



CITY OF EL PASO DE ROBLES

"The Pass of the Oaks"



September 1, 2011

BY ELECTRONIC MAIL ONLY

Chairman Charles Hoppin and Members of the Board
c/o Ms. Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
Sacramento, California
Commentletters@waterboards.ca.gov

Dear Chairman Hoppin and Members of the Board:

Subject: City of Paso Robles Comments on Phase II Small MS4 General Permit

The City of El Paso de Robles (City) appreciates the opportunity to review and comment on the draft Statewide General Permit (Draft Permit) for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s). The City has the following comments.

1. State Water Resources Control Board should focus on amending Proposition 218 so that small MS4s may properly fund stormwater programs instead of adding more requirements.

The Draft Permit is apparently based on an assumption that stormwater programs of small MS4s are not effective because the existing permit is inadequate. This is not true. The stormwater programs of small MS4s are not very effective because they are inadequately funded. Small MS4 stormwater programs are not adequately funded because the programs were established after the 1996 passage of Proposition 218 (the "Right to Vote on Taxes Act"). With the exception of fees for water, sewer, and solid waste collection services, Proposition 218 requires all new fees to be approved by two-thirds vote of those residing in the area affected by the fee. This effectively prevents small MS4s from establishing stormwater fees similar to water and wastewater utilities. Consequently, small MS4 stormwater programs must compete for funding with other municipal services such as police and fire protection, which are generally a higher priority for municipalities. The sales and property tax revenues that fund these services are presently declining and are projected to remain very low for many years.

Instead of ignoring this reality and adding requirements, State Water Resources Control Board should work with the state legislature to amend Proposition 218 and fix this funding problem. In 2007, State Senator Tom Torlakson introduced legislation (SCA12) that would additionally exclude fees for stormwater and urban runoff management from Proposition 218's two-thirds approval requirement. State Board was silent on the legislation and it died. If State Board expects small MS4 stormwater programs to be effective, then it must take a leadership role in this funding issue.

2. All Draft Permit provisions above and beyond the federal requirements are State mandates and should be State funded or removed from the permit.

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

“Guidance: EPA strongly recommends that until [EPA’s] evaluation of the storm water program [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.”

Despite repeated requests, State Board staff has not provided an analysis equivalent to an approved TMDL to support the draft permit requirements that go above and beyond the federal stormwater requirements contained in 40 CFR Section 122.34.

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. All draft requirements above and beyond 40 CFR 122.34 are State mandates. The following permit sections go above and beyond 40 CFR 122.34, thus are State mandates. These must be funded by the State or removed from the permit:

Order Section	Topic
D.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
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.e	Preparation of a spill response plan
E.8.c	Specification of construction site inspection timing and frequency
E.8.d	Permittee staff training
E.8.e	Construction site operator training
E.9.a	Development, maintenance, and annual reporting of inventory of Permittee-owned or operated facilities
E.9.c	Development, maintenance, and annual reporting of a map of Permittee-owned or operated facilities
E.9.d	Development and implementation of Stormwater Pollution Prevention Plans
E.9.e	Specification of inspection locations and frequency
E.9.g	Specification of frequency of monitoring and timing of cleaning of storm drain systems
E.9.i	Specification of assessment frequency of existing flood control projects
E.9.j	Pesticide, Herbicide, and Fertilizer Application and Management
E.10	Trash Reduction Program, in entirety
E.11	Industrial/Commercial Facility Runoff Control Program, in entirety
E.13	Receiving Water Monitoring, in entirety
E.14.c	Municipal watershed pollutant load quantification

These State mandates would require the City of Paso Robles to add approximately 5.5 staff and cost approximately \$700,000 per year. If these draft permit sections are not funded by the State or removed from the permit, the City of Paso Robles is prepared to partner with other local governments and file a claim with the State Mandates Commission.

3. The Draft Permit requirement for all small cities to develop and implement an industrial waste program is contrary to federal stormwater regulations, redundant, and exemplifies a misunderstanding of how small cities function. This requirement should be removed and the Water Boards should continue to regulate industries directly.

The draft requirement to develop and implement an industrial waste program is based solely on a suggestion in USEPA's *MS4 Permit Improvement Guide*. This guide was not subject to the federal rulemaking process. The introduction to Chapter 7 of the guide states,

“This [industrial stormwater control] program component typically applies only to Phase I MS4 permittees as Phase II federal regulations (40 CFR 122.34(b)) do not specifically address stormwater discharges from industrial facilities and commercial businesses (other than as part of the education and outreach program). However, EPA recommends that permit writers consider including requirements pertaining to stormwater discharges to the MS4 from industrial sources in Phase II permits to further reduce stormwater pollutants from the MS4.” (emphasis added)

There is no discussion in the fact sheet as to whether USEPA's guidance considers that the California Water Board already regulates industries directly through its Industrial General Permit. There is no discussion or evidence presented in the fact sheet that the Water Board's direct regulation of industries is not working. The fact sheet must explain why this new requirement is necessary.

This draft requirement is contrary to 40 CFR Section 122.34(e)(2), which states no additional requirements should be imposed on regulated small MS4s without the approval of the small MS4.

This draft requirement is redundant because the Water Board already regulates industries directly through its industrial waste program. Industries enroll in the State's Industrial General Permit, prepare annual reports, and pay annual fees. These fees support Water Board staff that are tasked with periodically inspecting the regulated industries. The fact sheet states that field presence is important. Did Water Board staff consider simply conducting more inspections?

Requiring small cities to develop and implement an industrial waste program would add a redundant and unnecessary layer of regulation. This will confuse industries and convolute enforcement. If I operated an industry and had both State and local agency inspectors coming to my facility to inspect the same thing, I would perceive this as redundant and wasteful.

The draft requirement to develop an industrial waste program exemplifies a misunderstanding of how small cities function. Small cities must partner with local businesses to implement stormwater programs and accomplish community goals. Examples include adopt-a-street and adopt-a-park programs. Businesses generate tax revenue for city services. The elected officials of small cities are often prominent business owners who have a vested interest in protecting businesses from increased regulations. These elected officials control the fate of ordinances and the funding of stormwater programs. This effectively prevents small city stormwater programs from establishing the legal authority and staffing necessary to effectively regulate its large industries. If a particular business

disagrees with a small city staff’s directive or enforcement action, it will often appeal to elected officials. This can rapidly diminish the authority of a local stormwater program.

For these reasons, the Water Board should continue to regulate industries directly through its industrial waste program and not pass along this responsibility to small cities. The Water Board already has well established legal authority, proper separation from industry, and good enforcement tools.

4. Permit Section E.5, Public Education, must be re-written to recognize that every community is different.

Draft Permit Section E.5 prescribes a list of over 20 public education measures that each MS4 must implement, at a minimum. Prescribing such a lengthy list of measures is contrary to 40 CFR Section 122.24, which states that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. This section must be re-written to recognize that every community is different and requires education measures that are appropriate for the community. State Board staff cannot possibly know what education measures are appropriate and cost-effective in every small MS4 in California.

5. Retrofitting should not be required at this time.

The draft requirements to retrofit existing facilities are above and beyond federal requirements and Phase I stormwater regulations. Discretionary funding for retrofit projects is very limited in small MS4s such as Paso Robles. The State should not mandate how many capital improvement projects an MS4 implements each year. The following sections should be removed from the Draft Permit:

Order Section	Topic
E.4.d.iii	“This summary shall include...the costs for...retrofitting existing BMPs to in include green infrastructure...”
E.9.i	The Permittee shall identify and implement a process for incorporating water quality and habitat enhancement features into new and existing flood management facilities.
E.9.i.ii	“...the permittee shall assess at least two existing flood management projects per year to determine whether changes or additions can be made to enhance water quality and habitat functions. The Permittee shall implement changes or addition to two flood management projects per year to enhance water quality and habitat functions, unless a feasibility analysis demonstrates the infeasibility of such changes or additions.”
E.11.b	“The Permittee shall require industrial and commercial facilities included in the inventory to select, design, install and implement storm water BMPs.”
E.14.c.i	“The report shall also identify storm water retrofit opportunities.”

Thank you again for this opportunity to comment. If you have any questions, please contact me at (805) 227-7200 ext. 7716 or mthompson@prcity.com.

Sincerely,



Matt Thompson, P.E.
Wastewater Division Manager

Cc:

Assemblyman Katcho Achadjian
State Capitol Room 2016
Sacramento, CA 95814

Senator Sam Blakeslee
State Capitol, Room 4070
Sacramento, CA 95814

Christine Sotelo, csotelo@waterboards.ca.gov
Eric Berntsen, eberntsen@waterboards.ca.gov
Doug Monn, dmonn@prcity.com
Patti Gwathmey, pgwathmey@prcity.com

I:\PWD\STORMWATER\City of Paso Robles Comments on Draft MS4 General Permit, September 2011.doc