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July 23, 2012

Member
Agencies:

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Belvedere

Corte Madera

**Subject: Comment Letter – Second draft of Phase II Small MS4
General Permit**

County
of Marin

Dear Ms. Townsend and Members of the State Water Board:

Fairfax

Thank you for the opportunity to submit comments on the second draft of the Phase II Small MS4 General Permit (Draft Permit). These comments are submitted to the State Water Resources Control Board (State Board) by the Marin County Stormwater Pollution Prevention Program (MCSTOPPP) on behalf of its 12 local government member agencies.¹

Larkspur

Mill Valley

Conservative estimates indicate that the new Phase II Permit regulations could increase the combined compliance costs to Marin's local agencies on the order of \$5 million per year (not including the County of Marin's cost to implement California Ocean Plan General Exception requirements). The State Board provides no funding or alternative mechanism to comply if a County or municipality lacks the necessary funds. Proposition 84 stormwater and Integrated Regional Water Management Planning funds are not available for ongoing stormwater program operations and are, for the most part, designed to fund specific "shovel ready" projects. These funds are not a realistic source for this enormous financial need. Furthermore, the ability of California cities and counties to raise funds is limited through Proposition 218. The State has not adequately addressed the funding realities associated with implementing the proposed new requirements.

Novato

Ross

San Anselmo

San Rafael

Sausalito

Tiburon

Through MCSTOPPP and numerous other programs, the County of Marin (County) and Marin's municipalities share a strong commitment to protecting the environment and water quality. Individually and collectively we successfully implement policies and projects to protect and enhance Marin's creeks and watersheds. Under the current Phase II Permit and through MCSTOPPP, Marin's municipalities and the County implement performance standards that were reviewed and approved by Regional Water Board staff as meeting the Clean Water Act's "maximum extent practicable" (MEP) standard governing municipal stormwater discharges. By implementing the performance standards at the local level and a

¹ Belvedere, Corte Madera, County of Marin, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, Sausalito, Tiburon.



stormwater pollution prevention program at the countywide level we are able to achieve cost-effective improvements to local water quality.

Given the current economic environment, it is imperative that the State Board work with Phase II municipalities to develop a permit that improves water quality and can be implemented with existing funding. We urge you to revise the Draft Permit based on our comments below and our additional comments and requests for clarification included in the attached table (Attachment A).

Comments

- 1) Revise the Receiving Water Limitation Language to allow permittees to comply with the Phase II Permit by implementing an iterative process, in good faith and in cooperation with the Regional Water Quality Control Boards, if it is determined that a discharge "causes or contributes" to an exceedance of a water quality standard. This change would be consistent with longstanding State Water Board policy regarding stormwater permitting and would support the core of the Water Board's cooperative partnership with local governments relative to stormwater management and the achievement of water quality standards.
- 2) Only include new requirements that are evidence-based and that will result in appreciable improvements to water quality.
- 3) Provide more flexibility in the permit language that will support implementation and prioritization by region or community based on local issues.
- 4) Provide a clear, documented, regulatory path to allow implementation of existing programs that are currently adaptively managed and are protective of water quality to the federal standard of "Maximum Extent Practicable".
- 5) Modify the compliance timelines to provide more time to prepare for and fund implementation of the new requirements.
- 6) Remove the burdensome reporting, analysis and assessment requirements with no significant water quality nexus.
- 7) Remove numerous provisions that are technically infeasible or have vague information making permit compliance unattainable. For example, Section E.7.a (i) requires the permittee to "measurably increase the knowledge of targeted communities regarding the municipal storm drain system..." While the permittee can provide varied outreach and education opportunities (events, trainings, web sites, etc.), the permittee cannot control a community's knowledge.
- 8) Incidental Runoff Requirements (B.4): This requirement goes above and beyond what is required of Phase Is and as written could present a significant enforcement burden on Phase IIs.
- 9) Municipal Watershed Pollutant Load Quantification (E.14.b): As written, this section would require Phase IIs to annually quantify subwatershed pollutant loads and estimate loads reduced by BMPs. This requirement could result in a large amount of work with very little value to stormwater programs. Remove the entire requirement.
- 10) Revise Attachment C (Special Conditions for Small MS4 Area of Special Biological Significance Discharges) to scale requirements, including monitoring requirements, based on population size and density and land use. Until the County of Marin obtains grant funding to implement the California Ocean Plan

General Exception (ASBS Special Protections) requirements it will be difficult to comply. Attachment C will require the County of Marin to conduct monitoring and to develop and implement a Duxbury Reef Area of Special Biological Significance Compliance Plan to cover an area with a population of only 500-1000 people in the rural residential community of Bolinas. These specific requirements could cost the County of Marin more than \$2,000,000 over six years to comply. Competitive grant funding may be provided by the State Water Resources Control Board to cover some monitoring and implementation costs, but the planned funding amount does not match the statewide need.

Recommendation: Direct State Water Board staff to incorporate the revisions as provided above and in Attachment A.

Thank you for your consideration of this critical and urgent topic. We appreciate the opportunity to provide our comments. If you have any questions, please contact me at (415) 473-6583.

Sincerely,



Terri Fashing
MCSTOPPP Stormwater Program Administrator

C (electronic): Bob Beaumont, Director of Public Works, County of Marin
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