



## CITY of NAPA

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VIA E-MAIL [COMMENTLETTERS@WATERBOARDS.CA.GOV]

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



Re: Comment Letter - Revised 3<sup>rd</sup> Draft Phase II Small MS4 Permit

Dear Ms. Townsend:

This letter sets forth the City of Napa ("Napa") comments on the revisions made since May 21, 2012 to both the Revised Draft Phase II Small MS4 Permit ("Draft Permit") and the Draft Fact Sheet for the Draft Permit ("Draft Fact Sheet"). Napa appreciates the many positive revisions that State Board staff has made to the Draft Permit and Draft Fact Sheet. Napa believes that the additional changes requested in this letter will help create a more cost-effective program that will allow the City to continue to develop its program and provide measurable water quality benefits.

This letter focuses on the key issues of concern to the City. Napa is an active member of both the California Stormwater Quality Association ("CASQA") and the Statewide Stormwater Coalition ("SSC"). The City joins in, and incorporates by reference, the comment letters submitted by CASQA and SSC.

The revisions to the Draft Permit do a better job of linking public expenditures to measurable water quality benefits. However, Napa believes that the additional changes requested below strike a more appropriate balance between resources spent and effective water quality outcomes.

1. **The Draft Permit's Reopener and the Draft Fact Sheet's Revised Discussion of the Receiving Water Limitations Language.**

Napa has previously commented on the need for the State Board to address the receiving water limitations language found in Section D, pages 19-20 of the Draft Permit. Napa appreciates the State Board's recent workshop on the issue and looks forward to a State Board resolution of this issue of vital statewide importance. Because of the significance of the receiving water limitations language, Napa has concerns about both the permit reopener language in Section I, page 140 of the Draft Permit and the discussion of the issue in Section XI, pages 25-26 of the Draft Fact Sheet.

First, rather than include the reopener in Section I, page 140 of the Draft Permit, the State Board should address the issue now before adopting the final Permit. As Permittees move forward with

implementation of the final Permit, they need regulatory certainty about Permit compliance. In light of the uncertainty surrounding the State Board's Orders WQ 99-05 and 2001-15 and the recent 9th Circuit decision, resolving this issue before adoption of the final Permit would provide needed regulatory certainty. The reopener only creates more uncertainty, both by allowing the current language to remain unaddressed and by putting in place a process that might reopen the new Permit on this crucial issue soon after Permit adoption. This approach simply defers resolution of this key issue.

Second, Section XI, pages 25-26 of the Draft Fact Sheet adds unnecessary language that conflicts with the reopener concept and with the State Board's ongoing consideration of the receiving water limitations language. Of particular concern is the sentence that reads as follows: "The Ninth Circuit holding is consistent with the position of the State Water Board and Regional Water Boards that exceedances of water quality standards in an MS4 permit constitute violations of permit terms subject to enforcement by the Boards or through a citizen suit." This sentence is inconsistent with the language of State Board Order WQ 2001-15, which makes clear that the State Board's precedential language "does not require strict compliance with water quality standards" and that compliance is to be "achieved over time, through an iterative approach requiring improved BMPs." Notably, the Draft Fact Sheet does not even mention Order 2001-15, even though Order 2001-15 is the State Board's last official policy statement on the issue.

For these reasons, the State Board should delete the new reopener related to the receiving water limitations language and address the issue now. At a minimum, the State Board should instruct staff to eliminate the language in the Draft Fact Sheet that "prejudges" the issue and prevents the State Board from continuing to have an open and productive dialogue on the need for regulatory certainty regarding compliance with water quality standards in MS4 permits.

## **2. Incidental Runoff.**

Section B.4 on Page 18 has been revised to attempt to clarify what constitutes incidental runoff which, if controlled, is not prohibited non-stormwater. Section B.4 has also been revised to attempt to explain what is prohibited "excess" runoff. However, as explained in detail in the SSC comment letter, the revisions create ambiguities that require clarification.

As explained in Napa's July 20, 2012 comment letter, Napa already has in place many market-based and education tools to address over-watering and to reduce the use of water for irrigation of landscaped areas. These market-based approaches are believed to be a more effective way to address this issue than the top-down regulatory approach in Section B.4.

## **3. Regional Board Executive Officer Discretion.**

Sections E.1.b on page 20 and E.7 on page 28 have been revised to establish some basic procedures to be followed when a Regional Board Executive Officer ("EO") requires deviations from the uniform standards of the Draft Permit. Specifically, Section E.1.b has been revised to establish a procedure to be followed when a Regional Board EO compels a Permittee to continue its existing SWMP. Section E.7 now requires a "statement of reasons" when a Regional Board EO compels a Permittee to implement Community Based Social Marketing ("CBSM").

Napa continues to believe that both of these provisions, as revised, should be deleted or significantly constrained. With regard to the continuation of existing programs, Napa believes

that this option should only be considered when requested by a Permittee. At a minimum, short deadlines must be established in which Regional Board EOs may compel continuation of a SWMP. Permittees need regulatory certainty on which program they are to implement. In addition, updating the SWMP should not be required when continuation of the SWMP is compelled. The obligation should merely be to continue the existing program.

With regard to CBSM, Regional Board EOs should not be provided the option to compel this expensive effort, even when a “statement of reasons” is provided.

**4. Outfall Mapping and Sampling.**

Sections E.9.a and E.9.c on pages 36-37 and 39-41 have been revised to clarify outfall mapping requirements and outfall field sampling obligations. These revisions and other similar requirements of the Draft Permit that are linked to the term “outfall” should be reconsidered in light of the new definition of “outfall” contained in Attachment I. The new definition of “outfall” is based on the definition of that term in 40 CFR 122.26(b)(9), which in turn is based on the definition of a “point source” in 40 CFR 122.2. Without reasonable limitations based on pipe size, this new definition will make the outfall mapping and sampling requirements of the Draft Permit overly broad and difficult to meet. Attachment J limits the scope of this definition to outfalls measuring 18 inches or more in diameter with regard to Ocean Plan monitoring. Similar constraints should be included for the other mapping, sampling and monitoring requirements of the Draft Permit.

**5. Industrial and Commercial Inspections.**

Section E.9.b.(ii).(e) on page 39 has been revised to add back into the Draft Permit a form of industrial and commercial inspection program. The revisions would require Permittees to inspect certain designated industrial and commercial facilities at least once during the Permit term. These revisions should be deleted from the Draft Permit. Indeed, the Draft Fact Sheet represents on page 11 that the industrial and commercial inspection program has been deleted from the Draft Permit to reduce costs. Such a program, even in this revised form, should not be added back into the Draft Permit.

**6. Recommended Construction Inspection Frequencies.**

Section E.10.c.(ii) on page 47 has been revised to insert certain “recommended” construction inspection frequencies. To avoid ambiguity about the enforceable requirements of the Draft Permit, these “recommended” inspection frequencies should be deleted. This would be consistent with the statement on page 11 of the Draft Fact Sheet that the “mandatory” construction inspection frequencies have been deleted from the Permit. If the State Board believes that it is important to provide a “recommendation” about when inspections should occur, it should include those “recommendations” in the Fact Sheet or other guidance document, not in the Permit itself.

**7. Post Construction Storm Water Management Program.**

Section E.12 contains many positive revisions that address, in part, the concerns expressed in the City’s July 20, 2012 comment letter. However, Section E.12 as revised still contains site design measures (E.12.b) and low impact development runoff standards (E.12.e) that Napa believes will

undermine its long-standing and highly successful urban growth management approach and the significant water quality benefits that flow from that approach. As explained in detail in Napa's July 20 letter, Napa has, since 1972, implemented a Rural Urban Limit Line that has prevented development of impervious surfaces in rural areas and focused growth to infill and redevelopment areas with the urban boundary. Some of the revisions to Section E.12.e.(ii).(h), including the specific reference to "smart growth projects" may help address some of Napa's concerns; however, more clarity is needed to address Napa's specific comment about the runoff standards and their relationship to Napa's Rural Urban Limit Line. Napa requests a more specific exemption that better fits its situation.

**8. Monitoring Requirements.**

Section E.13.(1)-(4) on pages 82-83 has been revised to attempt to clarify the Draft Permit's monitoring requirements. However, the revisions create an ambiguity about the monitoring requirements applicable to Napa, a City with a population greater than 50,000. New language in Section E.13 provides as follows: "Traditional Small MS4 Permittees that are already conducting monitoring of discharges to ASBS, TMDL *and* impaired water bodies are not required to perform additional monitoring as specified in E.13.a and E.13.b." Napa believes that the use of the word "*and*" is erroneous and that the word should be "*or*" as used in other portions of Section E.13. Please make this important correction to clarify Napa's monitoring obligations.

**9. TMDLs and Receiving Water Limitations Language.**

Section E.15.c on page 98 and Attachment G have been revised to incorporate certain TMDL-specific requirements and to allow additional time for Regional Board's to work with Permittees to develop TMDL-specific permit requirements for other TMDLs. In this regard, Napa also requests that the State Board address the receiving water limitations language of Section D of the Draft Permit now, prior to Permit adoption. This is particularly important in connection with TMDLs and their relationship to requirements of Section D. At the State Board's recent workshop on the receiving water limitations language, there appeared to be broad consensus among stakeholders, including U.S. EPA, that linking receiving water limitations language to TMDL implementation plans made regulatory sense. To provide regulatory certainty, Napa asks that the State Board address this issue now.

In conclusion, the Draft Permit and Draft Fact Sheet include many positive revisions. Napa thanks the State Board staff for making those revisions. It is believed that the comments in this letter will help make the Permit clearer and more understandable to all parties. We appreciate the opportunity to provide these comments and look forward to revisions based upon them.

Very truly yours,

  
Jacques R. LaRoche, PE, PLS  
Public Works Director