SACRAMENTO STORMWATER QUALITY PARTNERSHIP

VIA E-MAIL

September 8, 2011

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

Subject: Comment Letter - Phase II NPDES Small MS4 General Permit

Ms. Townsend and Members of the Board:

On behalf of the Sacramento Stormwater Quality Partnership, please accept these comments on the June 2011 Draft Phase II NPDES Small MS4 General Permit (draft Phase II permit).

The Sacramento Stormwater Quality Partnership (Partnership) was established to coordinate activities for seven permittees covered by Sacramento Areawide Phase I NPDES Municipal Stormwater Permit No. CAS082597; Order No. R5-2008-0142 (Sacramento Phase I permit) issued by the Central Valley Regional Water Quality Control Board (Regional Water Board). The permittees include Sacramento County and the cities of Sacramento, Citrus Heights, Elk Grove, Folsom, Galt and Rancho Cordova. The original Sacramento Phase I permit was issued in 1990 and has been renewed three times since, with the current permit adopted in December 2008 and set to expire in 2013.

The following is a summary of our main comments, with further explanation provided later in this letter:

1. The significant requirements in the draft Phase II permit may be precedent-setting for future Phase I NPDES stormwater permits in the state, including the renewal of the Sacramento Phase I permit
2. We support the comments offered on the draft Phase II permit by the California Stormwater Quality Association (CASQA)
3. The development of the draft Phase II permit did not consider the economic impacts to municipal permitholders and their regulated communities

117.1 → **1. The significant requirements in the draft Phase II permit may be precedent-setting for future Phase I NPDES stormwater permits in the state, including the renewal of the Sacramento Phase I permit**

Although the renewed Phase II permit will not immediately impact the Partnership or the regulated community within our Phase I permit area, we have serious concerns about the precedent-setting nature of several of the proposed requirements in the draft Phase II permit. We are aware of the Water Board's 2008 Strategic Plan Goal No. 6 and related strategies and priority actions intended to "*enhance consistency across the Water Boards*" and "*promote fair and equitable application of laws, regulations, policies and procedures*." In particular, it is our understanding that implementation of Priority 6.2.1 ("*Reissue the statewide Phase II MS4 permit to update the baseline for consistency*") is setting the stage for the development of similar requirements in subsequent NPDES stormwater permits (including Phase I permits) in the state. There are many aspects of the draft Phase II permit that are not appropriate and should not be applied across-the-board to Phase I programs by the Regional Water Boards when renewing Phase 1 permits. For example, the Post-Construction Storm Water Management Program (Section E.12.) requires watershed characterizations and "sediment budget" analyses. We feel strongly that such requirements should not extend in the future to previously established post construction and hydromodification management programs developed by the Phase I programs.

117.2 → **2. We support the comments offered on the draft Phase II permit by the California Stormwater Quality Association (CASQA)**

The Partnership supports CASQA's proactive advocacy role in working with the Water Boards over the years to develop programs to protect water quality in a pragmatic and cost-effective manner. We agree with the applicable comments in CASQA's comment letter, including this statement in the opening: "*The draft Phase II permit will pose significant challenges to the Phase II community.*" We would add that the draft Phase II permit is likely to pose significant challenges to the Phase I community as well. We would like to emphasize several items in the CASQA comment letter in particular that resonate with the Partnership:

117.3 →
- Maximum Extent Practicable vs. Prescriptive Regulation. The draft Phase II permit includes many "one size fits all" requirements. As stated in the CASQA comment letter, the prescribed requirements "*have no apparent nexus to water quality improvement*" and "*the Draft Permit's … prescriptive requirements are not consistent with the provisions of [California Water Code] Section 13360.*" Also, "*specifying … minimum [levels of effort] may unnecessarily consume sparse resources where no water quality problem exists.*" The Partnership's 20+ years' experience has taught us that each permittee is different and flexibility is a key factor in making progress toward improved water quality. The best

approach- as afforded by the current Sacramento Phase I permit - is to allow the permittees to develop and evolve their program elements and work priorities in an iterative fashion according to the MEP standard established by the federal regulations. We believe that compliance could be accomplished more efficiently by allowing municipalities (whether Phase I or II) to structure and prioritize their individual stormwater programs within the context of their water quality goals and resources, rather than prescribing the manner of prioritization.

Here are some examples of prescription in the draft Phase II permit which appear arbitrary and where there is no explanation of the nexus to improved water quality:

- The Public Outreach and Education Program (Section E.5.) requires the use of Community-Based Social Marketing (CBSM) strategies or equivalent. While the Sacramento Partnership sees the value of CBSM in some instances, there needs to be allowances for pilot testing and phasing-in of such approaches which can be more costly. Also, Section E.6.ii.b requires the formation of a citizens' advisory committee for the municipal stormwater program. We agreed with CASQA that a permittee should be allowed the ability to create its own public involvement and participation strategy appropriate for its community that may include a citizen group, but that does not require the formation of a citizen group.
- The Pollution Prevention/Good Housekeeping Program (Section E.9.) (similar to the Phase I municipal operations element) requires assessment of "hotspot" facilities at specified frequencies, prioritization of 20% of all catch basins as high and requiring removal of waste from catch basins when they are one-third full, removal of trash and debris in high priority areas three times per year, and incorporation of water quality and habitat enhancement features in two flood management facilities per year. These specified minimum levels of effort seem arbitrary and need rationale. Also, requirements to retrofit flood management facilities will trigger the need for permits from other regulatory agencies, may run counter to municipal mandates to protect life and property, and may not be possible on private property unless there is an application pending for redevelopment.
- The Trash Reduction Element (Section E.10) requires that at least 20% of the Permittee's zoned commercial and retail/wholesale areas comply with a Trash Abatement Plan. This prescriptive requirement may not be appropriate for all communities, since trash production is highly dependent on the nature of the businesses.
- The Program Effectiveness Assessment Element (E.14.d.a.ii) requires that at least 20% of the total BMPs must be maintained annually.

117.4 →

- Some Requirements Exceed Current Phase I Requirements. Some of the draft Phase II permit requirements exceed Phase I program requirements with no direct correlation or

quantifiable benefit to water quality, as described in the comparison table prepared by CASQA (Attachment B to CASQA's comment letter). For example, the list of industrial and commercial categories that must be inventoried and inspected by Phase II communities is much larger than the list of nine industrial categories inspected on a triennial cycle by the award-winning Sacramento County EMD industrial stormwater inspection program[1]. In the early stages of program development, the Partnership identified those business categories that posed the most significant threat to stormwater quality in our region and the list was accepted by the Regional Water Board. As the program progresses, new categories can be added to the program if inspection or monitoring results warrant. This approach focuses resources on water quality improvement, whereas use of the prescriptive longer list in the draft Phase II permit may not be as effective in addressing local water quality concerns. The prescriptive approach may result in problem industries being missed or permittees wasting limited public funds inspecting industries that are not contributing to the problem.

117.5 →

- Requirements to Retrofit Existing Development. In addition to the requirement mentioned above related to retrofitting flood management facilities to incorporate water quality and/or habitat enhancement features, there are several other retrofit-related requirements in the draft Phase II permit, including:
    - Program Management (p.24): include the costs for retrofitting existing BMPs to include green infrastructure
    - Program Effectiveness Assessment and Improvement (p.90): identify storm water retrofit opportunities

  While we have been told that the intent is not to establish mandatory retrofitting requirements within this Phase II permit term, the language of the permit does not imply this level of flexibility. There appears to be a trend towards requiring retrofitting of existing development in municipal NPDES permits. We are particularly concerned with the potential economic impacts of such requirements on property owners in our communities. Further in-depth analysis is warranted to investigate the costs and demonstrate the benefits to improved water quality, and requirements should be developed in collaboration with affected stakeholders.

117.6 →

- Redundancy with Other State Permit Programs. There is redundancy between the draft Phase II permit and the State's Construction and Industrial General Permit requirements. This is the case with the current Sacramento Phase I permit as well, and we continue to view this as problematic. The State Water Board continues to collect permit fees from the regulated businesses and construction/development interests in our communities, yet effectively passes through most of the inspection and enforcement responsibilities to the municipal permittees, forcing the municipalities to draw from their limited resources or to

[1] The Sacramento industrial stormwater inspection program has been recognized as an exemplary model nationally and statewide. The program was the recipient of the 2008 EPA National Storm Water Excellence Award – First Place, Industrial Sub-category, and the 2007 CASQA Source Control/ Programmatic BMP Implementation Award.

charge additional fees for these services. This is placing an additional financial burden on the municipalities as well as the regulated industries. If this issue can be resolved with the Phase II process, it will pave the way for more streamlined and less confusing Phase I permits in the future, with greater equity and transparency for the regulated business and development communities. With respect to the overlap with the CGP, we strongly agree with the CASQA recommendation: *The State Water Board should develop a mechanism to share the WDID Fee currently paid by the developer and submitted to the State.*

117.7 →

- Discharges of Incidental Runoff. Provision B.4 in the draft Phase II permit is something we've never seen before and should only apply to incidental runoff discharges from facilities/landscapes owned and operated by the permittees. Also, some of the irrigation-related parts of this requirement may overlap to some degree with a community's water conservation program and allowances should be made in the permit for the permittee to comply with the requirement through continued implementation of an existing program. This relates to a comment in the CASQA letter for Provision E.5.b.ii.h (water efficient landscape ordinance). We strongly concur with CASQA's recommendation to coordinate with existing outreach programs for the Water Efficient Landscape Ordinance to explain the benefits of storm water-friendly landscaping.

117.8 →

3. The development of the draft Phase II permit did not consider the economic impacts to municipal permitholders and their regulated communities

Due to the precedent-setting nature of this permit as explained above, the Partnership is concerned about the potential for new requirements in the renewed Sacramento Phase I permit that would require an increase in the annual stormwater program budgets for the permittees. In recent years due to diminished state and federal resources and a significant reduction in tax revenues, the permittees have been forced to reduce their operating budgets. When coupled with limited abilities to raise funds without a Proposition 218 vote of the general public, the permittees have no realistic way to pay for the increased costs without cutting other essential programs and services such as Fire or Police. At a time when most of the local municipalities have experienced employee reductions through layoffs, early retirements and associated service level reductions, requirements such as many of those proposed in the draft Phase II permit would not be feasible to implement. We continue to believe that establishing municipal NPDES program requirements that are within the capacity of the current and anticipated resources of the affected municipalities will create a more effective tool to protect water quality. Finally, as mentioned previously in this letter, we are equally concerned about the ability of businesses and industry in our communities to fund compliance activities passed down due to more prescriptive municipal stormwater permits.

The introduction of any new and expanded municipal stormwater permit requirements – particularly when they exceed federal mandate - should be accompanied by the results of a cost-benefit analysis to demonstrate a cost-effective, balanced and equitable solution for all stakeholders with direct correlation to water quality improvement.

The Sacramento Stormwater Quality Partnership is committed to improving stormwater quality and we appreciate the opportunity to provide comments on the draft Phase II permit. We urge the State Water Board to work with all affected stakeholders to produce a revised draft Phase II permit with pragmatic and feasible requirements to protect water quality that can be addressed cost-effectively.

Sincerely,

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