



**Santa Clara Valley  
Urban Runoff**

**Pollution Prevention Program**

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San Jose • Santa Clara • Saratoga • Sunnyvale • Santa Clara County • Santa Clara Valley Water District



August 18, 2014

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

**Subject: Comment Letter – Draft Drinking Water Systems General Permit and Resolution**

Dear Ms. Townsend:

The Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP)<sup>1</sup> appreciates the opportunity to provide comments regarding the State Water Resources Control Board (SWB) Draft Drinking Water Systems General Permit and Resolution (Draft Permit). SCVURPPP strongly supports Draft Permit Section I.3, which exempts water purveyors from applying for coverage under this General Permit if:

*“The water purveyor is an MS4 permittee or co-permittee named on an MS4 permit that also authorizes discharges from community drinking water systems issued by the State Water Board or a Regional Water Board.”*

SCVURPPP’s members are among the 76 co-permittees to the San Francisco Bay Area Municipal Regional Stormwater Permit (MRP), Order No. R2-2009-0074, which already contains requirements concerning the management of potable water discharges. As this aspect of their urban runoff programs have already proven effective, they should be left in place and MRP co-permittees should not have to obtain additional coverage for potable water discharges under the SWB General Permit as such an approach would be both unnecessary and impose a duplicative burden on SCVURPPP’s members.

For the same reason, SCVURPPP does not believe its members should be required to file with the SWB a Notice of Non-Applicability (NONA) per Section II.B.2 using the form in Attachment B.2 by December 1, 2014 (Section II.D). The SWB already knows that they are co-permittees to the MRP and that the MRP contains potable water requirements that are effective in protecting water quality. There is therefore no need for SCVURPPP’s members (or other

<sup>1</sup> SCVURPPP member agencies include the cities of Campbell, Cupertino, Los Altos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale, the towns of Los Altos Hills and Los Gatos, the Santa Clara Valley Water District and Santa Clara County.

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MRP co-permittees) to prepare and file NONAs on an individual basis or have to await processing and receipt of a Notice of Non-Applicability Approval (Section II.C). Both municipalities and the SWB can reduce burdens on their staffs from the elimination of this requirement for MRP co-permittees and other MS4s that hold permits that already effectively address potable water discharges.

Finally, from a policy perspective, SCVURPPP supports the additional statement in Finding III.C. that:

*“The State Water Board’s intention in the issuance of this statewide NPDES Permit is to provide consistent and efficient regulation of discharges from drinking water systems statewide.”*

However, we would appreciate the SWB clarifying that the immediately following sentence in Finding III.C is not meant to imply that regulatory coverage for potable water discharges under an existing MS4 NPDES permit would be terminated within a year of adoption of the Draft Permit absent issuance of a Notice of Applicability. (We understand the SWB’s intent is to allow coverage for the potable water discharges under an existing MS4 permit to continue under that permit and its successors.)

Further, to address the spirit of Finding III.C. while recognizing the need for some flexibility given the Clean Water Act’s standards for different types of NPDES permits (such as the maximum extent practicable standard for MS4 permits), it is important for the SWB to recognize on the record here that potable discharge requirements contained in MS4 permits need not exactly parallel those in the General Permit in every respect as long as they provide an equivalent level of protection to water quality overall. We believe that having the SWB speak to this concern and embrace the “equivalent level of protection” concept for future potable discharge requirements in MS4 permits in a modified finding or response to comments is in everyone’s interest and will help avoid future disputes and controversy.

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Beyond the comments we make above directly on behalf of SCVURPPP’s members, to the extent that the SWB General Permit will regulate non-MRP dischargers, some of whom will need to coordinate with MRP permittees, SCVURPPP suggests that the numeric effluent limits (NEL) for chlorine residual and turbidity proposed in the General Permit be eliminated and replaced by “benchmarks” (or action levels). Given the experience of SCVURPPP’s members and other MS4s with potable water discharges, no evidence has emerged that suggests that the BMP-based approach and benchmark-based monitoring and reporting practices are not effective or that NELs are necessary or feasible for such discharges. Indeed, these potable water system discharges have already been defined by the State Water Board as “de minimis” and “not likely

to cause or have a reasonable potential to cause or contribute to an adverse impact on the beneficial uses of receiving waters.”<sup>2</sup>

Beyond this, we do not agree from a technical perspective with the Draft Permit’s justification of the need for Numeric Effluent Limits (NEL) for chlorine residual and turbidity. Fact Sheet section VI.B.3.b.i (p. F-55) appears to be asserting that since the typical (required) concentration of chlorine residual in a water distribution system is at a level above the U.S. EPA’s acute water quality criterion, that reasonable potential for toxicity exists for chlorinated waters that are within 300 feet of receiving waters. While it is true that water purveyors are required to maintain a chlorine residual in their distribution systems, the appropriate point of application for a Reasonable Potential Analysis (RPA) is after the application of dechlorination BMPs. Following application of industry standard dechlorination BMPs, chlorine residual concentrations would be reduced to below the reporting level (minimum level (ML)) of handheld instruments (0.13 mg/L based on a State of Missouri ML study) and therefore not show reasonable potential.

We also disagree with the alternative rationale section VI.B.4 of the Fact Sheet cited as the basis for the finding of reasonable potential for toxicity. The mere existence of a water quality objective for a given constituent does not constitute sufficient grounds for imposition of a numeric WQBEL.<sup>3</sup> Similarly, the availability of a test method, in this case field test kits, does not constitute sufficient grounds for imposition of numeric WQBELs.<sup>4</sup>

Finally, even to the extent that we are speaking about those who may have to coordinate with MS4s, we also disagree with the characterization of the “feasibility” of imposing numeric WQBELs in the urban runoff-related context. As you know, in 2005 and 2006 the SWB convened a Blue Ribbon Panel of Experts to address the feasibility of NELs in California’s storm water permits (“The Feasibility of Numeric Effluent Limits Applicable to Discharges of

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<sup>2</sup> This definition is codified in the California Code of Regulations (CCR Title 23 Division 3 Chapter 9 Article 1 Section 2200 Subdivision (b) (9) Category 3 footnote 18).

*18 De minimis discharge activities include, but are not limited to, the following: ... discharges from fire hydrant testing or flushing; discharges resulting from construction dewatering; discharges associated with supply well installation, development, test pumping, and purging; discharges resulting from the maintenance of uncontaminated water supply wells, pipelines, tanks, etc.; discharges resulting from hydrostatic testing of water supply vessels, pipelines, tanks, etc.; discharges resulting from the disinfection of water supply pipelines, tanks, reservoirs, etc.; discharges from water supply systems resulting from system failures, pressure releases, etc.; and other similar types of wastes that have low pollutant concentrations and are not likely to cause or have a reasonable potential to cause or contribute to an adverse impact on the beneficial uses of receiving waters yet technically must be regulated under an NPDES permit. (emphasis added)*

<sup>3</sup> Even if the above were not the case, with respect to setting an appropriate WQBEL, it is questionable whether the USEPA WQC for chlorine residual (EPA 440/5-84-030, January 1985) is applicable to these *intermittent* potable water system discharges. The 1985 WQC document states that “These criteria are intended to apply to situations of *continuous* exposure ...” (p. 2, emphasis supplied).

<sup>4</sup> It is also important to recognize in this regard that field measurements, using handheld instruments, taken frequently by non-laboratory staff, are subject to interference by such things as turbidity, potentially causing false positive readings.

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Stormwater Associated with Municipal, Industrial, and Construction Activities (June 19, 2006)). For multiple reasons, the Panel concluded that NELs were infeasible. Subsequently NELs were therefore deleted from the Construction General Permit Order No. 2009-0009-DWQ and subsequent amendments and also, more recently, from the Industrial Stormwater General Permit (Order No. 2014-0057-DWQ). The same should be the case here.<sup>5</sup>

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In conclusion, SCVURPPP's members strongly support the Draft Permit excluding them since they already have an MS4 permit that regulates potable water discharges and ask that they and other MRP co-permittees also be exempted from filing a NONA. We also would appreciate the State Board embracing an equivalent level of protection concept in terms of potable water requirements in future MS4 permits. Finally, we thank the SWB in advance for its consideration of our additional comments as set forth above.

Sincerely,



Adam W. Olivieri, Dr.PH., P.E.  
Program Manager, SCVURPPP

Cc: SCVURPPP Management Committee  
BASMAA Member Agencies  
CASQA Chair and Executive Director

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<sup>5</sup> Beyond these issues, relative to those who will be covered and have to coordinate with its members, SCVURPPP generally supports the proposed approaches to notification, monitoring, and reporting requirements in the Draft Permit. One exception is the absence of a volume threshold for direct discharges to Waters of the United States (Attachment E – Monitoring and Reporting Program II.A.1., p. E-3). We would suggest consideration of a 50,000 gallon threshold that has been used in other higher threat to water quality regulatory contexts (e.g., SSOs, recycled water).