



September 8, 2011

Via Electronic Mail

Charles Hoppin, Chair and Members
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000
c/o Jeanine Townsend, Clerk to the Board
commentletters@waterboards.ca.gov



RE: Comment Letter—Phase II Small MS4 General Permit

Dear Chair Hoppin and Members of the Board:

WateReuse California (WateReuse) appreciates the opportunity to submit these comments on the draft National Pollutant Discharge Elimination System general permit and waste discharge requirements (draft General Permit) for stormwater discharges from small municipal separate storm sewer systems (MS4s). WateReuse is a nonprofit organization that promotes the responsible stewardship of California's water resources by maximizing the safe, practical and beneficial use of recycled water.

As you know, California must increase its use of recycled water to ensure our water resources will be sufficient to satisfy future demands. Continued population growth, increasingly scarce water supplies and global climate change create a heightened need for reliable, locally produced supplies of recycled water. Consequently, the State Water Board's 2009 Recycled Water Policy establishes a goal for California to "[i]ncrease the use of recycled water over 2002 levels by at least one million acre-feet per year (afy) by 2020 and by at least two million afy by 2030." (Recycled Water Policy at p. 1.) Included in this goal is the "substitution of as much recycled water for potable water as possible by 2030." (*Ibid.*)

To achieve this goal, the State Water Board must work to avoid artificial distinctions between potable water and recycled water and to promote a consistent scheme of irrigation best management practices (BMPs) for all water used in the urban environment. This draft General Permit is being promulgated as California works to reduce urban water use by 20% by 2020, an initiative that will necessarily advance better management of all water, especially irrigation water. Properly crafted, the draft General Permit affords the State Water Board a unique opportunity to advance BMPs around irrigation water, rather than craft an impractical regulatory system that will simply force artificial noncompliance.

Recycling Water to Meet the World's Needs

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In accordance with the goal, other provisions of the Recycled Water Policy and the federal stormwater regulations, we respectfully request that you revise the draft General Permit as described below. In particular, we ask that you: (1) Add landscape irrigation, irrigation water and lawn watering to the categories of non-stormwater discharges not prohibited under Discharge Prohibition B.3; (2) Delete Discharge Prohibition B.4 related to incidental runoff; and instead (3) Require in Section E “Provisions” or a new section of the draft General Permit that permittees implement BMPs addressing incidental runoff consistent with the Recycled Water Policy.

A. Landscape Irrigation, Irrigation Water and Lawn Watering Should be Included as Non-Stormwater Discharges Generally Not Prohibited

Consistent with the federal stormwater regulations, Discharge Prohibition B.3 should be revised to include *landscape irrigation, irrigation water and lawn watering* in the list of non-stormwater discharges generally not prohibited. (See draft General Permit at p. 15.) Under the federal regulations, these particular categories of non-stormwater discharges need be addressed in a stormwater program *only* “where identified by the municipality as sources of pollutants to waters of the United States.” (40 C.F.R. § 122.26(d)(2)(iv)(B)(1).) Further, where landscape irrigation, irrigation water or lawn watering may be a significant pollutant source or water quality threat in a given case, the Regional Water Board may impose related monitoring, reporting and BMP requirements. (Draft General Permit at p. 16.)

Incidental amounts of runoff from irrigation activities—regardless of the source of water used for irrigation—can be managed and minimized but not fully prevented, despite the implementation of best practices. Strictly prohibiting all runoff from entering the MS4, which is broadly defined to include streets, gutters and curbs, is not necessary to protect water quality and will simply place both MS4 permittees and irrigators in compliance jeopardy.

B. The Incidental Runoff Provisions of Discharge Prohibition B. 4 Should Be Revised and Recast as a Provision Rather than a Prohibition

Inherent in the Recycled Water Policy’s incidental runoff provisions is an understanding that not all runoff from recycled water use areas is preventable.¹ As a

¹ Similar to the draft General Permit, the Recycled Water Policy defines “incidental runoff” to include “unintended small amounts (volume) of runoff from recycled water use areas, such as unintended, minimal over-spray from sprinklers that escapes the recycled water use area. Water leaving a recycled water use area is not considered incidental if it is part of the facility design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.” (Recycled Water Policy at p. 8; draft General Permit at p. 16.) The difference is that “incidental runoff” as used in the draft General Permit also extends to potable water use areas. (Draft General Permit at p. 16.)

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result, rather than prohibiting incidental runoff, the Recycled Water Policy authorizes the regulation of incidental runoff using a BMP approach. (*Ibid.*) In keeping with the Recycled Water Policy, the draft General Permit should address incidental runoff through BMPs instead of a discharge prohibition. (See General Permit at p. 16.) This practice would work well for all irrigation water (not just recycled water) and is, in fact, consistent with the water conservation principals, including the Model Water Efficient Landscape Ordinance (MWELo) promulgated by the Department of Water Resources and local ordinances adopted by many jurisdictions. Both the Recycled Water Policy and MWELo were the products of collaborative stakeholder efforts, and the preferred BMP approach should not be discarded for a discharge prohibition approach that is, frankly, impractical to implement or enforce.

Accordingly, WateReuse requests that you revise the draft General Permit to delete Discharge Prohibition B.4 in its entirety. (See draft General Permit at p. 16.) Further, as the draft General Permit's detailed incidental runoff provisions with regard to water reuse merely reiterate those in the Recycled Water Policy, we ask that any incidental runoff language in the adopted General Permit simply require that incidental runoff of recycled water occur in conformance with the Recycled Water Policy. This would avoid confusion and ensure that the General Permit would be consistent with any future related changes to the Recycled Water Policy. This need for consistency is not simply a "preference." At this time, WateReuse is aware of several instances where water recyclers are literally held to two different monitoring and reporting standards because specific Phase 1 MS4 provisions are inconsistent with the Recycled Water Policy. The proposed draft General Permit runs the risk of extending this inconsistent and illogical regulation more broadly, and it will be simply impossible to meet our shared goals of expanding the recycled water resource if we continue to create an inconsistent regulatory environment around irrigation practices.

We understand the State Water Board's role in protecting our water quality and appreciate the need for practical, meaningful control of urban runoff. As always, we stand ready to assist in any manner that will help advance a safe, abundant water supply for California. Thank you for your consideration of these comments. If you have any questions, please contact me at (707) 237-6992 or dsmith@watereuse.org.

Sincerely,



David W. Smith, PhD
Managing Director

cc: Mary Grace Pawson
Roberta Larson