



**Santa Clara Valley
Urban Runoff
Pollution Prevention Program**



Campbell • Cupertino • Los Altos • Los Altos Hills • Los Gatos • Milpitas • Monte Sereno • Mountain View • Palo Alto
San Jose • Santa Clara • Saratoga • Sunnyvale • Santa Clara County • Santa Clara Valley Water District

Submitted electronically to commentletters@waterboards.ca.gov prior to noon on
December 17, 2012.

December 17, 2012 (DUE BY NOON, December 17, 2012)

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comment Letter – Revised Draft Phase II Small MS4 Permit

The Santa Clara Valley Urban Runoff Pollution Prevention program (SCVURPPP) appreciates the opportunity to comment on the revised Phase II Small MS4 Permit (Draft Phase II Permit). While the local agencies that comprise SCVURPPP will not be subject to this Permit, key provisions may be relied on by Regional Water Board staffs for future Phase I permit reissuances and consequently we are compelled to comment on the Draft Phase II Permit.

Receiving Water Limitations Language

As evidenced by the State Water Board's November 20, 2012 Workshop on the subject, the Receiving Water Limitations Provision (Provision D, pages 19-20) is a critical issue of concern for all MS4 permittees within the State. Notwithstanding the Workshop, the revised order does not modify Provision D as it was previously drafted. Instead, it just bypasses the issue by creating a reopener clause (see Finding #38, page 38; Provision I, page 140; and the Fact Sheet, pages 25-26). In light of all of the effort that went into the Workshop and the importance of this issue to all municipalities in the State, moving forward on the Draft Phase II Permit as it stands is not reasonable. We believe the State Water Board should not defer this issue until a later date (by the use of a reopener clause or otherwise) and contend that the State Water Board now has sufficient input and cause to develop a resolution.

We therefore urge the State Water Board to direct staff to propose a revision to the Receiving Water Limitation Language in Provision D now and not defer addressing this critically important issue to a later point in time.

Attachment J – Central Coast Post-Construction Requirements

Our concerns with Attachment J are two-fold, policy/procedural and technical. First we are concerned with the apparent escalation in permit requirements being conducted by the various Water Board permit writers in drafting provisions for land development. Over the last few years we have seen the ratcheting up of land development requirements in each MS4 permit reissuance without regard and consideration of either the impact/effectiveness of the prior development requirements and the key hydrologic principles of low impact development. This lack of a cogent and cohesive approach to standards has created an uneven playing field for communities and developers across the State. Furthermore, the clear absence of any consensus within the State on what the requirements are for land development (particularly with respect to hydromodification management) is damaging to the credibility of the entire stormwater program.

Another policy/procedural related issue is the timing of the inclusion of Region 3 requirements into the Draft Phase II Permit. By appending the Central Coast requirements, and stating, “the Water Board expects to amend this Order to incorporate similar requirements for Permittees in the remainder of the State”, the Water Board has introduced an entirely new set of rules with insufficient time for Phase I or II permittees to fully evaluate the potential impacts of these standards. At a minimum, we believe it prudent to allow a full 5-year permit term to incorporate the requirements of Section E.12 to assess their effectiveness before changing to a new and significantly different set of requirements. As discussed below, there are significant technical issues in the Region 3 requirements and any revisions would require opening the Phase II permit to amend a regional requirement at the state level.

It is worth noting that the post-construction requirements contained in Section E.12 have been through a thorough two-year review process including CASQA professionals, environmental NGOs, Permittees, and Water Board staff. The result is a set of straightforward and implementable LID and baseline hydromodification controls accomplishing most or all of the Region 3 requirements.

With respect to technical issues the magnitude and scope of the Region 3 requirements are not appropriate for the following reasons:

- The Region 3 requirements are not only the most stringent and complex in the State; they are also unique and entirely untested. For example, there is no demonstrated environmental benefit from retaining a 95th percentile storm event (as opposed to an 85th percentile event, a standard used throughout the state) on projects in urban areas. It is well established that water quality control measures are most economical and efficient when they target small, frequent storm events that

over time produce more total runoff than the larger, infrequent storms targeted for design of flood control facilities. Typically, design criteria for water quality control BMPs and baseline hydromodification controls are set to coincide with the “knee of the curve”, i.e., the point of inflection where the magnitude of the event (and corresponding cost of facilities) increases more rapidly than the number of events captured. In other words, targeting design storms larger than this point will produce volume retention gains but at considerable incremental cost. This approach is the very basis of the criteria in most Phase I MS4 permits and the draft Phase II permit for sizing stormwater control measures to capture the 85th percentile, 24-hour storm.

- The Central Coast sizing criteria was placed in the Region 3 requirements after the public review process was completed in that region. The sizing criteria uses and incorrectly applies a methodology taken from the Water Environmental Federation Manual of Practice No. 23, by requiring the retention/water quality volume to be multiplied by 1.963 in order to capture “all events up to and including” the 85th or 95th, as appropriate.
- The retention and hydromodification requirements, and some of the LID requirements, are inconsistent and go beyond those of existing or proposed statewide, regional, or local Phase I or Phase II MS4 permits in California. For example, thresholds for hydromodification requirements are much lower than existing or proposed permits (15,000 square feet and 22,500 square feet of created/replaced impervious surface for runoff retention and peak matching, respectively). Post-project vs. pre-project peak matching is an approach that has been proven ineffective in protection of receiving streams, based on the research of existing hydromodification control programs. The technical basis for these requirements is unclear and in the absence of demonstrated environmental benefit, there is no justification for the significant increased cost for their implementation.

We urge you to delete direct references to the Central Coast Post-Construction Requirements, including Attachment J, from the Draft Phase II Permit.

Thank you for your consideration of our concerns.

Yours sincerely,

//signed by Adam W. Olivieri//

Adam W. Olivieri, DR.PH, P.E.
Program manager
SCVURPPP

