



San Francisco
Water Power Sewer
 Services of the San Francisco Public Utilities Commission

Public Workshop
Revised Draft Phase II Small MS4 Permit
Deadline: 12/17/12 by 12 noon

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Charles R. Hoppin, Chair and State Water Board Members
 c/o Jeanine Townsend, Clerk to the Board
 State Water Resources Control Board
 P.O. Box 100
 Sacramento, CA 95812-2000



December 17, 2012

Re: San Francisco Public Utilities Commission Comments on the Draft Phase II MS4 General Permit

Dear Chair Hoppin and State Water Board Members:

The City and County of San Francisco Public Utilities Commission (San Francisco or SFPUC) respectfully submits the following comments on the draft Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (Draft Phase II MS4 General Permit).

The SFPUC owns and operates a combined sanitary sewer system that collects and treats almost all of San Francisco's wastewater and stormwater flow. There are small areas within San Francisco (comprising less than ten percent of the system) where the sanitary sewers have been separated from the storm sewers. SFPUC has dedicated considerable resources developing and implementing a stormwater management program for these areas. We are committed to effectively managing stormwater - within and outside of the combined areas - to protect the ocean and San Francisco Bay.

We appreciate that staff has taken considerable time to revise the Draft Permit and that they incorporated many of the changes recommended in the last comment period.

While the current draft already reflects a significant amount of work, there are a few outstanding issues we believe must be addressed to have an effective and successful permit. In addition to general comments we have also provided detailed comments on the specific provisions of the permit in the table below.

1. Revise Permittees Listed in Attachment A & Attachment B.

The current draft lists the City and County of San Francisco under Attachment A as a Traditional. However, it also continues to list San Francisco under Attachment B as a non-Traditional which, per earlier discussions with staff, does not appear to be the correct designation. We request that San Francisco be removed from Attachment B.

- Edwin M. Lee**
Mayor
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- Vince Courtney**
Vice President
- Ann Moller Caen**
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- Francesca Vietor**
Commissioner
- Anson Moran**
Commissioner
- Harlan L. Kelly, Jr.**
General Manager



2. Receiving Water Limitations Language Adoption Needed Prior to Adoption of Phase II MS4 Permit

We strongly believe that the permit should not be adopted until the issue of strictly applying water quality standards (WSQS) to MS4s is resolved.

State permit writers have considerable leeway in how, or even whether MS4 discharges are required to comply with water quality standards (see Defenders of Wildlife v. Browner, 191 F.3d 1159 (9th Cir. 1999)) and in defining “exceedance.” In the current MS4s permit, permittees with a population of less than 50,000 are not required to meet WQS but can address them using the iterative approach. We respectfully request that this common understanding of water quality standard compliance in stormwater permits should be explicitly and clearly stated in the Phase II MS4 General Permit.

As drafted the proposed permit would extend strict compliance to these smaller MS4s and expose them to third party lawsuits even though cost-effective BMPs are not available to meet WQS (for example, the bacteria objectives for which disinfection BMPs do not exist).

3. Specific provision comments: San Francisco provides the following additional comments on specific provisions of the proposed permit.

SECTIONS		COMMENTS
FINDINGS (GENERAL PROVISIONS)		
1.	Finding 28, p.9-10 Monitoring for MS4s with a population over 50,000	Finding 28, p.9-10: This description is too broadly defined and could eventually apply to virtually all waterways in the state. For example, over 500 waterways are currently listed as impaired due to indicator bacteria, pathogens, fecal coliform, total coliform, enterococcus, E coli, or enteric viruses. Very possibly many other waterways could be similarly listed based in additional monitoring as the 303(d) list is growing rapidly. Also, most Regional Boards apply Title 22 drinking standards to MUN waterways which results in relatively low levels of naturally occurring aluminum (7% in soils) or iron (4% in soils) likely exceeding standards. If monitored, possibly most inland waterways could be declared as “potentially impaired” based on these two constituents alone. The new requirement for monitoring listed or potentially listed waters should be made more specific and should only pertain to Small MS4s that are potentially significant contributors (in aggregate) to a listed waterway.
2.	Finding 38, p.11 Receiving Water Limitations language	Finding 38, p.11: The permit should not be issued until this issue of strictly applying water quality standards to MS4s is resolved. The reason is that under the current permit, MS4s with less than 50,000 are not required to meet WQS

		but can address them using the iterative approach. The proposed permit would extend strict compliance to these smaller MS4s and expose them to third party lawsuits even though cost-effective BMPs are not available to meet WQS (for example, the bacteria objectives for which disinfection BMPs do not exist).
3.	Finding 39, p.11 Prohibitions of Non-stormwater Discharges	Finding 39, p.11: In most of the Water Boards' regulatory initiatives, "pollutant" is defined or effectively considered as any constituent in a discharge that is not water. Every discharge has measureable constituents, and thus all conditionally exempt discharges would be prohibited. For example: the SF Regional Board's statement: " <i>Waste discharges will contain some levels of pollutants regardless of treatment.</i> " In the NRDC vs. LA County case, the court said that the permit means exactly what it says. Therefore, the current language of the draft permit leaves all conditionally exempt discharges at risk of being found to be prohibited. We therefore request that you clarify that this Finding and the related permit provisions that "pollutant" in context of this permit means a constituent in a concentration presenting an identifiable risk to beneficial uses.
4.	Finding 42, p.12-13 Watershed Process-Based Criteria for Post-construction	Finding 42, p.12-13: Please include which Boards have approved criteria and where they apply.
B. DISCHARGE PROHIBITIONS		
D. RECEIVING WATER LIMITATIONS		
5.	D. Receiving Water Limitations, p.19-20	D. Receiving Water Limitations, p.19-20: The permit should not be issued until this issue of strictly applying water quality standards to MS4s is resolved. The reason is that under the current permit, MS4s with less than 50,000 are not required to meet WQS but can address them using the iterative approach. The proposed permit would extend strict compliance to these smaller MS4s and expose them to third party lawsuits even though cost-effective BMPs are not available to meet WQS (for example, the bacteria objectives for which disinfection BMPs do not exist).
E.1 RENEWAL TRADITIONAL SMALL MS4 PROVISIONS		
6.	E.1.b, p.20 Renewal Traditional Small MS4s Permittees	E.1.b, p.20: Please provide an understanding of the factors that will be used as the basis for the Executive Officer to the determination that "a Renewal Traditional Small MS4 Permittee's current implementation of BMPs is equally or more effective at reducing pollutant discharges than implementation of the requirements of a given subsection". We request the factors for making this decision be specified in the permit.
7.	E.1.b, p.20 Renewal Traditional Small MS4s Permittees	E.1.b, p.20: As it is up to the Regional Board to determine if the SWMP or updated SWMP BMPs will achieve compliance with the order, we believe the language should be modified to "The updated SWMP shall include a signed certified statement by the Permittee, in accordance with

		Attachment F Sections 11 and 12 of this Order, certifying implementation of the SWMP." We request that the language "will achieve compliance with this order" be removed.
E.6. PROGRAM MANAGEMENT ELEMENT		
8.	E.6.c, (ii), (f) Recidivism Reduction, p.27	E.6.c, (ii), (f) Recidivism Reduction, p.27: The word "incentives" should be removed from the second sentence in paragraph (f) that states "The Permittee shall develop incentives, disincentives, or increase inspection frequency at the operator's sites to prevent chronic violations." No incentives of any kind should be offered to chronic violators. Recidivism Reduction should only be dealt with through disincentives or increased inspection frequency. The only incentive that an operator should receive should come from avoiding a disincentive. Providing incentives to chronic violators creates a situation whereby operators in compliance are treated unfairly, since their compliance was achieved of their own volition and in a spirit of cooperation, without being coaxed with incentives. Furthermore, providing incentives for chronic violators could create more violators.
9.	E.6.b. Certification (i)Task Description,(ii) Implementation Level (e), p. 25	E.6.b. Certification (i),(ii)(e), p. 25: This requirement and timeline is not realistic – if the legal authorities are not in place, it could very easily take more than a year to draft, circulate for public review, and enact the necessary laws or regulations. In addition, there is no guarantee on when such powers could be finally implemented. Furthermore, certification should not be made for requirements due to be completed within year 3, two full years ahead of implementation. For example: The Emergency Response Plan is required to be certified in year one however the Plan itself isn't required to be developed until year 3. We request that this infeasible deadline be required during the third year of the effective date of the permit.
10.	E.6.c. Enforcement Measures and Tracking (ii) Implementation Level (d), p. 26	E.6.c. Enforcement Measures and Tracking (ii) Implementation Level (d), p. 26: The permit requires the Enforcement Response Plan to describe enforcement processes based on the violation type, including NPDES permits. It is not the authority or responsibility, nor a wise use of local resources, to have the local jurisdiction investigate and or enforce NPDES permits not issued to the MS4 Phase II Permittee. Therefore we request this section be made optional.
E.7. EDUCATION AND OUTREACH PROGRAM		
11.	E.7 Education and Outreach Program, p.28	E.7 Education and Outreach Program, p.28: We request that parameters and guidance be established by the State Water Board and provided to the Regional Water Boards for establishing the basis for Permittees required to implement Community Based Social Marketing. More specifically, CBSM should only be required for larger MS4s and only when a specific need exists. CBSM is relatively new, complex, and potentially expensive to implement.
12.	E.7.b.2 Construction Outreach and	E.7.b.2 Construction Outreach and Education, b) Construction Site Operator Education, p. 33: We request

	Education, b)Construction Site Operator Education, p. 33	that the permit requirement for Permittees to provide training opportunities for construction site operators not employed by the Permittee be removed. As the State has formulated construction regulation and training programs and defined acceptable training and certification programs, we request that the State define the Construction Education and Training Standards thus allowing the Permittee to refer all non-permittee staff to the State for appropriate education.
E.9. ILLICIT DISCHARGE DETECTION AND ELIMINATION		
13.	E.9.c. Field Sampling to Detect Illicit Discharges, Table 1. Indicator Parameters, Table 2. Action Level Concentrations for Indicator Parameters, p.40-41 E.9.d.IDDE Source Investigations and Corrective Actions, pg.41	E.9.c. Field Sampling to Detect Illicit Discharges, Table 1. Indicator Parameters, Table 2. Action Level Concentrations for Indicator Parameters, p.40 & E.9.d.IDDE Source Investigations and Corrective Actions, pg.41: Some of the constituents identified in Table 1 are not relevant for discharges to marine waters (e.g., conductivity and hardness). Permittees should be allowed to tailor their response activities to local conditions. For example, a dewatering sump in a building may continue pumping for more than 72 hours after the last rain event (and may in fact be continuous in winter months) and Permittees should not have to conduct follow-up investigations, enforcement, etc., if the conductivity exceeds 2,000 $\mu\text{S}/\text{cm}$ which may just be representative of local saline conditions and of no environmental consequence (Table 2). Please include language that provides discretion for the permittee to tailor the program to meet local needs.
14.	E.9.c. Field Sampling to Detect Illicit Discharges, Table 1. Indicator Parameters, Table 2. Action Level Concentrations for Indicator Parameters, p.40-41	E.9.c. Field Sampling to Detect Illicit Discharges, Table 1. Indicator Parameters, Table 2. Action Level Concentrations for Indicator Parameters, p.40-41: Please specify the required test methods for parameters in Table 1 & Table 2. E.9.c. Field Sampling to Detect Illicit Discharges, Table 1. Indicator Parameters, Table 2. Action Level Concentrations for Indicator Parameters, p.40-41: Please clarify the concentration range for hardness, the formula is not clear. Also please specify the form of ammonia.
15.	E.9.c. Field Sampling to Detect Illicit Discharges, Table 1. Indicator Parameters, Table 2. Action Level Concentrations for Indicator Parameters, p.40-41	E.9.c. Field Sampling to Detect Illicit Discharges, Table 1. Indicator Parameters, Table 2. Action Level Concentrations for Indicator Parameters, p.40-41: Please be aware that Color and Surfactants have a short holding time; the tests for these parameters will more than likely have an expired holding time. Also please define the units of "color".
16.	E.9.c. Field Sampling to Detect Illicit Discharges, Table 1. Indicator Parameters, Table 2. Action Level Concentrations for Indicator Parameters, p.40-41	E.9.c. Field Sampling to Detect Illicit Discharges, Table 1. Indicator Parameters, Table 2. Action Level Concentrations for Indicator Parameters, p.40-41: Please define which class of surfactants is of interest; as "Detergents" and "Surfactants" are not synonymous. "Detergents" do not include soaps, which are surfactants. Please define the required test methods for the intended parameter. Also, please consider that testing for Surfactants is extremely labor intensive; most laboratories (commercial or

		otherwise) do not offer this service.
E.10. CONSTRUCTION SITE STORM WATER RUNOFF CONTROL PROGRAM		
17.	E.10.c. Construction Site Inspection and Enforcement, (ii) Implementation Level, Recommended Inspection Frequencies, p.47	E.10.c. Construction Site Inspection and Enforcement, (ii) Implementation Level, Recommended Inspection Frequencies, p.47: We respectfully request that you remove "other sites with one acre of more of soil disturbance (or part of a larger common plan of development not considered a construction site)". We do not believe that it would be realistic to recommend/require inspection of sites with disturbed area not part of a construction project as defined in the Construction Site Runoff Control Program.
E.11. POLLUTION PREVENTION/GOOD HOUSEKEEPING		
18.	E.11.f. Storm Drain System Assessment and Prioritization, (ii)Implementation Level, (2), p.53	E.11.f. Storm Drain System Assessment and Prioritization, (ii) Implementation Level, (2), p.53: Please define "large volumes of runoff".
E.12. POST CONSTRUCTION STORM WATER MANAGEMENT PROGRAM		
19.	E.12.b. Site Design Measures, (ii) Implementation Level, p.60	E.12.b. Site Design Measures, (ii) Implementation Level, p.60: An additional measure should be added to the end of the list of Site Design Measures that covers other, not listed but effective measures. Suggest adding Site Design Measure "i) or other site design measure that has been proven effective to reduce project site runoff." For Example, Bioretention Planters are often used by projects in San Francisco to reduce stormwater runoff but they are not included in this list.
20.	E.12.b. Site Design Measures, (ii) Implementation Level, p.60	E.12.b. Site Design Measures, (ii) Implementation Level, p.60: SMARTS calculator: Without an associated performance requirement it is unclear what benefit will come from requiring the use of the calculator for these small projects. San Francisco has developed our own calculator for use in complying with post construction requirements but it is designed specifically for our performance measure and would not work well for projects that do not have to comply with that performance measure. Also, completing the SMART calculator or an equivalent, such as San Francisco's calculator, requires a level of expertise that design teams for these smaller projects may not often have. We therefore recommend removing the requirement to calculate the runoff reduction.
21.	E.12.c Regulated Projects (ii) Implementation Level, p. 61-62	E.12.c Regulated Projects (ii) Implementation Level, p. 61-62: The numbering format is inconsistent. After the first (a)-(c), the lettering restarts at (a). Please update. E.12.c Regulated Projects (ii) Implementation Level (d) Road Projects, p.64: It is not clear from the text of this section what design storm needs to be infiltrated or treated for regulated road projects. Infiltration in highly urban and sometimes contaminated conditions may not be allowed or practicable. The requirement to treat runoff that cannot be infiltrated on site to the "extent feasible"

		leaves the Permittee unclear on how to implement this requirement. We recommend that road projects be added to the "Exceptions to Requirements for Bioretention Facilities" outlined in E.12.e (ii) (i) instead.
22.	E.12.e. Low Impact Development (LID) Design Standards, (i) Task Description, p. 66	E.12.e. Low Impact Development (LID) Design Standards, (i) Task Description, p. 66: The reference to numeric sizing criteria in the task description should be changed from "E.12.c" to "E.12.e.ii(c)"
23.	E.12.e. Low Impact Development (LID) Design Standards, (ii) (c) Numeric Sizing Criteria (a) Volumetric (1), p.67	E.12.e. Low Impact Development (LID) Design Standards, (ii) (c) Numeric Sizing Criteria (a) Volumetric (1), p.67: We recommend that you add a note that the 85 th percentile 24-hour storm runoff event is available in the SMARTS calculator.
24.	E.12.e. Low Impact Development (LID) Design Standards, (ii) (b)-(d), p.67	E.12.e. Low Impact Development (LID) Design Standards, (ii) (b)-(d), p.67: The numbering format is inconsistent. Section (c) is missing.
25.	E.12.i. Planning and Development Review Process, (i) Task Description, p.79, and (ii) Implementation Level, (a), p.80	E.12.i. Planning and Development Review Process, (i) Task Description, p.79, and (ii) Implementation Level, (a), p.80: It is not clear what the term "landscape code" is referring to. If the purpose is to reference the local building code, which included outdoor space code requirements, then the language should be amended to reflect this clarification.
E.13. WATER QUALITY MONITORING		
26.	E.13 Water Quality Monitoring, (3), p. 83:	E.13 Water Quality Monitoring, (3), p. 83: Please include some guidance, within the Permit, to the Boards on how they make this decision regarding Water Quality Monitoring. Please take into account specific factors, such as: Receiving water monitoring is designed for streams rather than for those discharging to lakes, ocean, or bays; the selected parameters, justifications, and protocols may be inappropriate in some cases. For example, increased bacteria cell count could be due to changes in bird populations; monitoring for E. Coli is not appropriate for marine waters; nutrients are generally not significant for marine waters; and pyrethroids are unlikely to be an issue for the duration of the permit period because of recent action by the California Department of Pesticide Regulation.
E.14. PROGRAM EFFECTIVENESS ASSESSMENT AND IMPROVEMENT		
27.	E.14.a. Program Effectiveness Assessment and Improvement Plan, (ii) Implementation Level, (a)(9), p.93	E.14.a. Program Effectiveness Assessment and Improvement Plan, (ii) Implementation Level, (a)(9), p.93: As the permit is the basis for the Effectiveness Assessment and Improvement Plan requirements, please remove the language "beyond the permit term".
28.	E.14.a. Program Effectiveness Assessment and Improvement Plan, (ii) Implementation Level, (a)(4), p. 93	During the last permit review period, comments were submitted regarding the difficulty of assessing pollutant source reductions achieved by individual BMPs, and the challenge in assessing BMP performance at achieving outcome levels, because such an assessment will still rely on an assessment of individual BMPs. We appreciate

	E.14.a. Program Effectiveness Assessment and Improvement Plan, (ii) Implementation Level, (a)(5), p. 93	Water Board Staff recognizing these challenges. However, requirements for 1) assessment of BMP performance at achieving outcome levels (Section E.14.a.ii.a.4, page 93 and 2) assessment of pollutant source reductions achieved by individual BMPs (Section E.14.a.ii.a.5) still remain in the third draft. We request these sections be removed. Deletion of the sections will allow Permittees to devote resources to program implementation and enforcement instead of re-allocating our resources to pollutant removal efficiency assessment.
29.	E.14.a. Program Effectiveness Assessment and Improvement Plan, (ii) Implementation Level, (a)(4), p.93 E.14.a. Program Effectiveness Assessment and Improvement Plan, (ii) Implementation Level, (a)(6) Page 93	During the last permit review period, comments were submitted regarding the difficulty of quantifying pollutant loads and pollutant reductions achieved by the program as a whole. We appreciate the Water Board Staff's recognition of these challenges, demonstrated by the deletion of E.14.b Municipal Watershed Pollutant Load Quantification. However, requirements for quantification of pollutant loads and pollutant load reductions still remain in the third draft. We request that the Water Board Staff remain consistent with their decision to remove E.14.b and remove the requirements for 1) quantifying pollutant load reductions (Section E.14.a.ii.b.4, page 93) and 2) quantifying pollutant loads and pollutant load reductions achieved by the program as a whole (Section E.14.a.ii.a.6, page 93).

Thank you for this opportunity to provide input on this NPDES Draft Phase II MS4 General Permit. We greatly appreciate the responsiveness of your staff to previous comments, and we hope that the comments provided here are also useful in achieving an effective regulation which will help further responsible stewardship of the water environment.

Sincerely,



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