

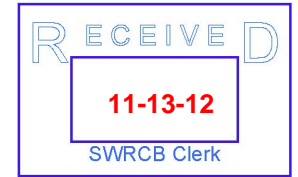


**City Council**  
311 Vernon Street  
Roseville, California 95678

Public Workshop (11/20/12)  
Receiving Water Limitations Language  
Deadline: 11/13/12 by 12 noon

November 13, 2012

Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
1001 "I" Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814



**Subject: Comment Letter – Receiving Water Limitations Language Workshop**

Dear Ms. Townsend and Members of the Board:

The City of Roseville appreciates the opportunity to provide comment on the issue of municipal stormwater permit receiving water limitations language, which is the subject of a State Water Board workshop to be held on November 20, 2012. The City has also provided in-depth comments on this topic in past letters to the State Board, most recently in our July 23, 2012 letter commenting upon the 2<sup>nd</sup> draft Phase II Small MS4 General Permit.

Roseville urges the State Water Board to revise the current receiving water limitations language being used within most state issued stormwater NPDES permits. Revision to the language is necessary because of the way it has been interpreted in the 9<sup>th</sup> Circuit Court of Appeals decision in a 2011 Los Angeles County case (*NRDC v. County of LA* (9<sup>th</sup> Cir. 2011) 673 F.3d 880). We are extremely concerned that should the State Water Board not modify the language, we will be vulnerable to unwarranted third party law suits; such as has been the case with the City of Stockton.

Roseville understands its responsibility and role in addressing water quality issues in the state. We have been actively implementing a stormwater quality program since 2003 when our city came under compliance with the NPDES general permit for small MS4s. We have spent over \$4 million in meeting these permit obligations over the past 10 years. Program expenses have increased from approximately \$101,000 in the first permit year to nearly \$800,000 for this current year. Roseville has met and has even exceeded the elements set forth in our stormwater management plan. For example the City of Roseville sponsors, "Our Water, Our World," an integrated pest management program, in several of Roseville's retail nurseries, to educate our residents on the use of less toxic alternatives to pesticides. In addition, Roseville has a robust illicit discharge detection and elimination program in which we have successfully responded to more than 600 discharge incidents since the inception of the program. With the current receiving water limitations language, however, even these additional efforts and full compliance with the stormwater management plan would not necessarily protect our city from what is essentially strict liability for exceedances of water quality objectives.

While Roseville has not yet conducted a water quality monitoring program, we are aware that with the reissuance of the small MS4 permit, we will be required to do so. We recognize that incorporating a water quality monitoring element into our program will increase opportunities for improved water quality outcomes. We have also always understood the stormwater program to be one of iterative improvement, where we work with our Regional Water Board on a continuous basis to identify actions and opportunities to address water issues as they appear. In light of the federal court's decision, we are now extremely concerned that without intervention by the State Water Board to modify permit language, any known water quality issues could force our city, and others, to noncompliance status and exposure to legal actions, regardless of our extensive, good faith efforts to address and resolve the issues.

**We respectfully request the State Water Board reaffirm its policy to allow municipal permittees to comply with water quality standards over time by using best management practices supplemented by the iterative process. We also request the State Water Board revise the existing receiving water limitations language consistent with an “iterative process” approach.**

The first step to developing any revised language is to first develop guiding principles for the language. These guiding principles would work to align the receiving water limitations language with the Board’s accepted iterative process policy, and as well provide assurance to the Board and interested third parties that agency actions to address water quality issues are effective and timely. We therefore support the guiding principles that are being suggested by the California Stormwater Quality Association. These include the following:

**The receiving water limitations language must identify an iterative process that:**

- Provides enough specificity and accountability so the municipalities understand their responsibility.
- Acknowledges that not all pollutants can be addressed equally.
  - Pollutants in stormwater discharges that are subject to TMDLs must be prioritized over pollutants that have sporadic and minimal impacts on receiving water. Similarly, the frequency and severity of the impact must be addressed in a prioritized manner.
  - Municipalities are under constant pressure to prioritize their resources, and to obtain the most “bang for the buck.” This pressure is evident in practically all aspects of public service, from police to fire to the environment. Thus, a city cannot afford, financially or politically, to address all stormwater issues simultaneously.
- Guides regional board staff (and others) to assess whether the permittees are in good faith implementing the iterative process.
  - Given the wide diversity and complexity of pollutants, sources and BMPs, the process must provide a mechanism for the MS4 and the State to agree on a practical implementation plan to satisfy the Permit provision.
- Establishes enough rigors to assure that progress will be made in addressing problematic discharges and protecting water quality.

**The receiving water limitations language must provide permittees assurances that they are not subject to enforcement action and third party litigation if they, in good faith, actively implement the iterative process.**

In closing, we believe the State Water Board can address this untenable vulnerability that agencies such as Roseville are facing and we are greatly appreciative of your efforts to do so. Without your action to change the current language, agencies such as ours and others across the state will find themselves diverting resources to defending lawsuits as opposed to protecting and enhancing water quality.

Sincerely,



Pauline Roccucci,  
Mayor

cc: Senator Ted Gaines  
Assembly Member Beth Gaines  
Jason Gonsalves, Gonsalves & Son