

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

HAND DELIVERED

July 6, 2009

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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

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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 May 22, 2009, draft Tentative Order issued by the California Regional Water Quality Control Board, North Coast Region for NPDES Permit No. CA0025054 for the City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency (Permittees) (Revised 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 (the Creek Stewardship Program 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 its curriculum. The Water Agency has partnered with the Russian River Watershed Association to administer and fund the Storm Water Pollution Prevention Video Contest for high school students for the last five years. In addition, 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. Additionally, the Water Agency has embarked on a project to develop a Low Impact Development (LID) Manual that potentially could be used by public and private entities throughout Sonoma County. Many of these activities are not required by the current or proposed storm water permit nor are they the Water Agency's legal responsibility; rather, they demonstrate the Water Agency's commitment to storm water pollution prevention.

The Water Agency appreciates the changes made in the Revised Proposed Permit which address some of our concerns and move the program toward improved effectiveness and cost efficiency. The Water Agency, however, continues to have the following primary concerns:

1. The Proposed Permit Fails to Acknowledge the Water Agency's Limited Legal Authority. As stated in our prior comments and throughout our meetings, the Water Agency does not have the legal authority to implement a majority of the provisions contained in the Revised Proposed Permit. The Water Agency is a 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 regulator or land use authority, and thus does not have the legal authority to enact ordinances, issue permits, regulate or inspect industrial or commercial facilities, impose controls on new development, or initiate enforcement actions, among others. The Water Agency possesses only the legal authority granted to it by the Legislature in its enabling statute.

The Revised Proposed Permit does not identify which Permittee is responsible for implementing the various components of the Revised Proposed Permit. In contrast, the current permit made the distinction between the Permittees. For example, the current permit applies the requirement to inspect retail gasoline service stations only to the County and the City; the Revised Proposed Permit, however, states the "Co-Permittees" – which includes the Water Agency – shall conduct such inspections despite the fact that the Water Agency has no legal authority to do so. The Water Agency continues to request that the Regional Board specify either in the text of the Revised Tentative Order or in a table which sections do not apply to the Water Agency. At minimum, the text of Finding 26 and the Fact Sheet's discussion of Local Land Use Authority should be revised to accurately state the Water Agency's limited legal authority (our specific suggestions are enclosed). In short, the Water Agency does not have the legal authority to carryout the majority of the provisions of the Revised Proposed Permit and the Revised Proposed Permit does not accurately recognize this fact.

2. MS4 Permit requiring coverage under State Water Board General NPDES permit for undefined future construction projects. Part 9, section 2(b), requires the Water Agency to obtain coverage under the State Water Board's General NPDES permit for storm water discharges associated with construction activity no later than October 8, 2009, for long-term maintenance projects, including maintenance or replacement of streets, sidewalks, roads, and any other project that the Water Agency undertakes including all capital improvement projects if either one or more acres of land are disturbed by grading, clearing or excavation activities. This requirement should be removed from the Tentative Order.

Whether the Water Agency must obtain coverage under the State Water Board's General NPDES construction storm water permit for a particular project is a site-specific factual inquiry that the Water Agency must undertake pursuant to the Clean Water Act, federal regulations, and the terms of the State Water Board's General NPDES permit for construction activities, and should not involve the Tentative Order's regulation of municipal storm water discharges. The Tentative Order cannot mandate a deadline for obtaining coverage under the State Water Board's General NPDES permit for undefined, future projects, for which the Water Agency can not currently obtain coverage due to the lack of

factual information regarding the project and inability to fashion appropriate BMPs and a SWPPP. Subjecting the Water Agency to enforcement under the Tentative Order for failure to obtain coverage by a specific date, when the Water Agency may be unable to do so, is unreasonable, and violates Water Code section 13000.

3. The Regional Board is Creating Unfunded Mandates. The Revised Proposed Permit and the Fact Sheet assert that the Revised Proposed Permit is not an unfunded state mandate. The Water Agency continues to disagree. 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 Revised 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. There are multiple additional examples where the Revised Proposed Permit exceeds federal requirement.

As you are aware, there are current Test Claims before the Commission on State Mandates involving regulation of municipal storm water discharges under the Clean Water Act and Porter-Cologne Water Quality Control Act, *see, e.g.*, Test Claim 07-TC-09 (pertaining to municipal storm water NPDES permit issued by the San Diego Regional Water Board to the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority, Order No. R9-2007-001). The Water Agency incorporates by reference herein the arguments made by those permittees as to the many similar programmatic elements of the Revised Proposed Permit that the Water Agency believes far exceeds the Clean Water Act's mandates regarding storm water regulation, found at 40 C.F.R. §122.26.

4. The Revised Proposed Permit Is Contrary to the Porter-Cologne Water Quality Control Act. The Revised Proposed Permit runs counter to the principle that the Regional Board should not specify the method and manner of compliance. In numerous instances, the Revised 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 Revised Proposed Permit Lacks Clarity. In addition to its lack of clarity regarding individual Permittee's responsibilities, the Revised Proposed Permit continues to lack clarity in its organization, layout and explanation of goals and provisions for which the Permittees are to be held responsible.

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. The Revised Proposed Permit, however, imposes significant new requirements and does not adequately recognize the Water Agency's lack of legal authority to implement significant portions of the Revised Proposed Permit.

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. Pogue
General Manager/Chief Engineer

Enclosures: **Attachment 1** – Comments Regarding Order No. R1-2009-0050, NPDES No. CA0025054, WDID No. 1B96074SSON
Attachment 2 – Comments Regarding Monitoring and Reporting Program Order No. R1-2009-0050 NPDES No. CA002505
Attachment 3 – Comments Regarding Fact Sheet Order No. R1-2009-0050 NPDES No. CA002505

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 95401

Attachment 1

**Comments Regarding Order No. R1-2009-0050,
NPDES No. CA0025054,**

ATTACHMENT 1

July 6, 2009

Sonoma County Water Agency

Comments Regarding Order No. R1-2009-0050, 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 and Non-Storm Water Discharges from Municipal Separate Storm Sewer Systems for the City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency follow.

Proposed Storm Water Permit

FINDINGS:

Finding 26:

Comment: The Permittees have significantly different legal authority. The Water Agency is a Permittee because it owns some of the flood control channels within the permit boundary. The Water Agency's role is unique in that it is not a regulator or land use authority, and thus does not have the legal authority to enact ordinances, issue permits, regulate or inspect industrial or commercial facilities, impose controls on new development, or bring enforcement actions, among others. The Water Agency possesses only the legal authority granted to it by the Legislature in its enabling statute. The Water Agency has legal responsibility only for flood channels it owns in fee. With respect to the flood control channels not owned in fee, the Water Agency simply holds an easement to maintain the carrying capacity of the flood control channel. Throughout the Permit, the Regional Board needs to identify which Permittee is responsible for implementing the various components of this Permit. The current permit makes this distinction between the Permittees. At minimum, this Finding should be revised to accurately state that the Water Agency possesses no land use authority.

Suggested Revision to Finding 26:

1. This Order and its requirements are not intended to restrict or control local land use decision-making authority. The Co-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 Co-Permittees' jurisdiction. The Regional Water Board recognizes that the Co-Permittees' land use authority allows urban developments that may generate pollutants and runoff that could impair receiving water quality and beneficial

uses. The Co-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 and to effectively prohibit non-storm water discharges into the storm sewers. This responsibility requires the Co-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~~. Therefore, not all requirements in this Order are applicable to the Water Agency.

SECTION A – DISCHARGE PROHIBITIONS

- Section 1 Comment: The introduction to Discharge Prohibitions states “Discharges from the MS4... are prohibited,” yet Table 1 has language that says “where such flows are diverted into the MS4, or enter the MS4.” The Clean Water Act is clear that the NPDES program governs flows *from* MS4s. This Permit should be consistent throughout that it governs flows *from* MS4s and not flows into MS4s.
- Section 2 Comment: None
- Section 3 Comment: None
- Section 4 Comment: None
- Section 5 Comment: None

SECTION B – RECEIVING WATER LIMITATIONS

- Section 1 Comment: None
- Section 2 Comment: None
- Section 3 Comment: The Water Agency does not have regulatory or land use authority and thus does not have the authority to modify other’s BMPs. Therefore, The Water Agency will not implement Section B – Receiving Water Limitations due to the lack of authority the Water Agency has over BMP implementation.
- Section 4 Comment: None

SECTION C- TOTAL MAXIMUM DAILY LOAD PROVISIONS FOR DISCHARGES TO THE LAGUNA DE SANTA ROSA

- Section 1 Comment: None
- Section 2 Comment: None
- Section 3 Comment: On Page 27 of the Fact Sheet, the 1995 Waste Reduction Strategy for the Laguna de Santa Rosa Total Maximum Daily Load (TMDL) identifies Sonoma County, City of Santa Rosa, Rohnert Park, Cotati, and Sebastopol as contributors of urban runoff. Because the Attainment Points are at locations where there is the potential for multiple contributors, whom are not apart of this Order, Section 3 should be revised as follows:
 - *The Co-Permittees shall submit a report in year five including the MS4 outfall monitoring results and compare results to an analysis of their compliance with the Laguna TMDL.*
 - *If an updated Laguna TMDL and Implementation Plan are adopted prior to year five, the Co-Permittees shall submit the MS4 outfall monitoring and analysis of the results by year five, but without verification of compliance with the 1995 Laguna TMDL.*

SECTION D – STORM WATER QUALITY MANAGEMENT PROGRAM IMPLEMENTATION

Part 1 – General Requirements

- Section 1 Comment: None
- Section 2 Comment: None

Part 2 – Legal Authority

As noted above, the Permittees have significantly different legal authority. The Water Agency is a Permittee because it owns some of the flood control channels within the permit boundary. The Water Agency's role is unique in that it is not a regulator or land use authority, and thus does not have the legal authority to enact ordinances, issue permits, regulate or inspect industrial or commercial facilities, impose controls on new development, or initiate enforcement actions, among others. The Water Agency can control activities only on flood channels it owns in fee. The Water Agency possesses only the legal authority granted to it by the Legislature in its enabling statute.

- Section 1 Comment: The Water Agency does not have regulatory or land use authority; therefore the Water Agency will not implement of Section D -Storm Water Quality Management Program Implementation, Part 2- Legal Authority, Section 1 of this Order.
- Section 2 Comment: The Water Agency does not have regulatory or land use authority; therefore the Water Agency will not implement Section D -Storm Water Quality

Management Program Implementation, Part 2- Legal Authority, Section 2 (b), (c), and (d) of this Order.

- Section 3 Comment: The Water Agency does not have legal authority to enact a Storm Water Ordinance. Consequently, the Water Agency will not implement Section D -Storm Water Quality Management Program Implementation, Part 2- Legal Authority, and Section 3 of this Order.
- Section 4 Comment: The Water Agency does not have regulatory or land use authority and cannot adopt ordinances and/or municipal code modifications. .Consequently, the Water Agency will not implement Section D -Storm Water Quality Management Program Implementation, Part 2- Legal Authority, Section 4 of this Order.

Part 3 – Fiscal Resources:

- Section 1 Comment: None

Part 4 – Modifications/Revisions:

- Section 1 Comment: None
- Section 2 Comment: None

Part 5 – Responsibilities of the Permittees:

- Section 1 Comment: None

SECTION E - SPECIAL PROVISIONS

Part 1 – General Requirements:

- Section 1 Comment: None
- Section 2 Comment: None
- Section 3 Comment: None
- Section 4 Comment: None

Part 2 – Public Information and Participation Program (PIPP):

- Section 1 Comment: Suggested text revision
 - *The Co-Permittees shall implement a Public Information and Participation Program (PIPP) that includes, but is not limited to, the requirements listed in this section. The Co-Permittees shall be responsible for developing and implementing the PIPP, and shall coordinate with other entities (such as Sonoma State University and the Santa Rosa Junior College) to implement specific requirements. The objectives of the PIPP are as follows:*

- *To measurably increase the knowledge of the target audience about the MS4, the adverse impacts of storm water pollution on receiving waters and potential solutions to mitigate the impacts;*
 - *To measurably change behavior of target audiences regarding waste disposal and activities that generate storm water pollution by encouraging implementation of appropriate solutions;*
 - *To involve and engage communities within the Permit Boundary Sonoma County to participate in mitigating the impacts of storm water pollution; and*
 - *To regularly review PIPP program elements to ensure that efforts are effective in educating the public and changing behavior. At a minimum, the Co-Permittees shall devote one regular MS4 Co-Permittee meeting per year to discuss PIPP program effectiveness.*
- Section 2 Residential Program Comment: With respect to Outreach and Education, the Water Agency has neither the legal authority to dictate educational curriculum nor the legal authority to require businesses to implement storm water requirements. The Water Agency will implement the following Part 2, Section 2, subsection (c) (1) (A, B, C-IV, E and F).
 - Section 3 Business Program Comment: The Water Agency does not have any legal authority over businesses in Sonoma County; therefore the Water Agency will not implement any part of Section E - Special Provisions, Part 2, Section 3 – Businesses Program.

Part 3 – Industrial/Commercial Facilities Program

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

Special Provisions: Part 5 – New Development/Redevelopment Integrated Water Quality/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 E - Special Provisions, Part 5- New Development/Redevelopment Integrated Water Quality/Water Resource Plan of this Order. The Water Agency will participate with the other Permittees in the development of Low Impact Development (LID) concepts.

Additional comments:

- Suggested revision to text on Page 41: *“Marin LID manual, the Contra Costa County sizing factor approach, the State Water Board stream erosion identification tool for hydromodification planning (Bowles), or TR-55 model; for sizing BMPs for the two-year 24-hr rain event that keeps post-construction peak discharge, ~~peak velocity~~, and peak duration at or below those respective pre-construction levels.*
- Suggested text revision on Page 41: The Co-Permittees will also ensure that post pre-construction storm water runoff volume is the same or lower ~~as the post~~-than pre-construction storm water runoff volume when possible.

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 E - Special Provisions, Part 6- Implementation of New Development/Redevelopment Post Construction BMPs of this Order.

Special Provisions: Part 7 – State Statute Conformity

- Section 1; Comment: The Water Agency does not have legal or regulatory authority over CEQA documents prepared by others. Therefore, the Water Agency will not update its CEQA processes to provide comments on potential storm water quality impacts and appropriate mitigation when reviewing CEQA documents prepared by others. The Water Agency’s current practice for preparing CEQA documents looks at all project related impacts. Therefore, no update is needed at this time.
- Section 2; Comment: The Water Agency does not have any legal authority over the General Plan; therefore the Water Agency will not implement any part of Special Provisions; Part 7 – State Statute 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 E - 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 regulatory or land use authority; therefore, the Water Agency will not implement any part of Section E - Special Provisions, Part 9- Public Agency Activities Program, Sections 1c through 1h of this Order.
- Section 2 Comment: The Water Agency does not have regulatory or land use authority; therefore, the Water Agency will not implement any part of Section E - Special Provisions, Part 9- Public Agency Activities Program, Section 2 Public Construction Activities Management of this Order.
- Section 3 Comment: None

- Section 4 Comment: The Water Agency does not have regulatory or land use authority; therefore, the Water Agency will not implement any part of Section E - Special Provisions, Part 9- Public Agency Activities Program, section 4 Roadway Paving or Repaving Operations (For Private or Public Projects) of this Order.
- Section 5 Comment: The Water Agency does not have legal authority over Streets and Roads; therefore, the Water Agency will not implement any part of Section E - Special Provisions, Part 9- Public Agency Activities Program, Section 5 Streets and Roads of this Order.
- Section 6 Comment: None
- Section 7 Comment: None
- Section 8 Comment: The Water Agency does not have legal authority over Parks and Recreation; therefore, the Water Agency will not implement any part of Section E - Special Provisions, Part 9- Public Agency Activities Program, Section 8 (a) of Landscape, Park, and Recreational Facilities Management of this Order.
- Section 9 Comment: Section E - Special Provisions, Part 9- Public Agency Activities Program, subsection 9 Storm Drain Operation and Management and Trash Management The Water Agency does not own storm drains; therefore the Water Agency will not implement Sections 9 (a),(b), (c), and (e).
- Section 10 Comment: None
- Section 11 Comment: None

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

- Comment: The Water Agency does not own storm drains, therefore the Water Agency will not implement Special Provision, Part 10. The Water Agency will work with the other Permittees

Special Provisions: Part 11 – Reporting Program

- Section 1 Comment: None

Attachment 2

Comments Regarding Monitoring and Reporting Program

Order No. R1-2009-0050

NPDES No. CA002505

ATTACHMENT 2

July 6, 2009

Sonoma County Water Agency

Comments Regarding Monitoring and Reporting Program No. R1-2009-0050
NPDES No. CA0025054

The Reissuance of NPDES
Permit No. CA0025054

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

Comments Regarding Draft Storm Water and Non-Storm Water Discharges from Municipal Separate Storm Sewer Systems for the City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency Monitoring and Reporting Program follow.

Monitoring and Reporting Program

Section A - Chemical Monitoring

- Section 1 Chemical Monitoring Comment: The Water Agency does not own any outfalls; therefore, the Water Agency will not implement any part of Section A – Chemical Monitoring Subsection 1a through 1c Outfall Monitoring of this Order.
- Section 2 Comment: None

Section B - Aquatic Toxicity Monitoring

- Comment: The Water Agency does not have regulatory or land use authority and is unable to regulate storm water discharge; therefore, the Water Agency will not implement any part of Section B – Aquatic Toxicity Monitoring of this Order.

Section C – Bioassessment

- Comment: The Water Agency does not have regulatory or land use authority and is unable to regulate storm water discharge; therefore, the Water Agency will not implement any part of Section C – Bioassessment of this Order.

Section D - Special Studies

Temperature Monitoring

- Comment: The Water Agency does not have regulatory or land use authority and is unable to regulate storm water runoff; therefore, the Water Agency will not implement any part of Section D – Special Studies, Temperature Monitoring Program of this Order.

Bacteria Monitoring

- Comment: The Water Agency does not have regulatory or land use authority and is unable to regulate bacteria runoff within City Limits of Santa Rosa; therefore, the Water Agency will not implement any part of Section D – Special Studies, Bacteria Monitoring of this Order.

Visual Flow Monitoring

- Comment: None

Atmospheric Deposition

- Comment: The Water Agency does not have regulatory or land use authority and is unable to regulate Atmospheric Deposition; therefore, the Water Agency will not implement any part of Section D – Special Studies, Atmospheric Deposition Study of this Order.

Kelly Farm Nutrient Monitoring

- Comment: The Water Agency does not have regulatory or land use authority over Kelly Farm; therefore, the Water Agency will not implement any part of Section D – Special Studies, Kelly Farm Nutrient Monitoring Study of this Order.

BMP Effectiveness Special Study

- Comment: The Water Agency does not have regulatory or land use authority, but will work with others Co-Permittees on Section D – Special Studies, BMP Effectiveness Special Study of this Order.

Volunteer Monitoring Programs

- Comment: None

Attachment 3

Comments Regarding Fact Sheet

Order No. R1-2009-0050

NPDES No. CA002505

ATTACHMENT 3

July 6, 2009

Sonoma County Water Agency

Comments Regarding Order No. R1-2009-0050, NPDES No. CA0025054,
WDID No. 1B96074SSON

The Reissuance of NPDES
Permit No. CA0025054

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Comments Regarding Draft Fact Sheet for Storm Water and Non-Storm Water Discharges from Municipal Separate Storm Sewer Systems for the City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency follow.

Fact Sheet

Planning and Land Development Program

Comment: The following is taken from the Fact Sheet beginning on Page 52:

Local Land Use Authority and Water Quality

Storm water runoff needs to be addressed during the three major phases of development (planning, construction, and use) in order to reduce the discharge of pollutants to the MEP and protect receiving waters. Urban development which is not guided by water quality planning policies and principles can unnecessarily result in increased pollutant load discharges, flow rates, and flow durations which can impact receiving water beneficial uses. Construction sites without adequate BMP implementation result in sediment runoff rates which greatly exceed natural erosion rates of undisturbed lands, causing siltation and impairment of receiving waters. Existing development generates substantial pollutant loads which are discharged in storm water runoff to receiving waters.

Municipalities have land use authority and make planning decisions based on that authority. The ultimate responsibility for the pollutant discharges, increased runoff, and inevitable long-term water quality degradation that results from urbanization lies with local governments. This responsibility is based on the fact that it is the local governments that have authorized the urbanization (i.e., conversion of natural pervious ground cover to impervious urban surfaces) and the land uses that generate the pollutants and runoff. Furthermore, the MS4 through which the pollutants and increased flows are conveyed, and ultimately discharged into natural receiving waters, are owned and operated by the same local governments. In summary, the Co-Permittees under this Order are responsible for discharges into and out of their MS4s because:

- (a) They own and operate the MS4; and
- (b) They have the legal authority that authorizes the very development and land uses which generate the pollutants and increased flows in the first place.

For example, since grading cannot commence prior to the issuance of a local grading permit, the Co-Permittees have a built-in mechanism to ensure that all grading activities are protective of receiving water quality. A Co-Permittee has the authority to withhold issuance of the grading permit until the project proponent has demonstrated to the satisfaction of the Co-Permittee that the project will not violate their ordinances or cause the Co-Permittee to be in violation of its MS4 permit. Since the Co-Permittee will ultimately be held responsible for any discharges from its MS4 by the Regional Water Board, the Co-Permittee will want to use its own permitting authority to ensure that whatever measures the Co-Permittee deems necessary to protect discharges into its MS4 are in fact taken by the project proponent.

This Order holds the local government accountable for this direct link between its land use decisions and water quality degradation. This Order recognizes that each of the three major stages in the urbanization process (development planning, construction, and the use or operational stage) are controlled by and must be authorized by the local government. Accordingly, this Order requires the local government to implement, or require others to implement, appropriate best management practices to reduce the discharges of pollutants and increased flow from each of the three stages of urbanization. Including plans for BMP implementation during the design phase of new development and redevelopment offers the most cost effective strategy to reduce storm water runoff pollutant loads to surface waters.

Comment: The Water Agency is a 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 regulator or land use authority, and thus does not have the legal authority to enact ordinances, issue permits, regulate or inspect industrial or commercial facilities, impose controls on new development, or initiate enforcement actions among others. Therefore, the statement that, as a Co-Permittee, the Water Agency has "*the legal authority that authorizes the very development and land uses which generate the pollutants and increased flows in the first place*" is grossly inaccurate.. This section requires substantial revisions to accurately reflect the Water Agency's lack of regulatory and land use authority. At minimum, there needs to be a statement that the Water Agency does not have regulatory or land use authority and, therefore, the discussion of land use authority and water quality does not apply to the Water Agency.