

# County Of Santa Barbara

Chandra L. Wallar  
County Executive Officer

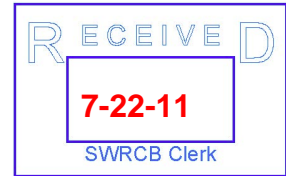


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## Executive Office

July 22, 2011

Mr. Charles R. Hoppin, Chair  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100



Subject: Comment Letter – Phase II Small MS4 General Permit

Dear Mr. Hoppin:

Thank you for the opportunity to comment on the Draft Phase II Small MS4 General Permit (Draft General Permit). Santa Barbara County understands the importance of the Phase II regulations for improving storm water quality and appreciates the effort of the State Water Resources Board staff in developing a Draft General Permit for statewide application. Our review of the Draft General Permit indicates that there are significant changes to the requirements that will have a dramatic impact on MS4 Permittees' already strained resources and operations and on their ability to fully implement the Phase II regulations. The County offers the following comments in the spirit of improving the effectiveness of the General Permit with the intent of meeting the objectives of the Clean Water Act. In addition, the County participated in and fully supports the detailed comments of the California Storm Water Quality Association.

68.1

**Comment 1: All draft permit provisions above and beyond the federal requirements are unfunded State mandates and should be removed from the Draft General Permit.**

Title 40 of the Code of Federal Regulations (40CFR), Section 122.34(e)(2), states:

“EPA strongly recommends that until the evaluation of the storm water program in 122.37 [after December 10, 2012], no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.”

State Board staff has not provided an analysis equivalent to an approved Total Maximum Daily Load (TMDL) to support the draft permit requirements that go above and beyond the federal stormwater requirements.

Article XIII B, Section 6 of California's Constitution requires the State to reimburse local governments for any new State-mandated programs or higher level of service. The following permit sections go above and beyond federal requirements and should be removed from the Draft General Permit:

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Order Section	Topic
B.4	Control of incidental irrigation runoff
E.4.c	Development and implementation of an enforcement response plan
E.4.d	Ensure adequate resources to comply with order; annual fiscal analysis
E.5.b(ii)(i)	Financial assistance related to "storm water-friendly landscaping"
E.5.b, c, and d	Implementation of Community Based Social Marketing measures
E.7.a	MS4 Mapping within a GIS system
E.7.c	Analytical monitoring to locate illicit discharges
E.7.e	Preparation of a spill response plan
E.8.c	Specification of construction site inspection timing and frequency
E.9.e	Specification of inspection locations and frequency for permittee-owned facilities
E.9.g	Specification of frequency of monitoring and timing of cleaning of storm drain systems
E.9.i	Retrofit of existing flood control facilities for water quality and habitat enhancement
E.10	Trash Reduction Program
E.12.b.3.d	Water Quality Runoff Standards for Road Projects that fall under the building and planning authority of a permittee
E.13	Receiving Water Monitoring
E.14.c	Municipal watershed pollutant load quantification

**68.2** **Comment 2: The requirement for receiving water monitoring is contrary to federal stormwater regulations, an unwise use of limited local agency resources, and would be an unfunded mandate from the State. We highlight this requirement because it will be the most costly new program element to implement and should be removed from the Draft General Permit.**

Section E.13 stipulates requirements for assessing the chemical impacts on receiving waters resulting from urban runoff, costly follow-up analysis and action in the form of Toxicity Reduction Evaluations (TRE) or Toxicity Identification Evaluations (TIE), and reporting of water quality standard exceedances. These requirements are not consistent with the EPA's Federal Phase II Rule and would have a significant adverse financial impact on small MS4's statewide, misdirecting funding for practicable and effective programs that will directly protect water quality while generating little useful information. Of all the new permit requirements, receiving water monitoring will be the most costly program element to implement.

The maximum extent practicable (MEP) standard of best management practice (BMP) implementation is adequate to address storm water pollution without additional requirements for water quality monitoring, as described below by the EPA in the Final Report to Congress on the Phase II Storm Water Regulations:

#### 40CFR (II)(H)(3)(a)ii Water Quality-Based Requirements

In the first two to three rounds of permit issuance, EPA envisions that a BMP-based storm water management program that implements the six minimum measures will be the extent of the NPDES permit requirements for the large majority of regulated small MS4s. Because the six measures represent a significant level of control if properly implemented, EPA anticipates that a permit for a regulated small MS4 operator implementing BMPs to satisfy the six minimum control measures will be sufficiently stringent to protect water quality, *including water quality standards*, so that additional, more stringent and more prescriptive water quality based effluent limitations will be unnecessary.

Water quality monitoring is expensive and subject to large temporal variation and statistical uncertainty. Past experience has shown that monitoring is not useful in identifying pollution sources, monitoring compliance, or measuring progress. Again, any mandate for monitoring storm-water quality is inconsistent with the Federal Phase II Rule, an unwise use of limited local agency resources, and would be an unfunded mandate from the State. Receiving water monitoring should be considered in a future permit term after EPA's federal rulemaking is completed.

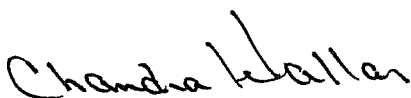
**68.3** **Comment 3: The Draft General Permit should maintain the MEP standard and provide enough flexibility for municipalities to design successful and cost-effective programs. Requirements to ensure adequate local resources to comply with permit requirements should be removed from the Draft General Permit.**

The Draft General Permit exceeds the MEP standard and does not allow enough flexibility for Permittees to develop successful and cost effective storm water programs to achieve water quality objectives within the confines of limited budgets and resources. Permittees vary greatly and a one-size fits all approach to Phase II Permittees is bound for failure, especially with the addition of so many non-traditional Permittees. A less prescriptive, more flexible approach with emphasis on MEP instead of receiving water standards would result in greater compliance and better water quality outcomes.

The Draft General Permit attempts to force a policy directive through the expenditure of funds. The requirement that Permittees ensure that adequate resources are available to comply with all the provisions of this permit is not obtainable under current national, state, and local economic conditions and in this post Proposition 218 environment. Forcing the expenditure of funds also offers no assurance that there will be improvements to water quality, or even if improvements are needed at all in certain cases. These attempts to prescribe expenditures will redirect limited and declining local revenues from important maintenance functions as well as deplete funds available for public safety functions such as police, fire protection and criminal justice which are generally a higher priority for municipalities. This is a policy decision that must remain at the local Board of Supervisors/City Council level. The permit needs to be flexible to allow municipalities to develop a program that fits the community it serves and preserves the ability to fund other programs that are important to the citizens of those areas.

Clean water is important to Santa Barbara County and our goal is to implement a science-based approach to finding effective and efficient methods of improving storm water quality. We appreciate the opportunity to provide comment to your staff and look forward to working together on implementing a successful and cost-effective Storm Water Management Program. If you have any questions, please don't hesitate to contact my office.

Sincerely,



Chandra L. Wallar  
County Executive Officer

Cc: Jeanine Townsend, Clerk of the Board, SWRCB  
Scott McGolpin, Director, Public Works Department