



From the Office of the Mayor

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

Subject: Comment Letter – Phase II Small MS4 General Permit

Dear Members of the State Water Resources Control Board:

On behalf of the City of Pismo Beach, please accept this comment letter regarding the Draft General National Pollutant Discharge Elimination System Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Draft Permit). Pismo Beach is a small coastal community on the central coast with a population of less than 10,000. The City's water quality program objectives are to minimize stormwater pollution, protect water quality, preserve beneficial uses, and comply with state and federal regulations.

Pismo Beach is extremely concerned about the costs to implement the Draft Permit and in fact, actually the Draft Permit in its present form, may harm water quality by deferring actual projects to improve water quality. With very limited resources available, the City funds that are used to comply with the Draft Permit activities such as source water monitoring and report writing will be derived from actual projects that were planned to improve water quality.

The City has recently completed an ocean water quality study that identified a series of projects to improve ocean water quality. In addition, the City installed a state of the art stormwater infiltration with a recent capital project at the Pier plaza. If the City is forced to focus on stormwater permit requirements and increase enforcement activities for the State, monitor source water and prepare extensive reports, very little funding will remain to address stormwater quality issues, and future capital projects like the Pier Plaza infiltration system will not be feasible.

Recommendation: That the Draft Permit be modified to allow agencies to identify priority projects for water quality improvement and allow permit waivers for certain provisions of Draft Permits with completion of the projects.

Many of the added Draft Permit requirements identified in the proposed Permit are unfunded mandates to local governments. According to the California Government Code, Article XIII B, Section 6, which is intended to prevent the State from shifting responsibility to local governments without providing funding, whenever “any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service...”. The Commission on State Mandates has determined that an unfunded mandate exists when: a) the state imposes a new program or higher level of service that is mandated by state law not federal law; and b) when the local government lacks adequate fee authority to pay for the new program or higher level of service. The proposed Draft Permit mandates both new programs and higher levels of service that go beyond the EPA Phase II requirements for MS4 jurisdictions.

The unfunded state mandates law is a constitutional requirement imposed on the state to fund programs that it requires local agencies to implement. Therefore, if the State does not provide the funding to implement the mandates, these mandates should not be included in the Draft Permit. The Draft Permit requires considerable increases in regulations pertaining to storm water management. The Draft Permit requires local agencies to implement new programs and activities as well as assume responsibility for oversight and enforcement of programs for storm water management that are not currently the responsibility of local agencies (e. g., Industrial and Construction General Permit oversight). The Draft Permit requires local agencies to implement activities and programs that go above and beyond the federally-mandated six minimum control measures in the Environmental Protection Act (EPA) Phase II regulations or provide a higher level of service than required under the existing General Permit. Examples of higher levels of service include watershed analyses, stream/riparian assessments, and sediment transport research, geographical information system (GIS) mapping, analytical monitoring of illicit discharges, developing an inventory of all construction sites, increased site inspection frequencies, prioritization of all catch basins and more.

Recommendation: That the State Water Resources Control Board modify the permit language to include only the six minimum control measures.

Pismo Beach would like regulations adopted by the State Water Resources Control Board to be more realistic and reflective of the capacity of local governments. The Draft Permit should be streamlined to focus on the most cost-effective means to improve and protect water quality and should be based on best management practices as established by expert scientific panels. We do not believe a blanket application of Low Impact Development (LID) and Hydromodification control by ordinance is neither cost-effective nor will it achieve the State Water Board’s water quality improvement goals.

The State Water Resources Control Board might consider following the regulatory model established by the Air Pollution Control Districts. Project impacts are identified during the environmental process and standard mitigation measures, and site specific mitigation measures are identified and adopted during the approval process. This avoids the time consuming practice of creating ordinances and trying to apply a one size fits all approach that are impractical and many times infeasible. Water quality policies can be established in the City's General Plan that ensures that these goals are addressed by all projects approved within each jurisdiction. This model has proved effective and is accepted by local jurisdiction and the development community.

Recommendation: The State Water Resources Control Board revise the LID/Hydromodification portion of the General Permit and follow the Air Pollution Control District model of providing general and site specific comments during the environmental review process.

The State Water Board has an obligation to the residents of California to assess both the costs and the benefits of the Draft Permit requirements. It is not reasonable for the State Water Board to impose many of the Draft Permit requirements without first having a scientific basis to conclude that water quality will be improved.

Pismo Beach supports the detailed comments and recommendations being sent under separate cover by the California Stormwater Quality Association, the Statewide Stormwater Coalition. Pismo Beach requests that the State Water Board withdraw the current Draft Permit, create a working group including municipal stakeholder representation, and prepare a new draft with the above considerations in mind. Thank you for your consideration.

Sincerely,



Shelly Higginbotham
Mayor

cc: Brian Ogg, State Water Resources Control Board
Charles Hoppin, Chair, State Water Resources Control Board
Frances Spivy-Weber, Vice Chair, State Water Resources Control Board
Tam Doduc, Member, State Water Resources Control Board
Thomas Howard, Executive Director, State Water Resources Control Board
Jonathan Bishop, Chief Deputy Director, State Water Resources Control Board
Vicky Whitney, Deputy Director, State Water Resources Control Board
Bruce Fujimoto, Chief – Stormwater, State Water Resources Control Board
Assemblymember Bill Monning, 27th District
State Senator Sam Blakeslee, 15th Senate District