



COUNTY OF SONOMA

PERMIT AND RESOURCE MANAGEMENT DEPARTMENT

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Jeanine Townsend, Clerk to the CA State Water Resources Control Board
POB 100
Sacramento, CA 95812-0100
sent via e-mail prior to 12 noon on Thursday 8 Sep 2011

8 Sep 2011

SUBJECT: County of Sonoma comment on the Phase II Small MS4 draft permit released 7 June 2011

Dear Ms. Townsend and members of the Board:

Preface: four items

1. **President Obama just abandoned stricter limits on air pollution proposed by the US EPA** because the regulations would have imposed “too severe a burden on industry and local governments at a time of economic distress” (New York Times front page, Saturday 3 Sept. 2011). Pres. Obama took into consideration that the regulations would cost too much money and too many jobs. Part of the rejection of the new ozone regulation was that the stricter environmental regulations “would have thrown...counties out of compliance...and required a major enforcement effort by state and local officials.” Also, Pres. Obama said “I have continued to underscore the importance of reducing regulatory burdens and regulatory uncertainty, particularly as our economy continues to recover.”

At the County of Sonoma we ask you to consider and follow the actions of President Obama to reject environmental regulations that are too costly, will force many out of jobs, and cause regulatory burdens and uncertainty. In many ways, the draft Phase II permit under consideration is too costly, will force many out of jobs, and cause regulatory burdens and uncertainty that is completely unacceptable at this time in our depressed economy.

2. **This Phase II permit is overreaching of state authority.** Asking the County to do watershed studies where the land area extends beyond the NPDES permit boundary and where there are no MS4s is entirely inappropriate and likely illegal. Another example of overreaching state authority occurs on pg. 76 of the permit which requires the County to establish a receiving water monitoring program. The local jurisdiction occurs within the MS4 and does not extend into receiving waters which is state jurisdiction. Similar opposition to asking the County to educate all K-12 students within the County where a given school may be outside the NPDES boundary and not drain to a County MS4.

3. **Excessive regulation.** Asking the County which is agriculturally based to conform to regulations aimed at urban city areas is excessive regulation.

4. **Costs will triple.** The estimated line item cost for new programs (see below) is expected to triple the County Phase II costs from roughly \$500,000 to over \$1,500,000 per year.

Introduction

The County of Sonoma has an existing Phase II storm water program based upon an existing storm water management plan (SWMP), Sonoma County Code Chapter 11 (commonly known as the Grading Ordinance), and Phase II permit requirements in the southern portion of Sonoma County¹.

¹ The County of Sonoma also has Phase I MS4 requirements in the northern portion of the county reporting to RB1 in Santa Rosa.

The Phase II SWMP focuses on reducing or eliminating pollutants of concern that cause impairment of waters. As a framework the SWMP uses the standard six minimum control measures as required by the federal government through the Clean Water Act. The Grading Ordinance protects against storm water pollution and sediment transport via use of appropriate best management practices (BMPs) to limit post-development storm water quantity and discharge of pollutants. The current Phase II permit contains measurable goals for the six minimum control measures (such as public education and outreach, public involvement, illicit discharge detection and elimination, construction site controls, redevelopment and new development post-construction controls, and pollution prevention/good housekeeping).

Six questions about the content of the draft Phase II permit

A. Why does the permit regulate small municipalities with populations greater than 5,000 when the Phase I program regulate municipalities with MS4s that serve populations of 100,000 or greater? My understanding was that the broad strategy of having both Phase I and Phase II entities was the Phase II entities would eventually be brought up to Phase I levels of requirements. However, the draft Phase II permit leap-frogs Phase II entities into the forefront of storm water requirements with new programs not found in the Phase I permits.

B. Would it make more sense to bring all Phase II entities under Phase I permitting requirements for the sake of regulatory consistency than to adopt new Phase II requirements that are inconsistent with the County's Phase I requirements?

C. Pg. 20 of the permit requires the County to levy citations or administrative fines immediately at the site or within "a few days." While I am supportive of the concept it will be difficult for the County to create such an environmental citation program before the permit is adopted (anticipated in Feb. 2012). That is, adoption of this portion without the permit setting a schedule, such as having the citation program in place one-year after adoption by the SWRCB, will immediately cause the County to be out of compliance and subject to law suit. Hence, we cannot support this concept without a reasonable compliance schedule.

D. Pg. 72 of the permit requires the County (and all Phase II entities) to develop numeric criteria to "support and protect watershed processes..." It seems the SWRCB is abdicating its responsibility in setting statewide numeric criteria and instead allowing each Phase II entity to set their own numeric water quality limits. Does it make more sense for the state to intervene and set these limits rather than have a suite of inconsistent limits varying among Phase II entity?

E. Pg. 54 of the permit discusses the need for programs related to trash. I thought there was a lawsuit in southern California that the SWRCB lost on the basis of the people who are littering may not be residents within the NPDES boundary or even the state. Can you please comment on that legal case, the validity, and legal nature of requiring trash programs within this any storm water permit?

F. Later in this comment letter I summarize the Little Hoover report (2009) on retooling the SWRCB. Have any or all of those important conclusions been incorporated into this Phase II draft report. In particular the Little Hoover requested scientific basis and a benefit/cost analysis for further regulations. Does this draft Phase II permit have both a scientific basis and a benefit/cost analysis for the many new storm water program elements? If yes, please release those documents for review.

Increased costs of implementing the draft Phase II permit: three times over current levels

The County of Sonoma reports spending approximately \$500,000 per year on the Phase II program. The following cost estimation for the following 35 items as new program elements shows a cost of \$1,697,000 per year including program one time start up costs (\$2,713,000) spread out over five years (\$543,000) added to the annual estimated cost of \$1,154,000.

The \$1,697,000 per year estimated costs of the draft Phase II permit are three times the current costs of \$500,000 per year. This increase is completely unacceptable during these times of economic hardship for the County during this layoff phase. The following is a line item estimation for those 35 items from the new programs in the draft Phase II permit.

1. Pg. 21 of the permit requires the County to develop and implement an "Enforcement Response Plan." This will take time and especially money. Estimate \$30,000 to develop this plan that the County likely does not have immediately at its disposal.
2. Pg. 27 of the permit requires the County to get involved with storm water education for "school-age children" using California's Education and Environment Initiative Curriculum "or equivalent." Estimate \$50,000 to develop and \$50,000 per year to maintain this educational program.
3. Pg. 29 of the permit requires the County to develop a watershed based inventory of the "high priority industrial and commercial facilities." Estimate \$50,000 per year additional for this program.
4. Pg. 29 of the permit requires the County to develop and implement an "industrial/commercial outreach and education" program that established measurable goals and prioritizes education tasks bases on water quality problems with target audiences and analyze task effectiveness. \$50,000 per year additional for this program.
5. Pg. 29 of the permit requires the County to develop "Community-based social marketing strategies" to address priority water quality issues. The County is unsure exactly what is required and the level of effort for this strategy. Estimate \$50,000 per year additional for this program.
6. Pg. 29 of the permit requires the County to identify the frequency which outreach will be conducted and the method of outreach. Estimate \$20,000 for this item.
7. Pg. 29 of the permit requires the County to conduct outreach to industrial/commercial facilities. Estimate \$50,000 per year additional for this program.
8. Pg. 33 of the permit requires the County to develop a public involvement and participation strategy. Estimate \$10,000 onetime costs then estimate \$20,000 per year additional for this program.
9. Pg. 33 of the permit requires the County to establish a "citizen advisory group." Estimate \$5,000 in onetime cost then estimate \$5,000 per year additional for this program.
10. Pg. 34 of the permit requires the County to maintain an "up-to-date and accurate" GIS storm drain system. Estimate \$200,000 in onetime cost then estimate \$50,000 per year additional for this program.
11. Pg. 34 of the permit requires the County to establish priority areas such as areas with older infrastructure, areas with a history of illegal dumping or illicit discharges, etc. Estimate \$200,000 in onetime cost then estimate \$50,000 per year additional for this program.
12. Pg. 35 of the permit requires the County to establish dry weather field screening for the detection of illicit discharges that includes an analytical monitoring program. Estimate \$100,000 in onetime cost then estimate \$50,000 per year additional for this program.
13. Pg. 36 of the permit requires the County to establish written procedures for conducting investigations into illicit discharges. Estimate \$10,000 in onetime costs to revise this existing program.
14. Pg. 44 of the permit requires the County to establish a training program for construction site operators. Estimate \$5,000 in onetime cost then estimate \$5,000 per year additional for this program.
15. Pg. 46 of the permit requires the County to establish an inventory and map of permittee-owned and

operated facilities. Estimate \$25,000 in onetime cost then estimate \$5,000 per year additional for this program.

16. Pg. 47 of the permit requires the County to establish a facility assessment of potential pollutant discharge locations including an annual review. Estimate \$15,000 in onetime cost then estimate \$10,000 per year additional for this program.

17. Pg. 48 of the permit requires the County to establish storm water pollution prevention plans (SWPPPs). Since the SWPPP is a state program we ask that this section be renamed as the County wishes to retain a division of labor between the state SWPPP and local erosion prevention and sediment control plans. Estimate \$3,000 in onetime cost then estimate \$2,000 per year additional for this program.

18. Pg. 48 of the permit requires the County to establish “weekly hotspot visual inspections.” Estimate \$5,000 in onetime cost then estimate \$5,000 per year additional for this program.

19. Pg. 49 of the permit requires the County to establish a storm drain assessment and prioritization program. Estimate \$200,000 in onetime cost then estimate \$30,000 per year additional for this program.

20. Pg. 50 of the permit requires the County to establish a complaint driven storm drain maintenance program. Estimate \$20,000 in onetime cost then estimate \$20,000 per year additional for this program.

21. Pg. 52 of the permit requires the County to incorporate water quality and habitat features into flood management facilities. Estimate \$10,000 in onetime cost then estimate \$2,000 per year additional for this program.

22. Pg. 54 of the permit requires the County to establish a trash reduction program including adopting ordinance and a “trash abatement plan.” Estimate \$100,000 in onetime cost then estimate \$30,000 per year additional for this program.

23. Pg. 55 of the permit requires the County to establish an industrial/commercial facility “runoff control program.” Estimate \$100,000 in onetime cost then estimate \$10,000 per year additional for this program.

24. Pg. 64 of the permit requires the County to establish a post construction storm water management program including using a tiered approach to require proper BMPs. Estimate \$5,000 in onetime cost then estimate \$20,000 per year additional for this program.

25. Pg. 65 of the permit requires the County to establish a “watershed baseline characterization” including identification of the “dominant watershed processes” that can be altered by development. Estimate \$200,000 in onetime cost then estimate \$30,000 per year additional for this program.

26. Pg. 66 of the permit requires the County to establish water quality runoff standards including runoff up to “two times the 85th percentile storm event.” Estimate \$200,000 in onetime cost then estimate \$30,000 per year additional for this program. Requiring these parameters is inconsistent with our Phase I permit in the northern portion of the County of Sonoma.

27. Pg. 70 of the permit requires the County to establish an interim hydromodification management program where “post-project runoff shall not exceed estimated pre-project volume and rate for the 2-year, 24-hour storm”. Estimate \$200,000 in onetime cost then estimate \$30,000 per year additional for this program. This parameter is inconsistent with Region 1 and US EPA guidance.

28. Pg. 72 of the permit requires the County to establish a long-term watershed process management program and strategy to “develop and implement numeric criteria to protect watershed processes.” Estimate \$200,000 in onetime cost then estimate \$30,000 per year additional for this program.

29. Pg. 73 of the permit requires the County to establish a “watershed-based storm water management” program. Estimate \$200,000 in onetime cost then estimate \$30,000 per year additional for this program.

30. Pg. 73 of the permit requires the County to establish an operation and maintenance storm water treatment system including tracking of various deeds, covenants, conditions, etc. Estimate \$100,000 in onetime cost then estimate \$30,000 per year additional for this program.

31. Pg. 76 of the permit requires the County to establish a receiving water monitoring program. Estimate \$100,000 in onetime cost then estimate \$150,000 per year additional for this program. Overreaches SWRCB authority as County authority ends at the MS4 end of pipe and that authority does not extend into waters of the state under state authority.

32. Pg. 86 of the permit requires the County to establish an effectiveness program. Estimate \$100,000 in onetime cost then estimate \$30,000 per year additional for this program.

33. Pg. 88 of the permit requires the County to establish a program on BMP conditions assessments using a rapid assessment or other method. Estimate \$100,000 in onetime cost then estimate \$30,000 per year additional for this program.

34. Pg. 89 of the permit requires the County to quantify municipal watershed pollutant loads annually for fecal coliforms, sediment, nitrogen, and many other constituents. We seek clarity on exactly how a “municipal watershed” is defined. Estimate \$100,000 in onetime cost then estimate \$200,000 per year additional for this program.

35. Pg. 91 of the permit requires the County to comply with all TMDL requirements. Estimate \$100,000 in onetime cost then estimate \$100,000 per year additional for this program.

Improving Performance and Outcomes at the State Water Boards by the Little Hoover Report (2009)

In this section of my comments I will try to summarize the 130-pg. Little Hoover Commission Report on “Improving Performance and Outcomes at the State Water Boards” dated January 2009. This report is prefaced with “Clearer Structure, Cleaner Water.”

The first action item from the report is “the governor and Legislature must exercise their leadership to reform the current system “ of water quality protection into one that “demonstrates that it is improving water quality.” I do not know if these reforms have happened but I think they have not happened.

The report summary letter concludes “Reforming those boards is a first step, and one that is urgently needed.” Please take a look at the section titled “An outdated system” (pg. 27); where some of the headings critical of past practices read: inconsistencies and inefficiencies, little focus on outcomes or accountability, boards unable to prioritize, lack of data, state has difficulty addressing modern water problems and lack of science! About lack of science (pg. 42) “Countless water users, environmentalists and water experts noted that the water boards do not engage in sufficient scientific research to support new regulation.” Is this still true with regards to the draft Phase II permit before us in that there is a lack of scientific basis for all the requirements?

The summary of Little Hoover report states California “... does not rank the biggest threats to water quality and systematically match its finite resources to address the most serious of them using the tools of scientific and economic analysis.” I strongly promote and would applaud such an economic and scientific approach to improving water quality.

The first paragraph of the Executive summary from the report states “California is attempting to solve modern water pollution problems with an antiquated system.” In these difficult economic times we really

need to generate and support water quality programs that are frugal, easy, efficient, and hit the mark of biggest “bang for the buck.”

The report also states “Urban stormwater is one of the biggest challenges the state faces...caused by modern city life.” However, the County of Sonoma has jurisdiction over what is basically an agricultural county of vineyards, pastures, and upland forests. I ask you is it acceptable to require the County to comply with a Phase II permit that in many ways is more prescriptive and onerous than the Phase I permit held by many cities with populations in the hundreds of thousands?

The report states the “boards have lost the confidence of a diverse array of stakeholders.” and that the Regional Boards do not have sufficient data “to make decisions, determine whether programs are effective, or analyze whether the costs of regulation are worth the incremental benefits to our water supplies.” Urban storm water is a “vexing problem with costly solutions, yet the state has not developed an adequate system for assessing and prioritizing this problem and other non-point source pollution problems.”

Further statements from the Little Hoover report include 1) because of the autonomy given each regional board “there is little focus on clean water outcomes...”, 2) the boards “also acknowledge they have difficulty prioritizing water quality problems”, 3) the boards fail to use any type of cost-benefit analysis to help determine priorities, and 4) that the regional boards “admit they have difficulty in analyzing watersheds to determine whether their programs are protecting and improving water quality.” Why then add additional regulatory requirements now in these depressed economic times when there is no guarantee any creek will be the better for it?

So, I ask you to please ask yourself and your staff: how do you know that the costs and burdens of the details of this draft Phase II permit will achieve our collective goals of improving water quality? I ask you to please take this opportunity to take the time to adequately and thoroughly review the written comments you shall receive in the light of the Little Hoover Commission and do not rush adoption of this Phase II permit.

Pg. xi of the Little Hoover report states: “Finally, the water boards should incorporate cost-effectiveness tests into their analysis of programs to help them prioritize and find the most cost-effective solutions to water quality problems. **The goal is ...to help the regulated and regulators find ways to improve water quality in the most cost-efficient manner possible and meet statutory requirements to balance water quality needs with other factors, such as economics.**” (emphasis added)

Conclusion

I feel our current Phase II program is robust yet could use further internal development to better achieve water quality improvements in an effective, efficient, and paced manner. I also feel the County of Sonoma does not need a new set of permitting requirements such as many that are contained within the draft Phase II permit (subject to the comments and cost estimates of this letter, see above). As presented and if adopted these new Phase II programs are going to be difficult to implement and complicated by the uncertainty on the part of the state to enforce those requirements. We also object to the estimated triple increase in cost of the County Phase II storm water program due to new requirements of the draft Phase II permit.

The County of Sonoma asks you to take these comments, the comments of CASQA, the Russian River Watershed Association, and the Statewide Stormwater Coalition; and the comments from all Phase II counties or cities and seriously review those comments for improvement, clarification, and edits in the next draft of the Phase II permit. The reality is the County of Sonoma will continue to be dedicated to improving storm water quality via various programs independent of the content of the final Phase II permit. I hope the SWRCB truly understands that the scope, cost, and timeline of these new storm water requirements will make it extremely difficult for the County of Sonoma to comply with all the new requirements of the reviewed draft Phase II. The permit will make it difficult for the County to balance its budget, will necessitate further slashing of other County programs, or make certain additional layoffs of

County staff even after the past three years of severe budget reductions.

When the Little Hoover report and we both tell you county governments are struggling to balance their budgets that is true. When we tell you the County of Sonoma is dedicated to improving water quality via local Sonoma County programs that is also true. When we tell you the last thing the County of Sonoma needs is paper programs that do not result in on-the-ground improvements or have little basis in improving water quality that is also true.

Finally, I ask you to follow the example of President Obama when he rejected the US EPA's own proposed regulations on ozone because the regulations were seen as a burden to the economy and excessive regulation. I concur with Pres. Obama on this matter.

Sincerely,

/signed original by/

Reg Cullen

County of Sonoma

Senior Engineer

Permit and Resource Management Department