



MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY

DEPARTMENT OF PUBLIC WORKS

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September 8, 2011

VIA ELECTRONIC MAIL (commentletters@waterboards.ca.gov)

JEANINE TOWNSEND, CLERK TO THE BOARD
STATE WATER RESOURCES CONTROL BOARD
1001 I STREET, 24TH FLOOR
SACRAMENTO, CA 95814



**SUBJECT: COMMENT LETTER – PHASE II SMALL MS4 GENERAL PERMIT
DRAFT GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION
SYSTEM (NPDES) PERMIT FOR STORM WATER DISCHARGES FROM
SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s)**

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

Thank you for the opportunity to review and comment on the Draft General Permit for Small Phase II MS4s (Draft Permit) published on June 7, 2011. The County of Monterey appreciates the 30 day extension that was granted for submitting comments and having the opportunity to participate in the public hearing held on August 17. The County has collaborated with the other members of the Monterey Regional Storm Water Permit Participants Group (Monterey Regional SWPPG) and kept abreast of developments through the California Stormwater Quality Association (CASQA) and the Statewide Stormwater Coalition (SSC). The additional time was used to continue our analysis of the impacts the Draft Permit will have on Monterey County's stormwater program, to collaborate with other Phase II municipalities throughout the state, and to distill our comments down to those of highest concern to the County. The County further appreciates that an additional comment period will be held to address revisions to this Draft after it has been published in October.

The County of Monterey supports the comments presented by CASQA, the SSC and the Monterey Regional SWPPG on the Draft Municipal Phase II Permit. Each of these groups has prepared an extensive list of concerns and discussions of key sections of the current Draft Permit. Rather than reiterate these valid comments, the County of Monterey incorporates them herein by reference.

As repeatedly expressed at the formal workshop on August 17, the County of Monterey is also concerned with the expense of implementing the program that is outlined in the Draft Permit and the questionable return on investment that will be realized from it. The County supports the unfunded mandates comments described in detail in the CASQA (Comment 1), SSC (Attachment A), and Monterey Regional SWPPG (pages 1 and 2) comment letters and will not repeat them here.

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The County of Monterey is fully committed to preventing stormwater pollution to the maximum extent practicable and would be a supporter of the Draft Permit if funding was not an issue. The details of the Permit present a thoughtfully designed program that is highly protective of water quality - one that we believe would be highly effective. However, the County's resistance to supporting the Draft Permit stems from having to implement a program that has no viable or sustainable source of funding. If a stable mechanism could be established to generate revenue that would support the County's stormwater program, such as State funding or creation of a statewide program that could assess polluters for the results of their actions and/or operations in proportion to the impact they cause to stormwater quality, the County would likely support most components of this Draft Permit.

However, the reality of the current economic climate is that municipalities have already made difficult decisions and eliminated non-essential services to balance their budgets. Municipalities are already strapped for cash and when push comes to shove, stormwater quality competes with essential services that the public deems higher priority than water quality – such as law enforcement and emergency fire and medical services. If this Draft Permit was approved in its present form, it is not unreasonable to expect that many of the designated permittees would not be able to fully implement all of the Permit's requirements. Choosing to defer their expenses and risk enforcement action by the State may become a viable alternative to cutting more essential services to fund their stormwater programs.

The County of Monterey has the following concerns as well. Our goal in presenting these items is to draw attention to concerns that we feel have not accurately expressed our unique opinion and those that we would like to emphasize further.

1. Footnote appearing throughout the Draft Permit authorizing the Regional Board's Executive Officer to require a Renewal Traditional Small MS4 Permittee to implement its current program

The footnote that appears throughout the Draft Permit (footnote 9 on page 18 and elsewhere) raises more questions than it appears to address for renewal traditional municipalities. For instance, when will the municipality be informed that it will be required to comply with the terms of its existing permit? Will the municipality have an opportunity to address its Regional Board and present its case for which portions of its existing permit should remain in effect, or is the entire existing program required to remain in effect? Are there any additional guidelines for employing this condition, or is the municipality solely dependent on the Regional Board's decision? Seeing this footnote throughout the Draft Permit is a reminder that the hundreds of hours invested in reviewing this permit and planning its implementation could be wasted if it is determined that the Draft Permit will not be implemented.

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2. Requirements for populations greater than 25,000

At the CASQA quarterly meeting in Sacramento on July 14, State Board staff indicated that counties with Urbanized Areas consisting of communities with populations less than 25,000 would not be subject to the provisions of the Draft Permit that apply only to communities larger than 25,000 population (specifically, E.10 Trash Reduction Program, and E.12, Post-Construction Storm Water Management Program) even when the total population of the Urbanized Areas exceeds 25,000. This would allow a number of small communities to avoid the higher standards that have been assigned to larger communities that are presumably in better positions to fund such programs. While we support the fair interpretation of the intent of these program elements that was expressed at the CASQA meeting, clarification of this issue is not specifically addressed within the Permit.

3. TMDL requirements

The County questions whether the thirteen TMDL implementation requirements presented in the Draft Permit will be enforceable without the full public vetting and review process that the TMDL order has undergone. Implementation requirements included in an approved TMDL resolution have been available for public scrutiny and have been reviewed and approved by multiple public agencies.

Specifically, the County of Monterey is subject to the TMDL for fecal coliform in the Pajaro River Watershed that includes seven specific implementation requirements that were approved by the Regional Water Board, the State Water Board, the Office of Administrative Law and the US Environmental Protection Agency. There are 13 specific implementation requirements listed in the Draft Municipal Permit (beginning on page 11 of Attachment G) that imply a higher level of implementation than was originally approved by these agencies. We question the validity of these additional requirements that have been presented without the benefit of the full public review process.

Further, there is a TMDL for fecal coliform in the Lower Salinas River assigned to Monterey County that is included in the Draft Permit (Attachment G, page 21). However, this TMDL has not yet been approved by the State Water Board, the Office of Administrative Law or the US EPA. We request that this TMDL be removed from Attachment G until it has been approved and is enforceable. If this TMDL is ultimately not approved in its current form, its inclusion in Attachment G calls its enforceability and implementation into question.

4. Requirements that exceed the US EPA's six minimum control measures

As mentioned at the August 17 formal workshop on the Draft Permit that was held by the State Water Board, it was noted that the US EPA is currently in the process of amending their requirements for Phase II MS4s throughout the Country. It was also noted that the EPA currently recommends adding no requirements in excess of the six minimum control measures it has established to enable municipalities to meet the maximum extent practicable (MEP) standard¹. The EPA's representative at the workshop indicated that final decisions have not yet been made, but that the EPA would soon complete its assessment and publish any new or

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revised recommendations to the six minimum control measures that it currently deems satisfy the MEP standard. The EPA's website² indicates that the EPA intends to propose a rule in September 2011 with final action occurring by November 2012.

We request that all unfunded mandates included in the current Draft Permit, those requirements above the six minimum control measures (see Attachment A of the Statewide Stormwater Coalition comment letter) be removed in conformance with EPA's current guidance. Program elements and requirements above the six minimum control measures should not be considered until the EPA has completed its rulemaking process, avoiding potential litigation over issues that may be included in this Municipal Permit and excluded from the EPA's final rulemaking.

5. Redundancy with other State programs

The County encourages the State Board to continue to explore opportunities under other existing regulatory programs that can be utilized to perform some of the required actions of the Draft Permit. Specifically, inspections of industrial facilities are already performed under the State's Certified Unified Program Agency (CUPA) inspectors who could be trained on stormwater inspections and perform the required industrial facility inspections while performing their annual CUPA inspections. The County also supports expanding the existing Surface Water Ambient Monitoring Program (SWAMP) to include the receiving water monitoring required in the Draft Permit resulting in a cost effective program that provides a high and consistent level of confidence in the data collected statewide. If sampling could be performed by a select number of highly trained and supervised personnel, monitoring results would be expected to have a higher degree of accuracy with tighter control over the select group of field personnel, and overall costs to the taxpayers should be less than having each municipality implement its monitoring program individually.

6. Timeline – schedules for compliance

The County requests that the schedules for compliance presented throughout the Draft Permit be reassessed and revised to agree with the schedules proposed by CASQA in Table A-1 of Attachment A of their comment letter (beginning on page A-105). Extending the time that municipalities have to comply with individual components of the Draft Permit will allow them to more carefully explore areas of their program that can be performed in collaboration with another municipality or by a Separate Implementing Entity (SIE). Negotiating Memorandums of Understanding or Agreements between municipalities can be a time-intensive process that can take a number of months to develop before such agreements are determined to be in the entities' best interest.

The County has offered these comments in the context of suggestions that we believe could improve the Municipal Permit that will ultimately be adopted. We applaud the State Board and their staff for developing a comprehensive program that is highly protective of surface water quality. Our desire continues to be to leverage available funds to their highest potential, to identify and tackle the highest priority problems that threaten the quality of surface waters in Monterey County, and to be able to maintain the uniqueness and beauty of our County for future generations. We believe these

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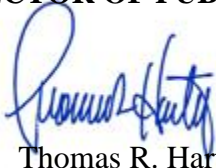
suggestions balance the Permit's requirements with our desire to use our available resources wisely especially given the realities of the State's current economy.

The County of Monterey looks forward to working with the State Water Board and its staff on this important and progressive program. Should you have any questions regarding these comments, please contact Thomas Harty at (831) 759-6630.

Sincerely,

YAZDAN T. EMRANI, M.S., P.E.
DIRECTOR OF PUBLIC WORKS

By



Thomas R. Harty, P.E.
Stormwater Program Manager

References

1. 40 CFR Section 122.34(e)(2) states: "*Guidance: EPA strongly recommends that until the evaluation of the storm water program in §122.37, no additional requirements beyond the minimum control measures be imposed on small MS4s without the agreement of the operator of the affected MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.*"
2. US EPA website regarding the stormwater rulemaking is located at <http://cfpub.epa.gov/npdes/stormwater/rulemaking.cfm>