



SAN MATEO COUNTYWIDE
Water Pollution Prevention Program
 Clean Water. Healthy Community.

August 14, 2014

(9/23/14) Board Meeting
Draft Drinking Water Systems General Permit
Deadline: 8/19/14 by 12:00 noon

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



Subject: Comment Letter – Draft Drinking Water Systems General Permit and Resolution

Ms. Townsend:

The San Mateo Countywide Water Pollution Prevention Program (SMCWPPP) appreciates the opportunity to provide comments regarding the State Water Resources Control Board (SWB) Draft Drinking Water Systems General Permit and Resolution (Draft Permit). SMCWPPP is a program of the City/County Association of Governments of San Mateo County, a joint powers agency made up of the 20 cities and towns and the county.

Comment 1

SMCWPPP strongly supports Draft Permit Section I.3, which exempts water purveyors from applying for coverage under this General Permit if:

“The water purveyor is an MS4 permittee or co-permittee named on an MS4 permit that also authorizes discharges from community drinking water systems issued by the State Water Board or a Regional Water Board.”

SMCWPPP’s members are among the 76 permittees under the San Francisco Bay Area Municipal Regional Stormwater Permit (MRP), Order No. R2-2009-0074, which already contains requirements concerning the management of potable water discharges. Eleven of our 21 member agencies are municipal water purveyors whose potable water management programs under the MRP have already proven effective; as such, they should not have to obtain additional coverage for potable water discharges under the SWB General Permit.

Comment 2

For the same reason, **SMCWPPP requests that municipal stormwater permittees be exempted from filing by December 1, 2014 Notices of Non-Applicability (NONA)** per Section II.B.2. The SWB already knows they are permittees under a regional municipal stormwater permit that contains potable water requirements. There is therefore no need for SMCWPPP’s members (or other MRP permittees) to prepare and file NONAs on an individual basis or have to await processing and receipt of a Notice of Non-Applicability Approval (Section II.C). Both municipal and SWB staff burden can be reduced by eliminating this requirement for municipal purveyors that are already permitted for potable water discharges.

Comment 3

From a policy perspective, SMCWPPP supports the additional statement in Finding III.C. that:

“The State Water Board’s intention in the issuance of this statewide NPDES Permit is to provide consistent and efficient regulation of discharges from drinking water systems statewide.”

However, we recommend the SWB clarify that the next sentence in Finding III.C does not mean regulatory coverage for potable water discharges under an existing MS4 NPDES permit would be terminated within a year of adoption of the Draft Permit absent issuance of a Notice of Applicability.

(We understand the SWB's intent is to allow coverage for potable water discharges under an existing MS4 permit to continue under that permit and its successors.)

Further, to address the spirit of Finding III.C. while recognizing the need for some flexibility given the Clean Water Act's standards for different types of NPDES permits (such as the maximum extent practicable standard for MS4 permits), the SWB should formally recognize that potable discharge requirements contained in MS4 permits need not exactly parallel those in the General Permit in every respect as long as they provide an equivalent level of water quality protection. Having the SWB address this concern and embrace the "equivalent level of protection" concept for future potable discharge requirements in MS4 permits via a modified finding or response to comments is in everyone's interest and will help avoid future disputes and controversy.

Comment 4

Beyond the comments we make above directly on behalf of SMCWPPP's members, to the extent that the SWB General Permit will regulate non-MRP dischargers, some of whom will need to coordinate with MRP permittees, **SMCWPPP requests that the numeric effluent limits (NEL) for chlorine residual and turbidity proposed in the General Permit be eliminated and replaced by "benchmarks" (or action levels).** Given the experience of SMCWPPP's members and other MS4s with potable water discharges, no evidence has emerged that suggests that the Best Management Practice (BMP)-based approach and benchmark-based monitoring and reporting practices are not effective or that NELs are necessary or feasible for such discharges. Indeed, these potable water system discharges have already been defined by the State Water Board as "de minimis" and "not likely to cause or have a reasonable potential to cause or contribute to an adverse impact on the beneficial uses of receiving waters."¹

Beyond this, we do not agree from a technical perspective with the Draft Permit's justification of the need for NEL for chlorine residual and turbidity. Fact Sheet section VI.B.3.b.i (p. F-55) appears to assert that since the typical (required) concentration of chlorine residual in a water distribution system is at a level above the U.S. EPA's acute water quality criterion, that reasonable potential for toxicity exists for chlorinated waters that are within 300 feet of receiving waters. While it is true that water purveyors are required to maintain a chlorine residual in their distribution systems, the appropriate point of application for a Reasonable Potential Analysis is after the application of dechlorination BMPs. Following application of industry standard dechlorination BMPs, chlorine residual concentrations would be reduced to below the reporting level (minimum level (ML)) of handheld instruments (0.13 mg/L based on a State of Missouri ML study) and therefore not show reasonable potential.

¹ This definition is codified in the California Code of Regulations (CCR Title 23 Division 3 Chapter 9 Article 1 Section 2200 Subdivision (b) (9) Category 3 footnote 18).

18 De minimis discharge activities include, but are not limited to, the following: ... discharges from fire hydrant testing or flushing; discharges resulting from construction dewatering; discharges associated with supply well installation, development, test pumping, and purging; discharges resulting from the maintenance of uncontaminated water supply wells, pipelines, tanks, etc.; discharges resulting from hydrostatic testing of water supply vessels, pipelines, tanks, etc.; discharges resulting from the disinfection of water supply pipelines, tanks, reservoirs, etc.; discharges from water supply systems resulting from system failures, pressure releases, etc.; and other similar types of wastes that have low pollutant concentrations and are not likely to cause or have a reasonable potential to cause or contribute to an adverse impact on the beneficial uses of receiving waters yet technically must be regulated under an NPDES permit. (emphasis added)

We also disagree with the alternative rationale cited in section VI.B.4 of the Fact Sheet as the basis for the finding of reasonable potential for toxicity. The mere existence of a water quality objective for a given constituent does not constitute sufficient grounds for imposition of a numeric Water Quality Based Effluent Limitation (WQBEL).² Similarly, the availability of a test method, in this case field test kits, does not constitute sufficient grounds for imposition of numeric WQBELs.³

Finally, we also disagree with the characterization of the “feasibility” of imposing numeric WQBELs in the urban runoff-related context. As SWB staff know, in 2005 and 2006 the SWB convened a Blue Ribbon Panel of Experts to address the feasibility of NELs in California’s storm water permits (“The Feasibility of Numeric Effluent Limits Applicable to Discharges of Stormwater Associated with Municipal, Industrial, and Construction Activities (June 19, 2006)). For multiple reasons, the Panel concluded that NELs were infeasible. Subsequently, NELs were therefore deleted from the Construction General Permit Order No. 2009-0009-DWQ and subsequent amendments and also, more recently, from the Industrial Stormwater General Permit (Order No. 2014-0057-DWQ). The same should be the case here.⁴

In conclusion, SMCWPPP’s members strongly support the Draft Permit excluding them from coverage since they already have an MS4 permit that regulates potable water discharges and ask that they and other MRP co-permittees also be exempted from filing a NONA. We also request the State Board formally recognize an equivalent level of protection concept in terms of potable water requirements in future MS4 permits. SMCWPPP also requests that Numeric Effluent Limits for chlorine residual and turbidity be eliminated or replaced with benchmarks. Finally, we thank the SWB for its consideration of our additional comments as set forth above.

Sincerely,



Matthew Fabry, P.E., Manager
San Mateo Countywide Water Pollution Prevention Program

Cc: SMCWPPP Stormwater Committee
SMCWPPP Technical Advisory Committee

² Even if the above were not the case, with respect to setting an appropriate WQBEL, it is questionable whether the USEPA WQC for chlorine residual (EPA 440/5-84-030, January 1985) is applicable to these *intermittent* potable water system discharges. The 1985 WQC document states that “These criteria are intended to apply to situations of *continuous* exposure ...” (p. 2, emphasis supplied).

³ It is also important to recognize in this regard that field measurements, using handheld instruments, taken frequently by non-laboratory staff, are subject to interference by such things as turbidity, potentially causing false positive readings.

⁴ Beyond these issues, relative to those who will be covered and have to coordinate with its members, SMCWPPP generally supports the proposed approaches to notification, monitoring, and reporting requirements in the Draft Permit. One exception is the absence of a volume threshold for direct discharges to Waters of the United States (Attachment E – Monitoring and Reporting Program II.A.1., p. E-3). We would suggest consideration of a 50,000 gallon threshold that has been used in other higher threat to water quality regulatory contexts (e.g., SSOs, recycled water).