

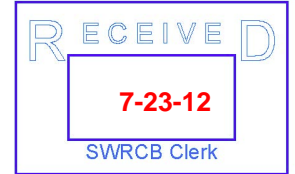
City of Rocklin



Public Comment  
Draft Phase II Small MS4 General Permit  
Deadline: 7/23/12 by 12 noon

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July 23, 2012

Ms. Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Via Electronic Mail: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Re: Comment Letter – Second Draft Phase II Small MS4 General Permit

Dear Ms. Townsend and Members of the Board:

This letter is to provide the State Water Resources Control Board (Board) with the City of Rocklin's comments pertaining to the Second Draft NPDES General Permit and Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, hereinafter referred to as the draft permit.

The City of Rocklin recognizes the draft permit as currently re-written reflects major changes from the first draft released in 2011. The second draft reflects these changes and is a far more practical permit. The City appreciates the Board's response to the public comments it received last year and the efforts to which Board staff have gone to work with stakeholders and incorporate significantly modified and new language in the permit.

The City of Rocklin continues to be committed to our pledge to be good stewards of the City's resources, including stormwater infrastructure, creeks, streams, and open space, to ensure the most effective and efficient stormwater management program that also complies with our MS4 General Permit.

City of Rocklin staff has conducted as thorough a review and analysis of the draft permit as possible during the public comment period. The City concludes that the draft permit still contains significant regulatory changes and potentially significant regulatory changes that will have a direct impact upon City resources and operations. In light of these anticipated additional demands and regulatory uncertainties, the City respectfully submits the following comments regarding the draft permit.

### **Support of California Stormwater Quality Association's Cover Letter and Technical Comments**

As a member, the City of Rocklin is in full support of the cover letter and the technical comments prepared by the California Stormwater Quality Association (CASQA). Two of Rocklin's staff members participated in CASQA's efforts to review the draft permit and prepare these technical comments. The City's support of CASQA's comments is inclusive of all of the recommended permit language and program changes.

### **Support of Statewide Stormwater Coalition Comments**

As a member of the alliance formed in response to the initial draft permit, the City of Rocklin is in full support of the comments prepared and submitted by the Statewide Stormwater Coalition (SSC). In particular, the City joins the SSC in strongly recommending the Board re-examine the Receiving Water Limitations requirements (discussed further below).

### **Support of Other Entities' Comments**

The City of Rocklin also supports the comment letters of Best Best & Krieger and the County of Stanislaus.

### **Discretionary Provisions—Permit Uncertainty and Cost Analysis**

The City of Rocklin has been and continues to be committed to addressing storm water quality issues, and must be able to continue to focus its limited resources on BMPs that are cost effective and provide the highest possible level of water quality benefits. The City appreciates and supports the need for streamlined reporting, consistency and effectiveness of programming, and the overarching goal of improved water quality throughout the State. The draft permit, while substantially modified, still poses an extreme hardship for the City to implement.

Because several major provisions of the permit (e.g. Provisions for Traditional Small MS4 Permittees E.7. Education and Outreach Program; E.12. Post Construction Storm Water Management Program; E.13. Water Quality Monitoring; and E.15. TMDL Compliance Requirements) will be mandated at the discretion of the Regional Board Executive Officer after permit adoption, the City is *unable to accurately estimate what the costs of implementation will be under the current draft permit.*

With the first draft, the City of Rocklin estimated its annual cost to implement the previously proposed requirements to be approximately \$645,000 over and above what the City currently spends for its Stormwater Management Program. Over the five-year permit term, that totals more than \$3.2 million, most of which is unfunded with no feasible method to obtain funding or recoup these costs. (Refer to the SSC and County of Stanislaus comment letters for further cost discussions.) This figure did not include an estimate for a community-based social marketing component of the Education and Outreach provision, which the Regional Board Executive Officer could still impose under the current proposed language.

In addition to the fiscal and programmatic uncertainty that these “discretionary provisions” cause, it is not clear how the process of Regional Board Executive Officers’ review and mandate after the permit adoption provides for stakeholder input and public comment. Each Permittees permit language will potentially be modified outside of the current public review and comment period. It appears this lack of public scrutiny puts the Permittees at additional risk of third-party lawsuit should a stakeholder take exception to the provision(s) established via this process. It is also not clear to what administrative process Permittees will be subject should they seek to appeal the discretionary provisions mandated by a Regional Board Executive Officer.

The City respectfully requests that the Board consider the lack of public input and clear appeal protocol in the Executive Officers’ discretionary provisions administrative process and amend the permit language to address these deficiencies.

### **Receiving Water Limitations**

As clearly described in the SSC letter, the Receiving Water Limitations (RWL) language is flawed and counter-productive to Permittees’ ability to comply successfully with this and all other provisions of the permit. Because the RWL language, as written, does not provide “protection” for Permittees to comply using water quality standards over time through the use of BMPs supplemented by the iterative process, it exposes Permittees to enforcement action and third-party lawsuits. While a permittee is focusing its efforts on addressing RWL, notwithstanding the level of success complying with all other provisions of the permit, those other provisions may receive less focus, to the further detriment of water quality and potentially increasing the permittee’s scope of non-compliance. Furthermore, it is generally accepted knowledge that there are no known effective BMPs to meet water quality criteria for certain pollutants, most notably the copper, lead and zinc that are shed by automotive vehicles’ brake components and are systematically deposited on roadways and parking lots. Permittees can not be held liable for these types of non-point source pollutants over which the permittee has no legal authority to prohibit or science-based BMP with which to reduce discharges or pollutant loading.

The City respectfully requests that the Board amend the draft permit to include the RWL language promulgated by CASQA and further supported by Best Best & Krieger.

### **Draft Permit Section Comments**

#### **Legal Authority - E.6.a(ii)(b) (p. 19-20)**

Like individual residential carwashing, organized car washes and individual residential pressure/power washing activities may be prohibited by Permittees as per the draft permit requirement, but in reality their prohibition will be nearly impossible to enforce since few Permittees have code compliance / enforcement staff working on week-ends and holidays when most of these activities take place.

**Recommendation:** “Organized carwashes, mobile cleaning and pressure wash operations” should be moved to Provision B.3. Discharge Prohibitions for consistency and logical organization of activities/discharge types and to account for the reality of enforcement.

**Legal Authority** - E.6.a(ii)(f) (p. 20)

Neither the State Board nor the Permittees have the legal authority to require retrofitting on existing development. The language in this subsection seems to indirectly require retrofitting of industrial and commercial facilities.

**Recommendation:** Revise the language to clearly state that "...installation, implementation..." of BMPs does not require retrofitting in anyway. (The list is not sequential; letter (e) was skipped.)

**Illicit Discharge Detection and Elimination** - E.9.a. Outfall Mapping & E.9.c. Field Sampling (p. 30-33)

At the Sacramento workshop, Board staff clarified the intent between these provisions is for Permittees to perform "The Walk." The Walk was further defined as the Permittee walking and visually inspecting every foot of every creek and stream and every outfall within the permit area at least once in the permit term, regardless of whether the Permittee already has completed an outfall inventory as required in E.9.a. As an example of the magnitude of this task, the City of Rocklin has approximately 1,700 outfalls within our jurisdiction (with more to come with future development). The City has one, part-time stormwater inspector to accomplish this workload.

Also in E.9.c. Field Sampling Task Description, does the Board expect Permittees to sample outfalls that are flowing 72 hours after the last rain event if the Permittee has, prior to the permit being adopted, already completed an outfall inventory? It obviously would not be a wise use of precious resources to conduct another inventory just to accomplish the outfall sampling.

**Recommendation:** If the performance of The Walk is one of the objectives, an additional provision and accompanying Task Description, Implementation Level and Reporting requirement should be added to the Illicit Discharge Detection and Elimination section. (CASQA comment #34)

Also, the Task Description for E.9.c. should be revised to clarify requirements between those Permittees that already have an outfall inventory as required by E.9.a. and those Permittees who will be conducting/creating their inventory under this permit. The number and size of outfalls, locations or "priority areas" of the outfalls, and the frequency of sampling for outfalls flowing more than 72 hours after the last rain event should be clearly spelled out. In the event of non-working days (vacations, sick leave, week-ends, holidays, and furloughs) falling within the post-72 hour time frame for sampling, the revised language should also clearly define compliance expectations and alternative compliance options, if feasible.

**Post Construction SWMP** - E.12.j. Planning and Building Document Updates (p. 63)

As the CASQA technical comments cover in detail, the compliance timeline of one year for revising planning and building requirements is not feasible. Furthermore, as the County of Stanislaus and Best Best & Krieger comment letters describe, it is not clear from where the State Board has obtained the authority to require Permittees to revise local land use guidance documents and ordinances.

Ms. Jeanine Townsend and Members of the Board

July 23, 2012

Page 5

**Recommendation:** Revise provision E.12.j. as recommended in CASQA's technical comments (# 101), to provide a less proscriptive process that allows Permittees time and latitude to revise documents judiciously and appropriately.

**Annual Reporting Program - E.16.a. & E.16.b. (p 77 and Fact Sheet page 33)**

The compliance certification and retention of information language in these two provisions and the Fact Sheet contradicts Reporting requirements language in provisions throughout the draft that refer to annual report submissions of reports and other documentation via SMARTS (E.6.b., E.7.a, E.7.b.2., E.7.b.3., E.8., E.9.j, E.10.c., E.11.a., E.11.e., E.12.j., E.14.a., and E.14.c.). At the Sacramento workshop, Board staff indicated that this inconsistency would be corrected.

**Recommendation:** Correct language in each provision and the Fact Sheet so that both are consistent with all other language within both documents.

**Annual Reporting Program - E.16.c. (p. 77)**

The language in this provision is not clear and, if literally interpreted, seems to require that all reporting for individual Permittees that participate in any sort of regional program(s) (for only one or multiple provisions of the permit) would have to be completed by a single Permittee. It is not feasible for one Permittee to be required to report for others or be held legally responsible for certifying all the other participating Permittees' compliance on all aspects of the permit (pursuant to provision E.6.b.). Also, this provision does not seem to account for reporting from/by a separate implanting entity (provision E.5.). As written, this provision strongly discourages collaborative regional programs.

**Recommendation:** Revise the language and ensure the functionality of SMARTS to allow multiple reports on behalf of Permittees involved in a regional program. (CASQA comments #19 and #141)

The City of Rocklin remains committed to stormwater quality and working with other stakeholders, Phase I and II Permittees, our Regional Board, and the State Board to craft stormwater BMPs and regulations that are achievable and effective. Thank you for the opportunity to comment.

Sincerely,



Brett Storey  
Mayor

cc: State Senator Doug LaMalfa  
Assembly Member Beth Gaines  
City of Rocklin Council Members

Ms. Jeanine Townsend and Members of the Board

July 23, 2012

Page 6

Ricky A. Horst, City Manager

Russell Hildebrand, City Attorney

Rick Forstall, Director of Public Services

Justin Nartker, Deputy Director of Public Services

Lyle Waite, Public Works Supervisor

Sherri Abbas, Community Development Director

Laura Webster, Planning and Housing Services Manager

Sean Bigley, Statewide Stormwater Coalition

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