



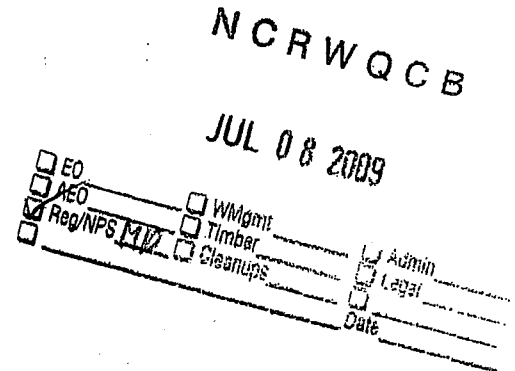
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

July 6, 2009

Mona Dougherty
California Regional Water Quality Control Board,
North Coast Region
5550 Skylane Boulevard, Suite A
Santa Rosa, California 95403



Re: Draft MS4 Permit for City of Santa Rosa and Co-Permittees (NPDES Permit No. CA0025054)

Dear Ms. Dougherty:

Following below are EPA Region 9's comments on the revised draft permit for discharges from the Municipal Separate Storm Sewer System (MS4) serving the City of Santa Rosa and its co-permittees (NPDES permit No. CA0025054). On October 22, 2008, we submitted comments on the previous draft permit dated September 9, 2008.

EPA appreciates the efforts made by Regional Board staff to respond to our comments on the previous draft permit. Our comments on the latest draft mainly concern the low impact development (LID) requirements and the TMDL requirements. We still believe that certain revisions and clarifications are necessary in these requirements to ensure a clear and enforceable permit. We are also providing comments on certain other issues on which we understand the Board is requesting comment.

A. LID Requirements

As we pointed out in our October 22, 2008 comments, Region 9 is seeking quantitative LID requirements in MS4 permits to ensure clear, measurable and enforceable requirements in the permits. Although the revised draft permit for the City of Santa Rosa has a number of requirements pertaining to LID (particularly in Part E.5 of the draft permit), it ultimately does not seem to go further than requiring a "preferential consideration of LID", as noted on page 54 of the draft fact sheet. The permit requires an updated SUSMP manual and a "New Development/Redevelopment Integrated Water Quality/Resource Plan," both of which need to integrate LID principles. However, we do not see any clear, measurable LID requirements, as we requested in our October 22, 2008 comments.

For an example of appropriate quantitative LID requirements, we suggest you consider the recently-adopted North Orange County MS4 permit (NPDES permit No. CAS618030), available at:

http://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/oc_permit.shtml.¹ The Orange County MS4 permit requires clearly defined LID controls for new development and significant redevelopment for a specified design storm and this ensures a measurable and enforceable permit requirement. The permit also recognizes that the LID requirements may not be practicable for certain projects and also provides for “alternatives and in lieu” programs in such circumstances, which would be subject to review and approval by the Executive Officer (EO).

The Santa Rosa MS4 permit also includes provisions for alternative requirements in Part E.6 of the permit. However, we believe the Mitigation Funding section, in Part E.6.4 of the permit, needs clarification. Specifically, there is mention of granting of a waiver of impracticability, but the permit does not specify who grants these waivers or what the basis for them is. If the permit is going to allow creation of a mitigation funding program, for EO approval, it should specify how the impracticability waivers should be granted. We suggest you consider the approach in the recently-adopted North Orange County permit noted above in which the permittees prepare practicability criteria, which the EO approves, and then the permittees can grant the waivers pursuant to the approved criteria.

In describing acceptable LID practices in the permit, we also suggest you consider section XII.C.2 of the North Orange County MS4 permit which refers to practices that “infiltrate, harvest and re-use, evapotranspire or bio-treat” (see also footnote 56 in the permit) the design storm. At present, the draft permit for Santa Rosa appears to include practices which may function more as treatment BMPs (for example see Part E.5.2.b(3)(A)(iii)) rather than LID practices, and not generate the full water quality benefits of LID.

Finally, we understand concerns have been raised about the project size thresholds found in Part E.4.6 of the draft permit which would define the universe of projects for which requirements such as LID would apply. We have reviewed the proposed thresholds and we believe they are reasonable and if anything slightly less stringent than other recent California MS4 permits such as the North Orange County MS4 permit. As such, we believe these thresholds, as a minimum, would be appropriate for the new permit.

B. Total Maximum Daily Loads (TMDLs)

We believe that certain additional clarifications and permit revisions are needed to ensure the consistency of the draft permit with the TMDL for the Laguna de Santa Rosa. The fact sheet (page 26) notes the TMDL was adopted by the Regional Board and approved by EPA in 1995, and therefore is in effect at this time. The fact sheet describes

¹ Another recently-issued MS4 permit to consider with suitable quantitative LID requirements would be the Ventura County permit adopted in May 2009 by the Los Angeles Regional Board, available at: http://www.waterboards.ca.gov/losangeles/water_issues/programs/stormwater/municipal/index.shtml.

the TMDL as a phased TMDL² with an "anticipated" compliance date of July 2000. As you know, NPDES regulations at 40 CFR 122.44(d)(1)(vii)(B) require that NPDES permits be consistent with the assumptions and requirements of wasteload allocations (WLAs) applicable to the discharges. In this regard, the fact sheet should clarify whether the July 2000 compliance date was intended to be a firm compliance deadline or just a non-enforceable goal. If firm compliance was intended, the draft permit should include conditions ensuring consistency with the WLAs applicable to the MS4s. Part C.3 of the draft permit lists the applicable WLAs but does not clarify (as it should) whether these WLAs are enforceable permit requirements.

Part C.2 of the draft permit also indicates the permit includes a number of requirements in Parts A and E to ensure compliance with the WLAs. Presumably, this is referring primarily to the many best management practice (BMP) requirements found in Part E. However, given the uncertainties in the performance of many of the BMPs commonly used for stormwater pollution control, it is often difficult to demonstrate consistency with an applicable WLA based on a requirement to implement a particular set of BMPs; we note that such a demonstration is not included in the fact sheet. Therefore, to ensure consistency with the applicable WLAs, we recommend they simply be incorporated into the permit as enforceable permit effluent limits, along with clear monitoring requirements adequate to demonstrate compliance. We suggest you again consider the North Orange County MS4 permit mentioned above for suitable permit language.

The draft permit for the City of Santa Rosa also notes the Laguna de Santa Rosa TMDL is currently being updated. However, until the updated TMDL is completed and approved by EPA, the existing TMDL remains in effect and its requirements need to be reflected in the new permit. If the modified TMDL is ultimately approved by EPA, the permit could be modified to incorporate the revised requirements.

C. *Other Issues*

1. *Hydromodification Controls*

We believe the draft permit includes appropriate requirements (Part E.5.2(c)) for hydromodification control in that it requires maintaining pre-development runoff flow rates and duration. This will ensure measurable requirements which in turn will ensure an enforceable permit, and we support the draft permit in this regard.

2. *State Statute Conformity*

We understand that concerns have been raised about the requirements of Part E.7 of the proposed permit which requires consideration of stormwater issues when preparing CEQA documents and when general plans are updated. We support the draft permit on

² EPA's approval letter (1995) includes the word "phased" TMDL; however, this is not a regulatory term and our intention was to acknowledge the Regional Board's plans to update the TMDL at some point in the future.

these matters. The requirements related to CEQA appear to be consistent with other recent California MS4 permits (such as the Orange County MS4 permit noted above) and appear to be reasonable to us. EPA stormwater permit guidance as far back as 1992 encourages stormwater issues to be considered in municipal general plans (as the draft permit would require); see for example EPA's Guidance Manual for the Preparation of Part 2 of the NPDES Permit Applications for Discharges from Municipal Separate Storm Sewer Systems (EPA 883-B-92-002, November 1992), available at: http://cfpub.epa.gov/npdes/docs.cfm?view=archivedprog&program_id=6&sort=date_published.

3. *Development Construction Program*

We understand that concerns have been raised about the requirements of Part E.8 of the proposed permit which includes grading restrictions during the wet season (variances may also be granted). We believe the draft permit requirements are fully supported in the fact sheet and we strongly support the draft permit on this matter. The proposed requirements are clearly appropriate given the existing impairments of the receiving waters for construction-related discharges such as sediment which are noted in the fact sheet. The fact sheet also notes the findings of the November 2007 EPA inspection of the City of Santa Rosa program which identified inadequate sediment and erosion control at construction sites as an MS4 program deficiency; similar concerns were identified in a previous 2002 EPA audit of the City of Santa Rosa program. We are pleased to see the conclusions of the inspection and the audit reflected in the draft permit.

4. *Public Agency Activities/Non-Stormwater and Illicit Discharges*

We understand that concerns have been raised about the various public agency activities required in Part E.9 of the draft permit, and the requirements related to non-stormwater discharges and illicit discharges in Part A.5 and Part E.10 of the draft permit. As we noted above in the discussion of LID requirements, Region 9 has been encouraging more prescriptive, quantitative requirements in MS4 permits to ensure clear, measurable and enforceable requirements. The need for such requirements has been a consistent theme in the roughly 50 MS4 audits we have conducted in our Region since 2001.

Although our reviews of draft California MS4 permits have recently been focused on matters such as LID and TMDLs, our recommendation for quantitative permit requirements extends to all aspects of a permit, including public agency activities, and requirements related to non-stormwater and illicit discharges. We have reviewed the requirements of the Parts E.9, A.5 and E.10 of the draft permit for the City of Santa Rosa and believe the requirements are consistent with other California MS4 permits, are fully supported by the fact sheet and we firmly support the draft permit with regards to these requirements.

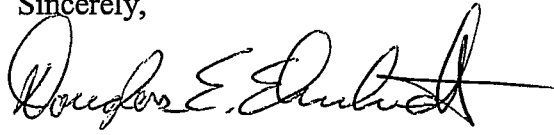
5. *Permit Boundary*

We have reviewed the proposed geographic boundary of the draft permit and we believe it is consistent with applicable regulations and guidance. Santa Rosa is a Phase I MS4 brought into the permit program as a result of the 1990 census and is subject to the Phase I regulations concerning the MS4 permit boundary. The applicable regulations at 40 CFR 122.26(b)(7) require permitting of incorporated places with a population of 100,000 or more (such as the City of Santa Rosa) and nearby MS4s designated by the permitting authority (Sonoma County in this case) based on the interrelationship between the MS4s.

Finding #21 also notes the Board intends to work with Sonoma County on implementation of certain program elements (such as LID) countywide using other regulatory authorities, and we would support such an extension of the program. The Finding further mentions the permit may be reopened if agreement to implement such programs cannot be reached. NPDES regulations at 40 CFR 122.26(a)(1)(v) provide that NPDES permits may be issued for a stormwater discharge that is determined "to contribute to a violation of a water quality standard or is a significant contributor of pollutants to Waters of the United States." The fact sheet includes a good discussion of the effects of stormwater discharges in Sonoma County which could support such a determination. We would support the Board on this issue, as this would ensure implementation of important programs such as LID in areas where growth may occur in the future, but may not be apparent at this time.

We appreciate the opportunity to provide input on this draft permit. If you would like to discuss these comments, please contact John Tinger at (415) 972-3518, or Eugene Bromley at 415-972-3510.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas E. Eberhardt", with a stylized, sweeping flourish at the end.

Douglas E. Eberhardt, Chief
NPDES Permits Office

