



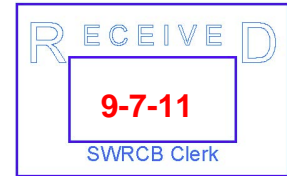
CITY OF ATASCADERO

PUBLIC WORKS DEPARTMENT

6907 EL CAMINO REAL, ATASCADERO, CA 93422
Telephone (805) 461-5000

September 7, 2011

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000



Comment Letter – Phase II Small MS4 General Permit

Dear Ms. Townsend,

The City of Atascadero has reviewed the Draft Phase II Small MS4 General Permit (Draft Permit.) The Draft Permit's minimum requirements have been expanded and new control measures have been added. The City believes that that it will be unable to maintain compliance with the Draft Permit's requirements because of a fundamental lack of human and financial resources. In addition, the Draft Permit contains new unfunded mandates that the City cannot possibly afford. Therefore, the City has the following recommendations:

- Eliminate all new control measures from the Draft Permit until such time the economy and local budgets recover to 2005 levels.
- Eliminate all unfunded mandates from the permit.
- Eliminate new requirements for the implementation of a new industrial/commercial runoff control program.
- Clarify that local agencies that are part of the Central Coast Regional Water Quality Control Boards Joint Effort for hydromodification Control are exempted from all hydromodification control requirements.
- Eliminate all new requirements that are above and beyond the six minimum control measures as recommended by the United States Environmental Protection Agency.

The City of Atascadero (City) has worked diligently to implement our current stormwater program (Program) since adoption by the Central Coast Regional Water Quality Control Board (Central Coast Water Board) in 2008. The City has worked hard to implement our Program in a cost efficient manner that produces positive, real world results. The City has been successful to date, but it is clear that the State Board's Draft Permit will significantly deter the City's present efforts. The City has evaluated the Draft Permit and does not foresee how the City could maintain compliance with the expanded requirements or pay for implementation. The Draft Permit will significantly escalate compliance costs and staff workload while providing no funding for implementation. In addition, the proposed permit is loaded with unfunded mandates, transfers responsibilities from the State to the local level and contains new hydromodification control requirements that conflict with Central Coast Water Board requirements. Lastly, the Draft Permit's new requirements are above and beyond what is recommended or required by the United States Environmental Protection Agency (USEPA.)

The State Board's Draft Permit comes at a time when City staff have agreed to pay more towards their retirement, have been laid off, have forgone raises over that last three years and have had pay reductions to help balance the City budget. The City currently uses \$700,000 of reserves and \$300,000 of staff savings to balance the City budget each year. Therefore, the City currently only funds minimum service levels in order to make its reserves last in these difficult economic times. However, our reserves are finite and the Draft Permit will have a major negative impact on them.

City staff estimates that the draft permit will require three fulltime persons and approximately \$300,000 - \$500,000 per year for implementation because of the increased evaluation, monitoring, inspection, reporting and capital project requirements. The City's current stormwater budget is \$44,300 for the next two years. The Draft Permit will force the City to choose between basic public safety spending or regulatory compliance. The City does not foresee a way to pay for these requirements other than using already scarce public safety funds. This would include shifting police and fire positions to the stormwater program and eliminating funding for a number of police and fire programs. Therefore, the City recommends that all new control measures be eliminated from the draft permit until such time the economy and local budgets recover to 2005 levels.

The City is troubled by the sheer number of unfunded mandates contained in the Draft Permit. The City has attempted to determine all of the unfunded mandates that are contained within the Draft Permit; however, more will likely be discovered. The list below outlines what the City believes are unfunded mandates in the Draft Permit. This list is not all inclusive and we reserve our right to bring up additional unfunded mandates as they are discovered.

- Section E.4.d. Ensure Adequate Resources to Comply with Order – The Draft Permit contains financial reporting, staffing, operations and maintenance requirements.
- Section E.5. Public Outreach and Education Program – The Draft Permit contains requirements to implement Community Based Social Marketing, effectiveness assessments, industrial and commercial outreach and other requirements/programs.
- Section E.9.g Maintenance of Storm Drain System – The Draft Permit contains requirements for monitoring, cleaning, reporting and waste disposal.
- Section E.9.i Incorporation of Water Quality and Habitat Enhancement Features in Flood Management Facilities – The Draft Permit contains requirements for retrofitting of existing facilities.
- E.10 Trash Reduction Program – The Draft Permit contains requirements for retrofitting drainage facilities in commercial/industrial zones.
- E.11 Industrial /Commercial Facility Runoff Control Program - The Draft Permit transfers State responsibility for the industrial and commercial stormwater enforcement and regulation to the City.
- E.13. Receiving Water Monitoring - The Draft Permit contains stormwater monitoring requirements of outfalls and other areas.
- New Total Maximum Daily Load Requirements - The Draft Permit contains new requirements for TMDL implementation.

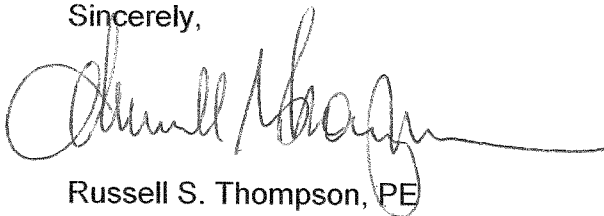
The City is unclear why the State Board is transferring responsibility for industrial stormwater oversight from the State to the City. The State has issued a standalone Industrial Stormwater Permit that applies to industrial sites throughout the State. The State's permit was promulgated to regulate industrial facilities discharge prior to the discharge leaving those sites. The City believes it is the States responsibility to regulate separate industrial and commercial facilities that have the potential to pollute surface and groundwater. In addition, this requirement appears to be an unfunded mandate since the State is not providing resources for implementation. Therefore, we recommend that this provision be removed from the permit.

The City is currently participating with the Central Coast Water Board as part of the Joint Effort for Hydromodification Control (Joint Effort.) The Joint Effort participants and the Central Coast Water Board are working on developing hydromodification control requirements that recognize each local agencies unique geophysical setting. The Draft Permit contains prescriptive requirements that will require the City to duplicate our hydromodification control efforts which will waste precious City resources. We request that the State Board acknowledge the Joint Effort and relieve the City from compliance with the State Board's Draft Permit requirements. Relief from the requirements could be predicated on participation in the Joint Effort.

Lastly, the Draft Permit greatly expands the minimum control measures that are required by the USEPA. The USEPA has weighed in on expanded requirements and has included guidance in Title 40 of the Code of Federal Regulations. Section 122.34(e)(2) recommends that no additional requirements beyond the minimum control measures be implemented until after the USEPA evaluates its existing program (sometime after December 10, 2012.) The USEPA also strongly recommends that new requirements should not be implemented without the agreement of the local agency. The City certainly does not agree with the need for expanded requirements. We recommend that the State Water Board consider the USEPA guidance and remove the additional requirements until such time the USEPA has evaluated the Stormwater Permit requirements.

The City appreciates the opportunity to provide comments to the State Water Board on this very important issue. Please do not hesitate to call should you have any questions or require any clarification.

Sincerely,



Russell S. Thompson, PE
Public Works Director