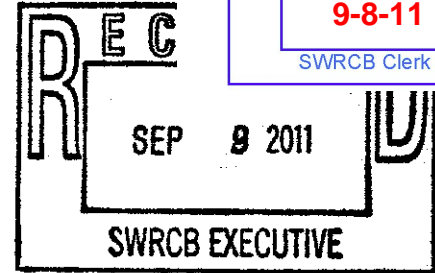


City of Rocklin



3970 Rocklin Road
Rocklin, California 95677-2720



September 8, 2011

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

VIA: Facsimile 916-341-5621 and US Mail

Re: Comments on the Draft Phase II MS4 Permit

Dear Mr. Hoppin,

This letter is to provide the State Water Resources Control Board (Board) with the City of Rocklin's comments pertaining to the Draft NPDES General Permit and Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, hereinafter referred to as the draft permit.

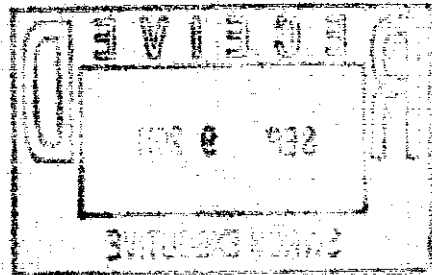
City of Rocklin staff has conducted as thorough a review and analysis of the draft permit as possible during the public comment period. The City concludes that the draft permit contains significant regulatory changes that will have a direct impact upon City resources and operations. In light of these anticipated additional demands, the City respectfully submits the following comments regarding the draft permit.

39.1 Support of California Stormwater Quality Association Technical Comments and Letter

As a member, the City of Rocklin is in full support of the technical comments and the cover letter prepared by the California Stormwater Quality Association (CASQA). Two of Rocklin's staff members participated in CASQA's efforts to review the draft permit and prepare these technical comments. The City's support of CASQA's comments is inclusive of all of the recommended permit language and program changes.

39.2 Support of Placer Regional Stormwater Coordination Group Regional Comments:

As a member, the City of Rocklin is also in full support of the comments prepared by the Placer Regional Stormwater Coordination Group (PRSCG). Rocklin Staff assisted with preparing the PRSCG letter. In particular, the City requests the Board give its full consideration to PRSCG's TMDL discussion.



39.3 ↘ **Support of Statewide Stormwater Coalition Comments**

As a member of the alliance formed in response to the draft permit, the City of Rocklin is in full support of the comments prepared by the Statewide Stormwater Coalition (SSC). Rocklin staff assisted with preparing the SSC letter, as well. In particular, the City joins the Coalition in strongly recommending a complete re-draft of the permit using the stakeholder process outlined in the letter. The City would willingly participate in this process, if asked.

If the Board does not choose to consider a complete re-draft of the permit, the City would like to highlight the following issues of most concern to Rocklin, some of which echo the above-mentioned organizations' comments, and offer the following recommendations for language changes and permit requirements.

Cost Analysis to City of Rocklin

The City of Rocklin has been and continues to be committed to addressing storm water quality issues, and must be able to continue to focus its limited resources on BMPs that are cost effective and provide the highest possible level of water quality benefits.

The draft permit as written does not allow for permittees' discretion in evaluating, analyzing, and implementing appropriate levels or measures of mandated program elements of the various provisions. The new MS4 permit should focus on those methods that promise scientifically proven water quality improvements, while allowing permittees the discretion to implement them in the most cost effective manner. As the aforementioned letters all attest, inspecting, monitoring and reporting do not have direct water quality benefits.

The City of Rocklin estimates its annual cost to implement the proposed requirements in the draft permit to be approximately \$645,000 over and above what the City currently spends for its Stormwater Management Program. Over the five year permit term, that totals more than \$3.2 million. This figure does not include an estimate for the mandated community-based social marketing component of the Public Education and Outreach provision. Preliminary cost estimates for establishing such a marketing program make it prohibitive.

39.4 ↘ **Recommendation:** Revise the draft permit language to allow renewing permittees to continue to implement their existing successful and effective programs (six original Minimum Control Measures) and provide for appropriate incremental ramp-up times over the course of the permit term should programs be proven to require enhancements or improvements to maintain or reach water quality standards. Also, revise the draft permit language to allow newly designated permittees adequate ramp-up time (one permit term at a minimum) to *establish* these brand new programs and BMPs.

39.5 ↘ **Recommendation:** Modify the Storm Water Multiple Application and Report Tracking System (SMARTS) so that it can be the single, statewide database for all permitted and reportable projects and businesses. Both Phase I and Phase II permittees, as well as Regional Boards, would be able to use SMARTS as the mandated database for tracking potential dischargers, inspections, etc. With a single, consistent database, the State and Regional Boards, the permittees, and the public would have

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immediate access to statewide data through the reporting year and permit term, not just when annual reports are submitted. Through a slight increase in the annual permit fee, permittees could help fund the SMARTS system modifications, which would be far less expensive than each permittee creating and maintaining their own database.

Land Use, CEQA and Police Power

It does not appear the Board has considered that the draft permit as written has the potential for creating land use situations through the retrofitting requirements that would trigger California Environmental Quality Act (CEQA) review and would require permittees to over-step the bounds of their police power. Commercial and industrial developments that are required to retrofit could be thrown into a land use regulation process in which approval of discretionary land-use entitlements such as Design Review and Variances would be required (for modifications such as loss of landscaping or parking spaces, for instance). If a land use action, e.g. an entitlement, is deemed "a project" under CEQA, environmental review is mandatory. In addition, BMP retrofitting would have to be permitted by either by the Engineering Department or the Building Department with associated fees for plan review and inspection. The combination of CEQA, entitlement, and permit processing would potentially cost several thousand dollars and take several months to complete, at a minimum.

This scenario is one of the reasons the legal precept of "grandfathering" exists. Generally, grandfathering allows for relief for those who would otherwise face financial hardship under new regulations. Permittees are limited in applying new codes to only new development and are also limited to requiring retrofitting or compliance with all new codes if the development proposed reaches a certain threshold such as requiring a land use entitlement. In addition, the courts have set legal precedent that CEQA mitigations and project conditions placed on a new development must have a reasonable nexus to the impacts the new development would create. As written, this permit would put property owners in a position of financial hardship and would require permittees to take their police power to unprecedented lengths. This extension of police power would likely face legal challenges and be overturned by the courts.

39.6

Recommendation: Remove all language in the draft permit that specifically calls out or alludes to the requirement to retrofit. If the Board is intent on requiring retrofitting in future permit terms, revise the draft permit language to require during the current permit term that permittees identify areas and facilities of highest priority to *evaluate* should *future* retrofitting opportunities arise.

TMDL/Attachment G Listing

The City disagrees with the inclusion of the City in Attachment G for Diazinon and Chlorpyrifos TMDL implementation. As the Board is aware, in 2004, Diazinon was made illegal for use in residential pesticides, but continues to be used for agricultural applications. In the US, Chlorpyrifos is registered only for agricultural use. It should be noted that within the City of Rocklin's jurisdiction, there is no agriculturally zoned land. Furthermore, the City's stormwater system does not discharge directly to the Sacramento River. It is extremely unlikely that the City would be contributing these two constituents to the Sacramento River. As discussed in the PRSCG letter, the City respectfully requests to be removed

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PHYSICS DEPARTMENT

PHYSICS 350

LECTURE 1

MECHANICS

1.1 Kinematics

1.2 Dynamics

1.3 Energy

1.4 Momentum

1.5 Angular Momentum

1.6 Oscillations

1.7 Waves

1.8 Relativity

1.9 Quantum Mechanics

1.10 Statistical Mechanics

1.11 Thermodynamics

1.12 Electromagnetism

1.13 Optics

from the list in Attachment G of the draft permit for the Sacramento and Feather River Basin Plan TMDL implementation.

39.7

Recommendation: Remove the City of Rocklin from the TMDL listing. If the City is not removed, Staff strongly recommends that the draft permit include revised language that provides for the exemption or de-listing of permittees from Attachment G at the discretion of the respective Regional Board upon their determination that a permittee is not contributing a constituent of concern into receiving water. If the Board is intent that non-contributing permittees assist with TMDL implementation, the City recommends adding language under the Public Education and Outreach provision (E.5.) that would require permittees to include general public outreach for specified constituents of concern in downstream receiving waters (e.g. disposal of old products through hazardous waste collection). The respective Regional Boards would be responsible for directing permittees what, if any, constituents they need to address with their outreach program.

Regional and Inter-Agency Collaboration

The City recognizes that regional and inter-agency collaboration and sharing of resources can be an excellent way for many Phase II permittees to comply with current and future permit requirements. The City also recognizes that effecting inter-agency agreements takes time. As an example, the City has actively participated in PRSCG by regularly attending meetings, assisting with planning and hosting regional training workshops, and providing support to other agency staff who have chaired the Group since its start in 2002. Despite the Group's cohesiveness and excellent working relationships, the collective Group has been unsuccessful for the past seven years in finalizing a Memorandum of Understanding (MOU) and obtaining adoption by all the participating agencies. Given the amount of staff time and effort expended on several attempts to get the MOU ratified, the City has concerns about the timelines mandated in the draft report for permittees to enter into collaborative agreements and arrangements for specific draft permit provisions.

39.8

Recommendation: Revise the timelines for achieving regional collaboration to span the permit term. Permittees wishing to enter into such agreements should be required in their annual reports to demonstrate due diligence in their attempts to enter into agreements while maintaining their current programs. To assist permittees with developing these agreements, the permit or the Board via the website should provide boilerplate agreement language that the Board would like to see in such agreements. The permit should also more clearly define in what situations and for what provisions the Board believes permittees could get the most direct water quality benefits from collaboration, particularly for newly designated permittees who are contemplating the development of brand new programs and BMPs.

39.9

Recommendation: The Board should host a web-based clearinghouse of successful, effective and approved programs and BMPs, especially in the areas of Public Education and Outreach, Public Participation, and Monitoring. Access to an inventory of proven, successful BMPs would give all Phase I and Phase II permittees a boost toward improving existing programs, starting new programs, or joining existing collaborative programs.

GIS Requirements

The City does not currently have a GIS system in place. The City does have a CAD-based map on which it has plotted the entire stormwater conveyance system, all the open space preserves, all the waterways, and all other City infrastructure (roads and culverts, fire hydrants, etc.). If a GIS system is mandated by the new permit, not only will the City have to invest in the purchase of a system, all of the existing mapping will have to be hand input and/or re-created to transfer it from the CAD-based map. As noted above, the City does not have the budgetary resources to fund this magnitude of programming from purchasing software to hiring staff to implement and maintain it.

39.10

Recommendation: The GIS requirements should be removed from the draft permit. If the Board is intent on having prescriptive mapping requirements, at the maximum the permit should have provisions to allow those jurisdictions that have some existing type of mapping system, or those that can demonstrate the financial burden of implementing a brand new GIS system, to use an alternate, approved, method of mapping. The permit should allow adequate ramp-up time over the permit term for permittees to continue to expand their mapped data or create a brand-new mapping system. The next permit term can require Phase II permittees to have fully implemented mapping systems.

SIC Codes

The City, through its preliminary analysis of the scope of inventorying and reporting required by the draft permit, has learned that Standard Industry Classification (SIC) Codes may become completely obsolete as early as the next permit period. According to the US Census Bureau's website, in 1997, the North American Industry Classification System (NAICS) was introduced to standardize the system across Canada, Mexico, and the United States and to replace the SIC system.

(<http://www.census.gov/eos/www/naics/>)

39.11

Recommendation: If the SMARTS system is not modified to be a statewide database as recommended, revise section E.11.a. of the permit to include NAIC codes as well as SIC codes. Also, the permit should provide the list of codes that the Board feels corresponds with the list of targeted industrial and commercial facilities and sources in E.11.a.(ii)(b). These revisions will provide flexibility to permittees whose existing database software uses both SIC and NAICS codes or only NAICS codes and provide specific data targets for compiling the inventory correctly so that permittees can more easily and fully comply with this section of the permit.

Illicit Discharge Detection and Elimination and Receiving Water Monitoring

The City currently conducts routine structural control inspections and maintenance, outfall inspections, and water quality monitoring. The City believes that our ongoing effective outfall monitoring and other Illicit Discharge Detection BMPs have greatly reduced the likelihood of receiving water contamination. The water monitoring itself has not led to any identification of point source pollutants or of any illegal discharges.

39.12

Recommendation: Within the permit structure, combine the two provisions into one comprehensive monitoring program, so that the single provision is streamlined for tracking and reporting purposes.

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This will reduce redundancy at the permittee level and provide the permittees, the State and Regional Boards, and the public more inclusive and integrated data. Modify the draft permit language that requires receiving water monitoring: only permittees who have dischargers with potential elevated risk of discharging known contaminants and permittees who have existing documented water quality exceedences would be required to conduct regular receiving water monitoring and reporting.

39.13

Recommendation: The State should be responsible for a consistent and consolidated water quality monitoring program or system. Having one comprehensive repository of consistently collected and analyzed data reduces costs and redundancy for all Phase I and Phase II permittees who would otherwise have to collect, maintain and analyze their own data. A statewide database would also provide the permittees, the State and Regional Boards, and the public with accurate and up-to-date information. The existing Surface Water Ambient Monitoring Program (SWAMP) is ideal to provide such a statewide database. Through a slight increase in the annual permit fee, permittees required to conduct monitoring (see recommendation above) could help fund the SWAMP program enhancements, which would be far less expensive and than each permittee conducting water quality monitoring on their own.

39.14

Unfunded Mandates

The City fully supports the discussion regarding unfunded mandates, Overarching Comment #3, in CASQA's comment letter to the Board. It is the City's position that the new programs and higher levels of service are represented accurately in CASQA's letter and the City will be under a severe fiscal hardship to implement the draft permit as written, as discussed in the Cost Analysis section above.

The City of Rocklin remains committed to stormwater quality and seeks to work with other stakeholders, the Regional Board, and the State Board to craft stormwater BMPs and regulations that are achievable and effective. To that end, the City reiterates its willingness to participate in any efforts to re-draft the current draft permit. Thank you for the opportunity to comment.

Sincerely,



Rick A. Horst
City Manager

