



City of San Luis Obispo

Public Comment
Draft Phase II Small MS4 General Permit
Deadline: 7/23/12 by 12 noon

990 Palm Street, San Luis Obispo, CA 93401-3249

July 23, 2012

Charles R. Hoppin, Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100



Subject: Comments on Second Draft Phase II Municipal Separate Storm Sewer Systems (MS4) Permit

Dear Mr. Hoppin,

We appreciate the efforts of the State Water Board to listen to the MS4's comments and the revisions to the draft permit are a positive step forward to maintain compliance. The City of San Luis Obispo staff has conducted a review of the second Draft Phase II MS4 permit, supports the comments from the California Stormwater Quality Association (CASQA), and the Statewide Stormwater Coalition (SSC). The City has the following specific comments:

- To meet the water quality criteria identified in the new draft permit, the State Board has not used its discretion to allow dischargers to comply with water quality criteria over time and make modifications through the iterative process. By failing to use its discretion to draft permits based upon achieving compliance through the iterative process, the State Board has left local governments vulnerable not only to enforcement, but also to third party lawsuits that will cost millions of dollars to resolve, over and above the funding being spent to implement the stormwater program.

To correct this problem, the State Board should substitute receiving water limitations language proposed by CASQA, which reads:

"Except as provided in this Section D, discharges from the MS4 for which a Permittee is responsible shall not cause or contribute to an exceedance of water quality standards contained in a Statewide Water Quality Control Plan, the California Toxics Rule (CTR), or in the applicable Regional Water Board Basin Plan."

"If a Permittee is found to have discharges from its MS4 causing or contributing to an exceedance of an applicable water quality standard or causing a condition of nuisance in the receiving water, the Permittee shall be deemed in compliance with this Section D and this Order, unless it fails



to implement the requirements of this Section D or as otherwise covered by a provision of this Order specifically addressing the constituent in question, as applicable."

- Although the second draft permit claims to be prescriptive and clear, it contains open-ended terms and provisions subject to interpretation by the Executive Officer of Regional Boards. Specifically the draft permit states:

"Permittees shall use Community Based Social Marketing (CBSM) or equivalent for education and outreach strategies." (Draft Order Attachment E, page 2.)

Local Regional Water Board staff have expressed the desire for local MS4's to use this strategy (CBSM) in the past which leads us to believe this will be a requirement and not an option based on the Executive Officers direction.

Also, the Central Coast MS4s are required to implement post-construction standards that exceed those required for other permittees. This region specific requirement is inappropriate given the nature of a general permit which is to be one permit of general application. The uncertainty is further magnified by the fact the Central Coast Regional Board has not yet acted upon the post-construction standards. Comments from City staff and CASQA to the Central Coast Regional Water Quality Control Board concerning the Central Coast specific post-construction standards indicate the requirements are unreasonable, infeasible for many projects, have no demonstrated additional environmental benefit and are not cost-effective. Even more importantly, the more restrictive numeric standards have not been shown to have a water quality benefit. The extreme nature of the proposed Central Coast post construction numeric standards further compounds the difficulty for local Central Coast MS4s to comply with the full terms of this permit. Central Coast MS4s should be subject to the same post-construction standards as all other Phase II MS4s under the new permit.

No criteria are provided to determine how or when this determination would be made. Especially since this more restrictive post construction numeric standard has not been shown to provide water quality benefit for its more onerous and costly burden.

If the State Board intends to allow the Regional Board Executive Officer to unilaterally decide whether to continue a current program, permittees should be allowed to petition (afforded an appeal process for) these decisions to the State Board. This sounds as if it could undermine the "prescriptive" nature of the General Permit intended to bring all MS4's to the same level. We may still be left to comply at a higher level of service with higher costs to our already very comprehensive program.

- All permittees are required, at a minimum, to provide storm water education to school-age children, with a suggested curriculum named. However permittees have no legal authority to impose curriculum on schools. Further the curriculum suggested has limited if any direct stormwater quality educational pieces. The State of California should implement this curriculum into the educational process and not make this a requirement for the MS4's.
- Pollution Prevention/Good Housekeeping for permittee Operations indicates that the MS4 maintain an inventory of over 19 industrial business types, some of which are already covered under the Industrial General Permit (IGP). Reference or requirement dealing with a facility regulated under the Water Boards IGP should be removed from the Stormwater General Permit since the Water Board already has this information and would constitute a duplicative work effort.
- In the Effectiveness Assessment Section, Implementation Level E.14.b. MS4's will be required to quantify the annual sub-watershed pollutant loads for sediment, fecal coliform bacteria, total phosphorus, total nitrogen, cadmium, chromium, copper, lead, nickel, zinc, and trash. This is predicted to be a huge work load increase and "additional POC's after consultation with the Regional Boards shall also be quantified". This is an effort that could be readily collected by the Water Boards CCAMP (Central Coast Ambient Monitoring Program) since they are trained and have protocols for conducting these studies. This would be a duplicative effort to pass this along to the MS4 staff. This requirement should be removed.
- The City of San Luis Obispo has a very comprehensive SWMP which was developed with numerous meetings and revisions working collaboratively with local Regional Water Board staff and was identified to meet water quality to the Maximum Extent Practicable (MEP). City staff have been working to the MEP to meet the intent of the Stormwater Program but having funding limitations from Proposition 218, San Luis Obispo had adopted a decentralized approach to remain in compliance and we have done well. With the increased work load in the new draft permit, we will have to re-arrange the program to remain in compliance but also adopt some triage system since we will not have additional staff to help remain in compliance.

Sincerely,



Katie Lichtig, San Luis Obispo City Manager

Cc: Thomas Howard, SWRCB Executive Director
 Roger Briggs, Central Coast RWQCB Executive Officer
 Jan Marx, Mayor for City of San Luis Obispo