



## CITY OF EL PASO DE ROBLES

"The Pass of the Oaks"

July 20, 2012

Ms. Jeanine Townsend  
Clerk of the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 85814  
[Commentletters@waterboards.ca.gov](mailto:Commentletters@waterboards.ca.gov)



**Subject: City of Paso Robles Comments on the 2<sup>nd</sup> Draft Phase II Small MS4 General Permit.**

Dear Ms. Townsend and Members of the Board:

Thank you for the opportunity to comment on the May 2012 Draft Phase II Municipal Permit. While this version of the permit is more considerate of local agency funding limitations than the first version, the City of Paso Robles still has many concerns.

### Over-arching Comments

#### Regional Water Board Authorities

The Draft Permit implements the minimum control measures described in 40 CFR Part 122.34. This statute is clear that implementation of a storm water management program that is consistent with these minimum control measures constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." Any requirements beyond these minimum control measures would be State requirements that would be subject to review by the Commission on State Mandates and may require State funding.

Section G, Regional Water Board Authorities, appears to give the Regional Board Executive Officer broad authority with this statement:

"Permittees shall modify and implement their storm water management programs and monitoring as required by the Regional Water Board Executive Officer."

This statement must be qualified by a statement that any Regional Board Executive Officer requirements above and beyond the General Permit are State requirements that are subject to review by the Commission on State Mandates and may require state funding. The Regional Board Executive Officers should be required to consider costs when establishing requirements above and beyond the General Permit.

### **Program Costs**

The City appreciates the State Water Board's willingness to incorporate changes suggested during the comment period from the first draft permit to make this version of the permit practical however the City still has concerns about the significant cost increase implementation the Draft Permit.

The higher level of requirements outlined in the permit will require the City to hire additional designated storm water staff and consultants and purchase monitoring equipment to implement the higher level permit requirements. The City does not have the means to fund this program.

40 CFR 122.34(e)(2) states "EPA strongly recommends that until the evaluation of the storm water program in section 122.3, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality." The City has not agreed to the additional requirements of the Draft Permit.

Additionally, Article XIII B, Section 6a) of the California Constitution (Section 6) provides that whenever "any State agency mandates a new program or higher 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 increase level of service..."

The Draft Permit includes additional programs and higher service levels beyond the minimum control measures outlined in 40 CFR 122.34(b). Therefore, the State should either remove the requirements that are above and beyond the minimum control measures or provide a legal funding mechanism.

Adding to the cost of the program is the compressed timeline for implementing requirements. A large majority of the tasks are required to be completed by the end of the third year and all of the BMPs require detailed tracking and reporting which will be very time-consuming. This requires the City to hire staff or consultants immediately to implement the programs instead of allowing the City time to properly budget and develop the required programs.

### **Redundant Requirements**

The Draft Permit continues to include requirements that are redundant of other programs. This redundancy increases staff workload for other programs in the City by requiring additional tracking and reporting. Requiring redundant tracking and reporting is not effective.

- Water Conservation program: The City has an effective water conservation program that has developed and distributes educational materials, conducts workshops on water conservation and implements programs such as rebates for low flush toilets, Cash for Grass, and responds to complaints of incidental runoff. Tracking the amount of educational materials handed out, the number of workshops provided, and the number of complaints will not increase the effectiveness of the program, but shift time to tracking and reporting. These requirements should be deleted.
- Inspections, Visual Monitoring and Remedial Action (E.11.e). This section requires that the Permittee should conduct regular inspections of Permittee owned facilities. However, airports, landfills, fleet maintenance facilities that work on public transportation vehicles are required to be covered under the Industrial Storm Water General Permit (IGP) and are required to conduct detailed facility inspections and sample storm water and non-storm water discharges under this program. The City should not have to track and report the inspections and sampling results under two different storm water programs. The Draft Permit should exempt any facility covered under the IGP.
- Landscape Design and Maintenance (E.11.j(ii)(b)(1)) Requires Permittees to implement educational activities for municipal applicators and distributors. This requirement is redundant of the State's requirements for the licensing and certification program. This requirement should be removed.

## **Specific Comments**

### **E.6 Program Management Element**

This section requires that the Permittee shall have an overarching program management element in the storm water management program. A program management element is not one of the six minimum control measures required by the Phase II regulations. The requirements of this element exceeds the requirements of 40 CFR 122.134 and should be removed

#### **E.6.a(ii)(h) Legal Authority**

*Requires Permittees to have adequate legal authority to enter private property for the purpose of inspecting, any facilities, equipment, practices, or operations for active or potential storm water discharges, or non-compliance with local ordinances/standards or requirements in the Draft Permit.*

The City is limited by the United States and California Constitutions to enter private property for the purpose of inspection. This requirement should be deleted.

#### **E.6.a(ii)(b) Legal Authority**

*This section requires Permittees to prohibit and eliminate illicit discharges to the MS4, including discharges from organized car washes.*

The language "organized car washes should be deleted. The proper method of reducing discharges from organized car washed is through education which is required under E.7.a(ii)(I).

### **E.6.c Enforcement Response Plan**

*Requires the Permittee to develop an Enforcement Response Plan.*

The Draft Permit under E.6a Legal Authority requires Permittees to have ordinances or other regulatory mechanisms including imposing more substantial civil or criminal sanctions and escalate corrective response for persistent non-compliance, repeat or escalating violations. An Enforcement Response Plan is redundant of E.6.a and should be deleted.

### **E.7 Education and Outreach Program**

#### **Community-Based Social Marketing**

*Traditional Permittees may be required to implement Community-Based Social Marketing (CBSM) as detailed in Attachment E.*

The Central Coast RWQCB has stated that they plan to have Permittees implement CBSM. Permittees are required to develop and implement a public education strategy that will include CBSM strategies or equivalent. The City does not have the staff or funding to develop a CBSM strategies or a CBSM equivalent. Additionally, it should left up to the Permittees to determine a public outreach program that is appropriate for its community. This requirement is above and beyond the requirements of 40 CFR 122.34(b) and should be deleted.

#### **a(ii)(I)**

*Suggest that the Permittee may use the Sacramento Stormwater Quality Partnership's River Friendly Carwash Program or equivalent for guidance.*

This language implies that Permittees will develop a program for charity car washes. The requirement that Permittees should develop a program for charity car washes is above and beyond the requirements in 40 CFR 122(B). The language should be removed from the permit.

#### **E.7.b.2 Construction Outreach and Education**

**(a) Permittee Staff Training:** *Requires that the Permittee ensures plan reviewers and permitting staff are certified pursuant to a sponsored program as a QSD.*

It is not feasible or necessary to have every plan checker and permitting staff certified as a QSD. This requirement is above and beyond 40 CFR 122(b)(4) and should be deleted.

**(ii)(b) Construction Site Operator Education:** *The Permittee shall develop and distribute educational materials to construction site operators.*

The implementation level of this section requires the development and distribution of educational materials to construction site operators, however the reporting requires that Permittees include (b) the dates of training (c) the number and percentage of Permittee operators, inspectors, and number of contractors attending each training (d) results of any surveys conducted to demonstrate the awareness and potential behavioral changes in the attendees.

The reporting requirements should be changed to reflect the implementation requirements.

#### **E.9.a(ii)(c) Outfall Mapping**

*The Draft Permit requires Permittees to show priority areas that are listed in the Draft Permit on the outfall map. There are seven types of priority areas.*

This requirement should be modified to read that priority areas *may include* and *if applicable*. The priority area listed may not be applicable to all communities. For example, if an MS4 has an area with older infrastructure but is covered by the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (WDR) and has not had any reportable sewage overflows then this should not be a high priority area. The City implements its Sanitary Sewer Management Plan (SSMP) and routinely conducts TV inspections of the collection system which would reveal illegal connections. Implementing the SSMP per the WDR is the most effective mechanism for locating illicit connections, cross-connections, and prevention of sewage overflows. Inspecting and sampling outfalls is not an effective method for preventing sewage from entering the waterways.

Likewise, if there is no history of illicit discharges or illegal dumping from industrial, commercial, or mixed use areas, then these areas should not be a priority.

#### **E.9.b Illicit Discharge Source/Facility Inventory**

**(ii)(a)** *This BMP requires the Permittee to maintain an inventory of all industrial/commercial facilities/sources within their jurisdiction that could discharge pollutants in storm water to the MS4. The Draft Permit requires the inventory to include the nature of the business or activity, the digital longitude-latitude of the storm drain receiving discharge, name of receiving water and if it is a 303d listed water body or subject to a TMDL.*

This requirement is too burdensome due to the detail required for the inventory.

- To determine the “nature of business” most sites will require a site visit to get this information unless the Permittee has existing inspection programs that would have this information. The City does not have this type of information for the majority of the businesses.
- If a Permittee has a map of the storm drain system that include DIs, outfalls, and water bodies, then this information is already available and should not be required on this inventory.

**(ii)(c)** *The Permittee shall determine if the facilities that are required to be covered under a NPDES Storm Water permit have done so. Upon discovering any facilities requiring a permit but are not yet permitted, the Permittee shall notify the RWQCB.*

The SWRCB is responsible for the oversight and enforcement of the IGP and receives fees for this program. The State Board cannot shift this obligation to the Permittees. Since the inventory is required to be submitted with the annual report the Board Staff can use it to determine if a facility should be covered or not. This requirement should be deleted.

### **E.9.c Field Sampling to Detect illicit Discharges**

*While conducting the outfall inventory under Section E.9.a, the permittee shall sample any outfalls that are flowing more than 72 hours after the last rain event. The Permittee shall also sample outfalls annually identified as priority areas.*

Language should be added to this section that states “if the source of a dry weather flow is known and/or is known to be a non-storm water discharge authorized under the General Permit, sampling is not required.” It is not cost effective to have staff sample and investigate dry weather flows that the source is known. Documentation of the source is all that should be needed.

### **(ii)(b) Action Levels**

The City questions the legality of the action levels listed in the Draft Permit. How these limits were derived should be stated in the permit. How does the SWRCB know that any exceeding these action levels necessitates an investigation?

### **E.9.d(ii)(e) Illicit Discharge Detection and Elimination Source Investigations and Corrective Actions**

*Requires the Permittee to immediately notify the responsible party of the problem, and require the responsible party to conduct all necessary corrective action eliminate the non-storm water discharge with 72 hours of notification.*

Not every incident can be corrected within 72 hours. This language should be modified to allow additional time as warranted by the circumstances.

#### **E.10.c Construction Site Inspection and Enforcement**

The City appreciates the State allowing the Permittee to determine the inspection frequency.

#### **E.11.a Inventory of Permittee-Owned and Operated Facilities**

*The Permittee shall develop and maintain an inventory of Permittee-owned or operated facilities within their jurisdiction that are a threat to water quality, if applicable.*

This language should be modified to include "if a facility is covered under the Industrial General Permit (IGP) it should be noted".

#### **E.11.c Facility Assessment**

*The permittee shall conduct a comprehensive inspection and assessment of pollutant discharge potential and pollutant hotspots.*

Language should be added that "if a facility is covered by the IGP, it is exempt from this requirement." Conducting a comprehensive inspection and assessment of facilities covered by the IGP is redundant.

#### **E.11.e Inspection, Visual Monitoring and Remedial Action**

*This section requires the Permittee to conduct regular inspections of Permittee owned facilities.*

Airports, landfills, and fleet maintenance facilities that work on public transportation vehicles are required to be covered under the IGP and are required to conduct detailed facility inspections and sample storm water and non-storm water discharges under this program. The City should not have to track and report the inspections and sampling results under two different storm water programs. The Draft Permit should exempt any facility covered under the IGP.

#### **E.11.g Maintenance Storm Drain System**

*The Permittee is required to begin maintenance of the all high priority storm drains within the third year of the effective date of the permit.*

This maintenance program will require additional staff to be hired. This is not feasible within the third year for the City.

#### **E.11.h Permittee Operations and Maintenance Activities**

*Assess O&M activities for potential to discharge pollutants in storm water and inspect all O&M BMPs on a quarterly Basis. Reporting requirements include a list of BMPs and associated pollutants with each O&M activity, Log of annual BMP evaluations, and documentation of high priority designated facilities maintained.*

This is yet another onerous program required to be implemented in the third year. This requirement should be delayed until the 5<sup>th</sup> year. The requirement to inspect all O&M BMPs on a quarterly basis is impossible. Staff do not know every BMP that will be implemented on a daily basis. It is not feasible to expect a staff person to follow field staff around for days at a time to inspect BMPs, nor is it feasible for field staff to keep track of which BMPs they implemented. This level of detail in tracking implemented BMPs lessens the productivity of field staff.

The City would like clarification on the reporting requirement for documentation of high priority designated facilities maintained. This appears to be redundant of Section E.11.d, Storm Water Pollution Prevention Plans. Also it is not clear what type of verification should be submitted annually that identified BMPs that were effectively implemented for all operation and maintenance activities.

### **E.13 Water Quality Monitoring**

*Permittees that are assigned a wasteload allocation, identified as a responsible party in an approve TMDL, or discharge to waterbodies listed as impaired on the 303(d) list shall consult with the Regional Water Board within six months of the effective date of the permit to determine the monitoring study design and a monitoring implementation schedule.*

The permit should set parameters to ensure that the Regional Boards do not require monitoring that is above and beyond that necessary to determine compliance with the General Permit.

### **E.14 Program Effectiveness Assessment and Improvement Plan**

*The Permittee shall develop a Program Effectiveness Assessment and Improvement Plan which includes an assessment of pollutant source reductions achieved by individual BMPs, Quantification of pollutant loads and pollutant load reductions achieved by the program as a whole, and receiving water quality data, including analysis of the data is*

This requirement is above and beyond the requirements in 40 CFR 122(g) and should be deleted.

#### **E.14.b Municipal Watershed Pollutant Load Quantification**

*The Permittee shall quantify annual sub-watershed pollutant loads for sediment, fecal coliform, total phosphorus, total nitrogen, cadmium, chromium, copper, lead, nickel, zinc,*



*trash, and any additional pollutants of concern as identified by the Permittee in consultation with the Regional Boards.*

This requirement is not feasible for the City. It is not possible to conduct this exercise without taking actual samples. It is very unlikely that pollutant concentrations data exists for our region. Additionally, this requirement is above and beyond 40 CFR 122 (g) and should be deleted.

Thank you again for the opportunity to comment. If you have any questions, please contact me at 805-227-1654 or [pgwathmey@prcity.com](mailto:pgwathmey@prcity.com)

Sincerely,

A handwritten signature in black ink that reads "Patti Gwathmey". The signature is written in a cursive, flowing style.

Patti Gwathmey  
Industrial Waste Manager

Cc:

Doug Monn, Director of Public Works  
Matt Thompson, Wastewater Division Manager