



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

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Transmitted via email to <commentletters@waterboards.ca.gov>

September 15, 2011
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
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 Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) 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 9).

SCVURPPP is an association of 15 agencies, including 13 cities, Santa Clara County and the Santa Clara Valley Water District, which have historically shared a joint stormwater NPDES permit to discharge to South San Francisco Bay. The proposed fee schedule will result in a total increase of over \$68,000 for our co-permittees, an amount that was not anticipated and has not been included in local agency budgets for FY 11-12. This increase is particularly troublesome as it comes at a time when municipalities are already challenged to make ends meet in a struggling economy, and when Bay area municipalities are also reeling from the costs of compliance with the new requirements imposed by a recently adopted Municipal Regional Stormwater Permit.

Additional reasons why SCVURPPP and its member agencies oppose the fee increase for MS4s are as follows:

- **There has been a structural surplus in the Stormwater account of the Waste Discharge Permit Fund for the last 9 years due to 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.” (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. We strongly believe 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.

- **The stormwater fee increase does not correspond to an increase in services to MS4s.** There is a significant difference between the amount of money being paid in permit fees to the State and the level of service provided by Water Board staff at the region level. Local jurisdictions are continually told that Water Board staff does not have sufficient resources to oversee compliance with municipal, industrial, and construction stormwater permits. Collectively, SCVURPPP co-permittees currently pay over \$196,000 in permit fees annually (including the SWAMP surcharge), which will increase to over \$264,000 under the State Board staff's recommendation. We have one half-time Regional Board staff person assigned to assist our program.
- **Local jurisdictions are severely restricted by Proposition 218 from increasing fees on local taxpayers to fund increased compliance costs.** Municipalities in the Bay Area became subject to a regional stormwater permit issued by the San Francisco Bay Water Board in October of 2009, under which compliance costs significantly increased. SCVURPPP co-permittees are all dealing with projected structural deficits to simply comply with the permit requirements, let alone pay increased permit fees. 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 jurisdictions to adequately review and provide meaningful comment.** Permit holders were not notified directly of the proposed increase. The only way permittees became 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.

We respectfully request 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 Bay Area municipal stormwater permittees and staffing/resources at the San Francisco Bay Regional Water 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,



Jill C. Bicknell, P.E., EOA, Inc.
Assistant Program Manager

cc: SCVURPPP Management Committee
Tom Howard, Executive Director, State Water Resources Control Board
Bruce Wolfe, Executive Officer, San Francisco Bay Regional Water Quality Control Board