



CVCWA

Central Valley Clean Water Association

Representing Over Fifty Wastewater Agencies

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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:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the draft general National Pollutant Discharge Elimination System (NPDES) permit and waste discharge requirements (Draft General Permit) for stormwater discharges from small municipal separate storm sewer systems (MS4s). CVCWA is a non-profit organization that represents more than 50 publicly owned treatment works throughout the Central Valley Region in regulatory matters affecting surface water discharge, land application and water reuse. We approach these matters with a perspective to balance environmental and economic interests consistent with applicable law.

As such, we are concerned with provisions in the Draft General Permit related to irrigation runoff (including incidental runoff) from recycled water use areas and discharges to sanitary sewer systems. For the reasons provided below, we respectfully request that you: (1) Include landscape irrigation, irrigation water and lawn watering in the list of authorized non-stormwater discharges in Discharge Prohibition B.3; (2) Address incidental runoff as a general provision—not a discharge prohibition—establishing a best management practices (BMP)-based strategy and requiring consistency with the State Water Resources Control Board's (State Water Board's)

2009 Recycled Water Policy; and (3) Revise the Draft General Permit and its Draft Fact Sheet to make clear that the Draft General Permit does not specifically require the use of, or discharge to, sanitary sewer systems.

A. Revise the List of Allowable Non-Stormwater Discharges to Include Landscape Irrigation, Irrigation Water and Lawn Watering

Landscape irrigation, irrigation water and lawn watering should be added to the list of allowable non-stormwater discharges in Discharge Prohibition B.3. (See Draft General Permit at p. 15.) The federal regulations specifically authorize these categories of non-stormwater discharges under the MS4 program unless and until identified on a case-by-case basis as significant pollutant sources. (40 C.F.R. § 122.26(d)(2)(iv)(B)(1).) By not including these categories as allowable non-stormwater discharges, the Draft General Permit presumes that all runoff from irrigation activities contributes significant pollutant loads to small MS4s. (See Draft General Permit at p. 15; Draft Fact Sheet at p. 21.) Nothing in the record supports this presumption. Thus, it runs afoul of the requirement to bridge the analytic gap between the raw evidence and decision to impose a strict ban on runoff that the federal MS4 program generally authorizes. (See *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.)

In addition, an outright prohibition on all runoff from landscape irrigation, irrigation water and lawn watering activities creates an unreasonable and unattainable regulatory standard. (See e.g., Wat. Code, § 13000, requiring activities that may affect water quality to be regulated “to attain the highest water quality which is reasonable”) Even the use of BMPs cannot fully prevent incidental amounts of runoff from such activities. Strictly banning all irrigation runoff from entering the MS4 is unnecessary to protect water quality and will place MS4 permittees and irrigators in jeopardy of non-compliance. A strict ban would also hinder the use of recycled water at a time when increased recycled water use is necessary for California to realize a sustainable water supply future. (See e.g., Recycled Water Policy at p. 1, calling for a statewide emphasis on the use of recycled water and establishing a goal 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.”) Further, where concern may exist over irrigation activities in a given case, the Draft General Permit would authorize the regional water quality control boards to require monitoring, reporting and the use of BMPs. (Draft General Permit at p. 16.)

B. Revise the Incidental Runoff Provisions to Be Less Prescriptive and Re-Characterize Them as a General Provision Rather Than a Discharge Prohibition

The Draft General Permit inappropriately regulates incidental runoff from potable and recycled water use areas by means of a discharge prohibition (Discharge Prohibition B.4) rather than a general provision calling for a BMP-based strategy. (Draft General Permit at p. 16.) As previously explained, the federal regulations governing MS4s do not strictly prohibit incidental

runoff. (See 40 C.F.R. § 122.26(d)(2)(iv)(B)(1).) The source of the irrigation water is irrelevant under the federal regulations. (See 40 C.F.R. § 122.26(d)(2)(iv)(B)(1).) Moreover, irrigation runoff cannot be prevented in its entirety. The State Water Board's 2009 Recycled Water Policy recognizes as much with regard to recycled water use areas and thus authorizes the regulation of incidental runoff by way of BMPs. (Recycled Water Policy at p. 8.) The Recycled Water Policy was the culmination of a multi-year effort involving stakeholders of wide-ranging interests and careful consideration of reputable studies and data. The Draft General Permit should not undo or undermine such efforts.

Accordingly, we request that you delete Discharge Prohibition B.4 and include any incidental runoff language as a general, non-prescriptive provision merely authorizing a BMP-based strategy and requiring compliance with the Recycled Water Policy. This would ensure that the regulation of incidental runoff would be consistent with the Recycled Water Policy (including any future changes) and eliminate confusion or redundancy related to existing regulatory requirements for minimizing incidental runoff. Should you choose to retain incidental runoff provisions of a prescriptive nature, we ask that you use "minimize" rather than "prevent" or "control" to reflect what you have already recognized—that not all irrigation runoff can be avoided.

C. Make Clear that the General Permit Does Not Specifically Require Discharges to a Sanitary Sewer System

The Draft General Permit would require permittees to develop and document a waste material disposal procedure to dewater and dispose of materials extracted from catch basins. (Draft General Permit at pp. 50-51.) The purpose is to ensure that materials removed during the catch basin cleaning process will not reenter the MS4. The Draft Fact Sheet provides additional detail in this regard, stating that "the material can be dewatered in a contained area and the water treated with an appropriate and approved control measure or *discharged to the sanitary sewer.*" (Draft Fact Sheet at p. 27, emphasis added.)

Neither this provision, nor any other of the Draft General Permit, should be interpreted to mandate the discharge or disposal of materials into the sanitary sewer system. (See General Permit at p. 59, requiring industrial and commercial facilities to "ensur[e] that all wash water drains to a proper collection system (i.e., not the stormwater drainage system).") What may be discharged to a sanitary sewer system is properly a decision left to the owner or operator of that system and must be consistent with any NPDES permit or waste discharge requirements issued for the system. While we believe it is not the intent of the Draft General Permit to mandate use of sanitary sewer systems, we also believe that clarity in this regard should be provided in the Draft Fact Sheet and Draft General Permit to avoid any confusion.

We appreciate your consideration of these comments and revisions requested. Please contact me at (530) 268-1338 or eoofficer@cvcwa.org if I can be of further assistance.

Sincerely,



Debbie Webster,
Executive Officer