



File: 43.1-1-9 NPDES Storm Water Permit No. CA0025054

October 22, 2008

N C R W Q C B

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Ms. Catherine Kuhlman, Executive Officer
California Regional Water Quality Control Board
North Coast Region
5550 Skylane Boulevard
Santa Rosa, CA 95403

<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

Subject: Comments on the Tentative Order Issued by the California Regional Water Quality Control Board, North Coast Region for NPDES Permit No. CA0025054

Dear Ms. Kuhlman:

The Sonoma County Water Agency (Water Agency) has prepared comments on the Tentative Order issued by the California Regional Water Quality Control Board, North Coast Region for NPDES Permit No. CA0025054 issued for the 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 (Permittees) on September 9, 2008, (Proposed Permit). This letter provides an overview of the Water Agency's comments; detailed comments are enclosed. The Water Agency also supports the comments submitted by the County of Sonoma (County) and the City of Santa Rosa (City).

The Water Agency is firmly committed to protection of water quality. For instance during the last permit term the Water Agency provided direct instruction to over 13,000 students, removed over 2400 tons of debris from creeks and channels using Water Agency staff, SAC crews, and through the Creek Stewardship Program, which is funded by the Water Agency and the City. The Water Agency's Water Education Program has always included storm water as well as water conservation as part of their curriculum. The Water Agency's commitment to storm water education was further demonstrated in 2006-2007 when we began sponsoring a school assembly program to increase educational outreach which focused specifically on storm water pollution prevention aimed at elementary and junior high school students. In the past two years, over 10,000 students have taken part in this school assembly program. In addition, the Water Agency has partnered with the Russian River Watershed Association to administer and fund a Storm Water Pollution Prevention Video Contest for high school students for the last five years. Many of the items described above are not required by the Storm Water Permit, but demonstrate the Water Agency's commitment to storm water pollution prevention.

As part of our ongoing effort to improve water quality and protect environmental resources, the Water Agency, along with its Co-Permittees, submitted an application in December 2007 for a permit that would meet the Water Agency's Clean Water Act (CWA) responsibilities under the

MS4 program and provide for the continued protection and preservation of the County's surface waters. As discussed below, we were quite surprised to see many of the provisions your staff included in this Proposed Permit. Despite the many meetings and conversations between our staffs, most of the special provisions in the Proposed Permit were discussed only in general terms, or not discussed at all. Among others, the entire Public Information and Participation Program, Development Construction Program and Industrial/Commercial Facilities Program were a complete surprise and, as discussed below, do not apply to the Water Agency.

We are also quite surprised and disappointed that your staff immediately rejected all Water Agency, County and City requests for any extension of time to prepare comments or hold a hearing on the proposed changes. Your staff spent more than nine months reviewing our permit application, rejected our requests to review an administrative draft in order to collaboratively work through any issues, and then allows Permittees and the public less than two months to review and comment on the Proposed Permit containing significantly new and previously undisclosed provisions.

We hope that you will rectify these issues, and put our two agencies back on the road to a productive partnership to address storm water issues in Sonoma County. That result would be far preferable to all concerned, and would avoid the impasse and gridlock suffered by the Regional Board for the Los Angeles region. As you may be aware, that regional board has resumed negotiations with Ventura County after appointment of a veteran regulator, described as someone agreeable to listening to all sides, to handle the county's NPDES application. Such a collaborative approach would be equally beneficial here.

Given that our extension requests have been denied and the lack of collaboration thus far, we submit these comments. The following items summarize the Water Agency's primary concerns:

1. The Proposed Permit Fails to Acknowledge the Water Agency's Limited Legal 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. Throughout the Proposed Permit, the Regional Board needs to identify which Permittee is responsible for implementing the various components of the Proposed Permit. The current permit made the distinction between the Permittees. Compare, for example, Section D - Special Provisions, Part 4- Planning and Land Development Program states "The Permittees shall implement a Planning and Land Development Program for all New Development and Redevelopment projects subject to this Order to..." The Water Agency does not have legal authority over Planning and Land Development and, therefore, could not meet this requirement and consequently would not be in compliance with this Proposed Permit. In short, the Water Agency does not have the legal authority to carryout the majority of the provisions of the Proposed Permit and the Proposed Permit improperly fails to recognize this fact.

2. The Proposed Permit Exceeds the Regional Board's Authority under the MS4 Program.

The Proposed Permit contradicts the plain language and legislative intent of the Clean Water Act. Phase I permits are intended to apply only to urban centers with a population of 100,000 or more, which do not exist in Sonoma County outside the City of Santa Rosa. The Proposed Permit currently provides no supporting arguments or justification, much less substantial evidence, supporting a notion that the area outside Santa Rosa should be regulated as a Phase I community. The intent of the CWA and the MS4 program was to target urban centers with defined population thresholds. Sonoma County is primarily rural in nature with several urban centers in the unincorporated areas ranging in size from about 7,500 to several hundred in population. Applying the MS4 permit to a rural environment is an inappropriate expansion of and contrary to the intent of the MS4 program.

3. The Regional Board is Creating Unfunded Mandates. The Proposed Permit contains a finding that asserts that the Proposed Permit "does not constitute an unfunded local government mandate." The Water Agency disagrees. As an initial matter, the Regional Board's jurisdiction does not include decisions or determinations regarding what is, 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.

4. The Proposed Permit Is Contrary to the Porter-Cologne Water Quality Control Act.

The Proposed Permit runs counter to the principle that the Regional Board should not specify the method and manner of compliance. In numerous instances, the Proposed Permit provides very specific guidance on how to achieve permit compliance. The Porter-Cologne Act does not permit this approach, and instead allows Permittees to devise the method and/or manner in which they comply with permit prohibitions or limits.

5. The Proposed Permit Imposes Significant Program Costs and Funding Uncertainty.

Where, as here, the Regional Board imposes permit restrictions that are more stringent than what federal law requires, 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. The Water Agency investigated the potential cost to implement the Storm Water Management Plan based upon the requirements in the Proposed Permit. The Water Agency estimates that the

Public Information Participation Program (PIPP) would take an additional three full time employees (approximately \$204,000 salary only); the Media Outreach program would cost an additional \$100,000; and the Monitoring Program would increase by ten-fold (from \$10,000 annually to \$100,000 annually). These costs do not include what it would take to create a volunteer monitoring and watershed programs (time and materials) need to have successful programs with in Region 1 in Sonoma County, costs to train employees as well as contractors on pesticide management and the storm water management plan, costs to implement all of the special studies in the Monitoring Plan, or costs to conduct outreach in the businesses sector. In all, the Water Agency estimates that costs would increase approximately \$1 million per year. Finally, unlike the County or the City, the Water Agency has no means to collect permit fees to cover the costs of its storm water program.

6. The Proposed Permit Lacks Clarity. In addition to its lack of clarity regarding individual Permittee's responsibilities, the Proposed Permit lacks clarity in its organization, layout and explanation of goals and provisions for which the Permittees are to be held responsible.

7. Rejection of Permittees' Request for an Extension of Time is Unreasonable. The Permittees submitted its proposed storm water management plan to the Regional Board in December 2007. Due to unknown circumstances the Regional Board released the Proposed Permit on September 9, 2008, with a 42-day comment period, ending on October 22, 2008. The Proposed Permit was released over 120 days late. Considering the Regional Board released the Proposed Permit late, refusing to grant an additional 30 days for the Permittees to comment on the Proposed Permit, which has significant changes from the previous permit, is unreasonable. The Water Agency again respectfully requests that the written public comment period for the Permit be extended an additional 30 days and a public workshop be held after the new year before the Regional Board. This extension would allow the Permittees and the public the opportunity to provide written comments after hearing more about the proposed permit at the staff workshop and would provide for a more collaborative effort between the Regional Board, the Permittees, and the public to produce a storm water management plan that would benefit Sonoma County.

In summary, the Water Agency has implemented a robust storm water program in good faith for the last several years, and remains committed to doing the same in the future. We have an outstanding compliance record, and have exceeded the scope of our current permit. Our actions, however, have been rewarded with a Proposed Permit that improperly fails to recognize the Water Agency's lack of legal authority to implement significant portions of the Proposed Permit and improperly seeks to regulate rural Sonoma County on a level equivalent to an urban Phase I community.

The Water Agency is committed to protecting water quality, and looks forward to working with you in a collaborative manner to ensure adoption of a new permit which does so in a legal and rational manner.

Thank you for your consideration of our comments on this important issue. Please contact Kevin Booker at (707) 521-1865 if you have any questions on the enclosed comments or if you would like to discuss them in more detail.

Sincerely,


Randy D. Poole
General Manager/Chief Engineer

Enclosures:

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

Attachment 2 – Comments Regarding Monitoring and Reporting Program No. R1-2008-0106
NPDES No. CA002505

Attachment 3 – U.S. Census Bureau 2000 Census Urbanize Areas

c: Pam Jeane, Kevin Booker, SCWA
Janice Gilligan, Storm Water Coordinator, Sonoma County PRMD
Rita Miller, Associate Civil Engineer, City of Santa Rosa, 69 Stony Circle, Santa Rosa, CA
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