

September 7, 2011



Jeanine Townsend
Clerk of the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814



SUBJECT: COMMENT LETTER – PHASE II SMALL MS4 DRAFT GENERAL PERMIT



Established in 2003, The Placer Regional Stormwater Coordination Group (PRSCG) is comprised of NPDES permitted small MS4s within Placer County. This group meets quarterly to promote and facilitate regional coordination and implementation of each jurisdiction's MS4 permits. We have elected to comment, as a group, on the draft MS4 General Permit (draft permit) released June 7, 2011 and amended July 8, 2011.

First, we would like to express our appreciation for the State Water Resources Control Board (Board) extension of the initial review period by 30 days and for including a second review draft within the adoption process. Because the draft permit is substantially different, in both form and content, than the existing MS4 permit, the additional timeline allows our agencies to more fully evaluate the impacts this permit may have upon our agencies and our communities. We recognize the challenges the Board and Board staff have in crafting a balanced permit that will ultimately result in cost effective improvements to water quality. PRSCG supports the continued improvement of water quality across our region and our state. To that end, however, we need a reasonable permit that small MS4s can implement.

As currently drafted, the permit will have significant financial impacts upon permittees. Many of those financial impacts are associated with required actions and activities that have questionable value in actually improving water quality. **These new financial impacts are likely to result in some agencies' inability to comply (some agencies cannot financially meet the requirements of the current permit) and thus, having to devote resources to defending actions rather than implementing water quality improvement programs.** As such we hope the Board will consider our comments as constructive in assisting the Board in creating a balanced and implementable permit. Much work is needed to revise the current draft permit to make it cost-effective and focused on implementing essential federal requirements. Please do not rush adoption of this permit. The financial implications of the proposed permit to permittees and the business community will have potentially devastating consequences.



COMMENTS

PRSCG recognizes and supports the comments on this draft permit provided by the California Stormwater Quality Association (CASQA) and the Statewide Stormwater Coalition (SSC), as generally representing this group's concerns. We offer the following additional comments for your consideration.

FUNDING CHALLENGES AND FINANCIAL IMPLICATIONS OF THE PERMIT

The Phase II permittees represented by PRSCG are willing to implement programs that are focused on cost-effective ways to improve water quality. Many of the draft permit requirements appear to not be cost-effective. Our municipalities are struggling with severe funding challenges; even the most cost effective and focused program will be challenging to implement. We request that the Board more fully consider the cost and resource implications of this permit upon both the directly regulated and sub-regulated entities before taking action on its adoption.

This new permit expands upon the 6 Minimum Control Measures identified for Phase II stormwater programs within the Clean Water Act and adds significant new programs commensurate with many Phase I permits. The Federal government is recognizing the need to reduce costs and reduce regulations. **This is not a time for increasing State mandated regulations and costs based on State interpretations of federal mandates.** Any new permits must relate specifically to federal requirements and demonstrate that the program is a cost effective approach to achieving improved water quality.

Impacts to the Permittees

PRSCG includes all the Phase II MS4s within Placer County permitted since 2003. The stormwater quality programs of these municipalities are supported by General Funds. None of our programs are funded by stormwater utilities or other voter approved fees, as are many of the Phase I programs. Many of the Phase I permittees established fees before enactment of Proposition 218 which requires voter approval. Very few stormwater utilities or other fee mechanisms have been successfully implemented in California since Proposition 218. Additionally, the passing of Proposition 26 further limits the ability of local agencies to charge user fees and reinforces the reality that **local agencies lack adequate funding options and opportunities to support Phase I levels of stormwater quality programs.** Coupled with the current economic conditions and budget shortfalls impacting most jurisdictions, stormwater programs are not likely to receive additional funding to implement expanded programming required under this new permit. Nor are any grant funds available to support a long term stormwater quality program.

Statements from PRSCG agencies highlighting the fiscal challenges of the permit are provided below:

Placer County

The County of Placer anticipates cost and resource impacts similar to those described below for the Cities of Roseville and Rocklin. Placer County's current water quality program administration budget is \$1.2M. This program includes administration and implementation of two municipal Phase II permits, and one Phase I permit within the unincorporated County area. The noted budget does not include the full cost of program implementation, as the program relies on numerous other County departments and agencies to assist with implementation. Most of these other departments

and agencies do not budget separately for those additional stormwater responsibilities, so determining associated program cost is difficult. Because the draft permit language is much more prescriptive and includes extensive new requirements, such incidental program support from other departments may no longer be feasible. It is anticipated that the new permit will likely triple the level of effort and cost on the already overburdened County resources.

Since 2007 the County of Placer has experienced a continuing decline in local General Fund revenues – specifically from property tax, by far the County's largest local revenue source. **An additional drop in property tax of five percent is expected in Fiscal Year 2011-12, meaning a \$5 million reduction in available revenues to fund local service needs and priorities including the stormwater quality program.** A substantially reduced growth rate due to current economic conditions has further impacted fee revenues. In response to declining revenues and a reduction in development-related workload the County implemented a hiring freeze, furloughs, staffing reassignments and layoffs to reduce operational costs. Additional budget reductions have been necessary through changes to employee benefit structures, purchasing and contracting practices, departmental reorganizations, and many other cost reduction actions. Consequently, this has had the collective impact of reduced funding and staffing levels, increased individual workloads, and an inability to secure additional resources for effective implementation of new regulatory requirements, such as those included in this draft permit.

City of Auburn

The City's stormwater program is administered through the Public Works Department of which there is a Public Works Director, Associate Civil Engineer and Engineering Technician. Based on preliminary estimates, approximately two additional full-time staff members would be required in order to administer the new permit for the City. **With the stormwater program operating strictly from the general fund, the City anticipates the new draft permit to increase costs by five times annually.** At a time when the City of Auburn (population 13,000) has experienced employee reductions through early retirements and layoffs, employee salary reductions, with the associated service level reductions, the permit as written is simply not feasible.

City of Roseville

As currently drafted, the City of Roseville anticipates its stormwater program costs to increase from approximately \$800,000 per year to as high as \$3.5M in year 1 with a 5 year average cost of \$2.9M. This represents a 3.6-fold increase in compliance costs (4.3x in year 1). Given the City's average population estimated over the permit term of 121,185 this would result in an average annual program cost of \$61.10 per household (based on 2.54 persons per household). This is \$15.10 to \$43.10 more per household than the \$18-\$46 per household annual costs of Phase I MS4 programs cited within the Fact Sheet of the permit (page 10).

General fund revenues for the City of Roseville are down \$20.2M since fiscal year 2007. The City has implemented employee reductions through early retirements and layoffs, service level reductions and employee salary reductions to address structural financial deficits. The City was able to use one time money and deferrals to balance the General Fund budget this fiscal year; however the existing structural deficits is expected to continue in future years. The impact of expanded and new state regulations will continue to degrade the City's ability to fund core services. While the City's stormwater program is important to our community, it is not a core service.

City of Rocklin

The City of Rocklin estimates its annual cost to implement the proposed requirements in the draft order to be approximately \$645,000 over and above what the City currently expends for its Stormwater Management Program. Over the five year permit term that equals more than \$3.2 million. Based on the 2010 Census population of 56,000, this results in an estimated annual increase per resident of \$11.52 (\$57.59 over the permit term) This figure does not include an estimate for the mandated community based social marketing component of the Public Education and Outreach provision. Preliminary cost estimates for establishing such a marketing program make it prohibitive. As other jurisdictions cite in this letter, the City has responded to an ongoing structural budget deficit for the past four years with layoffs, early retirement incentives, furloughs, re-organizations, staff re-assignments, and service level reductions. The City will not be able to fund most of the additional requirements in the draft permit as currently written.

Town of Loomis

The Town of Loomis has always been limited in budget and resources. The Town already struggles to keep up with the existing permit requirements under a Public Works staff of four. Adding new requirements to an already stressed work load and budget constraint will be a difficult challenge. **The Public Works Department's entire operating budget is \$450,000 (a ten percent decline from last year) and with State and Federal funding in a fall, additional funding to support the proposed requirements would have to come from other town services that have already been reduced in the last few years.** As mentioned by several of the other jurisdictions, compliance costs toward each resident will escalate no matter what size your population is. In a small community like Loomis, if additional funding is needed by the local business owners to be in compliance with the new requirements, the Town could lose these fragile businesses and ultimately lose tax revenues that are very small to start with.

City of Lincoln

Cost estimates for the City of Lincoln prove similar in magnitude as that cited for the City of Roseville. **Dramatic reductions in general fund revenues (revenues are about half the amount they were four years ago) have forced the City of Lincoln to defer for at least several years implementation of any non-development fee supported aspect of the current MS4 permit.** Lincoln has no financial ability to implement additional MS4 permit requirements.

Impacts to the Business Community

The cost of the draft permit requirements will also be shouldered by the industrial, commercial, and development sectors. The Board should evaluate the financial impacts to the business community located within Phase II jurisdictions. Financial impacts should include the cost of retrofitting, long term maintenance of best management practices (BMPs) and employee training. It should also include the additional costs that MS4s would have to pass along through new business impact fees to enforce the program as written. In addition, the impact analysis should take into account that property owners subject to retrofitting requirements could have significant land use entitlement, permitting and CEQA analysis fees. The draft permit does not anticipate or address the potential that retrofitting would qualify as "projects" and not be able to be found exempt under CEQA. Projects found to not be exempt would require review, analysis, mitigation, and possibly even long-range mitigation monitoring. The smaller agencies, such as Lincoln, lack the financial resources to

implement the proposed permit requirements on large statewide industries within their jurisdiction (lumber mill and clay pipe). These local agencies are also sensitive to the need to keep these employment centers in their community given the high unemployment rate in the area (20%).

In particular, the business community will be significantly impacted by permit sections E.10-Trash Reduction Program and E.11 – Industrial/Commercial Facility Runoff Control Program. The permit requires a broad selection of commercial and industrial BMP businesses to retroactively install and to maintain trash capture and other stormwater quality BMPs. **While the goal of the program as drafted is admirable, the implementation approach is infeasible.** For example provision E.11 requires permitted MS4s to notify businesses by May 2014 of the requirement to install stormwater BMPs and then to enforce the requirement, which would require all the retrofitting to happen almost immediately and simultaneously. Existing land use development standards (i.e. off-street parking and parking lot shade requirements) would have to be reviewed and likely changed through the public review process and be approved by Planning Commissions and/or City Councils—a 4 to 6 month process at best generally. Our jurisdictions no longer have the Community Development staff (Building, Engineering, and Planning) available to handle this influx of work or the Code Enforcement staff to follow through on enforcement.

The State Board should eliminate the Provision E.11 and instead focus on public education of business as established in Provision E.5.c. Commercial public education can more easily and cost effectively be incorporated into existing programs with the real potential to provide as good or better water quality benefits.

NATIONWIDE PHASE II PROGRAM PARITY

We feel this permit should be better aligned with Federal regulations to avoid further impact to the State's economic and business climate. By making California stormwater regulations more restrictive than other National Phase II communities, California is losing business to other states due to uncertainties relating to the future cost of these regulations. **As an example, the City of Roseville was one of two cities being considered by a company which would have brought nearly 5,000 jobs to the region. That company chose a city in Arizona based on anticipated additional costs to their business due to unknown state regulatory impacts such as the MS4 General Permit implementation.** Even EPA admitted at the State Board Workshop held on August 17th that this permit will be the first of its kind in our nation. California Phase II permittees should not be on the "bleeding-edge" and thus bear a burden of increased regulation that other Phase II (and Phase I) permittees nationwide do not.

WATERSHED INCENTIVE PROGRAMS

The draft permit includes provisions for using a watershed-based system management approach. Since watershed boundaries do not coincide with political boundaries, there will be a redundancy of effort affecting adjacent MS4 permitted jurisdictions. **We would like to see the permit include incentives for communities to work together and eliminate redundant efforts.** But, before the watershed work can be completed and for monitoring to be meaningful, the State will need to make current monitoring data available. The State has been working on the California Environmental Data Exchange Network (CEDEN) data site as the desired, web-based, information sharing and access portal. However, much of the available data is still missing from the site, or may not be useful because it was collected, analyzed, or reported based on incompatible protocols. Local jurisdictions will need the help of the State to interpret this data and set up compatible programs.

Again, smaller agencies do not have the resources or the background knowledge to implement even the exchange of information that is needed for coordination among adjacent MS4 jurisdictions.

TMDLs

The Cities of Lincoln, Roseville, Rocklin and Loomis, who participate in PRSCG, are identified in Appendix G, as needing to comply with the Central Valley Regional Water Quality Control Boards TMDL for diazinon and chlorpyrifos in the Sacramento and Feather Rivers. The reasoning behind this designation is unclear as it is true that these jurisdictions are within the watershed boundaries, including Pleasant Grove Creek and Dry Creek, which are tributary to the Sacramento River. However, the jurisdictional urbanized areas within these watersheds are many miles upstream of the creeks that discharge to the river. In fact, the creeks do not directly discharge to the Sacramento River, but first discharge to either the Natomas Cross Canal or Natomas East Main Drainage Canal. Intermediate to these points of discharge are numerous other storm water inputs, but more importantly, numerous agricultural return water inputs.

More perplexing is the fact that these jurisdictions have never specifically been assigned a Waste Load Allocation (WLA) under this TMDL. Nor have we been informed by the Regional Water Board of a need for, or the pending assignment of a WLA. The specific TMDL does not name any of our agencies, specifically assign a WLA, or direct any specific effort at controlling diazinon or chlorpyrifos discharges from possible sources under our jurisdiction. In the Regional Water Board's staff report supporting the subject TMDL, staff essentially dismisses urban sources of chlorpyrifos and diazinon on the basis that banning of residential use (i.e., registration cancellation) in 2001 and 2002 significantly reduces the potential of urban-based water quality impact. In fact, the focus of the TMDL's control strategy is on agricultural practices, where many uses of chlorpyrifos and diazinon continue to this day.

Compliance with the allocations and loading capacity contained in the TMDL is to be determined at a location where a source actually discharges (point of discharge) to the Sacramento River. Numerous other named streams and agricultural based discharges occur between our jurisdictional boundaries and these points of discharge.

By way of example, the City of Roseville discharges to Pleasant Grove Creek and Dry Creek but not directly to the Sacramento River. As such, if diazinon and chlorpyrifos were present in the discharge to the Sacramento River, it would be exceedingly difficult to determine the City's contribution. It would be inconsistent with the TMDL and scientifically inappropriate to determine the City's contribution by measuring diazinon and chlorpyrifos in any reach of creek within the City's jurisdiction as doing so would not account for the many physical and chemical loss pathways, in addition to attenuation through dilution, that necessarily need to be considered when determining environmental fate.

Further, in a discussion of the implementation costs to NPDES permittees, the Regional Water Boards states, "As discussed previously, all urban uses of diazinon and almost all urban uses of chlorpyrifos are being phased out. Therefore, it is not anticipated that NPDES permittees (municipal storm water permittees or publicly owned treatment works) will be required to implement additional management measures or treatment technologies to control diazinon or chlorpyrifos" (page 135, *Basin Plan Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Diazinon and Chlorpyrifos Runoff*). Not even the

Regional Water Board envisioned a need to implement management and control measures, so it is inappropriate now to require such measures.

The Board should not impose the requirements of Section E.15 – Total Maximum Daily Loads Compliance Requirements on permittees where the motivating TMDL does not clearly do so itself. This Cities of Lincoln, Loomis, Roseville and Rocklin request that they be removed from the list of named permittees in Appendix G.

WATER QUALITY FIRST

We request the Board address the question of how many of these requirements are based on sound science to improve water quality. **Many of the requirements included in the draft MS4 permit require data collection, maintenance, analysis and reporting which do nothing to directly improve water quality conditions.** Attachment B includes a matrix of permit requirements and indicates which program elements directly impact water quality and which program elements do not.

RECOMMENDED BOARD ACTION

The Board should request their staff to re-draft the permit. Phase II MS4s are willing to comply with reasonable storm water quality permit requirements. The permit should be drafted using a formal stakeholder group that includes representatives from the permittees, business community representatives, and enforcement sectors. Together, this group can identify and prioritize those elements that truly benefit water quality improvement. We fully expect that bringing a diverse group of stakeholders around the same table can collectively develop creative strategies for achieving stormwater quality improvements in a way that balances the fiscal challenges we face today.

Board staff should remove those program elements that will not directly benefit water quality improvement. Removing program elements that do not directly benefit water quality improvement efforts will help achieve a permit that is balanced and implementable. Permit elements should be based upon sound science with attainable long term solutions and those elements that are redundant or do not have direct water quality benefits should be eliminated. Reporting requirements could be made more flexible with less complexity and fewer time consuming requirements for smaller agencies. New programs not specifically listed as one of the federal 6 Minimum Control Measures should be eliminated.

Board staff should be directed to evaluate cost impacts not only to permittees but as well to the business community and potentially to the State. We are truly concerned the permit as written will be devastating to local government and the business we rely on for a healthy economy. Before the Board adopts this permit, it is your fiduciary responsibility to understand the economic impacts of these regulations.

Board staff should be directed to work with other State Agencies to reduce permit redundancies. We direct the Board to the CASQA comment letter and to the Statewide Stormwater Coalition comment letter for additional information on this item.

Permit impacts would be reduced by a more balanced implementation schedule which steps-up requirements over multiple permit cycles and recognizes that smaller agencies require less structured approaches to achieving clean storm water. For example, during the

next permit term, permittees might be required to set up the prioritization of municipal facilities and develop Stormwater Pollution Prevention Plans (SWPPPs) for those facilities. The next permit term could require the implementation of the SWPPPs at those facilities. Municipal facility SWPPP guidelines have not yet been developed by SWRCB staff; this creates ambiguity for permittees as the specific requirements of this element of the permit and associated impacts are currently unknown.

Permit impacts can be reduced by leveraging existing state programs. For example, and as suggested at the August 17th Board Workshop, allow MS4s to contribute to the SWAMP program for stormwater quality monitoring. The state has the expertise to perform water quality monitoring and analyze the resultant data. Thus the State can expand efforts efficiently and per protocol, as opposed to all MS4s trying to do this on their own. This would be a much more efficient and effective use of tax payer dollars. Also, as recommended in the Statewide Stormwater Coalition comment letter, the existing SMARTS program could be used by all permittees as the sole statewide construction and industrial database that would allow for reporting and tracking in "real-time."

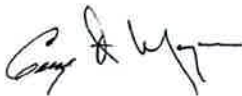
Thank you for your consideration of our comments.



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