

County of Santa Clara
Department of Planning and Development
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September 15, 2011

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100



Subject: Proposed FY 11-12 Waste Discharge Permit Fund Program Regulatory Fee Schedule for Stormwater (State Water Resources Control Board Meeting, September 19, 2011, Agenda Item 9)

Dear Ms. Townsend:

The County of Santa Clara (County) strongly opposes the proposed 34.9% fee increase for area-wide municipal separate storm sewer systems (MS4s) contained in the proposed 2011-2012 Fee Schedules to be considered by the State Water Resources Control Board at its September 19, 2011 meeting (Item 3).

The County has two permits, one for the portion of the County that flows to the San Francisco Bay (Region 2) and another that flows to the Monterey Bay (Region 3). The County is involved in the program known as the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) for our permit in Region 2 with 13 other cities/towns in Santa Clara County and the Santa Clara Valley Water District. The County participates in a Regional Stormwater Management Plan with the City of Gilroy and the City of Morgan Hill, for the program in Region 3. The proposed fee schedule will result in a total increase in fees for Region 2 and Region 3 of over \$6,200. The County did not anticipate an increase of \$6,200 in fees when it prepared and adopted its budget for FY 2011-2012 in June 2011 and, thus, this amount has not been included in the County's budget for FY 2011-2012.. The fee increase is particularly troublesome as it comes at a time when the County is already challenged to make ends meet in a struggling economy. The County also faces the difficulty of implementing two separate NPDES Municipal Programs, both of which have increased costs to comply with the new requirements. Those new requirements include a recently adopted Municipal Regional Stormwater Permit in Region 2 and the Stormwater Management Plan in Region 3. The Region 3 Plan will require additional unforeseen costs to revise the existing program to meet the new requirements of the NPDES Municipal Stormwater Phase II Permit when the State Water Resource Control Board adopts the Permit.

Additional reasons why the County opposes the fee increase for MS4s are as follows:

- **There has been a structural surplus in the State's Stormwater account of the Waste Discharge Permit Fund for each of the last 9 years. This is the result of excess fees collected from stormwater dischargers, which has been used to fund deficits in other accounts.** California Water Code section 13260 (d)(1)(B) requires the total amount of annual fees collected shall equal the amount necessary to recover costs incurred in connection with waste discharge requirements and waivers of waste discharge requirements. State Board staff's own report on Agenda Item 9 recognized the stormwater fee imbalance when it stated, "Between FY 2004-05 and FY 2009-10, the Storm Water Program collected approximately \$22 million more in revenue than it incurred in expenditures. This amount contributed to the large reserve balances carried in the WDPF during these years. It also allowed the State Water Board to minimize fee increases during this time period." (Staff Report, p. 5. Other documents show surpluses in FYs 2002-03 and 2003-04 as well.)

It is established and agreed that stormwater fees have been set at inappropriately high levels for many years and those excess fees have been used by the State to subsidize other water quality programs. The County strongly believes it is the duty and responsibility of the State to budget and expend whatever monies are collected from stormwater permittees on addressing stormwater quality. Any increased costs to the State's stormwater program could have easily been funded out of this significant surplus.

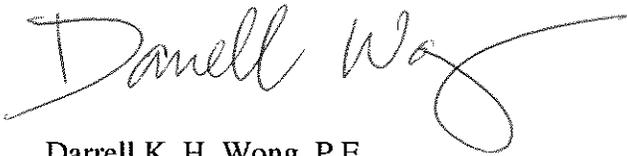
- **Local jurisdictions are severely restricted by Proposition 218 from increasing fees on local taxpayers to fund increased compliance costs.** The County became subject to a regional stormwater permit issued by the San Francisco Bay Water Board in October of 2009 and a Regional Storm Water Management Plan issued by the Central Coast Water Board in April 2010. Compliance costs for the Permit and Plan have significantly increased. Every dollar spent on increased permit fees will be one less dollar that can be spent upon permit compliance.
- **The public notice process on the proposed fee increase is insufficient for the County to adequately review and provide meaningful comment.** The County was not directly notified of the proposed increase. The County was made aware of the increase by staff with the Santa Clara Valley Urban Runoff Pollution Protection Program (SCVURPPP). The only way a permittee could become aware of the proposed increase was through email subscriptions to State Board notices. If a permittee is not subscribed to appropriate State Board email services, they were not directly notified of the proposed fee increase. The State Board's agenda was emailed out on Friday, September 9, at 4:30 p.m. with comments on agenda items due by noon on September 15 – three and a half business days later. This type of public process for an issue that has a financial impact on permittees is inappropriate and unacceptable.

The County respectfully requests that the State Board do the following to address our concerns:

1. Do not adopt the proposed fee increase for stormwater dischargers.
2. Adopt a plan to provide fee credit to stormwater dischargers to over a period of two to five years to address previous overpayment.

3. Direct State Board staff to provide information on the public notice procedures for proposed fee increases, including whether all municipal stormwater permit holders were directly notified of the proposed increase and provided sufficient opportunity to review and comment on the staff recommendation.
4. Direct State Board staff to provide information detailing the relationship between stormwater fees submitted by municipal stormwater permittees and staffing/resources at the corresponding Regional Water Quality Control Board.
5. Direct State Board staff to annually provide detail on the previous year's expenditures and the projected expenditures for the following fiscal year, to make sure that stormwater program fees are being spent to support stormwater-related activities.
6. Direct State Board staff to develop performance measurements so that expenditures can be correlated to staffing levels and the level of service provided by State Board staff.

Very truly yours,

A handwritten signature in cursive script that reads "Darrell Wong". The signature is written in black ink and is positioned above the typed name and title.

Darrell K. H. Wong, P.E.
Senior Civil Engineer
Land Development Engineering
DEVELOPMENT SERVICES OFFICE

cc:

Jody Hall Esser- Director of Planning and Development
Elizabeth Pianca- Deputy County Counsel
Clara Spaulding- Clean Water Coordinator

