



## CITY of NAPA

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July 20, 2012

VIA EMAIL [COMMENTLETTERS@WATERBOARDS.CA.GOV]



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

Re: Comment Letter – 2nd Draft Phase II Small MS4 General Permit

Dear Ms. Townsend:

The City of Napa ("Napa") appreciates the opportunity to provide these written comments on the 2nd Draft Phase II Small MS4 General Permit ("Draft Permit") and the Draft Fact Sheet for the Draft Permit ("Draft Fact Sheet"). Napa thanks the State Water Resources Control Board ("State Board") for the improvements made in the Draft Permit since the release of the 1st Draft last year. Napa urges the State Board to continue to improve the Draft Permit based on these comments and the other comments submitted by municipal dischargers.

Napa participates in the Napa County Stormwater Pollution Prevention Program ("NCSPPP"), and is a member of both the California Stormwater Quality Association ("CASQA") and the Statewide Stormwater Coalition ("SSC"). Napa joins in and incorporates by this reference the comment letters submitted by NCSPPP, CASQA and SSC. Napa writes separately to address issues unique to Napa's program.

### Comments on the Draft Permit

As the State Board is aware, all of the conditions of the final Permit will become legally enforceable requirements for Napa. If there are future legal disputes about the meaning of the conditions in the Permit, a court will review the Permit's terms as it would review any contract or legal document. Napa therefore urges the State Board to listen to the concerns of municipal dischargers, who are essentially the State Board's contractual partner when it comes to the Permit (albeit partners who lack control over the final permit language). The State Board should only include provisions in the Permit that are precise and intended to create enforceable obligations that are well understood by all parties.

Consistent with this general comment, Napa has the following specific comments on the Draft Permit:

1. Section B.4 (Incidental Runoff): This section prohibits all runoff from landscaped areas not qualifying as "Incidental Runoff" and also requires controls for Incidental Runoff. In accordance with 40 C.F.R. § 122.26(d)(2)(iv)(B)(1), non-storm water discharges from landscape irrigation, discharges from potable water sources, irrigation water, lawn watering and related categories need only be addressed as illicit discharges where such discharges are identified by the municipalities as sources of pollutants to waters of the United States. Consistent with this regulation, Napa should be allowed to establish, as needed, the conditions under which runoff from landscaped areas is to be prohibited or controlled. The requirement to prohibit or regulate this non-stormwater source should be left to the City. Further, the controls required by section B.4.a-e are not always feasible to achieve. For example, it is not always feasible to detect and correct leaks within 72 hours. In accordance with the applicable regulations, Napa should be free to establish feasible controls if it determines that non-storm water discharges from landscaped areas are a source of pollutants to receiving waters in Napa.

Through its water department, Napa has already put in place a market-based approach to reducing water used for landscaping, thereby helping to achieve the City's conservation and water quality goals. Specifically, Napa's water rates provide financial incentives to reduce water usage. Napa also has provided on-line and smart phone tools to assist water customers to reduce water usage and locate leaks or inefficient watering practices. Through its Conservation Coordinator, Napa offers a host of individualized and general educational tools to lower water usage. In addition, Napa has a "cash for grass" turf replacement rebate program that has been very successful. These market-driven and educational approaches are believed to be more effective than the top-down regulatory approach in the Draft Permit.

2. Section D (Receiving Water Limitations): The State Board's receiving water limitations language must be revised to make it consistent with the State Board's stated intent to achieve compliance with water quality standards "over time, through an iterative approach requiring improved BMPs." (State Board Order WQ 2001-15 (interpreting the State Boards' mandatory receiving water limitations language in State Board Order WQ 99-05.) In a case that the United States Supreme Court will review next term, the Ninth Circuit held that, contrary to the State Board's stated intent, the receiving water limitations language requires immediate compliance with numeric water quality standards. To bring the language of the Draft Permit into line with the State Board's policy of achieving compliance over time through the iterative process, the State Board should revise the receiving water limitations language as proposed by CASQA and the SSC in their respective comment letters. Making the receiving water limitations language consistent with State Board Order WQ 2001-15 is important to Napa because the Napa River is subject to tidal influences. Therefore, pollutants in the Napa River may come from upstream or downstream sources. Napa should not be placed in position where it might face potential legal exposure over receiving water conditions it cannot control.

3. Section E.1.a (Continuation of Current Programs): This section allows a Regional Water Board Executive Officer ("EO") to require a Renewal Traditional Small MS4 Permittee to continue implementation of current BMPs and reporting requirements in lieu of implementation of the requirements of the Draft Permit. Rather than making this in lieu provision a unilateral decision of the Regional Board EO, Napa requests that Permittees be permitted to apply to the Regional Board EO to continue current programs in lieu of the Draft Permit. If such an application is made, the Regional Board EO could then make the determination that the Permittee's current program is equally or more effective at reducing pollutants. The Regional Board EO's decision should also be subject to review by the State Board through the Water Code petition process, not just subject to State Board EO review. Finally, the in lieu process should apply to all the provisions in the Draft Permit, including section E.12 and E.13.

This is an issue of vital importance to Napa and was mentioned in the City's comment letter on the 1<sup>st</sup> Draft of the Permit. Through the NCSPPP, Napa and its partners have invested a significant amount of time and money to develop a stormwater program tailored to local conditions. Napa and its partners have invested in excess of \$600 Million on major projects in the Napa River/Napa Creek that enhance water quality in the Napa River and its tributaries and provide environmentally responsible flood and watershed protection. Napa should have the ability to apply to continue these programs without having to restart them based on the requirements of the Draft Permit. Napa should also have the ability to challenge a Regional Board EO's denial of such a request by filing a petition to the State Board.

4. Section E.7 (Education and Outreach Program): This section provides that Traditional Small MS4 Permittees may be required to implement Community-Based Social Marketing ("CBSM") if the Regional Board EO requires it. Because there is no requirement in the Clean Water Act ("CWA") and implementing regulations to use any particular type of education and outreach, this provision must be deleted. As previously explained in Napa's comment letter on the 1st Draft of the Permit, CBSM is an expensive and time-consuming process that is not the best approach for Napa. Napa should not have to deviate from its current local program and from its procurement processes (which generally do not allow for such a sole-source approach) at the unilateral direction of the Regional Board EO.
5. Section E.11.i (Incorporation of Water Quality and Habitat Enhancement Features in New Flood Management Facilities): This provision requires Napa to "develop and implement a process for incorporating water quality and habitat enhancement features into new and rehabilitated flood management facilities." By the fourth year of the new Permit, Napa would be required to "complete and have available a list of new or upgraded flood management projects, including a summary of water quality and habitat enhancement features incorporated into their design."

This provision is unnecessary and should have no application to Napa. As noted above and in the City's comment letter on the 1st Draft of the Permit, Napa and its partners at NCSPPP have invested in excess of \$600 Million on the Napa River/Napa Creek Flood Protection Project and numerous other local watershed enhancement efforts. To burden Napa with the additional requirements of section E.11.i of the Draft Permit is unreasonable in light of the efforts Napa has already taken.

6. Section E.12 (Post Construction Storm Water Management Program): Section E.12 of the Draft Permit establishes post construction requirements for new and redevelopment projects. Required measures include, without limitation, site design measures (E.12.6), low impact development runoff standards (E.12.d) and hydromodification management (E.12.c). When applied to Napa, these "one-size-fits-all" requirements will significantly undermine Napa's long-standing and highly successful urban growth management approach and the significant water quality benefits that flow from that approach.

In 1973, the voters in Napa established the basis for what has become the City's Rural Urban Limit Line ("RUL"), an urban growth boundary identifying a limited area subject to urban development. The RUL has remained in place, virtually unchanged, for over 20 years, and the City's current general plan retains the RUL for the next 25 years. The RUL results in significant water quality benefits by preventing development of impervious surfaces in rural areas and channeling urban growth to infill and redevelopment areas within the urban boundary, the type of "smart growth" principles that section E.12.j of the Draft Permit claims to promote.

However, the volume and flow criteria in section E.12 of the Draft Permit will prevent Napa from achieving and preserving the goals of the RUL. A key part of the RUL is the policy to "provide for the efficient development and redevelopment of land within the RUL in order to allow job and housing growth through the end of the planning period." In other words, to prevent sprawl, the City must allow infill and redevelopment projects to reasonably occur within the constraints of such sites. Section E.12's requirements do not accommodate the realities of infill and redevelopment projects because achieving the volume and flow criteria demand more land than such projects have available. The limited exceptions found in the Draft Permit in section E.12.d.2.(ii).(3).C and elsewhere are too vague and limited to provide effective relief. As currently written, the Draft Permit will place Napa in the untenable position of continuing its "smart growth" plan without all the necessary tools to allow for "the efficient development and redevelopment of land within the RUL . . . ."

In order to allow Napa to continue to implement the RUL and achieve the associated water quality benefits of this "smart growth" land use approach, Napa requests a specific exemption from the requirements of section E.12. The Draft Permit should include an exemption that applies when dischargers have adopted

and consistently applied an urban growth management boundary such as the RUL.

7. Section E.13.c (Special Studies): This section allows Permittees to develop and implement a special study monitoring program, with approval of the Regional Board EO, in lieu of regional or receiving water monitoring. Napa believes that the Draft Permit's monitoring requirements as a whole are excessive and not required by the CWA and its implementing regulations. At a minimum, section E.13.c should be amended to allow ongoing monitoring efforts for existing flood control, habitat enhancement and stream restoration projects to qualify as special studies.
8. Section E.16.c (Regional Programs and Reporting): This section provides that only one annual report may be submitted on behalf of Permittees involved in a Regional Program. As noted above, Napa participates in the NCSPPP. While part of NCSPPP, Napa administers its own stormwater program and is separately enrolled under the Permit. The State Board should consider providing more flexibility in how programs such as Napa's that are independent but coordinate with regional partners report on their efforts.

#### **Comments on the Draft Fact Sheet**

The Draft Fact Sheet must satisfy the requirements of 40 C.F.R. sections 124.86(a) and 124.56. In addition to the deficiencies in the Draft Fact Sheet pointed out in the SSC comment letter, Napa submits the following two key comments on the Draft Fact Sheet.

1. Section III – Economic Considerations: The State Board in Order WQ 2000-11 acknowledged that the cost of compliance is a relevant factor in determining MEP. To remain consistent with MEP, the BMPs imposed in the Draft Permit should be shown to "have a cost that bears a reasonable relationship to the pollution control benefits to be achieved."

Attached to this comment letter is an estimate of the costs to Napa to implement the controls in the Draft Permit. Rather than relying on outdated studies of Phase I program costs, the State Board should conduct a true cost assessment of the controls required by the Draft Permit. The State Board should then assess these costs in light of actual estimates of the pollutant control benefits to be achieved by each control. Such an assessment is consistent with the cost considerations that are an inherent part of MEP. Since the State Board in section E.14.9.(ii).(a).(4) of the Draft Permit expects Permittees to assess the "pollutant source reductions achieved by individual BMPs," this is an effort that the State Board must believe it can perform.

2. Section IV (Unfunded Mandates): Napa contends that the new programs and higher levels of service in the Draft Permit constitute unfunded state mandates, for all the reasons expressed in the SSC letter. Rather than imposing these unfunded state mandates on cash-strapped local jurisdictions, the State Board

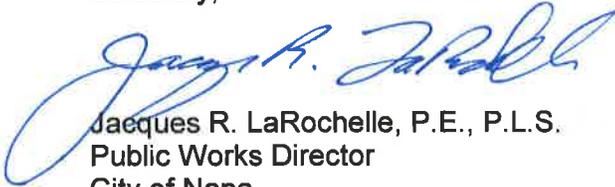
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should implement the 6 minimum control measures consistent with EPA's Phase II regulations.

**Conclusion**

For the reasons expressed in this written comment letter and in the NCSWPPP, CASQA and SSC letters, Napa asks the State Board to revise the Draft Permit and Draft Fact Sheet.

Sincerely,



Jacques R. LaRochelle, P.E., P.L.S.  
Public Works Director  
City of Napa

Enclosure: Napa's Implementation Cost Estimate Summary

cc w/enclosure:

State Senator Noreen Evans  
State Senator Lois Wolk  
State Assembly Member Mariko Yamada  
State Assembly Member Michael Allen  
Napa City Council  
Napa County Board of Supervisors  
Napa Chamber of Commerce  
California League of Cities  
Statewide Stormwater Coalition  
Shawn Hagerty, Best, Best, and Krieger

**ATTACHMENT C - DETAILED COST ESTIMATE SUMMARY**

					ONE TIME COST BY YEAR			
	2012 - 13	2013 -14	2014 -15	2015 -16	2016 -17			
\$	309,395.84	\$ 37,962.98	\$ 41,584.76	\$ -	\$ 28,869.93			

**City of Napa - PHASE II PERMIT  
IMPLEMENTATION COST ESTIMATE  
SUMMARY**

							COST BY YEAR				
YEAR	2012 - 13	2013 -14	2014 -15	2015 -16	2016 -17						
Base Costs	\$ 2,977,968.76	\$ 2,977,968.76	\$ 2,977,968.76	\$ 2,977,968.76	\$ 2,977,968.76						
One Time Costs	\$ 309,395.84	\$ 37,962.98	\$ 41,584.76	\$ -	\$ 28,869.93						
<b>Total Cost</b>	<b>\$ 3,287,364.60</b>	<b>\$ 3,015,931.74</b>	<b>\$ 3,019,553.52</b>	<b>\$ 2,977,968.76</b>	<b>\$ 3,006,838.69</b>						
Est Population	77,867	78,256	78,648	79,041	79,436						
Cost per resident	\$ 42.22	\$ 38.54	\$ 38.39	\$ 37.68	\$ 37.85						
Cost per household	\$ 107.23	\$ 97.89	\$ 97.52	\$ 95.70	\$ 96.14						

AVERAGE ANNUAL COST FOR 5 YEARS	
Total Annual Avg Cost for 5 Years	\$ 3,061,531
5 Year. Avg Population	78,650
Avg Cost per Resident	\$ 38.93
Avg. Cost per Household	\$ 98.87

Residents per household

2.54

PROGRAM ELEMENT	ANNUAL COSTS	ONE-TIME COSTS	TOTAL COST
E.6 PROGRAM MANAGEMENT ELEMENT	\$ 23,096	\$ 211,690	\$ 234,785
E.7 OUTREACH AND EDUCATION PROGRAM	\$ 303,939	\$ 6,854	\$ 310,793
E.8 PUBLIC INVOLVEMENT AND PARTICIPATION PROGRAM	\$ 12,715	\$ -	\$ 12,715
E.9 ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM	\$ 374,981	\$ 20,269	\$ 395,250
E.10 CONSTRUCTION SITE STORM WATER RUNOFF CONTROL PROGRAM	\$ 167,879	\$ -	\$ 167,879
E.11 POLLUTION PREVENTION/GOOD HOUSEKEEPING FOR PERMITTEE OPERATIONS PROGRAM	\$ 1,095,331	\$ 43,305	\$ 1,138,636
E.12 POST CONSTRUCTION STORM WATER MANAGEMENT PROGRAM	\$ 619,455	\$ 83,876	\$ 703,331
E.13 WATER QUALITY MONITORING	\$ 152,998	\$ 46,192	\$ 199,189
E.14 PROGRAM EFFECTIVENESS ASSESSMENT	\$ 112,221	\$ 19,016	\$ 131,237
E.15 TOTAL MAXIMUM DAILY LOADS COMPLIANCE REQUIREMENTS	\$ 55,354	\$ -	\$ 55,354
<b>TOTAL</b>	<b>\$ 2,917,969</b>	<b>\$ 431,202</b>	<b>\$ 3,349,171</b>

Other annual costs - permit fees, vehicles, office supply etc. \$ 60,000.00  
Vactor Truck-rental-\$1600 p/month

PROGRAM ELEMENT	TOTAL COSTS	STAFF COSTS	OTHER COSTS
E.6 PROGRAM MANAGEMENT ELEMENT	\$ 234,785	\$ 264,052	\$ -
E.7 PUBLIC OUTREACH AND EDUCATION PROGRAM	\$ 310,793	\$ 310,793	\$ -
E.8 PUBLIC INVOLVEMENT AND PARTICIPATION PROGRAM	\$ 12,715	\$ 12,715	\$ -
E.9 ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM	\$ 395,250	\$ 282,872	\$ 112,378
E.10 CONSTRUCTION SITE STORM WATER RUNOFF CONTROL PROGRAM	\$ 167,879	\$ 167,879	\$ -
E.11 POLLUTION PREVENTION/GOOD HOUSEKEEPING FOR PERMITTEE OPERATIONS PROGRAM	\$ 1,138,636	\$ 1,124,305	\$ 18,000
E.12 POST CONSTRUCTION STORM WATER MANAGEMENT PROGRAM	\$ 703,331	\$ 703,331	\$ -
E.13 WATER QUALITY MONITORING	\$ 199,189	\$ 199,189	\$ -
E.14 PROGRAM EFFECTIVENESS ASSESSMENT	\$ 131,237	\$ 131,237	\$ -
E.15 TOTAL MAXIMUM DAILY LOADS COMPLIANCE REQUIREMENTS	\$ 55,354	\$ 55,354	\$ -
<b>TOTAL</b>	<b>\$ 3,349,171</b>	<b>\$ 3,251,729</b>	<b>\$ 130,378</b>















CITY OF Napa - PHASE II PERMIT IMPLEMENTATION COST ESTIMATE

PERMIT ELEMENT (May 14, 2012 Draft)	PERMIT COMPLIANCE YEAR (SPECIFIC DATE OR MAY-15TH LINKERS OTHERWISE NOTED)	STAFF LEVEL	STAFF HOURS PER WEEK	STAFF PER HOUR PER YEAR	FTE	\$/FTE	STAFFING COSTS (personnel, equipment, etc.)	OTHER COSTS (personnel, equipment, etc.)	ANNUAL COST? (Yes = 1, No = 0)	TOTAL COST	ANNUAL COST	ONE TIME COST
E: 15 - Comply with Clean Water Act Sections 302,303B and 314 E: 15 Sub-Total	2013	Similar Civil Engineer	7	104	0.029	182,154	8,109	-	1	8,107.70	8,107.70	-
					0.003	-	85,352.98	-	0	85,352.98	85,352.98	85,352.98
<b>TOTAL</b>					0.032	182,154	8,109	188,578.00	1	3,393,086.87	3,393,086.87	421,032.25

One Time Cost Schedule

2012	2014	2015	2016	2017	One Time FTE
-	-	-	-	-	0.020
200,000.00	37,667.50	41,884.30	-	-	0.000
					20.11