

ATTACHMENT 1

OCT 22 2008

October 22, 2008

Sonoma County Water Agency

<input type="checkbox"/> EO	<input type="checkbox"/> WMgmt	<input type="checkbox"/> Admin
<input type="checkbox"/> AEO	<input type="checkbox"/> Timber	<input type="checkbox"/> Legal
<input type="checkbox"/> Reg/NPS	<input type="checkbox"/> Cleanups	<input type="checkbox"/> Date

Comments Regarding Order No. R1-2008-0106, NPDES No. CA0025054,
WDID No. 1B96074SSON

The Reissuance of NPDES
Permit No. CA0025054

For suggested revisions to the text of the TO, underline is shown for suggested additions, and ~~strike-out~~ is shown for suggested deletions.

Comments Regarding Draft Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges from Municipal Separate Storm Sewer Systems For The City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency follows.

Proposed Storm Water Permit

FINDINGS:

Finding 1:

Comment: The Permittees have significantly different land use authority. The Water Agency is a Co-Permittee because it owns and maintains some of the flood control channels within the current permit boundary. The Water Agency's role is unique in that it is not a land use authority, and thus does not have the legal authority to enact grading ordinances, regulate or inspect industrial or commercial facilities, or impose controls on new development, among others. The Water Agency has land use authority only for flood channels it owns in fee. Throughout the Permit, the Regional Board needs to identify which permittee is responsible for implementing the various components of this Permit. The previous permit made this distinction between the Permittees.

Findings 9 and 10: Permit Boundary

Comment: The U.S. EPA, using the 2000 (Attachment 3) census show, urbanizes areas in Sonoma County. The Permit should be revised to be limited to this area. It is unclear why has the Regional Board proposes to expand the Storm Water Permit boundary beyond what EPA has identified to include rural areas in Sonoma County. Please provide substantial evidence to support the proposed boundary expansion.

Finding 11:

Comment: The following edits should be made to Section 11. The Water Agency does not having any land use authority except for flood control channels it owns in fee. The added text below was included in the previous permit and should be included in this Permit.

This Order and its requirements are not intended to restrict or control local land use decision-making authority. The Permittees retain authority to make the final land-use decisions and retain full statutory authority for deciding what land uses are appropriate at specific locations within each Permittees' jurisdiction. The Regional Water Board recognizes that the Permittees' land use authority allows urban developments that may generate pollutants and runoff that could impair receiving water quality and beneficial uses. The Permittees are therefore responsible for considering potential storm water impacts when making planning decisions in order to fulfill the CWA requirement to reduce the discharge of pollutants in municipal storm water to MEP. This responsibility requires the Permittees to exercise their legal authority to ensure that any increased pollutant loads and flows do not affect the beneficial uses of the receiving water. The Sonoma County Water Agency (Water Agency) does not have broad land use authority and can control activities only on its own property or through its flood control and stream maintenance responsibilities. References to the Agency land-use authority refer only to the boundaries of its fee-owned flood control channels. Therefore, not all requirements in this Order are applicable to the Water Agency. Do we want to include a map to show what these are?

Finding 24:

Comment: Finding 24 discusses impairments for the Mark West Creek and the Laguna de Santa Rosa. Is there such data for the other creeks in the proposed permit boundary? If not, how does the Regional Board plan to identify impairments causes by storm water? Is the Regional Board planning to initiate the TMDL processes for all creeks in the proposed expanded permit boundary?

Finding 30:

Comment: The Water Agency does not have the legal authority to inspect industries and businesses. Therefore, the Regional Board needs to identify the "Permittees" in Section 30 which have the legal authority to inspect industries and businesses for discharge contaminated storm water.

Finding 33:

Comment: In this Finding, the Regional Board acknowledges that each permittee is responsible for implementing its own Storm Water Management Plan. Therefore, the Regional Board needs to identify the Permittees with the authority to implement the various items in the Proposed Permit.

Finding 41:

Comment: This Finding is not clear. Please clarify the impacts of item 41 on sediment basins. If excess sediment is a potential pollutant, how does the new storm water permit affect in-channel sediment basins? Does the Regional Board consider sediment basins a pollution control facility? How will the Regional Board address existing sediment basins?

Finding 45:

Comment: This finding acknowledges that the federal Phase I MS4 program applies to areas with populations over 100,000. Given this, it is unclear why has the Regional Board proposes to expand the Storm Water Permit boundary beyond what EPA has identified to include rural areas

in Sonoma County. The Proposed Permit should be revised to be limited to urbanized areas. If not, please provide substantial evidence to support the proposed boundary expansion.

Finding 46:

Comment: This Finding is not clear. Has preliminary TMDL analysis been done on all creeks in the proposed expanded permit Boundary? If not, why? Does the Regional Board have data showing impairment, due to storm water, for all creeks in the expanded Boundary? Is there data to suggest the impairment is a result from storm water runoff? The Proposed Permit contains no substantial evidence to support this Finding.

Finding 49:

Comment: The Water Agency does not have the legal authority to inspect industrial or construction activities, other than its own construction sites, or issue permits. This Finding must be revised to clarify that it does not apply to the Water Agency.

Finding 50:

Comment: The Water Agency does not have legal authority to inspect industrial facilities or commercial establishments, therefore this Finding should be revised to clarify that it does not apply to the Water Agency.

Finding 51:

Comment: The Water Agency does not have the legal authority to inspect industrial or construction activities, other than its own construction sites. Finding 51, as well as all other sections in this Order, should specify the responsibilities of each permittee, rather than group all Permittees together.

Finding 52: State Mandates

Comment: The Water Agency disagrees with this Finding. As an initial matter, the Regional Board's jurisdiction does not include decisions or determinations regarding what are, or what is not, an unfunded mandate. Second, the Proposed Permit contains many provisions that individually and collectively exceed federal Clean Water Act requirements for MS4s and, therefore, amount to unfunded mandates. For example, the Proposed Permit requires compliance with water quality objectives found in the Regional Board's Basin Plan. The Regional Board is required to create a Basin Plan pursuant to the Porter-Cologne Water Quality Control Act, not the federal Clean Water Act. As a result, this provision (among others) creates an improper, unfunded mandate. Similarly, the Proposed Permit requires that the "Permittees" provide educational materials to each school district in the county (including live presentations) pursuant to Water Code section 13383.6. The California State Assembly passed AB 1721 (Pavley Environmental Education) to add section 13383.6, relating to environmental education. AB 1721 and Water Code §13383.6 are state statutes are not directly related to the CWA.

In addition, the Water Agency does not have the authority to levy charges or assessments for storm water as asserted in paragraph 4. Therefore, Finding 52 must be revised to clarify which Permittees have this authority.

Finding 66:

Comment: AB 1721 is an unfunded mandate as it is not part of the federal Clean Water Act's MS4 program.

Finding 87:

Comment: Has the model described in Finding 87 been verified by an independent third party? If yes, then who and what were their conclusions? If the model has not been reviewed by an independent party, then why not?

Finding 94:

Comment: The Water Agency disagrees with this Finding and asserts that the Proposed Permit contains many provisions which are more stringent than federal law. Accordingly, California law requires the Regional Board to take into account the public interest factors of Water Code section 13241, which includes economic factors and the cost of compliance. The Proposed Permit does not reflect any consideration of this important legal requirement. Your staff has added more than 90 new work items to the Proposed Permit which would result in significantly increased costs of compliance.

Finding 102: Public Process

Comment: The Water Agency disagrees with this Finding. Regional Board staff rejected multiple requests to review or discuss provisions of the Proposed Permit. Staff has also unreasonably rejected the Water Agency's reasonable requests for an extension of the public comment period. Scheduling a public workshop one day before written comments are due undermines effective public participation. Can you show where the Regional Board and the Permittees have work together to achieve a well integrated set of documents that will effectively protect water quality?

SECTION A – DISCHARGE PROHIBITIONS

Table 2 - Required or Suggested BMPs for Non-Storm Water Discharges

Comment: This table is not clear and must be revised. Most significantly, it is not clear whether the BMPs in Table 2 are required or whether they are a suggestion. There is a practical and legal difference between something being required and something being suggested. This must be clarified.

With respect to, non-commercial car washing by residents or non-profit organizations, it is not clear whether all car washes, performed by residents or non-profit organizations, are required to get authorization from the Regional Boards Executive Officer before proceeding. This must be clarified.

SECTION B – RECEIVING WATER LIMITATIONS

Section 3:

Comment: What if an exceedance is not a result of storm water? If fecal or total exceeds water quality limit how does one determine that the exceedance is caused by humans versus wildlife?

Comment: If through the monitoring program, an exceedance occurs, the Water Agency does not have the authority to modify BMPs, and therefore the Water Agency should not file a Receiving Water Limitations Compliance Report. Section B – Receiving Water Limitations should be revised to excluded the Water Agency from submitting such report due to the lack of authority the Water Agency has over BMP implementation.

SECTION C- STORM WATER QUALITY MANAGEMENT PROGRAM IMPLEMENTATION

Part 1 – General Requirements:

Comment: In Part 1 – General Requirements, subsection 2, should be revised to the following:

“Each Permittee shall comply with the requirements of 40 CFR 122.26(d)(2) and implement programs and control measures, within its authority, so as to reduce the discharges of pollutants in storm water to the MEP and achieve water quality objectives. “

Part 2 – Legal Authority:

Comment: The Water Agency does not have land use authority; therefore the Water Agency will not implement any part of Section C -Storm Water Quality Management Program Implementation, Part 2- Legal Authority of this Order

Part 3 – Fiscal Resources:

Comment: The Water Agency does not have land use authority; therefore the Water Agency will not implement any part of Section C -Storm Water Quality Management Program Implementation, Part 3- Fiscal Resources Part 3,1,a,3,B, (i-vi) of this Order.

Part 4 – Modifications/Revisions:

No Comment.

Part 5 – Responsibilities of the Permittees:

Comment: Part 5, Section 1g: Since some committees are outside Water Agency's authority, the Water Agency will assist with committees in the Flood Control Zone 1A Boundary, outside of city limits.

SECTION D - SPECIAL PROVISIONS

SPECIAL PROVISIONS: PART 2 – Public Information and Participation Program (PIPP)

Section 1:

Comment: The Water Agency does not have any regulatory or land use authority.

Special Provisions: Part 2 - Section 2: Residential Program

Comment: The Water Agency does not own any storm drains; therefore the Water Agency will continue to implement the education program it has in place.

Comment: With respect to Outreach and Education, the Water Agency has no legal authority to dictate educational curriculum in the schools. Moreover, this provision is overly prescriptive in that it goes well beyond requiring the Permittees to develop a PIPP but spells out exactly what must be in the PIPP. In all cases, the Proposed Permit fails to state how these specific requirements control pollutants to the maximum extent feasible or how they are necessary in order to meet water quality standards. These provisions exceed federal CWA requirements.

Comment: The Water Agency has determined that Part 2, Section 2, subsection c7 and c8 specifies a requirement to see behavioral changes. The Water Agency believes without a collaborative effort with teachers and the public, these requirements will provide little if any benefit to Storm Water. If a collaborative effort is not undertaken, then The Water Agency will not implement any part of Section D - Special Provisions, Part 2, Section 2, subsection c7 and c8 of this Order.

Special Provisions: Part 2 - Section 3: Businesses Program

Comment: The Water Agency does not have authority over businesses in Sonoma County therefore; the Water Agency will not implement any part of Section D - Special Provisions, Part 2 Section 3 – Businesses Program of this Order.

Special Provisions: Part 3 – Industrial/Commercial Facilities Program

Comment: The Water Agency does not have land use authority; therefore the Water Agency will not implement any part of Section D - Special Provisions, Part 3- Industrial/Commercial Facilities Program of this Order.

Special Provisions: Part 4 – Planning and Land Development Program

Comment: The Water Agency does not have legal authority over planning and Land Development; therefore the Water Agency will not implement any part of Section D - Special Provisions, Part 4- planning and Land Development Program of this Order.

Special Provisions: Part 5 – New Development/Redevelopment Integrated Water Quality/Water Resource Plan

Comment: The Water Agency does not have legal authority over New Development/Redevelopment; therefore the Water Agency will not implement any part of

Section D - Special Provisions, Part 5- New Development/Redevelopment Integrated Water Quality/Water Resource Plan of this Order.

Special Provisions Part 6 – Implementation of New Development/Redevelopment Post-Construction BMPs

Comment: The Water Agency does not have legal authority over New Development/Redevelopment; therefore the Water Agency will not implement any part of Section D - Special Provisions, Part 6- Implementation of New Development/Redevelopment Post Construction BMPs of this Order.

Special Provisions: Part 7 – State Statute Conformity

Section 2; Comment: The Water Agency does not have any authority over the General Plan; therefore the Water Agency will not implement any part of Special Provisions; Part 7 – State Statue Conformity, Section 2 of this Order.

Special Provisions: Part 8 – Development Construction Program

Comment: The Water Agency does not have legal authority over Development; therefore the Water Agency will not implement any part of Section D - Special Provisions, Part 8- Development Construction Program of this Order.

Special Provisions: Part 9 – Public Agency Activities Program

Section 1; Comment: The Water Agency does not have land use authority; therefore, the Water Agency will not implement any part of Section D - Special Provisions, Part 9- Public Agency Activities Program, subsections 1c through 1h of this Order.

Section 2; Comment: The Water Agency does not have land use authority ; therefore, the Water Agency will not implement any part of Section D - Special Provisions, Part 9- Public Agency Activities Program, subsections 2 Public Construction Activities Management of this Order.

Section 3; Comment: Identify where in the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with construction Activity (General Permit) Water Quality Order 99-08-DWQ does it discuss Maintenance of Flood Control Channel (such as vegetation removal)?

Comment: The following is a paragraph taken from the SWRCB website, under the Construction Storm Water Program.

“Dischargers whose projects disturb one or more acres of soil or whose projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 99-08-DWQ). Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.”

The last sentence in the paragraph states "Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility." The Water Agency channel maintenance activities are to restore the channel to their design capacity. There are some instances where restoring the channel to its original capacity is not feasible due to public comments. Based upon the paragraph from the SWRCB website, the Water Agency will not implement Section D - Special Provisions, Part 9- Public Agency Activities Program, subsections 3b.

Section 4; Comment: The Water Agency does not have land use authority; therefore, the Water Agency will not implement any part of Section D - Special Provisions, Part 9- Public Agency Activities Program, subsections 2 Public Construction Activities Management of this Order.

Section 5; Comment: The Water Agency does not have land use authority over Parks and Recreation; therefore, the Water Agency will not implement any part of Section D - Special Provisions, Part 9- Public Agency Activities Program, subsections 4 Landscape, Park, and Recreational Facilities Management of this Order.

Section 6; Comment: The Water Agency does not have operate storm drains; therefore, the Water Agency will not implement any part of Section D - Special Provisions, Part 9- Public Agency Activities Program, subsections 6 Storm Drain Operations and Management of this Order.

Section 7; Comment: The Water Agency does not have legal authority over land use; therefore, the Water Agency will not implement any part of Section D - Special Provisions, Part 9- Public Agency Activities Program, subsections 7 Streets and Roads.

Section 8; Comment: Identify where in the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with construction Activity (General Permit) Water Quality Order 99-08-DWQ does it discusses channel maintenance?

Section 11; Comment: Section D - Special Provisions, Part 9- Public Agency Activities Program, subsections 11 MunicipalEmployee and Municipal Contractor Training should be revised to the following:

1. Municipal Employee and Municipal Contractor Training
 - (a) Each Permittee shall, no later than (6 months after Order adoption date and every other year annually thereafter before June 30), train all of their employees and ~~contractors~~ in targeted positions (whose interactions, jobs, and activities affect storm water quality) on the requirements of the overall storm water management program to:
 - (1) Promote a clear understanding of the potential for activities to pollute storm water.
 - (2) Identify opportunities to require, implement, and maintain appropriate BMPs in their line of work.

- (b) Each Permittee shall, no later than (6 months after Order adoption date and annually thereafter before June 30), train all of their employees and ~~contractors~~ who use or have the potential to use pesticides or fertilizers (whether or not they normally apply these as part of their work). Training programs shall address:
 - (1) The potential for pesticide-related surface water toxicity.
 - (2) Proper use, handling, and disposal of pesticides.
 - (3) Least toxic methods of pest prevention and control, including IPM.
 - (4) Reduction of pesticide use.
- (c) Each Permittee shall, no later than (6 months after Order adoption date) and annually thereafter before June 30, train all of their employees and ~~contractors~~ who are responsible for illicit connections and illicit/ illegal discharges. Training programs shall address:
 - (1) Identification.
 - (2) Investigation.
 - (3) Termination.
 - (4) Cleanup.
 - (5) Reporting of Incidents.
 - (6) Documentation of Incidents.

Comment: The Water Agency recommends the above changes due to the Water Agency have the potential to use multiple contractors. The above requirement would require the Water Agency to train all contractors. The contractors could use this training for monetary gain, which could in turn be a gift of public funds.

Comment: The Water Agency does not have land use authority; therefore, the Water Agency will not implement Section D - Special Provisions, Part 9- Public Agency Activities Program, subsection 11(c)

Special Provisions: Part 10 – Illicit Connections and Illicit Discharges Elimination Program

Comment: The Water Agency does not have land use authority; therefore, the Water Agency will not implement any part of Section D - Special Provisions, Part 10- Illicit Connections and Illicit Discharges Elimination Program.

Special Provisions: Part 11 – Reporting Program

Comment: Throughout this Order a number of reports are due. All reports should be due at the same time the annual report is due rather than have different dates throughout the year.

