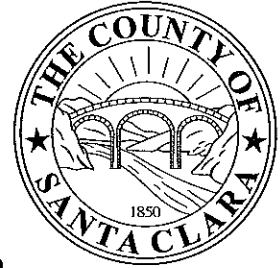


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September 8, 2011

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

Subject: County of Santa Clara Comment Letter – Phase II Small MS4 General Permit.

Dear Ms. Townsend:

The County of Santa Clara (“County”) appreciates the opportunity to submit comments on the DRAFT GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR STORM WATER DISCHARGES FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS (MS4s) Tentative Order (hereinafter referred to as “Draft Permit”) dated June 7, 2011. The County has reviewed the Draft Permit and submits the following comments in response to the State Water Resources Control Board request to comment.

**Background**

For the portion of the County located in Region 3, the County is governed by a Storm Water Management Plan (SWMP), approved by the Central Coast Regional Water Quality Control Board (“CCRWQCB”) in 2010. The County participates in the SWMP with the City of Gilroy and the City of Morgan Hill. For the portion of the County located in Region 2, the County is governed by a Municipal Regional Stormwater NPDES Permit (“Phase I Permit”) issued by the San Francisco Bay Regional Water Quality Control Board. The County is a member of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP)

The County is in the unique situation of operating under two distinct permits—a Phase I Permit for Region 2 and a Phase II Permit for Region 3. Therefore, in light of limited County resources available for permit implementation and oversight, the County is most interested in developing a permit for small MS4s that provides sufficient flexibility to apply existing resources to meet the requirements of the Phase II Permit.

**General Comments**

The County strongly supports any effort by the State Water Resource Control Board to provide the County with the opportunity to successfully achieve Draft Permit compliance. To that end, the Draft Permit should prioritize areas of importance, reduce additional programs and higher level of services of

the existing program, allow more flexibility on how to implement the permit, and provide for adequate phase-in time for the County to secure additional sources of revenue.

In reviewing the Draft Permit the County noted that many Draft Permit requirements are similar to the new requirements established in the County's Phase I Permit such as E.10 Trash Reduction Program and E.7.c Field Screening to Detect Illicit Discharges. The County has only recently started implementation of the new Phase I Permit requirements and the County encourages the Water Board to remove the duplicative requirements in the Draft Permit until the Phase I Programs have shown that there is a beneficial impact to water quality.

In some cases, the Draft Permit requirements are more demanding than those in the Phase I Permit such as the requirements found under E.9 Pollution Prevention/ Good Housekeeping for Permittee Operations Program, E.11 Industrial/Commercial Facility Runoff Control Program and E.14 Program Effectiveness Assessment and Improvement. This is of significant concern because the Phase I Permit has been evolving over the past 20 years in conjunction with SCVURPPP and has been the subject of three to four permit cycles, each cycle increasing and building upon the existing Phase I Permit program requirements. The Draft Permit, however, seeks to implement similar requirements as those found in the current Phase I Permit in just two permit cycles. In addition, it is noted that the Phase I Permit is purposefully designed for larger communities that have substantially more staff and resources than a smaller community. This permit needs to be focused on the capabilities of a smaller community.

The Draft Permit proposes requirements that are not a part of the Phase II Permit in Region 3. Through the County's implementation of the Phase I Permit, the County has experienced the increase in program scope and cost to implement the requirements from simply developing stormwater management programs as envisioned in USEPA's regulations. Some of the more burdensome requirements include industrial/commercial inspection programs; construction inspection programs; monitoring requirements; and TMDL implementation requirements, such as trash. Consequently, the Phase I requirements have significantly increased the cost of compliance and the County is not able to tap any additional funding sources to fund the stormwater management program at a higher level. The implementation of Draft Permit requirements, distinct from those currently governing the County under the Phase I and Phase II permits, present a significant financial burden on the County during a time when many California cities and counties are facing severe revenue shortfalls, including the County. In light of the County's limited financial resources, and in an effort to effectively maximize limited public agency resources, the County recommends the Draft Permit be modified to allow more flexibility, such as enabling the County to follow the Construction/Industrial/Commercial inspection requirements established in the Phase I Permit and receiving credit for studies, pilot projects, and monitoring work that are conducted as part of another NPDES municipal stormwater program.

The County also believes that many of the proposed requirements are regulated under other state agencies or programs, such as: E.11 Industrial/Commercial Facility Runoff Control Program, and E.9.j Pesticides, Herbicides and Fertilizer Application and Management. The County encourages the Water Board to work with state departments like the Department of Pesticide Regulations and Department of Toxic Substance Control, and the Office of Environmental Health Hazard Assessment to determine what is already regulated under another program to reduce redundancy.

### **Specific Comments**

- 1. The Draft Permit Imposes Additional Requirements Beyond the Six Minimum Control Measures Specified in the USEPA Stormwater Phase II Final Rule (Final Rule).**

The Draft Permit imposes additional requirements that are not specifically required under the Final Rule. The additional requirements should be prioritized and phased in to allow time to establish additional funding and/or partnerships with other agencies:

- Pesticides, Herbicides and Fertilizer application and management (E.9.j):
- Trash Reduction Program (E. 10)
- Receiving water monitoring (E.13)

**2. The Draft Permit Requires Time Consuming and Costly Data Gathering and/or Tracking that Has Little or No Impact on Water Quality Benefit.**

The Draft Phase II Permit includes numerous requirements to gather information, which can be useful, but the data collection needs to be prioritized or, alternatively, needs to allow more flexibility on the type and amount of data tracked and collected.

The County does not believe there is a direct water quality benefit associated with any of the following requirements and recommends that they be removed from the Draft Permit:

- Certification statement for legal authority to implement and enforce each requirement (e.4.b); and,
- Analysis on funding resource to comply with order (E.4.d).

The County also recommends the following tasks be modified to provide for more flexibility or prioritization:

- **MS4 mapping (e.7.a).** The MS4 map should be made available to the public, either electronically or as a hard copy. This is consistent with the County's NPDES Phase I program requirements under the MRP.
- **High priority areas (e.7.b).** Remove the requirement to identify 20% of the priority areas as priority and allow the County the flexibility to identified priority areas considering the following areas:
  - Areas with older infrastructure that is more likely to have illicit connections and a history of sewer overflows or cross-connections;
  - Industrial, commercial or mixed use areas;
  - Areas with a history of past illicit discharges;
  - Areas with a history of illegal dumping;
  - Areas with onsite sewage disposal systems;
  - Areas upstream of sensitive water bodies; and,
  - Areas that drain to outfalls greater than 36 inches that directly discharge to the ocean.
- **Construction site inventory (e.8.a).** The information required for the construction site inventory should be included as part of the determination for the Construction General Permit (CGP). The County has no influence over the CGP; therefore, the County should not be required to track this information. For example, the County should not be required to track information contained in (c) the proximity to all water bodies listed as impaired by sediment-related pollutants and water bodies for which a sediment related TMDL has been adopted. The following requirements should also be removed from the Draft Permit because they are time consuming, hard to keep track of, and have little relationship with improving water quality: (e) current construction phase; (g) the project start and anticipated completion date; (h) whether the project has coverage under the CGP; and, (i) the date the Permittee approved the erosion and sediment control plan.

- **Inventory of permitted-owned and operated facilities. (E.9.a).** The County requests that that this requirement be removed because many of the facilities listed in this section are already covered under another permit. Furthermore, some of these facilities do not have activities that are located outside and, thus, would not result in any potential discharge of pollutants. By comparison, the County's Phase I Permit only requires the County to track and inspect corporation yards and pump stations.
- **Identify all materials that could be discharged from each permitted O&M activity (e.9.h).** *The CASQA Handbook for Municipal Operations* contains many of these O&M activities and also discusses targeted constituents and appropriate BMPs to use for each activity. The County recommends this section of the Draft Permit allow the County to use the CASQA handbook or equivalent when determining which BMP(s) to use for O&M activities and annually report on implementation/compliance with the handbook.
- **Maintain an inventory of all industrial/commercial facilities/sources that could discharge to the MS4 (e.11.a).** This section requires a significant amount of information to be collected for industrial/commercial facilities. The County recommends reducing the amount of facilities/sources to inventory and reduce the minimum information tracked for each facility. Consistent with the County's Phase I Permit, the following information should be collected:
  - Name and address of the business and local business operator;
  - A brief description of business activity;
  - Inspection priority and inspection frequency (SIC code is no longer used); and,
  - If coverage under the IGP is required.

The County also recommends reducing the amount of industrial/commercial facilities be inventoried to the following, which is also consistent with the County's Phase I Permit:

- Industrial facilities subject to IGP;
- Vehicle salvage yards;
- Metal and other recycling materials collection facilities, waste transfer facilities;
- Vehicle mechanical repair, maintenance, fueling or cleaning;
- Building trades central facilities or yards, corporation yards;
- Building material retailers and storage;
- Plastic manufactures; and,
- Other facilities designated by the County or Water Board to have a reasonable potential to contribute to pollution of stormwater runoff.

The County also recommends allowing the County the ability to prioritize commercial/industrial facilities instead of requiring that 20% of all facilities that could discharge pollutants to the MS4 system be prioritized as "high priority facilities". The County encourages the Water Board to provide criteria to be used when determining how priority should be given, such as pollutant source on site, pollutants of concern, proximity to a water body, and violation history for the facility.

- **Inventory and assess the maintenance condition of urban stormwater BMPs (including BMPs used for flood control) (E.14.b).** The requirements under this section are similar to the requirements found under the post construction requirements. The County recommends removing these requirements and including everything under the post construction requirements.

### 3. Beyond the Phase I Program

The Phase II Permit is intended to be a less complex permit than the Phase I Permit. The following Draft Permit requirements meet or exceed the Phase I Permit requirements. The County recommends the following revisions to these requirements:

- **Develop and implement an Industrial/Commercial and Construction outreach and education program (E.5.c and d).** This section should provide flexibility on how the County conducts its industrial/ commercial/ construction outreach and education program. The County suggests that the Water Board remove the mandatory requirements and instead replace it with the goals the Water Board would like the County to accomplish under the outreach and education programs.  
  
**Community-based social marketing strategies for public education and outreach (e.5.b).** The County recommends allowing more flexibility on development and implementation of a public education strategy and suggests including goals of what the Water Board would like the County to achieve with the public education and outreach program.
- **Establish a citizen advisory group (E.6.b).** The County suggests revising this requirement to invite the citizen advisory group to participate in the development and implementation of all *public education and outreach parts* of the community storm water program instead of all parts of the storm water program.
- **Field screening to detect illicit discharges (e.7.c).** The County suggests removing the fielding screening monitoring and analytical monitoring and increasing the space between each inspection point to make this requirement less costly. The County suggests using the following language, which is consistent with our Phase I Permit:  
  
“Permittee shall develop and implement a screening program by conducting a survey of strategic collection system points (one screening point per square mile of Permittee urban areas) including some key major outfalls draining industrial areas once each year in dry weather conditions meaning no significant rainfall within the past 3 weeks. Routine surveys that occur on an ongoing basis during regular conveyance system inspections may be credited toward this requirement.”  
(Phase I Permit, page 51).
- **Construction Plan Review and Approval Process (E.8.b).** This section contains the requirement that erosion/sediment control plans include a rationale for selecting or rejecting BMPs including quantifying the expected soil loss from different BMPs. This requirement is time consuming for the developer to complete and the County to review and does not necessarily guaranty that the selected BMPs will be sufficient for the construction. The County suggests that this time would be better spent in the field verifying that the BMPs are appropriate for the construction site and are installed properly. The County recommends removing the rationale requirement and instead requiring the County to review the erosion/sediment control plan to verify that appropriate construction BMPs are shown on the plan.
- **Inspection frequency (E.8.c).** The County recommends the Draft Permit provide more flexibility on how the County elects to comply with this requirement. The County prefers to inspect some construction sites less often and a few select high priority construction sites more frequently because the construction sites that disturb an acre or more of land are already being carefully monitored under the CGP. The County recommends monthly inspections for all sites that disturb one acre or more and high priority sites. Under the Phase I Permit the County is able to determine our own high priority sites using the following factors in our decision process:
  - Soil erosion;

- Site slope;
  - Project size and type;
  - Sensitivity or receiving water bodies;
  - Proximity to receiving water bodies;
  - Non-stormwater discharges; and,
  - Any other relevant factors as determined by the local agency.
- **Permittee Staff Training (E.8.d)**. The County recommends removing the requirement that the plan reviewers and inspectors must be a certified QSD/QSP or supervised by someone who is certified because this goes beyond the requirements of the Phase I Permit. The County does agree with training staff but does not believe staff needs to be a certified QSD/QSP to properly review plans or perform inspections.
  - **Facility Assessment (e.9.c), Develop and implement SWPPP for all “hotspots” (e.9.d) and Perform weekly visual inspections of hot spots (e.9.e)**. The County recommends changing this “hotspot” to corporation yard assessment and requiring an annual inspection, this is consistent with our Phase I Permit.
  - **Storm Drain System Assessment and Prioritization (e.9.f)**. The County recommends removing the requirement that 20% of catch basins must be prioritized as high priority and instead that the Permit include criteria to be used when determining priority.
  - **Maintenance of Storm Drain system (E.9.g)**. The County recommends removing the requirement to inspect prioritized problem areas three times per year and instead allow the County to inspect and remove trash as needed.
  - **Incorporate water quality and habitat enhancement features into new and existing flood management facilities. (E.9.i)**. The County recommends removing this requirement or at least removing the retrofit requirements until the Phase I Permit Program shows that there is a direct water quality benefit.
  - **Post construction stormwater management program (e.12.a)**. The County recommends including Permittees that have a Phase I Permit under another RWQCB in addition to Permittees located within a Phase I Permitted area under this requirement.
  - **Program Effectiveness assessment and improvement (e.14)**. The County recommends simplifying the program effectiveness assessment. Currently, this requirement asks the County to evaluate programs up to CASQA Level 6. This is of concern to the County because under the SCVURPPP program, the County is only now able to answer some of the Level 3 and Level 4 questions. The County is also concerned because this requirement is complex and will take significant time, effort and possibly more specialized staff than the County currently employs to do this level of assessment. Permittees can learn a lot about how effective their program is without going to this level of analysis.

#### 4. Industrial General Permit (IGP)

The County does not issue the IGP to industrial or commercial facilities. The State Water Resource Control Board (SWRCB) issues these permits and should not require the County to enforce their permit. SWRCB receives a permit fee to offset the cost to manage the IGP. The County cannot take on a higher

level of service for the industrial/commercial inspection program then it already has without receiving additional funding resources. The following requirements should be removed from the Draft Permit:

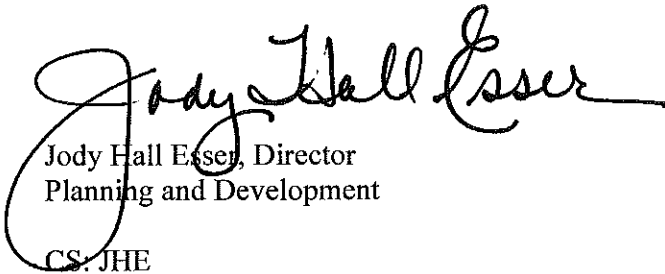
- **Inspections of industrial/commercial facility (e.11.e).** Remove the requirements to review the facilities monitoring data to determine if the BMPs are appropriate and effective.
- **Staff Training (e.11.f).** Remove the requirement to have IND/COMM inspection staff trained on receiving water; water quality objectives and numeric benchmarks or standards; and the requirements of IGP, including elements in an effective SWPPP.

## Conclusion

In conclusion, the Draft Permit includes many new or significantly expanded requirements that: (1) are not mandated by law or reflected in USEPA-issued municipal stormwater permits; (2) would represent a significant expenditure of public resources that are not available at the local level; and (3) with a few notable exceptions (which still need to be fine tuned to avoid wasting resources), are unlikely to produce a significant return in terms of increased water quality benefits. It is essential that the provisions in Draft Permit be prioritized to address significant water quality problems in a cost effective manner consistent with the available staff and funding resources available to the small cities, counties and special districts that are subject to the Phase II Permit.

Thank you for the opportunity to comment on the Revised Tentative Order. Please contact Clara Spaulding at (408) 299-5737 if you have questions.

Sincerely,



Jody Hall Esser, Director  
Planning and Development

CS: JHE

CC:

Sylvia Gallegos- Deputy County Executive  
Jody Hall Esser- Director of Planning and Development  
Phil Smith- Director of Environmental Health  
Michael Murdter- Director of Roads and Airports  
Julie Mark - Director of Parks and Recreation  
Jeff Draper- Director of Facilities and Fleet  
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