

Response to Comments on the fourth draft of the General Permit for Storm Water Discharges from
Small Municipal Separate Storm Sewer Systems (Small MS4s) (General Permit)

A. California Stormwater Quality Association (CASQA)

1. Comment

Ninety days between General Permit adoption and the application due date, is not sufficient for municipalities to submit complete applications. Furthermore, 90 days is inappropriate because, as stated in Finding 31, the permit will not take effect until 100 days after permit adoption. For these reasons, the application deadline should be 180 days from permit adoption.

Response

The requirements contained in the General Permit are substantially the same as what has been in previous drafts, as well as the federal regulations, therefore, the 180 days requested is not justified. However, the deadline for application submittal has been extended 10 days to August 8, 2003 for consistency with Finding 31.

2. Comment

CASQA does not support the inclusion of any design standards in the General Permit. However, if design standards are to remain in the General Permit, CASQA feels that the requirements should allow for “functionally equivalent” design standards. The Design Standards in Attachment 4 of the fourth draft of the General Permit are very similar to those adopted in the area-wide Los Angeles County MS4 permit, however, several different versions of design standards have been adopted around the state. A functionally equivalent option would promote consistency for neighboring communities in the implementation of post-construction best management practices (BMPs) and to allow for more effective and locally appropriate post-construction programs.

Response

Section B: Design Standards, of Attachment 4 has been modified to allow for functionally equivalent post-construction programs.

3. Comment:

“Safe harbor” language should be included in the Receiving Water Limitations (RWL) because without it, the potential cost impacts to municipal budgets are unlimited.

Response:

The State Board has declined to add “safe harbor” language to the iterative RWL requirements in precedential orders. (See WQO 99-05 and WQO 2001-15.) As discussed in the Fact Sheet, which has been clarified, strict compliance with water quality standards is not required. Permittees are not required to begin the iterative process if there are exceedances of RWL until SWMPs are fully implemented (which must be fully implemented by the end of the permit term).

4. Comment:

If compliance with RWL is required, they should be part of the permit, not an attachment to the permit. MS4s may be misled because there is no reference to the RWL in the General Permit.

Response:

The RWL have been intentionally placed as an attachment in attempts to limit confusion, as the RWL are only applicable to a subgroup of the regulated Small MS4s. RWL are referenced in the Fact Sheet, and in Findings 18 and 19 of the General Permit. Provision E of the General Permit requires larger and faster growing Small MS4s to comply with the requirements in Attachment 4, which contain the RWL.

5. Comment:

The discussion of compliance with RWL contained in the Fact Sheet is confusing, as to whether strict compliance is not required by the permit or whether strict compliance with the RWL is required after the five years allowed for complete implementation of a SWMP.

Response:

The Fact Sheet has been clarified. Strict compliance with water quality standards is not required. Permittees are not required to begin the iterative process if there are exceedances of RWL until SWMPs are fully implemented.

6. Comment:

The reference to the California Toxics Rule (CTR) contained in the RWL is confusing and should be removed.

Response:

The reference to the CTR has been modified; however, the reference remains in the General Permit because the CTR applies to inland waters throughout the state. The CTR states to which water bodies it applies and it describes the criteria these water bodies must meet. The method of ensuring protection from storm water discharges is set forth in the iterative process. If permittees are confused about which standards apply to their receiving waters, they can contact Regional Board staff. The first version of the General Permit was incorrect because it did not refer to all documents where applicable water quality standards may appear.

B. League of California Cities (League)

Comment:

If the intent of the iterative approach is to provide “safe harbor,” it needs to be stated so more explicitly in the General Permit or Fact Sheet. Additionally, the League understands that “safe harbor” is given to municipalities that are under 50,000 people and are not fast-growing, but it is in a different manner. The League suggests that the General Permit and Fact Sheet and attachments be revised to clearly spell out the safe harbor provisions for both types of permittees.

Response

The term “safe harbor” has been used by storm water permittees to indicate that permittees who follow the iterative process in the RWL will be deemed in compliance with RWL and provided with some protection from enforcement actions. The term itself is not used in the General Permit nor is safe harbor language included in the current General Permit. If a permittee complies with the iterative process requirements, but still causes exceedance of water quality standards, the

permit does not address whether enforcement may be appropriate. See Response A.3 for clarification on the discussion of the application of RWL to those municipalities subject to Attachment 4. The issue of a safe harbor is not relevant to those municipalities that are not subject to Attachment 4 because are not subject to RWL at all.

C. Construction Industry Coalition of Water Quality (CICWQ)

1. Comment:

CICWQ does not support the inclusion of the Design Standards that are similar to those approved in WQ Order 2000-11 [Standard Urban Stormwater Mitigation Plans (SUSMPs)] in the General Permit. The General Permit should encourage the use of regional mitigation facilities to protect water quality from both new-development and existing development, as the SWRCB directed in WQ Order 2000-11. Regional mitigation facilities improve water quality, are cost-effective, are generally better maintained, allow the beneficial reuse of collected storm water, and can often be used for multiple purposes.

Response:

The Design Standards are modified to allow for functionally equivalent alternative programs, which may include regional mitigation facilities.

2. Comment

RWL should be contained within the General Permit, not as an attachment.

Response:

Please see response to comment A.4.

3. Comment:

Reference to the CTR in the RWL should be removed.

Response:

Please see response to comment A.6 for discussion of the CTR.

4. Comment:

The discussion of the application of the RWL in the Fact Sheet is confusing.

Response:

Please see response to comment A.5 for a discussion on the application of RWL.

5. Comment

The cost of compliance with RWL is potentially unlimited. Additionally, standards contained in Basin Plans are not appropriate for storm water discharges because they are episodic and highly variable. The RWL should be revised to the following:

“Urban runoff discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or that cause or create a nuisance, are to be remedied through the use of BMPs that are consistent with the Maximum Extent Practicable (MEP) standard. Where such exceedances occur, Permittees who act in good faith and implement such BMPs consistent with

the MEP standard, shall be deemed in compliance with the discharge prohibition and receiving water limitation provisions of this Order.”

Response:

Standards in Basin Plans are water quality based to protect beneficial uses. The source of the pollutants is not the issue, it is the damaging effects they can have. Furthermore, the General Permit implements Basin Plans, this is not the appropriate venue to challenge the limits contained in Basin Plans.

While MEP is the technology standard contained in MS4 permits, RWL are water quality based and may require a level of effort above that required by MEP. Therefore, the suggested language has not been incorporated into the General Permit.

6. Comment

“Safe harbor” language should be included in the General Permit. Without safe harbor, the cost to municipalities is limitless.

Response:

Please see response to comment A.3 for a discussion on safe harbor language.

D. California Regional Water Quality Control Board, San Diego Region

1. Comment:

RWL should be applicable to all permittees that obtain coverage under the General Permit. If small entities generate small levels of pollutants, then in general, those entities that are smaller should be in compliance with the RWL but if they are not, there is a mechanism in place to achieve compliance. Additionally, the concept that smaller entities produce smaller amounts of pollutants does not hold true for non-traditional MS4s, such as military bases. Furthermore, there are non-traditional Small MS4s adjacent to Phase I MS4s that must comply with RWL and are currently exceeding the MEP standard in attempts to achieve compliance with the RWL. It is unfair that MS4s within the same watershed have different standards of compliance and must put forth different levels of effort to protect water quality.

Response:

The SWRCB’s precedent decision (WQO 99-05) only applied to Phase I communities. With the adoption of this General Permit, SWRCB has decided that in this first of Small MS4 permitting, the applicability of RWL should only be extended in general, to larger and fast-growing Small MS4s. If the RWQCB finds that additional requirements are necessary for permittees within its jurisdiction, it may issue a more stringent permit.

2. Comment

The designation of non-traditional Small MS4s needs clarification.

Response:

Language was added to the Fact Sheet specifying SWRCB’s intent that the non-traditional Small MS4s listed on Attachment 3 of the General Permit be designated within the five year permit term. RWQCBs may designate individual or groups within that time frame.

E. California Department of Transportation

1. Comment

The General Permit should not require compliance with RWL because without mixing zones, the RWL become effluent limits, compliance is potentially very expensive, if even possible in some cases. RWL should be included in the General Permit as a goal to achieve, such as they are in the San Bernardino Phase I MS4 permit.

Response:

The comment assumes that in determining whether discharges cause or contribute to exceedance of water quality standards, the Discharger must, in effect, determine what a numeric effluent limitation would be, by determining the mixing zone, etc. The permit does not include numeric effluent limitations, and therefore the procedure is not required. BMPs should emphasize (i) low impact design; (ii) source controls; and (iii) treatment controls, in that order. The language in the San Bernardino permit does not indicate a different approach since the RWL language is similar.

2. Comment:

The Design Standards should not recommend against infiltration devices for sites with 25,000 or greater average daily traffic unless pretreatment is provided. Each situation should be assessed on site-specific factors such as potential pollutants, soil types, location, groundwater use, vector control, and other issues.

Response:

Attachment 4 has been revised to require maintenance and monitoring of infiltration devices but not require pretreatment. Additional discussion has been added on the need to evaluate site conditions to determine the appropriate BMP and consider the need for pretreatment.

F. Murdoch, Walrath & Holmes - Paul Holmes

Comment:

Community colleges follow a similar parallel process as K-12 schools for construction projects and therefore should be included in the exemption from redesigning projects in the “pipeline.” Accordingly, redesign of community college facilities should not be required in order to comply with the post-construction requirements if the design has been approved by the Public Works Board on or before December 31, 2004. Additionally, the language regarding K-12 schools should be modified to reference the State Allocation Board instead of the Department of Education.

Response:

The language regarding school projects in the pipeline has been expanded to include community college projects and the reference to the Department of Education has been changed to State Allocation Board.

G. Best Best & Krieger

See comment and response to comment F above regarding projects in the pipeline.

H. Department of the Navy

Comment:

Naval Auxiliary Landing Field, San Clemente Island should be taken off Attachment 3 because it is a remote island off the coast of California outside of an urbanized area, it has a permanent population of 400 personnel, the industrial activities on the facility are covered under the General Permit for the Discharges of Storm Water Associated with Industrial Activity, and most of the urbanized portion of the island drains to the NALF SCI coastline that has been granted a 1,000 foot exclusion zone from the State Water Quality Protection Area (formerly Areas of Biological Significance) prohibition against discharges granted for the treated sewage discharge.

Response:

Although not in an urbanized area or an otherwise permitted MS4, this non-traditional Small MS4 remains on Attachment 3 because not all discharges are directed to the area covered by the exclusion from the State Water Quality Protection Area discharge prohibition. Furthermore, the exclusion was granted for the discharge from the wastewater treatment plant, not the storm water discharge.

I. Fresno Metropolitan Flood Control District (District)

Comment

As supported by the EPA's National Urban Runoff Program study and a 1995 USGS study, a properly designed basin, following a prescribed monitoring and maintenance program is believed to be protective of the water table. Accordingly, the District recommends replacing the word "pretreatment" with "monitoring and maintenance" in regards to section B.5: Limitation on Use of Infiltration BMPs in Attachment 4.

Response:

Please see response to comment E.2 above regarding modification to the limitations of infiltration BMPs language.

J. Butte County

1. Comment

Provision D.7 of the General Permit requires that "outfalls not identified in SWMP, but constructed within the permitted area during the term of this General Permit..." which implies that the initial SWMP submittal needs to identify all outfalls. However, provision D.2.c.2) states "develop, if not already completed, a storm sewer system map...." The General Permit should be clarified on whether the system map is required in the initial SWMP submittal.

Response:

The language was modified by replacing "SWMP" with "storm sewer map required by provision D.2.c.2)."

2. Comment

Language should be included in the General Permit specifying that if the MS4 does not discharge to a water of the U.S., the Small MS4 should be exempted from the NPDES Phase II requirements.

Response:

Although the Fact Sheet and the Definition of terms specified that only Small MS4s that discharge to waters of the U.S. are subject to this permit, Finding 8 of the General Permit is also modified to clarify this point.

K. Monterey County Water Resources Agency

Comment:

Monterey County should be removed from Attachment 5 because the permitted portion of the MS4 does not serve over 50,000 people. The Fort Ord area and the Pebble Beach area were identified as being served by the County's MS4 when generating Attachment 5, however, these areas are under separate jurisdictions and therefore, the population is reduced from 68,906 to 44,391 people.

Response:

Monterey County has been removed from Attachment 5.

L. City of Hanford

Comment:

The City of Hanford should be moved back to Attachment 2 as it had been on previous drafts. A clerical error made by the Bureau of the Census changed the Hanford area from an urbanized cluster to an urbanized area, subsequent to the release of most 2000 census urbanized area data. The City of Hanford was preparing to submit an application for permit coverage 180 days after permit adoption, not 90 days. Additionally, the area that is required to be permitted is unclear, which may also affect other municipalities. If surrounding entities are also designated, the manner in which the permit may be implemented may change.

Response:

The City of Hanford as well as the City of Lemoore and Kings County, the other entities affected by the creation of the Hanford urbanized area, are placed on Attachment 2 because the urbanized area and in turn the City's designation status, was recognized subsequent to the release of other urbanized areas.

The Hanford urban cluster and the Lemoore urban cluster were joined by five census blocks and defined as an urbanized area. The permit boundaries for the City of Hanford must be the entire City. The Bureau of the Census's website (www.census.gov) or SWRCB staff may be consulted for further details on the urbanized area boundaries.

M. City of Goleta

1. Comment:

The recently incorporated City of Goleta should not be included on Attachment 5 because the MS4 owned by the City does not serve 50,000 or more people nor does it meet the definition of high growth.

Response:

The data used to generate Attachment 5 used the population of the Goleta Census Designated Place (CDP). The boundaries of the City are not the same as those of the CDP nor is the population the same. Because the City does not meet the required thresholds, it has been removed from Attachment 5.

2. Comment:

The General Permit fails to set effluent limitations of point sources as required by the Clean Water Act.

Response:

The federal regulations allow inclusion of BMPs as effluent limitations in lieu of numeric effluent limitations for storm water permits. Title 40 of the Code of Federal Regulations (40 CFR) §122.44(k)(2). Also, Clean Water Act (CWA) §402(p) specifically allows the inclusion of “management practices” in storm water permits. The BMPs are the effluent limitations, and numeric effluent limitations are not required.

3. Comment:

The third draft General Permit comment period should have been extended. The assumption could have been made that because the third draft General Permit was “pulled” SWRCB’s February 4, 2003 agenda, that the comment period would be extended.

Response:

There was no reason to believe that the comment period had been extended. It was clear that the draft General Permit was pulled from the agenda due to the Ninth Circuit Court decision, not specific issues under consideration in the draft General Permit at that time that would be the subject of comments.

4. Comment:

The time allowed for submitted modifications in accordance with Provision A.2.b of Attachment 4 should be 90 days instead of 30 days.

Response:

The suggested change was not made in the General Permit. The iterative process is initiated when there is an exceedance of water quality standards which must be responded to in a timely manner. Additionally, the time schedule was adopted by the SWRCB in Order WQ 99-05.

5. Comment:

The time allowed for revisions of the SWMP in accordance with Provision A.2.c of Attachment 4 should be 90 days instead of 30 days.

Response:

The suggested change was not made in the General Permit. The iterative process is initiated when there is an exceedance of water quality standards which must be responded to in a timely manner. Additionally, the time schedule was adopted by the SWRCB in Order WQ 99-05.

6. Comment:

The SWRCB has failed to establish any nexus between the Design Standards contained in Attachment 4 and water quality benefits. Municipalities must be able to demonstrate nexus on a project by project basis under constitutional standards.

Response:

Order WQ 2000-11 established SUSMPs as meeting the MEP standard for large and medium MS4s, thus, SWRCB found that the appropriate nexus exists. Additionally, a Finding has been added to the General Permit.

7. Comment:

The two separate categories relating to home subdivisions in the Design Standards should be combined into one for “housing subdivisions with 10 housing units or more.”

Response:

The Design Standards have been modified as suggested.

8. Comment:

Provision B.2.a of Attachment 4, the limitation on post-development peak storm water runoff discharge rates, appears to exceed the authority of SWRCB, as the CWA, and Porter-Cologne Water Quality Control Act (Porter-Cologne), reach only to the discharge of “pollutants” or “wastes” and water, by itself, regardless of rate of discharge, is not the discharge of a pollutant. Rate of discharge is not within the statutory definition of “pollutant.”

Response:

Section 122.34 of 40 CFR states that a Small MS4 permit will require the MS4 to protect water quality. Excess flow has been found in general to degrade water quality. Therefore, requiring controls on flows is not outside of the permitting authority’s authority. Additionally, the limitation is based on increased flows that will result in increased potential for downstream erosion. The requirement applies to erosion, which is a discharge within the meaning of the CWA, and not simply to the discharge of “water.”

9. Comment:

The definition of redevelopment contained in the permit is inconsistent with EPA’s definition of redevelopment which refers to alterations of a property that change the footprint of a site or building in such a way that results in the disturbance of equal to or greater than one acre of land.

Response:

The definition of redevelopment has been clarified. The creation of impervious area triggers the requirements for post-construction control. This is consistent with U.S. EPA’s definition.

10. Comment:

The requirement to “concentrate or cluster development contained in Provision B.2.b.1 of Attachment 4 lacks definition and may infringe on property rights.

Response:

The requirement only applies where it is consistent with applicable General Plan and Local Area Plan policies. It also does not require a specific level of clustering. There is no takings issue here.

N. City of Buellton

1. Comment:

The General Permit fails to set effluent limitations of point sources as required by CWA.

Response:

Please see response to comment M.2 above regarding effluent limitations.

2. Comment:

There is no evidence to support the inclusion of the City of Buellton as a regulated Small MS4 and its inclusion is based on an erroneous construction of EPA’s Phase II regulations. As such, the designation of Buellton is an unfunded mandate.

Response:

The constitutional provision on unfunded mandates does not apply to federal requirements.

3. Comment:

The third draft General Permit comment period should have been extended. The assumption could have been made that because the third draft General Permit was “pulled” SWRCB’s February 4, 2003 agenda, that the comment period would be extended.

Response:

Please see comment M.3 above regarding the comment period.

4. Comment:

The time allowed for submitted modifications in accordance with Provision A.2.b of Attachment 4 should be 90 days instead of 30 days.

Response:

Please see comment M.4 above regarding the report modification time schedule.

5. Comment:

The time allowed for revisions of the SWMP in accordance with Provision A.2.c of Attachment 4 should be 90 days instead of 30 days.

Response:

Please see comment M.5 above regarding SWMP modification time schedule.

6. Comment:

The SWRCB has failed to establish any nexus between the Design Standards contained in Attachment 4 and water quality benefits. Municipalities must be able to demonstrate nexus on a project by project basis under constitutional standards.

Response:

Please see comment M.6 above regarding the link between Design Standards and water quality.

7. Comment:

The two separate categories relating to home subdivisions in the Design Standards should be combined into one for “housing subdivisions with 10 housing units or more.”

Response:

Please see comment M.7 above regarding the modification to the home subdivision categories in the Design Standards.

8. Comment:

Provision B.2.a of Attachment 4, the limitation on post-development peak storm water runoff discharge rates, appears to exceed the authority of SWRCB, as the CWA, and Porter-Cologne, reach only to the discharge of “pollutants” or “wastes” and water, by itself, regardless of rate of discharge, is not the discharge of a pollutant. Rate of discharge is not within the statutory definition of “pollutant.”

Response:

Please see response to comment M.8 in regards to SWRCB’s authority to regulate discharge rates.

9. Comment:

The definition of redevelopment contained in the permit is inconsistent with EPA’s definition of redevelopment which refers to alterations of a property that change the footprint of a site or building in such a way that results in the disturbance of equal to or greater than 1 acre of land.

Response:

Please see response to comment M.9 in regards to the definition of redevelopment.

10. Comment:

The requirement to “concentrate or cluster development contained in Provision B.2.b.1 of Attachment 4 lacks definition and may infringe on property rights.

Response

Please see response to comment M.8 in regards cluster development.

O. Santa Barbara County Flood Control And Water Conservation district and Water Agency (Agency)

1. Comment:

At a minimum, ninety days should be allowed for submittal of a final SWMP after adoption. This will allow time for review of the SWMP in light of an adopted General Permit and allow

for meaningful public review prior to submittal. Because the March 10, 2003 federal deadline remained despite the lack of an adopted statewide General Permit, the SWMP submitted by the Agency could not fully go through such a process.

Response:

Section A.1.a of the General Permit requires automatically designated Small MS4s to submit applications for permit coverage by August 8, 2003 (100 days after adoption). If the Agency does not want the previously submitted SWMP to be considered, it should convey this to the RWQCB and resubmit an application by August 8.

2. Comment:

Buellton, Solvang, or Santa Ynez/Los Olivos should not be designated as regulated Small MS4s. These areas have small populations and monitoring data submitted show that they do not contribute to the impairment of the Santa Ynez River.

Response:

Please see response to comments C.2 in the Response to Comments on the October 28, 2002 Draft. Additionally, the proposed 2002 303(d) list still contains the Santa Ynez River. Furthermore, the monitoring data does not address sedimentation/siltation, the impairment cited as having contributions from urban runoff.

3. Comment:

Industrial permits for county operations should be part of the municipal permit. The redundancy is inefficient, unnecessary and confusing to the public.

Response:

As noted in the General Permit, a permit satisfying both industrial and municipal storm water permit regulations would have to contain all of the requirements of both permits, while containing different standards. The result would be a confusing and cumbersome permit. All municipal activities should be evaluated for potential storm water impacts under the municipal permit, whereas only ten categories of industrial activities defined in the industrial permit must be covered under the industrial permit. While there may be some BMPs that are applicable to both permits, this should not make for an inefficient program.

4. Comment:

Monitoring storm water should not be required. The Agency is concerned that the General Permit allows the RWQCB to require additional monitoring at any time without meaningful public process or explanation of why and which may be financially burdensome. Any mandate for monitoring storm water is inconsistent with Congressional intent, unjustified, a waste of local agency resources, and would be an unfunded mandate from the state.

Response:

The authority to require monitoring clearly exists in the Clean Water Act and in California Water Code section 13383, which implements the federal law in California. Additionally, the preamble to the Phase II regulations states that "the NPDES permitting authority is responsible for determine whether and what types of monitoring needs to be conducted and may require monitoring in accordance with State/Tribe monitoring plans appropriate to the watershed."(Federal Register, December 8, 1999, page 68769) The General Permit is consistent with this because it allows the RWQCBs to work on a watershed basis and it

discusses a broad range of objectives for a monitoring plan, but it does not specify the types of monitoring that may be used.

The constitutional provision on unfunded mandates does not apply to federal requirements. Section 123.35(h)(1) of 40 CFR states that the permitting authority “must incorporate any additional measures necessary to ensure effective implementation of your state or Tribal storm water program for regulated Small MS4s.

It is not true that there is no public review process for monitoring requirements added by Regional Boards. The Regional Board may hold a public meeting to consider such requirements, and permittees may petition the State Board for review of monitoring requirements pursuant to Water Code section 13320.

5. Comment:

The Design Standards contained in Attachment 4 should be modified to allow “substantially equivalent or more stringent” alternatives.

Response:

Please see response to comment A.1 regarding the allowance of Design Standard alternatives.

6. Comment:

The City of Goleta should be removed from Attachment 5.

Response:

Please see response to comment M.1 regarding the removal of the City of Goleta from Attachment 5.

7. Comment:

Safe harbor language should be included in the RWL language and the whole section should be made part of the General Permit, not an attachment. Additionally, reference to the CTR should be removed from the RWL.

Response:

Please see response to comments A 3, 4, and 6 regarding RWLs.

The Agency’s remaining comments are similar to comments already addressed. Please see comments and responses to comments M.4-M.10.

P. County of Los Angeles

1. Comment:

Lake Los Angeles should not be listed on Attachment 5 because it has not experienced high growth nor does the MS4 serve over 50,000 people. Census tracts 9001.01 and 9001.02 had a population of 11,953 in 1990 and a population of 12,634 in 2000, which does not constitute high growth over the past 10 years.

Response:

According to the Bureau of the Census' American Fact Finder on its website (www.census.gov), the Lake Los Angeles CDP had a population of 7,977 people in 1990, and 11,523 people in 2000. Constituting a growth rate of 44% over 10 years, far above the 25% threshold requiring compliance with Attachment 4. Therefore, Lake Los Angeles has not been removed from Attachment 5.

2. Comment:

Requiring compliance with RWL, specifically provision A.1 of Attachment 4, is inconsistent with the Clean Water Act (CWA) which sets forth specific standards to be applied to municipal permittees. The CWA specifies that a municipal permittee shall "reduce the discharge of pollutants to the MEP. Additionally, including "contributing" to an exceedance in the RWL can also require the permittee to go beyond MEP. If it is SWRCB's intent that compliance with provision A.2 of Attachment 4 is sufficient to achieve compliance with Part A.1, then this should be explicitly stated by amending provision A.2.

Response:

The Clean Water Act authorizes the State Board to require compliance with water quality standards. (*Defenders of Wildlife v. Browner* (9th Cir. 1999) 191 F.3d 1159.)

3. Comment:

Installation of energy dissipaters as required by the Design Standards, is not always possible or practical.

Response:

The General Permit has been modified to allow for functionally equivalent programs. Where energy dissipaters are not possible, the post-construction program may include alternatives.

4. Comment:

Connection to the sanitary sewer, as required by the Design Standards for Vehicle/Equipment Wash Areas, is not possible in areas that rely on septic systems.

Response:

Areas designed to be continuously used for vehicle/equipment wash areas, as stated in the requirement, have the potential to be exposed to a variety of harmful constituents. Facilities that receive runoff from these areas, whether on-site or through a sanitary sewer system, should be designed and permitted to handle such constituents. The language in the requirement has been modified to be consistent with similar parts of the permit.

Q. City of Tulare**Comment:**

The City of Tulare should not be subject to the General Permit because the MS4 serving the City does not discharge to waters of the U.S. The MS4 discharges to the Tulare Irrigation District which in turn discharges to the closed Tulare Lake Basin.

Requiring the City of Tulare to obtain permit coverage is an unfunded mandate. The funding information suggested by SWRCB staff present grants and loans, which are not sufficient for ongoing maintenance of the storm water program. They also do not address the problems

associated with Proposition 218. General Fund money is used to fund storm water operation. This means that the additional costs associated with the storm water program will compete for the same limited dollars with public safety, street maintenance, parks and recreation, as well as others.

Response:

The permit applies to discharges to “waters of the United States.” This is explained in the Fact Sheet. If an entity claims that it never, **under any circumstances**, discharges any storm water to “waters of the United States,” then this permit would not apply to it. There are no exemptions from the permit, and it is the responsibility of each MS4 to apply for the permit if it could ever have a discharge. The penalties for discharging without a permit are severe.

Please see response to comment N.2 in regards to the unfunded mandate comment. In regards to program funding, the storm water program should not be seen as competing for funds with other programs. The programs referenced are excellent examples of programs that can integrate proper storm water practices. For instance, using integrated pest management methods in place of traditional herbicides and pesticides at parks, enforcement of litter control laws by police officers, and proper storage of “cold patch” can all be part of a storm water program as well as being part of normal operating procedures for those other programs.

R. County of Humboldt

Comment:

McKinleyville, an unincorporated portion of Humboldt County, should not be designated as a regulated Small MS4. The community does not meet the high density criteria as listed on Attachment 2; the community has little effect on the sedimentation and turbidity problems of the Mad River, which is listed on the 303(d) list; 85% of the sediment generated in the watersheds come from natural landslides, Humboldt County has helped produce “A Water Quality and Stream Habitat Protection Manual for County Road Maintenance in Northwestern California Watersheds;” Humboldt County adopted a new grading ordinance which has many protective requirements; and the community was listed on Attachment 2 for the first time in the fourth draft of the General Permit and as the only community under the jurisdiction of Humboldt County designated, implementing a storm water program would require significant resources.

Response:

While the entire area has a density below 1,000 people per square mile, there are portions of the community that meet this threshold, as is seen by its urban cluster status given by the Bureau of the Census. More importantly the community discharges to the Mad River, which is an impaired waterbody due to sediment and is subject to the Total Maximum Daily Load (TMDL) development and implementation process. During the development of other TMDLs in the area, such as the Garcia River, it has been found that anthropogenic sources, such as roads found in populated areas, also contribute to sediment discharges along with natural causes. There is no reason to believe the Mad River is any different in this regard.

The measures referenced by the County, the road maintenance manual and the grading ordinances, are important steps in developing a storm water program but should not be a stopping point.

The communities designated as regulated Small MS4s and located in the North Coast Regional Board area was approved by that Board on August 22, 2002 in Eureka

(http://www.swrcb.ca.gov/rwqcb1/agenda/08_2002/item_11.html). At that meeting, no testimony from the County was received. Additionally, McKinleyville was on Attachment 2 in previous drafts, though inadvertently listed as a City.

S. Coalition for Adequate School Housing

1. Comment:

The exemption from redesigning approved school projects to include post-construction projects should be clarified and expanded to include community colleges.

Response:

Please see response to comment F in regards to post-construction requirements for school projects.

2. Comment:

Schools should be exempted from fees as explicitly stated in the previous draft General Permit.

Response:

Fees are set in the California Code of Regulations, not by the General Permit. School districts remain exempt from fees although the language in the fourth draft was slightly modified from the third draft. The fourth draft makes requires submittal of the “appropriate fee.” Currently, the appropriate fee for this General Permit for K-12 school districts is zero. Using “appropriate” instead of explicitly stating schools are exempted is simpler in terms of permit language and will remain accurate if the fee schedule changes in the future.

T. Natural Resource Defense Council

1. Comment:

It appears that SWRCB failed to consider any comments submitted by the environmental groups in previous letters dated October 18, 2002 and November 26, 2002.

Response:

Responses to comments contained in those letters can be found in the responses to comment to the October 28, 2002 draft document. This can be found on our internet site at http://www.swrcb.ca.gov/stormwtr/phase_ii_municipal.html, where it was posted January 9, 2003.

2. Comment:

The SWRCB must set a deadline for designation of the Small MS4s in Attachment 3.

Response:

In light of the more time-consuming review and consideration of SWMPs, the State Board cannot designate as many small MS4s at this time. The fact sheet is modified to clarify that it is the intent of the SWRCB to designate all listed small MS4s by the end of the current permit term.

3. Comment:

The permit is not clear as to the process followed for SWMPs submitted before the General Permit is adopted.

Response:

The intent of the discussion on applications submitted before the General Permit was adopted was simply to indicate applications do not have to be resubmitted upon adoption of the General Permit. Applications submitted early will follow the same review and public noticing process as others submitted after the General Permit is adopted.

4. Comment:

The General Permit must fulfill certain public participation requirements, as specified in *Environmental Defense Center v. EPA*. The General Permit should include a method for the public to be notified when a draft SWMP is available for review at the website. The federal regulations provide for specific methods of notification including by mail, publication in newspapers, or other methods that give notice to the public.

Response:

While the SWRCB is voluntarily complying with the process set forth in *Environmental Defense Center v. EPA* (9th Cir. 2003), it is important to note that this decision has been stayed for reconsideration and is not in effect. The notification process set forth in the permit will allow all interested persons to be aware of complete applications and SWMPs, to review them, and to make comments or request hearings where appropriate. Additional mailings would result in a very large amount of paper and financial resources wasted, and will not be made unless such requirement is clarified by the Court, after its reconsideration. If a hearing is requested, the RWQCB will follow applicable requirements in noticing the hearing and allowing comments. There is no reason for this process to be explicitly stated in this General Permit.

5. Comment:

The General Permit should allow for at least 60 days for an interested party to request the appropriate RWQCB for a hearing. This time may allow for consultation between stakeholders and the MS4 in question, which in turn may obviate the need for a hearing.

Response:

The procedure outlined in the permit has been modified to allow for a 60-day public review period in which the public can request a hearing. The request for a hearing must be in writing to the RWQCB and must include a summary of the main issues of concern regarding the SWMP in question.

6. Comment:

Approval of the SWMP cannot be delegated to the RWQCB Executive Officer because SWMP constitutes permit approval. Additionally, approval of revisions to SWMPs cannot be delegated to the Executive Officer. Only minor changes to the SWMP may be allowed without a hearing by the RWQCB.

Response:

While the State Board is voluntarily complying with the process set forth in *Environmental Defense Center v. EPA* (9th Cir. 2003), it is important to note that this decision has been stayed

for reconsideration and is not in effect. Moreover, the permit itself does include clear requirements to implement BMPs that will result in reduction of pollutants to the MEP. Additional specific requirements (Attachment 4) apply to larger and fast-growing communities. Therefore, approval of the SWMP does not constitute issuance of waste discharge requirements and is not delegation to the EO of writing waste discharge requirements. The process that will be followed is staff will review the SWMP and if the SWMP is not found to be in substantial compliance with the permit standard, staff will work with the applicant to develop a SWMP that is in substantial compliance with the permit. If there is a request for a RWQCB hearing, permit coverage will commence only upon Board approval. If there is no request for a hearing the RWQCB Executive Officer will notify the Permittee in writing of permit coverage commencement. The process set forth will allow all interested persons to request a hearing and full consideration of the SWMP by RWQCB itself at a public meeting. In light of the number of anticipated SWMPs, to require even uncontested SWMPs to go to the RWQCBs in public meetings would create a large workload and interfere with the ability of the Boards to implement and enforce the permit.

7. Comment:

Permit coverage should not be waived for non-traditional Small MS4 entities that are subject to the industrial storm water permit and that meet the criteria for the exclusion of coverage.

Response:

The Board is not waiving any permit requirements for non-traditional MS4s. The fact sheet clarifies that if a non-traditional MS4 subject to the statewide industrial permit operates under a SWPPP that fully complies with all requirements for the industrial permit and all requirements in this permit for its entire area, it need not be regulated under this permit. The standards for compliance with the industrial permit are more stringent than for the municipal permit. Therefore, it is appropriate to not require applications under both permit.

8. Comment:

The General Permit does not meet the MEP standard. Most problematic is that it lacks specificity.

Response:

The General Permit includes all requirements of the EPA Phase II regulations and additional requirements (Attachment 4) for larger and fast-growing Small MS4s. In addition, the permit now requires individual review of each SWMP to assure that the MEP standard is met. This approach was endorsed by the 9th Circuit when it upheld the Phase II regulations, in the decision that is currently being reconsidered. At this time, there is no basis to claim that the permit does not meet the MEP standard. While it is true that Phase I MS4 permits are more specific, this permit is appropriate as a first-generation permit for small communities.

9. Comment:

The time schedule allowed for implementation of the SWMP is too long. A five-year implementation and compliance period is unlawful and violates 40 CFR section 122.47.

Response:

Section 123.35(e) of 40 CFR, requires the permitting authority to “specify a time period of up to 5 years from the date of permit issuance for operators of regulated Small MS4s to fully

develop and implement their storm water program.” As the permitting authority, SWRCB has complied with this regulation.

10. Comment:

The reference to priority pollutants in paragraph 1 of the RWLs should be modified to reduce confusion.

Response:

The suggestion has been incorporated into the General Permit.

11. Comment:

Causing or contributing to nuisance and prohibitions should be included in the RWL.

Response:

A nuisance provision is included in the Prohibitions section of the General Permit, which is in the main part of the permit, and applies to **all** permittees. There is no iterative process for compliance.

12. Comment:

Environmentally Sensitive Areas should be a category that requires appropriate Design Standards.

Response:

Environmentally Sensitive Areas were not approved by SWRCB in WQ Order 2000-11. With the addition of the RGOs, the provision is consistent with the SUSMP provisions that have been approved by the State Board. The “functional equivalency” provision been added allows permittees to work with Regional Boards to address site-specific issues.

13. Comment:

A definition of redevelopment should be included in the Design Standards.

Response:

A definition of redevelopment is included in the Definition of Terms, Attachment 9 of the General Permit.

14. Comment:

The “Protect Slopes and Channels” section should include a requirement to “control or reduce or eliminate flow to natural drainage systems to the MEP”

Response:

The suggested requirement was not incorporated because it conflicts with another requirement of the same section.

15. Comment:

In addition to the signage requirements, Attachment 4 should include a hotline requirement for general public reporting of clogged catch basin inlets and illicit discharges/dumping, faded or lack of catch basin stencils, and general stormwater management information.

Response:

The suggested change was not made in order to remain consistent with Order WQ 2000-11.

16. Comment:

The “Design Standards for Structural or Treatment Control BMPs” section should include the additional design option: “volume of runoff produced from a 0.75 inch storm event, prior to its discharge to a storm water conveyance system.”

Response:

Specifying a 0.75 inch storm event is not appropriate for a statewide permit. A specific storm event size is location specific.

17. Comment:

The “Peak Flow Control” section should be modified to include a flow-based treatment control BMP.”

Response:

The suggestion has been incorporated into the General Permit.

18. Comment:

The “Limited Exclusion” to retail gasoline outlets should be deleted.

Response:

The limited exclusion for retail gasoline outlets is consistent with Order 2000-11 as well as the most recent Los Angeles County MS4 permit.

19. Comment:

The “Properly Designed Parking Area” section should be modified to include the requirement to “treat runoff before it reaches storm drains”

Response:

The suggestion has not been incorporated into the General Permit. It is not appropriate to specify when treatment occurs, as long as it occurs before runoff enters a water of the U.S.

20. Comment:

The “waiver” section should be modified to include a requirement to transfer costs in cases where a waiver is granted for a project.

Response:

The suggestion has not been incorporated into the General Permit. As stated in Order WQ 2000-11 “As a long-term strategy, municipal storm water dischargers should work to establish regional mitigation facilities, which may be more cost-effective and more technically effective than mitigation structures at individual developments. But at this point there are not sufficient resources in place to require all permittees to establish such funds or to find appropriate non-profit organizations.”

21. Comment:

A resource and reference section as well as a list of example BMPs should be provided for permittees.

Response:

A link to references and resources is included in the General Permit.