



City of Buellton

September 7, 2011

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



Subject: Comment Letter- Phase II Small MS4 General Permit

Dear Ms. Townsend,

The City of Buellton appreciates the opportunity to submit these comments regarding the Draft Phase II Permit for MS4s and respectfully requests its consideration. The City of Buellton is an active member of the California Stormwater Quality Association (CASQA) and joins in the comment letters submitted by CASQA. The City is writing separately to address the issues specific to Buellton.

24.1

The State Water Resources Control Board (SWRCB) identified The City of Buellton as a Small Municipal Separate Storm Sewer Systems (MS4s) requiring coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges from Small MS4s. Buellton is located in the Santa Ynez Valley, approximately 40 miles northwest of Santa Barbara. At the time of the 2010 census the population of Buellton was 4828. The City of Buellton has minimal open land and does not have the issues that accompany rapid growth.

The City of Buellton is just ending the first year of its Storm Water Management Program as approved by the local Regional Water Quality Control Board. The current program is compliant with the existing General Permit and has been effective in taking care of any storm water issues that arise.

The City of Buellton's main concerns with the draft permit are the financial impact and the inflexibility of requirements presented with this new permit. The new requirements

involving outreach and other mandated activities will result in a need for significant funding that the city does not have.

The following are a few examples of mandates from the draft general permit that will negatively impact Buellton:

24.2 → Mandate: B.3 Discharge Prohibitions
Concerns: "Landscape irrigation," "irrigation water," "lawn watering," and "individual residential car washing" have all been removed from the list of allowable discharges. Regulation to this level is infeasible and unreasonable to meet, from a staffing level to monitor and inspect, to the impact to our citizens.

24.3 → Mandate: E.4.d Ensure Adequate Resources to Comply with Order
Concerns: The existing permit requirements have already strained the City's resources. Fees cannot be collected and there is no new or redevelopment projects in which to assess fees to. Without allocation of funds from the State or Federal sources, this is infeasible and unreasonable to meet.

24.4 → Mandate: E.5.b Public Outreach and Education
Concerns: Several aspects of this section appear to be too prescriptive. These include the requirements such as the use of Community-Based Social Marketing (CBSM) in the development of a public education strategy, using the mandated minimum CBSM strategies listed in this section, and providing "technical and financial assistance and implementation guidance related to storm water-friendly landscaping." The City already has an aggressive outreach program for its community. Additional "financial" assistance can only be accommodated through funds from the State or Federal sources.

24.5 → Mandates: E.5.c & E.5.d Industrial/Commercial Outreach and Education Program & Construction Outreach and Education Program
Concerns: The "minimum" requirements imposed in these sections and the required use of CBSM is very specific and do not allow the ability to be adjusted for each individual case.

24.6 → Mandates: E.7, E.8, E.9, E.10, E.11, and E.12
Concerns: Aspects of these sections appear to be excessively regulatory and would require more funds and manpower for monitoring purposes.

The underlying concern is the estimated cost to comply with the draft permit. The harsh reality is that local jurisdictions, particularly small ones such as the City of Buellton, already have unprecedented budget constraints given the state of our economy. Significant additional funds and staffing will be needed to implement the proposed requirements. Because these activities are to be required in the General Permit and no funding from the state is to be expected, they fall under Article 13B, Section 6 a of the California Constitution. This section of the California Constitution refers to "Unfunded State Mandate" which may be seen on the below.

CALIFORNIA CONSTITUTION
ARTICLE 13B GOVERNMENT SPENDING LIMITATION

SEC. 6. (a) Whenever the Legislature or any state agency mandates a new program or higher level of 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 increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

- (1) Legislative mandates requested by the local agency affected.
- (2) Legislation defining a new crime or changing an existing definition of a crime.
- (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

This Draft Phase II Permit does not meet any of the exceptions listed above. As a result, the state must be ready to reimburse the MS4s for the cost of the new mandates. The reimbursement funding source and its system needs to be set up prior to the implementation of the draft permit.

Although the City of Buellton is still in its early stages of its Storm Water Management Program, it has been effective. Without the benefit and of implementing the full 5 years of its program, there is no basis to justify a modification to its program. Additionally, according to 40 CFR, Section 122.34 E (2) of the Code of Federal Regulations, the "*EPA strongly recommends that until the evaluation of the storm water program in §122.37, 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.*"

A goal of the City of Buellton's SWMP is to be dynamic and adapt to the changing needs and goals of its community. However, these proposed changes are considered by Buellton to be excessive and very inflexible. The draft permit does not reflect the challenges of each individual community, and more importantly, does not reflect the size and characteristics of each community. One size does not fit all in this situation.

The City of Buellton understands the difficulties of creating a Permit that satisfies the general populace, however the City respectfully requests that the Draft Phase II Permit be reassessed to address these issues identified. Thank you for the opportunity to submit these comments regarding the Draft Phase II Permit and Small Municipal Separate Storm Sewer Systems. Please do not hesitate to contact me should you have any additional questions.

Respectfully,

Rose Hess

Rose Hess, PE
City Engineer
City of Buellton