

City of Carmel-by-the-Sea

COMMUNITY PLANNING AND BUILDING DEPARTMENT

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8 September 2011

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Subject: Comment Letter – Phase II Small MS4 General Permit

Reference: Revised Notice of Opportunity for Public Comment, Draft General National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s), dated July 27, 2011

Dear Ms. Townsend:

This letter responds to the SWRCB's Notice of Opportunity for Public Comment dated July 27, 2011, subject as above. The table below contains the specific comments of the City of Carmel-by-the-Sea on the proposed Phase II Small MS4 General Permit.

The City is a Participating Entity in the Monterey Regional Storm Water Management Program, and also supports the comments contained in the letter being submitted by that body on behalf of its member entities.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Conroy".

Sean Conroy
Planning & Building Services Manager

CITY OF CARMEL-BY-THE-SEA SPECIFIC COMMENTS

PERMIT PAGE	TOPIC	COMMENTS
<p>Page 10 in Section 31, and Page 18 in Section E.4.c</p>	<p>RWQCB has discretion to make the determination that the BMPs of the Storm Water Management Program of a permittee that is regulated under the <u>current</u> General Permit is equally or more effective than the BMPs required under the new General Permit and may then require that the permittee continue to implement its current BMPs rather than those contained in the new General Permit</p>	<p>In addition to the referenced pages and Section, this same discretion is stated in the form of footnotes such as the ones at the bottom of pages 18, 25, 26, 28, 30, 39, and 55.</p> <p>The draft permit gives the RWQCB the discretion to decide whether the BMPs of an existing SWMP of a permittee that is regulated under the <u>current</u> General Permit are equally or more effective than the BMPs required under the new General Permit. If the RWQCB wishes to, it may then require that the permittee continue to implement its current BMPs rather than those contained in the new General Permit, even if some of the BMPs in the existing SWMP are more comprehensive than those required under the new General Permit. This is clearly discriminatory against current permittees, in that it would allow the RWQCB to hold current permittees (under the existing General Permit) to additional and potentially more stringent requirements than new permittees that enroll for the first time under the new General Permit.</p> <p>As the "Fact Sheet" for the draft General Permit states on page 7 "This Order specifies the actions necessary to reduce the discharge of pollutants in storm water to the Maximum Extent Practicable (MEP)..." thereby defining MEP. It goes on to say "This set of specific actions is equivalent to the requirements that were included in a separate SWMP for each Permittee in the existing General Permit," thereby confirming that the BMPs in the new General Permit fulfill the requirements of the current General Permit.</p> <p>Since the new draft General Permit defines in great detail what actions must be taken to achieve MEP, it should not be necessary for ANY permittee to take actions beyond those specified.</p> <p>The language in Findings No. 31 and in these footnotes should be revised to read as follows: "If a Renewal Traditional MS4 Permittee believes that certain of the BMPs in its existing SWMP meet the MEP standard and are equally or more effective at reducing pollutant discharges than implementation of the requirements of this Section, the Permittee may request approval by its RWQCB to continue implementing its existing BMPs in lieu of implementation of the requirements of this Section."</p>

PERMIT PAGE	TOPIC	COMMENTS
Page 17 in Section C.1	Maximum Extend Practicable (MEP) Standards	<p>This term continues to be only vaguely defined in the draft General Permit, as was the case in the current General Permit. As a result there can be wide interpretation as to what constitutes compliance with it. Since the new draft General Permit is much more prescriptive than the current one, the language in the General Permit should be reworded to simply state:</p> <p>“Fulfillment of the BMPs and other requirements contained in the General Permit will be considered by the SWRCB to demonstrate that the permittee is implementing BMPs that reduce pollutants in storm water to the technology-based standard of MEP.”</p>
Pages 25-26 in Section E.5.b (c)		<p>A Table 1 is included in the attachments to the proposed General Permit which lists several general topic areas that the permittee must include in its Public Outreach and Education Program. The language on pages 25 and 26 states that renewal permittees shall review their existing Programs to ensure that they fulfill the requirements in this Section. However, little if any detail on any of these topic areas is provided in either Table 1 or in the body of the proposed General Permit. Also, Table 1 excludes certain of the topic areas for entities with populations < 5,000, but it is not clear whether this applies to “Renewal” MS4s as well as “New Traditional MS4s.” Hence, it is not possible to ascertain with certainty what level of effort will be required to comply with this set of requirements.</p> <p>The applicability of the topic areas listed in Table 1 should be clarified with regard to the population size of the Permittee, and a description of what is expected of Permittees in order to fulfill the requirements in each of those topic areas should be provided.</p>
Page 34 in Section E.7.a (i)	Mapping	<p>The proposed General Permit requires that mapping be GIS-based. The City does not have GIS-mapping capabilities at present, and does not envision needing to have it in the foreseeable future in order to carry out any functions of the City. This requirement would necessitate the City having to invest considerable monies to acquire and implement that capability.</p> <p>GIS-mapping is not essential to fulfilling the other requirements of the proposed General Permit, and is not essential to the proper management of storm water pollution prevention programs, especially in smaller communities.</p> <p>For these reasons this requirement should be deleted.</p>

PERMIT PAGE	TOPIC	COMMENTS
Page 39 in Sections E.8.a (i) and (ii) and E.8.b (ii)	Construction Site Inventory and Construction Site Plan Review and Approval Procedures	<p>There are requirements in these Sections, for example the requirement is that each operator of a construction activity must submit an erosion and sediment control plan, and the City must review and approve such plans before a Building Permit can be issued, that appear to be applicable only to construction sites of 1 acre or more in size. However, that distinction is not clearly stated.</p> <p>The language in these Sections should be revised to state that these requirements are applicable only to construction sites of 1 acre or more in size.</p>
Page 44 in Section E.8.d (ii)	Permittee Staff Training	<p>This Section requires that persons performing construction site plan reviews and those performing inspections all be certified as either a "Qualified SWPPP Developer" (QSD) or a "Qualified SWPPP Practitioner" (QSP), depending on what their duties are. Previously the QSD and QSP training requirement only applied to projects 1 acre or larger in size.</p> <p>The proposed General Permit does not include that distinction, so it appears that this training will be required of all persons performing these duties. This appears to be inconsistent with the other Sections of the proposed General Permit which apply higher standards and requirements to the sites 1 acre or larger in size than to those for smaller sized projects.</p> <p>The language in this Section should be revised to state that these requirements are applicable only to persons performing construction site plan reviews, and those performing inspections, of construction sites of 1 acre or more in size.</p>
Pages 65-70 and 72-76, in Sections E.12.b.1, E.12.b.2, E.12.b.3, E.12.b.5, E.12.b.6, E.12.b.7, and E.12.b.8	Watershed Baseline Characterization, Watershed Sediment Budgets, Water Quality Runoff Standards, Long-Term Watershed Process Management, Implementation Strategy for Watershed Process Management, and Watershed-Based Storm Water Management, and Operation and Maintenance of Storm Water Treatment Systems	<p>These Sections contains a substantial set of new requirements pertaining to characterizing the watershed within which the permittee is located. These requirements appear only to apply to entities with populations greater than 25,000 per paragraphs E.12.c and E.12.d. However, the proposed General Permit does not clearly make that distinction.</p> <p>The language in these Sections should be revised to state that these requirements are applicable only to entities with populations greater than 25,000.</p>

PERMIT PAGE	TOPIC	COMMENTS
Pages 70-72, in Section E.12.b.4	Interim Hydromodification Management	<p>These requirements appear only to apply to entities with populations greater than 25,000 per paragraphs E.12.c and E.12.d. However, the proposed General Permit does not clearly make that distinction.</p> <p>The language in this Section should be revised to state that these requirements are applicable only to entities with populations greater than 25,000.</p>
Pages 88-89 in Section E.14.b	BMP Condition Assessment	<p>This Section requires that cities which are required to comply with the Attachment 4 Design Standards of the current General Permit must also comply with all of the requirements in this Section of the proposed General Permit. The BMPs described in this Section all appear to pertain to post-construction structural and/or treatment BMPs which the Permittee requires to be included in new development or redevelopment projects. However, in smaller communities with only small-sized development projects, there may be none of these structural and/or treatment BMPs to assess.</p> <p>The language in this Section should be revised to state that these requirements are applicable only to post-construction structural and/or treatment BMPs within the Permittee's jurisdiction.</p>