

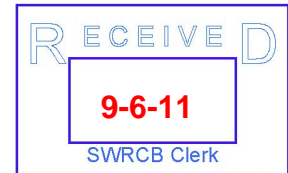


CITY OF SANTA MARIA
UTILITIES DEPARTMENT
Business Services • Regulatory Compliance
Solid Waste Services • Water Resources

2065 EAST MAIN STREET • SANTA MARIA, CALIFORNIA 93454-8026 • 805-925-0951, EXT. 7270 • FAX 805-928-7240

September 6, 2011

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
PO Box 100
Sacramento, CA 95812-2000



SUBJECT: City of Santa Maria Comments on the Draft General National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s)

Dear Ms. Townsend:

The City of Santa Maria ("Santa Maria") submits these comments on the Draft General National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) ("Draft Permit") that has been issued by the State Water Resources Control Board ("State Board") for public review and comment. Santa Maria appreciates the opportunity to submit these comments, and thanks the State Board for extending the public comment period to allow the stakeholders sufficient time to review and respond to the Draft Permit. It is hoped that these comments assist the State Board in revising the Draft Permit to make it a cost-effective program that will provide measurable water quality benefits.

Santa Maria's comments focus on the unique concerns it has about how the Draft Permit would change Santa Maria's existing and well-regarded storm water program. Santa Maria is an active member of the California Stormwater Quality Association ("CASQA") and the Statewide Stormwater Coalition ("SSC"). Santa Maria joins in the comment letters submitted by both CASQA and SSC. The City writes separately to address issues unique to Santa Maria.

THE CITY OF SANTA MARIA

Santa Maria is located in Santa Barbara County along California's Central Coast and covers a land area of 23 square miles. The California Department of Finance estimates the City's population to have topped 100,000 as of January 1, 2011 making Santa Maria

the largest City in the County by both population and geographic area. While large in population and land area, Santa Maria faces many financial challenges that it must balance to continue to provide essential governmental services and to help maintain the quality of life of its residents. Approximately 60-percent of Santa Maria's population is at or below 80-percent of the County's median household income. As part of its 2010-12 budget process, Santa Maria had to address an \$8 million or 15-percent deficit in its General Fund budget. In order to maintain essential services, Santa Maria, like many cities, had to make very tough decisions and fundamental changes to its staffing and services.

Unfortunately, these difficult budgetary constraints are likely to continue as the City struggles to implement its mandated activities while facing increased funding challenges. These challenges do not mean that the City will stop providing essential services to its residents, including operating a storm water management system that provides measurable water quality benefits. It does mean, however, that the City must spend its limited funds wisely on a wide range of essential programs, of which the storm water program is one of many. A fundamental point of Santa Maria's comment letter is that the Draft Permit fails to follow the same prudent approach to the effective use of very limited resources that cities must take, and fails to acknowledge that the State Board must play a more active part in funding those programs that are not essential to meeting the Federal requirements.

SANTA MARIA'S STORM WATER PROGRAM

Even though Santa Maria faces significant challenges to funding its City programs, Santa Maria is very proud of the storm water program that it has developed, actively implements, and funds. The City is currently enrolled under the State Board's Order No. 2003-0005-DWQ ("Existing Permit"). Santa Maria's Storm Water Management Plan ("SWMP") was developed in compliance with the Existing Permit and was approved by the Central Coast Regional Water Quality Control Board ("Regional Board") on October 2, 2008. It is the City's position that its SWMP actually exceeds the express requirements of the Existing Permit. The City is also participating in the Regional Board's Joint Effort to develop a region-wide Hydromodification Management Plan ("HMP") and Low Impact Development ("LID") requirements.

As reflected in the City's Storm Water Annual Reports for 2009 and 2010, Santa Maria is actively implementing its SWMP in a progressive manner and is committed to continuing to do so. Among other things, Santa Maria has a vigorous public participation program, a water quality monitoring program, a business and industry inspection program that targets the City's pollutants of concern, a promising GIS mapping system, and a staff training program. Since its enrollment under the Existing Permit, Santa Maria has achieved 172 of its Measurable Goals and has implemented 39 of its specified Best Management Practices. For more information about Santa Maria's storm water program, please visit the City's website at www.santamariacleanwater.org.

Santa Maria believes that its existing program properly balances storm water management and the achievement of measurable goals within overall budget

constraints. As noted in the City's 2010 Storm Water Annual Report, a key aspect of the City's program is to demonstrate an economy of effort. Programs must show a balance between resources spent and effective outcomes. The Draft Permit fails to strike such a balance and imposes redundant, costly requirements that are not linked to relevant outcomes. A better approach would be to allow Santa Maria to continue to implement its current program under its approved SWMP so that the City can maintain the balance between resources spent and effective storm water management outcomes that are specific to our City and its needs.

SPECIFIC COMMENTS ON THE DRAFT PERMIT

With these overarching comments as a backdrop, Santa Maria has the following more specific comments about the Draft Permit.

1. Unfunded State Mandates: Articles XIII B, Section 6(a) of the California Constitution ("Section 6") provides that whenever "any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of services..." Section 6 applies to storm water permits issued by the State Board and the Regional Boards. (County of Los Angeles v. Commission on State Mandates (2007) 150 Cal.App.4th 898, 920.) Other comment letters, including the letters submitted by SSC and the City of Roseville, provide more detail on the background and issues related to unfunded state mandates, and Santa Maria joins in those more detailed comments.

Based upon Santa Maria's analysis, the following elements of the Draft Permit, among others, represent state mandated new programs or higher levels of service for which a subvention of funds must be provided: **Draft Permit, Sections B.3 Discharge Prohibitions**, which removes "landscape irrigation," "irrigation water," "lawn watering," and "individual residential car washing" from the list of allowable discharges; **E.4.c Enforcement Measures and Tracking**; **E.4.d Ensure Adequate Resources to Comply with Order**; components of **E.5 Public Outreach and Education Program**; components of **E.6 Public Involvement and Participation Program**; components of **E.7 Illicit Discharge Detection and Elimination Program**; components of **E.8 Construction Site Storm Water Runoff Control Program**; components of **E.9 Pollution Prevention/Good Housekeeping for Permittee Operations Program**; components of **E.12 Post Construction Storm Water Management Program**; **E.10 Trash Reduction Program**; **E.11 Industrial/Commercial Facility Runoff Control Program**; **E.13 Receiving Water Monitoring**; **E.14 Program Effectiveness Assessment and Improvement**; and **E.16 Online Annual Reporting Program**. The State Board should reevaluate each of these elements of the Draft Permit and should delete or substantially revise those provisions for which the State Board is not able to provide adequate funding to implement.

Santa Maria has conducted an exhaustive analysis of the increased costs associated with these new programs or higher levels of services and has developed

initial cost estimates. The City estimates that compliance with these new programs or higher levels of service will cost upwards of \$2,800,000 per year including increased staffing levels, capital costs, and operational expenses. The City would need to increase staff currently dedicated to storm water pollution prevention from two full-time positions to ten. New staff would require new computers, new vehicles, and a vector truck dedicated to cleaning storm drains. For a City that is already facing significant budgetary constraints, it is simply not responsible for the State Board to impose these costly state mandated requirements on Santa Maria.

2. Application of the Draft Permit to Renewal Traditional MS4s

The Draft Permit contains a repeated footnote stating that if “a Regional Water Board Executive Officer determines that a Renewal Traditional Small MS4 Permittee’s current implementation of its program BMPs meets the MEP standard and is equally or more effective at reducing pollutant discharges than implementation of the requirements of this Section, the Executive Officer may require continued implementation of the Permittee’s current program BMPs and reporting requirements in lieu of implementation of the requirements of this Section.” (See, e.g., Draft Permit, Section E.4, fn. 9.)

While it makes good sense to accommodate the current programs of Renewal Traditional Small MS4 Permittees within the structure of the Draft Permit, the authority delegated to the Regional Boards is too great and creates too much confusion about the applicability of enforceable provisions of the Draft Permit. A better approach would be to find that the current programs of Renewal Traditional Small MS4s that have been enrolled under the Existing Permit satisfy the requirements of the Draft Permit. If a role for the Regional Board is necessary, the State Board should redraft this footnote to create a presumption that current programs satisfy the requirements of the Draft Permit, and require the Regional Board to make findings to the contrary. If this course is pursued, the Draft Permit should also provide a vehicle by which Renewal Traditional Small MS4s who believe that their current programs exceed the requirements of the Draft Permit may elect to implement the requirements of the Draft Permit rather than their current programs.

This comment is particularly important to Santa Maria. As noted above, the City is in the third year of implementation of its SWMP and should be allowed to continue to implement its program as already approved by the Regional Board. In addition, the City is participating in the Joint Effort and the Draft Permit should be clear that Santa Maria’s involvement in the Joint Effort satisfies any HMP and LID requirements of the Draft Permit. Santa Maria understands that staff at the Central Coast Regional Board share this concern, and desire clarity on the status of the Joint Effort. To create uncertainty about the City’s current program efforts, as well as the Regional Board’s efforts, and to potentially obligate the City to start a new program, does not make good fiscal sense.

3. The Draft Permit’s Retrofitting Requirements should be Deleted

The Draft Permit contains several retrofitting requirements that appear to apply to

both dischargers and to local businesses. For example, Section E.9.i.(ii) appears to require the retrofitting of two flood management projects per year. Similarly, Section E.11.b-e appears to require local agencies to mandate that industrial and commercial facilities retrofit their facilities. These requirements should be deleted. The U.S. EPA is currently considering a rulemaking that might ultimately address, among other things, the appropriateness of retrofitting requirements in storm water permits. The State Board should allow U.S. EPA to complete its consideration of that issue as part of its rulemaking process before the State Board includes retrofitting requirements in the Draft Permit.

4. The State Should Be Responsible for Industrial and Construction Inspections under the State Board's General Permits

The Draft Permit continues the State Board's general approach of pushing inspection obligations for which the State Board collects a fee onto local agencies without providing funding for such inspections. (Draft Permit, Sections E.8.c and E.11.c) As a matter of fairness and good fiscal policy, this trend must stop. The Draft Permit is particularly objectionable in this regard because in addition to requiring local inspections for compliance with the State Board's General Permits, the Draft Permit seeks to compel local agencies to conduct "front-line" enforcement of the State Board's General Permits. According to Section E.4.c.(ii).(d).(2) of the Draft Permit, Santa Maria could only refer facilities to the Regional Board after the City has conducted "good faith" efforts to enforce the State Board's General Permits, which efforts must include, at a minimum, "two follow-up inspections and two warning letters or notices of violations." Such specific direction for local agencies to assume the State's obligation to enforce its own General Permits is simply not fair, especially when the State Board is not willing or is unable to share the funding for such inspections with local agencies.

Santa Maria is very sensitive to budget constraints, and understands the State Board's own lack of funding. However, the State Board's budget constraints do not justify a wholesale transfer of inspection obligations to local agencies, particularly when the State Board collects a fee to fund such inspections.

5. The Draft Permit's Commercial Inspection Requirements Should Be Deleted

The Draft Permit contains very detailed inventory and inspection requirements for commercial facilities. (Draft Permit, Sections E.11.a and E.11.c.) Despite the fact that most commercial facilities have no impact on the pollutants of concern in Santa Maria, the Draft Permit requires that Santa Maria designate 20-percent of the commercial facilities within the City as high priority and inspect those facilities annually. (Draft Permit, Section E.11.c and E.11.d.) These commercial inspection requirements are very costly to implement and will not have measurable impacts on water quality. They should therefore be deleted.

6. The Draft Permit's Reporting Requirements Should Be Reduced

The Draft Permit contains both general reporting requirements and specific reporting requirements within each of the major program elements. (See, e.g., Draft Permit,

Sections E.16 and E.10.(iii.) These reporting requirements are often duplicative and will only serve to keep City staff in the office, not out in the field implementing the program. The State Board should minimize reporting requirements and streamline the reporting process.

Thank you for the opportunity to provide comments on the Draft Permit, and please do not hesitate to contact me should you have any questions or concerns.

DEPARTMENT OF UTILITIES



RICHARD G. SWEET
Director of Utilities