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September 7, 2011

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



RE: COMMENT LETTER – NPDES PHASE II SMALL MS4 GENERAL PERMIT

Dear Board Members:

The City of Tracy (City) would like to thank you for this opportunity to comment on the State Water Resources Control Board's (Water Board) NPDES Phase II Small MS4 General Permit (draft Phase II permit) and for the extension granted by the Water Board to the initial comment period.

The City of Tracy is supportive of efforts to improve and maintain water quality in California. California's Water Quality has a direct impact on the City of Tracy's inhabitants as well as local wildlife and aquatic habitat. The City is committed to helping the State to achieve its water quality goals by working with you to adopt stormwater regulations that have implementable stormwater quality objectives. Of course, those objectives will have operational and economic realities for both the public and private entities affected.

The City fully agrees with comment letters recently submitted by CASQA, the League of Cities and the Statewide Stormwater Coalition. The City believes that the new provisions outlined in the draft permit are not economically feasible given the current fiscal climate nor will they be attainable moving forward over the permit cycle because they are beyond federal requirements.

The City is deeply concerned that the cost to implement the new provisions of the draft permit, as currently written, as well as continuing implementation of its existing program will not only undermine current water quality progress, but also will force already budget strapped agencies, such as the City, to cut deeper into non-existent funds and limit the ability to perform much needed public services. The City is subject to Proposition 218 requirements which virtually guarantee that compliance with this draft permit would require funding through the general fund which constitutes an unfunded mandate.

Further, the Water Board recently announced that stormwater program fees will increase for the 2011 – 2012 fiscal year by approximately 34.9 percent. This fee increase coupled with the costs associated to implement the draft Phase II permit new provisions will make it much harder, if not impossible, for the City of Tracy to comply with all requirements and timelines in the draft permit.

The City of Tracy respectfully asks that you consider making the following changes to the draft Phase II permit:

E.4.b.iii (a) Reporting

The City recommends removing the requirement to have legal counsel certification. No direct water quality effect occurs by way of this mandate.

E.4.d.(i)(ii)(iii) Ensure Adequate Resources to Comply with Order

The City recommends removing this section in its entirety. The City will be signing its Annual Report stating that it has complied or not complied with sections of the Order which would mean fiscally as well. No direct water quality effect occurs by way of this mandate.

E.5.b.(ii)(a)(c) Public Outreach and Education Implementation Level

The City recommends removing the requirement to use Community-Based Social Marketing (CBSM) because this is an extremely costly program. Instead, allow the Permittee to create a program based on the character and goals of the individual community. No direct effect on water quality occurs by way of this mandate.

E.5.b.(ii)(l) Public Outreach and Education Implementation Level

The City recommends removing the requirement to educate school-age children because this requirement should be met by the Tracy Unified School District which is a designated Permittee by the Water Board under Attachment A of the Draft Order.

E.5.b.(iii) Public Outreach and Education Reporting

The City recommends removing the CBSM language from this section. No direct water quality effect occurs from which type of marketing is used.

E.5.c.(ii) Industrial/Commercial Outreach and Education Program Implementation Level

The City recommends removing this section because the timeline to develop a watershed-based inventory of the high priority I/C facilities is neither feasible nor is it using a CBSM based marketing program. This requirement does not directly affect water quality.

E.5.d.(ii)(c) Construction Outreach and Education Program Implementation Level

The City recommends removing the CBSM requirement from this section. Instead allow the City to continue its existing program. Use of a CBSM does not directly affect water quality.

E.5.d.(iii) Construction Outreach and Education Program Reporting

The City recommends removing the CBSM requirement from this section. Instead allow the City to continue its existing program. Use of a CBSM does not directly affect water quality.

E.7. Illicit Discharge Detection and Elimination (IDDE) Program

The City recommends removing the requirement to use the Center for Watershed Protection's guide on IDDE and instead allowing the Permittee to select a successful IDDE program (other agency or Phase I) to follow. No direct effect on water quality occurs from using any one guide.

E.7.b.(ii) IDDE Identifying Priority Areas Implementation Level

The City recommends removing the 20 percent requirement from this section because it is an arbitrary number that has no real water quality significance. Instead allow the City to continue using its citizen reporting processes and educate on a case-by-case basis. No direct effect on water quality would occur with the 20 percent requirement.

E.7.b.(iii) IDDE Identifying Priority Areas Reporting

The City recommends removing the requirement to report the basis for selection of a priority area and create a list of those identified in the system. Instead allow the City to continue to report on its citizen reporting processes and map the location and illicit discharge type and submit that map annually. No direct water quality benefit is gained from reporting on how areas are chosen and requiring a list of the areas.

E.7.c.(i)(ii) Field Screening to Detect Illicit Discharges

The City recommends the removal of the requirement for analytical monitoring in this section. Instead Permittees should be required to develop and implement a Spill Response Plan and respond to reports of Illicit Discharge violations. Violators could be educated on a case-by-case basis.

E.7.c.(iii) Field Screening to Detect Illicit Discharges Reporting

The City recommends removing the requirement for analytical monitoring from this section. This type of monitoring for monitoring sake is costly and wasteful. Instead allow the City to determine if an analytical monitoring should be performed based on the Illicit Discharge reported.

E.8.b.(ii)(c) Construction Plan Review and Procedures Implementation Level

The City recommends removing the requirement that the Permittee must verify existing coverage for any other agency except the NPDES Construction General Permit. These other programs should not be tied to this requirement because verification of these are time consuming and costly. No direct effect on water quality occurs from verifying other program mandates.

E.8.e.(i)(ii)(iii) Construction Site Operator Education

The City recommends that this section be removed because it should be completed by the Water board because it collects the fees for this program. Education should be done when submittal for permit is initiated. Further, onsite education by the owner/developer should be occurring because the owners/developers are ultimately responsible.

E.9.f.(ii)(a) Storm Drain System Assessment and Prioritization Implementation Level

The City recommends the 20 percent minimum prioritization of catch basins be removed. This is an arbitrary number and has no significant water quality benefit over a set number of Permittee determined. Left alone this could be costly and wasteful.

E.10. Trash Reduction Program

The City recommends removing this section in its entirety. This is not only costly to the municipality but will be costly to those property owners in the areas targeted by the arbitrary 20 percent which has no significant water quality benefit for all Permittees because they are each unique in their retail, commercial and wholesale makeup. Further, costs incurred for this section are new and would require general fund use which is an unfunded mandate.

E.11. Industrial/Commercial Facility Runoff Control Program

The City recommends this section be removed in its entirety. This would require a whole new staff and program to be implemented resulting in costs to the general fund thereby creating an unfunded mandate. Further, this program should be covered under the NPDES Industrial General Permit.

E.12.b.1(i)(ii)(iii) Post Construction Stormwater Management Program – Watershed Baseline Characterization

The City recommends that this section be removed because it is above the EPA's six minimum control measures and would exceed the ability of the City to comply with this provision. The cost of this effort is quite expensive and would require hiring of outside assistance. An alternative might be that this section be folded into the hydromodification section.

E.12.b.2(i)(ii)(iii) Post Construction Stormwater Management Program – Watershed Sediment Budget

The City recommends this section be removed because it is included as a watershed process in Section E.12.b.1.e.

E.12.b.3 Post Construction Stormwater Management Program – Water Quality Runoff Standards

The City recommends this section be modified from a full-retention to one that matches pre-project conditions. Also, those municipalities be allowed the flexibility to craft credit systems for redevelopment and infill. Delete automotive repair shops and retail gasoline outlets because they are commercial developments and clarify that only the parking lots are held to standards.

E.12.b.4 Post Construction Stormwater Management Program – Interim Hydromodification Management

The City recommends removing this section. Implementation of E.12.b.3 should be considered compliant. This section places extreme burden on the City and development community if it must implement one set of criteria and then change it within one to two years. The City currently only requires permit approval process on those projects greater than 1 acre.

E.12.b.5 Post Construction Stormwater Management Program – Long Term Watershed Process Management

The City recommends removing this section until a future permit when the Water Board is able to provide definitions and metrics that are not vague. Also, there are no current models to follow or approaches with known adaptations to small MS4s.

E.12.b.6 Post Construction Stormwater Management Program – Implementation Strategy for Watershed Process Management

The City recommends this be removed and included in a future permit. The timeline is such that implementation (2017) occurs after numeric criteria (2016), however, a strategy will need to be developed for numeric criteria prior to implementing it.

E.12.b.7 Post Construction Stormwater Management Program – Watershed-Based Stormwater Management

The City recommends removing this subsection because it has recommended removal of the Watershed Characterization due to the financial cost.

E.12.b.8 Post Construction Stormwater Management Program – Operation and Maintenance of Storm Water Treatment Systems

The City recommends stating that this is on new development only and not requiring a retrofit for existing. The City recommends removing E.12.b.8.(ii).b and c, because the City cannot legally require a private property owner to work with another agency nor require them to provide access to another agency's staff. Further, remove Mosquito

and Vector Control from E.12.b.8.(iii).(b) because the City should not be required to report to another local agency without the State providing the contact information of the person who will need this information. No direct effect on water quality occurs from reporting mechanisms or access enforcement.

E.13. Receiving Water Monitoring

The City recommends removing this section entirely because it exceeds federal requirements. It was never anticipated, under the current Federal Phase II Rule for Phase II MS4s, to require monitoring of receiving water. However, should this section remain, the City recommends that the Water Board expand the Statewide or Regional SWAMP monitoring program to include this section.

E.14 Program Effectiveness Assessment and Improvement Plan

The City recommends removing this section entirely because it exceeds Federal mandates and is an unfunded mandate due to the new cost to implement. The requirement for science-based estimates of pollutant load removal for BMPs is extremely expensive and staff intensive. Instead of requiring staff time to report on short and long-term progress of the City's stormwater program, the City should be using its limited resources to implement sections that will show a benefit to water quality.

E.14.b Best Management Practice Condition Assessment

The City recommends removing this section entirely because it exceeds Federal mandates and is an unfunded mandate due to the new cost to implement.

E.14.b.(ii) Best Management Practice Condition Assessment – Implementation Level

Should this section remain, the City recommends removing the requirement to develop and implement a methodology similar to Lake Tahoe BMP Rapid Assessment and instead allow the flexibility for the MS4 to implement a methodology to inventory, map and determine the maintenance condition of Post Construction BMPs through a self-certification program. No direct effect on water quality occurs from using the Lake Tahoe BMP Rapid Assessment Methodology or something similar.

E.14.c Municipal Watershed Pollutant Load Quantification

The City recommends removing this section entirely because it exceeds Federal mandates and is an unfunded mandate due to the new extensive costs to implement.

E.14.d Storm Water Program Modifications

The City recommends removing this section entirely because it exceeds Federal mandates and is an unfunded mandate due to the new extensive costs to implement.

E.15 Total Maximum Daily Load Compliance Requirements

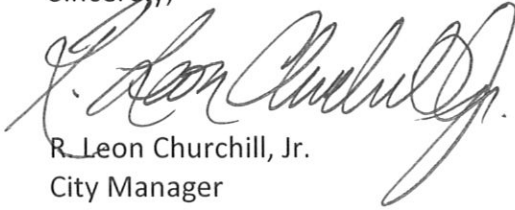
The City recommends that language be inserted to address Ag and Urban stormwater comingled waterways where TMDLs exist for Ag related pollutants. The City is included

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under Attachment G for chlorpyrifos and diazanon TMDLs. It needs to be noted that both of these pollutants are still viable products that Ag Coalition members use within the City and the City has no control over their use.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Leon Churchill, Jr.", written in a cursive style.

R. Leon Churchill, Jr.
City Manager

cc: Kevin Tobeck, Public Works Director
Stephanie Reyna-Hiestand, Water Resources Analyst