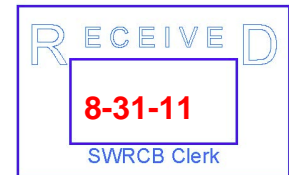




August 31, 2011

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
North Coast District Office
PO Box 100
Sacramento, CA 95812-2000



Via email: commentletters@waterboards.ca.gov

Re: Draft Phase II Small MS4 General Permit

Ms. Townsend and Board Members,

On behalf of the Board and staff of Humboldt Baykeeper, the following comments are submitted regarding the Draft Phase II Small MS4 General Permit (“Draft Permit”). Humboldt Baykeeper is located on the North Coast of California and works to safeguard our coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community through education, scientific research, and enforcement of laws to fight pollution. We commend State Water Resources Control Board staff for their work on this permit, and appreciate the immense time and effort that was expended in its development. We believe this Draft Permit will assist in making considerable progress towards the Clean Water Act’s goal of restoring our nation’s waters.

We believe that having specific measurable requirements is an important step forward in regulating the quality of our waters, and appreciate the Draft Permit’s specificity. Furthermore, although we do sympathize with the economic conditions that many entities that are subject to the provisions of the Draft Order are experiencing, we do not believe that is sufficient basis to shirk our responsibilities to meet water quality standards for current or future generations.

As an initial matter, Humboldt Baykeeper supports the comments submitted by the California Coastkeeper Alliance, Heal the Bay, and the Natural Resources Defense Council. Our additional concerns are outlined below.

Industrial/Commercial Facility Runoff Control Program

Humboldt Baykeeper strongly supports the provisions in the Draft Permit that address Industrial and Commercial facilities. These provisions will result in more comprehensive and substantial oversight of Industrial and Commercial facilities in our communities, and will result in reduced discharges of potentially harmful substances to our waterways.

That the Industrial/Commercial Facility provisions will require the compilation of a complete inventory of such sites is exceptional. By having persons who are part of the community compiling an inventory and providing oversight is an enormous step forward. Entities regulated by the Draft Permit are in the best position to provide the oversight and service required by the permit. They have the ability to impose specific fees for myriad services, not simply in the form of a general tax.

Implementation of the Industrial/Commercial requirements within the Draft Permit will have measurable results in ensuring good oversight, good housekeeping practices, and reductions in illegal or accidental discharges from these facilities. As these requirements have been the responsibility of the Regional Boards, the results are less on-the-ground presence than is acceptable to provide the basic level of protection. We in Humboldt County are located over 200 miles from the offices of our Regional Board, making local oversight more effective. As noted in the Fact Sheet “compliance improves with field inspector presence.” Having local inspectors is the most logical and cost effective way to accomplish this compliance.

Post Construction Storm Water Management Program **Low Impact Development Provisions**

We strongly support the inclusion of post-construction Low Impact Development (LID) methods to minimize the impacts of storm water runoff to surface water quality, groundwater recharge, and flood hazards. We support requirements for Permittees to use their planning authorities to include appropriate source control, site design, and storm water treatment measures in new development and redevelopment projects. LID methods are most effective when incorporated into project design during initial layout and configuration. Too often, project applicants complete a project design before learning that NPDES and other permit conditions necessitate a modification of the project design. This lack of coordination can result in lost time, increased project costs, and misunderstandings between applicants and permitting agencies. Furthermore, without such requirements, many local jurisdictions are likely to continue authorizing permits with inadequate mitigations to prevent runoff from causing erosion, sedimentation, and impacts to water quality that are all avoidable. Specifically, we support the requirement to regulate New Development or redevelopment projects that create and/or replace 5,000 square feet or more of impervious surface, collectively over the entire project site (Draft Order at p. 67). In urban and residential areas, the amount of impervious surface clearly needs to be reduced to minimize impacts of hydromodification to water quality and peak flows, and this requirement will be a major step toward reducing these impacts.

Outfall Monitoring

The Draft Permit does not include any provision for outfall monitoring. The elimination of all outfall monitoring reduces the ability to effectively and accurately track, and eliminate, the originating location of the pollutants entering our waterways through these MS4s. If monitoring of all outfalls cannot be completed on an annual basis, there needs to be a protocol designed for their analysis on at least a rotating basis. Waiting to conduct outfall monitoring until it is “needs based” is not sufficient. Further, it is not likely that the limited receiving water monitoring that is required under the Draft Permit would detect and allow tracking of discharges in any meaningful way.

Receiving Water Monitoring

The requirements for receiving water monitoring are inadequate to provide any meaningful data related to the effectiveness of the requirements of the Draft Permit. The Draft Permit does not provide any guidance as to how the receiving water is chosen for sampling, where within the receiving water body the samples will be taken from, and requires at most two (2) samples per year. The sampling requirements do not have adequate structure identifying when the samples can be taken, allowing the regulated entity to pick the time when conditions are most advantageous to eliminate the need for an increased sampling regime. The samples can also be taken at any location – theoretically allowing dischargers to collect their samples from the headwaters of their receiving waters where no impacts are occurring.

An additional concern exists in areas where receiving waters also act as storm water conveyances. In much of Humboldt County stream channels and ephemeral streams also function as the infrastructure for eventual man-made discharges into Humboldt Bay. Though this is a wet area, these channels often dry up through the dry season, with any dry season discharges infiltrating soils, only to begin flowing again once the wet season rains begin again. There is no clarification in the Draft Permit when these receiving waters would be sampled, if they would be sampled at all. Humboldt Baykeeper believes this is an oversight of the Draft Permit that should be rectified prior to final adoption.

Waiver Certification

Humboldt Baykeeper does not believe the standard that is included in the Draft Permit for the granting of a waiver is stringent enough to meet Clean Water Act Goals. The Draft Permit states that for a waiver to be granted the “Regulated Small MS4 must certify (1) their discharges do not cause or contribute to, or have the potential to cause or contribute to, a water quality *impairment*...”(Draft Permit Fact Sheet at p. 16. Emphasis added). Allowing a waiver to be granted for discharges up to the point of impairment would encourage the continued degradation of our waters unnecessarily and irresponsibly.

It may be possible that some dischargers do not need to be subject to the terms of the Draft Permit, but that privilege should not be granted unless the discharger can certify that their discharges do not contain *pollutants*. These permits are not designed to merely assist in removing the impaired status of our waterways, but instead to meet the Clean Water Act's goals.

Good Housekeeping Provisions

Street Sweeping

The Draft Permit Fact Sheet states that street sweeping is not required for compliance with the Order "because MS4s already conduct these activities for aesthetics and air quality benefit." (Draft Permit Fact Sheet at p. 28). Regular street sweeping is one of the easiest and most fundamental means of reducing pollutants in storm water discharges. Despite this, many municipalities have reduced or eliminated street sweeping from their regular maintenance activities, or conduct it only in specific high profile areas. Street sweeping must be included in the permit as a compliance requirement.

Discharge Prohibitions:

Areas of Special Biological Significance

The health of California's coast is vitally important to the State's economy, quality of life, and is essential to the health of our diverse and abundant marine life. California has some of the richest habitats on earth, including forests of giant kelp, and the SWRCB created Areas of Biological Significance (ASBS) to preserve and protect these especially valuable biological communities from continuous streams of waste discharges throughout the state.

Humboldt Baykeeper respectfully requests that exceptions allowing discharges into an ASBS be accompanied by rigorous sampling regime. The Receiving Water Monitoring plan for ASBS should include year-round, weekly beach water quality monitoring in accordance with AB 411 monitoring. Further protection of our significant coastal resources should be implemented with BMPs that are designed to ensure that Permittee's discharges meet water quality standards. The draft Permit should require performance evaluations for all BMPs used by the Permittee to comply with the Permit. Additionally, a BMP performance report should be submitted to the State Board each permit cycle to assess the efficacy of the BMPs at reducing the targeted pollutants of concern.

Conclusion

Humboldt Baykeeper would again like to thank the State Water Resources Control Board and its staff for the immense time and effort that went in to developing this Draft Permit. We are optimistic that the progress made in improving our state's waters will increase once the Phase II MS4 Permit is adopted and implemented. We appreciate the

opportunity to provide the above comments and hope they will be incorporated into the final Permit adopted by the State Water Resources Control Board.

Thank you for your time,

_____/s/_____
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