollutants in the design storm. As such, we recommend the HDOT permit be revised to mirror the LID provisions in the CCH permit.

Also, Part D.1.f.(1)(iv) of the draft HDOT permit requires an action plan for retrofitting structural BMPs but does not provide expectations for the scope, scale and geographic focus of this plan has been established. This action could include TMDL implementation, as the permit currently alludes; but it could also build upon consent decree efforts or focus on geographic priorities where DOT HWYS infrastructure is adjacent to impaired waters. There may also be specific geographic areas (e.g., Kuliouou, Wailupe, Kaelepulu stream watersheds) where DOT retrofit action might complement CCH permit requirements related to retrofits. The permit should include more specific direction regarding the scope, scale, and geographic focus of this plan.

C. Development and Update of Plans/Policies/Tracking Systems

Multiple sections of the permit require development of a plan, policy, or tracking system, and many within a year; however it is not clear whether these have already been established by the permittee or if they are new requirements. If these are not new requirements, the permit should require an update, rather than development of the established plan, policy, or tracking system. DOH should consider whether an update requires the same length of time given to development, and adjust the permit accordingly. We also recommend DOH provide a summary of the deadlines included in the permit and specify which plans, policies, or tracking systems need to be submitted to DOH.

D. Frequency of Inspections

We appreciate that the permit provides inspection frequencies for industrial and commercial facilities, but in addition, we recommend the permit provide a minimum frequency for visual inspections, field screenings, inspections of permanent BMPs, etc. A minimum frequency provides a guideline to the permittee for development of their inspection program, and also creates an enforceable requirement.

E. Area of Permit Coverage

The Kahului area on Maui (including HDOT roadways within this area) is now subject to the MS4 permit program as an urbanized area based on the 2010 census. Many states (including California, Nevada and Arizona) issue one statewide MS4 permit for their State Department of Transportation covering both Phase I and Phase II areas. The draft HDOT permit would only cover the Island of Oahu (Phase I area). The HDOT discharges on Maui could be covered under the State's upcoming general permit for small MS4s, but for the sake of efficiency, consistency and to expedite permit coverage, we suggest DOH consider including the Maui discharges in the new individual MS4 permit. In any event, the fact sheet should note the new urbanized area on Maui and explain DOH's plan for permitting highway runoff in this area.

F. Ensuring an Opportunity for Public Participation

The draft HDOT permit requires the submittal to DOH of numerous plans during the term of the permit (e.g., SWMP, TMDL implementation and monitoring plans, and

the retrofit plan). Hawaii DOH needs to ensure that the public is afforded an opportunity to review and comment on these plans to ensure consistency with the 2003 decision by the Ninth Circuit Court in *Environmental Defense Center, Inc. v. EPA*, 344 F.3d 832 and the 2005 decision by the Second Circuit Court in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486.

We would note that local organizations such as Malama Maunalua have expressed an interest in working with DOH in developing remediation strategies to address pollutant discharges in stormwater runoff into impaired waterbodies such as Maunalua Bay. Such organizations may have helpful suggestions for projects to consider for the plans to be submitted to DOH such as the retrofit plan. As such, we recommend that DOH ensure they have an opportunity to review and comment on the plans submitted to DOH during the term of the permit. The final fact sheet should also explain how DOH intends to ensure an opportunity for such public input which we believe will substantially enhance the effectiveness of DOH's overall program.

We appreciate the opportunity to provide input on this draft permit. If you would like to discuss these comments, please contact Elizabeth Sablad 415-972-3044 or Eugene Bromley at 415-972-3510.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Smith', with a stylized flourish at the end.

David Smith, Manager
NPDES Permits Office (WTR-5)

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