Item No. 4, MS4 Storm Water Permit

Santa Rosa, Sonoma County and the Sonoma County Water Agency

Executive Officer's Summary Report Attachment 7:

Comments Received on the 2nd Draft Permit

PUBLIC COMMENTS on the

City of Santa Rosa, County of Sonoma, and Sonoma County Water Agency

Phase I MS4 NPDES Permit Term 3

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Coast Action Group

1. Coastal Zone Management Act – Background

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SONOMA COUNTY WATER AGENCY

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

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July 6, 2009

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☐ EO ☐ WMgmt ☐ Admin
☐ AEO ☐ Timber ☐ Legal
☐ Reg/NPS ☐ Cleanups ☐
☐ Date

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

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.

1.1

1.2

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. 1.3

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' 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. 1.4

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 1.5

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. 1.6

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. 1.7 1.8 1.9

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. 1.10

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. 1.11

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. 1.12

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,

Pamela Jeane for
Randy D. Poole
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

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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.

1.13

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 <u>from</u> the MS4… are prohibited," yet Table 1 has language that says "where such flows are diverted <u>into</u> 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. 1.14

- 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. 1.15

- 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.* 1.16
        - *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 1of this Order. 1.17

- 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* 1.18
- *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). 1.19

- 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. 1.20

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. 1.21

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. 1.22

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. 1.23 1.24

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.* 1.25

- 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. 1.26

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. 1.27

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. 1.28

- 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 Statue Conformity, Section 2 of this Order. 1.29

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. 1.30

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. 1.31

- 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. 1.32

- 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. 1.33

- 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. 1.34

- 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. 1.35

- 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). 1.36

- 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 1.37

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. 1.38

- 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. 1.39

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. 1.40

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. 1.41

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. 1.42

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. 1.43

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. 1.44

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. 1.45

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

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 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. 1.46

July 6, 2009

CITY OF SANTA ROSA

UTILITIES DEPARTMENT
69 Stony Circle
Santa Rosa, CA 95401
707-543-4200
Fax: 707-543-3936

HAND DELIVERED
Catherine E. Kuhlman, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard
Santa Rosa, CA 95403

CITY OF SANTA ROSA COMMENTS ON ORDER NO. R1-2009-0050 -DRAFT NPDES MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGE PERMIT

Dear Ms. Kuhlman:

On May 22, 2009 Order No. R1-2009-0050, NPDES No. CA0025054, Second Draft Storm Water Permit (Draft Permit), for County of Sonoma, City of Santa Rosa (City) and the Sonoma County Water Agency (Permittees) was issued. The City appreciates the changes made to the Draft Permit which addressed some of our concerns and which moved the program toward improved effectiveness and cost efficiency. However, the City continues to be very concerned with the permit approach and the ability to maintain compliance with its extensive provisions which will result in having to cut effective and established water quality programs. The Draft Permit language remains quite different from what was submitted as part of the initial proposed Term 3 Storm Water Management Plan (SWMP) and contains a substantial increase in requirements and an apparent disregard for many of the proposed/existing management practices developed with the region's unique basin conditions and needs in mind. 2.1 2.2 2.3 2.4

Please be advised that it remains the City's intent to continue implementation of a comprehensive, cost-effective storm water pollution control program to protect and improve water quality in Sonoma County. Yet, the City takes exception to the prescriptive nature and lack of flexibility in the Draft Permit as it is currently written. Also of concern is lack of clarity regarding which provisions are applicable to each Permittee as well as the associated potential liability risks for each Permittee. 2.5 2.6

Existing Storm Water Management Program

The City has continuously developed its SWMP to improve water quality since 1996. During the November 2007 inspection conducted by US EPA, several program elements were praised as "model" program elements. Programmatic enhancements were recommended in only three of the seven program elements reviewed and the City proposed changes to address all of these in the initial Term 3 SWMP. The City's existing SWMP features many beneficial elements beyond those required by the current NPDES storm water permit. These have included funding of the Creek Stewardship program, an Environmental Crimes Detective who aids in the investigation/enforcement of illicit discharges, the High School Bioassessment program, the annual six month Down the Drain storm water exhibit at Spring Lake's Environmental Discovery Center, numerous creek restoration activities as well as the award winning Summer 2008 Storm Water & Creek Program Summary. Many of these existing program elements may need to be curtailed to comply with the prescriptive nature of the draft permit. 2.7

Santa Rosa ★★★★★ All-America City 2007

Receiving Water Limitations Are Not Consistent With The Clean Water Act

The City appreciates the Regional Water Board's modification of the Receiving Water Limitation language in the revised Tentative Order, at section B.4., in response to prior comments made by the City, which requested the Regional Board implement the State Water Resources Control Board's (State Water Board) precedential decision, Order WQ 99-05, that prescribes the specific receiving water limitation language to be included in municipal storm water permits. However, the Regional Water Board's revised language does not completely implement the language required by the State Water Board, and changes a critical aspect of the recommended language.

2.8

Specifically, State Water Board Order 99-05 prescribes the following language as the concluding paragraph:

> "So long as the permittees have complied with the procedures set forth above and are implementing the revised SWMP, the permittees do not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Regional Water Board to develop additional BMPs."

See State Water Board Order WQ 99-05 at page 3. While the Regional Water Board can modify the State Water Board's required language to reflect site-specific differences, such as the appropriate moniker of the respective management plan, the Regional Water Board is to adhere to the prescribed language above. Recent storm water permits issued by other regions have implemented the State Water Board's language (*see, e.g.,* R5-2007-0173).

Nonetheless, the concluding paragraph in the Receiving Water Limitation section of the revised Tentative Order states as follows:

> "The Co-Permittee(s) will have to implement alternative BMPs or combinations of BMPs and will repeat the procedure set forth above to comply with the receiving water limitations for continuing or recurring exceedances of the same WQS unless directed otherwise by the Regional Water Board Executive Officer. The Co-Permittees shall not be expected to continue the same specific BMPs repetitively if they have been shown to be ineffective."

See Tentative Order at page 16, Receiving Water Limitation B.4. The language in the Tentative Order is fundamentally different than that prescribed by the State Water Board, and the City has serious concerns regarding the implementation and enforcement of the proposed language. The City again requests that the Regional Water Board implement the language required by the State Water Board. The City also requests the Regional Water Board remove related language in the Tentative Order, such as the language in Part 3, section 3(a)(1), (page 27 of the Tentative Order) that states, "Likewise, for those BMPs that are not adequate to achieve WQS…".

2.8

If the Regional Water Board retains the proposed language over the City's objection, the City requests that prior to the revised Tentative Order being presented to the Regional Water Board for adoption, Regional Water Board staff first review the Water Quality Control Plan for the North Coast Region ("Basin Plan") and revise, where appropriate, water quality objectives which may

apply, or are to be applied, to storm water and urban runoff in accordance with Cal. Water Code sections 13000 and 13241, and adopt the requisite corresponding implementation plan for compliance pursuant to Cal. Water Code section 13242. Cal. Water Code §§ 13000, 13240 - 13242; see *also Cities of Arcadia, et al. v. State Water Resources Control Board, et al.,* Orange County Superior Court Case No. 06CC02974 (Nov. 10, 2008). The City is not aware that the Regional Water Board previously considered the factors set forth in Cal. Water Code section 13000 and 13241 when adopting the Basin Plan's existing water quality objectives, with respect to application of those objectives to storm water and urban runoff, as contemplated in the Tentative Order. Similarly, the City believes that the Regional Board has not yet adopted an implementation plan for the application of the Basin Plan water quality objectives, as required by Cal. Water Code section 13242.

Inclusion of 1995 Waste Reduction Strategy for the Laguna de Santa Rosa

For the first time, the Tentative Order purports to apply the 1995 Waste Reduction Strategy for the Laguna de Santa Rosa. *See* Tentative Order at section C., pages 16-17. This action is unreasonable, and contrary to state and federal law governing the preparation and implementation of Total Maximum Daily Loads ("TMDL") for the reasons set forth below.

2.9

When the City's NPDES permit for its treated wastewater discharge from the Laguna Subregional Water Reclamation System to the Laguna de Santa Rosa was renewed in 2006, Regional Water Board staff agreed that a valid TMDL for the Laguna de Santa Rosa did not exist, and for that reason, controversial "zero, or no net loading" final water quality-based limitations were adopted for nitrogen and phosphorous until such time as a TMDL for the Laguna de Santa Rosa is complete. *See* Regional Water Board Order No. R1-2006-0045 ("Discharge Order") at IV.A.1.g., page 13. To that end, the Discharge Order states,

> "**g. Effluent Limitations for Biostimulatory Substances for Compliance with Narrative Objective.** The Regional Board plans to develop and adopt total maximum daily loads (TMDLs) for nitrogen and phosphorus which will specify wasteload allocations (WLAs) for point sources and load allocations (LA) for non-point sources, as appropriate. Following the adoption of these TMDLs by the Regional Water Board, this Order will be issued with final WQBELs based on applicable WLAs. Alternatively, in the absence of a TMDL at the end of the compliance schedule authorized by this Order [Nov. 9, 2011], the final effluent limitation for nitrogen and phosphorus will be zero, or no net loading."

Additionally, the Discharge Order Fact Sheet states,

> "**ii. Biostimulatory Substances**. On June 5 and July 25, 2003, the USEPA modified and approved the list of impaired water bodies, prepared by the State Water Board pursuant to Section 303 (d) of the CWA – water bodies which are not expected to meet applicable water quality standards after implementation of technology-based effluent limitations for point sources. The 303 (d) list includes the Laguna de Santa Rosa within the Middle Russian River Hydrologic Area as impaired by low dissolved oxygen, nitrogen, phosphorous, sedimentation/siltation, and temperature. The CWA requires the Regional Water Board to establish, in accordance with a priority ranking for 303 (d) listed waters, TMDLs for each impairing pollutant – the maximum amount (including a margin of safety) of each pollutant that a water body can receive and still meet water

> quality standards, and an allocation of that amount to the pollutant's point and nonpoint sources. ***On October 27, 1994, the Regional Water Board approved a "TMDL" approach for the Laguna de Santa Rosa to satisfy Section 303(d) requirements [reference to the final March 1, 1995 Waste Reduction Strategy], but this approach was subsequently found not to contain the minimum elements of a TMDL. For example, follow-up compliance monitoring, a critical element for TMDLs, was not continued.***"

See Discharge Order, Fact Sheet, at IV.C.3.a.ii., page F-22 (emphasis added). At the September 20, 2006 hearing, U.S. EPA, Region 9, agreed with the Regional Water Board's approach regarding imposition of the "zero, or no net loading" final water-quality based effluent limitations in the absence of a valid TMDL. *See* Sept. 2006 testimony of Doug Eberhart, U.S. EPA, Region 9.

At the time the Discharge Order was being renewed, Regional Water Board planning staff were in the process of preparing a TMDL to address the current 303(d) listings for the Laguna de Santa Rosa (low dissolved oxygen, nitrogen, phosphorous, sedimentation/siltation, and temperature), and the City understands those staff are still in the process of developing that complex TMDL.

The City challenged the "zero, or no net loading" provision before the State Water Board and in Superior Court. Before proceeding to the merits of the City's case in Superior Court, the City and Regional Water Board staff prepared the Santa Rosa Nutrient Offset Program, which was approved by the Regional Water Board in July 2008, to govern compliance with the final water quality-based effluent limitations during the time, if any, between the November 2011 effective date of the "zero, or no net loading" limitation and the adoption/approval of a valid TMDL. The approval of the Santa Rosa Nutrient Offset Program, along with other actions not relevant to the comments herein, resolved the City's challenge to the "zero or no net loading" final water quality-based effluent limitations. 2.10

For the reasons set forth above, the 1995 Waste Reduction Strategy is not a valid TMDL pursuant to 40 C.F.R. § 130.7, and should not be included in the Tentative Order. The Regional Water Board cannot ignore the findings and process applied to the City in the Discharge Order proceedings in the current proceedings, as the same facts and law are applicable to both NPDES permits. 2.11

Even if, however, the 1995 Waste Reduction Strategy were a valid TMDL, the 1995 Waste Reduction Strategy has not been adopted into the Basin Plan prior to implementation, and therefore, should not be imposed in the Tentative Order. TMDLs are not self-executing, but rather, rely upon further action to impose on individual dischargers. *See City of Arcadia v. EPA,* 265 F.Supp.2d 1142, 1144-1145 (N.D.Cal. 2003); *see also* www.krisweb.com/policy/tmdl_factsheet_northcoast.htm ("There are four steps to developing a TMDL …The third step involves getting approval of the TMDL by the Regional Water Board, the State Water Resources Control Board, and the US EPA, **and thus incorporating the TMDL into the Basin Plan.**") (emphasis added). The Regional Water Board's own website states, "Currently, the Waste Reduction Strategy is scheduled for review by the Regional Water Board's 2.12

Planning Unit in an effort to adopt the Waste Reduction Strategy's seasonal waste loads and reduction strategy into the Basin Plan." *See* www.swrcb.ca.gov/northcoast/water_issues/programs/tmdls/laguna_de_santa_rosa/. Thus, even if the 1995 Waste Reduction Strategy were a valid TMDL, it would be premature at this point to implement the strategy in the Tentative Order.

Finally, if the 1995 Waste Reduction Strategy was a valid TMDL, and properly adopted into the Basin Plan, the Regional Water Board has failed to reasonably incorporate the 1995 Waste Reduction Strategy into the Tentative Order. Tables 2 and 3 in the Tentative Order seek to impose a net allowable load of total nitrogen and ammonia, respectively, from urban sources at four particular locations in the Laguna de Santa Rosa watershed based on the 1995 Waste Reduction Strategy, but do not accurately reflect current conditions, or take into consideration geographic limitations and/or the method for determining compliance. Imposition of the values 2.13

in Table 2 and 3 as load limits is inappropriate for the following reasons:

1. The Laguna de Santa Rosa is no longer listed as impaired for ammonia due to a variety of actions taken in the 1990s. Thus, there is no statutory or regulatory basis for inclusion of Table 3, the net loads for total ammonia. 2.14

2. Both Tables 2 and 3 describe the allowable load allocated to *all* urban sources in the Laguna de Santa Rosa watershed, but the Tentative Order regulates only some of the urban runoff sources tributary to the four compliance locations. In the case of one compliance location (Stony Point Road), none of the Co-Permittees has jurisdiction over urban areas upstream of this compliance location, so they have no ability to affect loads from urban areas that drain to the compliance location. The City should not be required to achieve the load reduction allocated to all urban areas within its jurisdiction, which represent only a portion of the urban areas that may drain to the Laguna de Santa Rosa watershed. The values in Table 2 and 3 should be modified to require the Co-Permittees to control only the portion of the total urban load originating from urban areas in their respective jurisdictions. 2.15

3. The total annual loads in the 1995 Waste Reduction Strategy (*e.g.*, the values on which the Table 2 and 3 net annual loads are based) are based on average seasonal flows. Actual loads will fluctuate with rainfall, but the Table 2 and 3 values do not reflect this variability. The Regional Water Board recognized this flow variability issue when it approved the Santa Rosa Nutrient Offset Program in 2008, by including a three-year averaging period for compliance determination. The values in Table 2 and 3 should be modified to reflect this natural variability in loading. 2.16

For the foregoing reasons, the City requests that section C of the Tentative Order be removed. 2.17

Draft Permit Contains Numerous "Unfunded State Mandates"

Article XIIIB, Section 6, of the California Constitution requires subvention of funds to reimburse local governments for state-mandated programs in specified situations. Known as "unfunded state mandates," the State of California can be required to provide funding to reimburse the local agency for requirements that exceed the Clean Water Act's mandates for municipal storm water discharges. The City is aware of the 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 2.18

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), and the City incorporates by reference herein the arguments made by those permittees as to the many similar programmatic elements of the Tentative Order that the City believes far exceeds the Clean Water Act's mandates regarding storm water regulation, found at 40 C.F.R. §122.26.

The City would like to highlight several specific instances in the Tentative Order where the City believes the Regional Water Board is far exceeding the requirements of applicable federal law, and, instead, is freely choosing to shift costs that should be incurred by the State to the City, without corresponding reimbursement. First, the Regional Water Board is requiring the City to undertake a very specific, progressive method of investigation and enforcement of industrial facilities and construction sites that are currently regulated under the State Water Board's General NPDES Permits for storm water associated with both industrial and construction activity. *See* Tentative Order at Part 3, section 4, page 32. These actions are required to be taken before the City can refer alleged violations of the State Water Board's General NPDES Permits, for which the City retains no authority to independently and specifically enforce, to the State Water Board or the California Attorney General's office, ostensibly so that the State Water Board does not have to expend resources to investigate and/or enforce compliance with its own General NPDES Permits. This delegation/shift of responsibility is precisely the type of action that qualifies as an unfunded state mandate, and should receive reimbursement by the State of California, if the requirements are retained in the final NPDES permit issued to the City. 2.18 2.19

Additionally, the Regional Water Board is requiring duplicative requirements and enforcement by the City for construction sites greater than 1 acre, that are already regulated by the State Water Board's General NPDES permit for storm water discharges associated with construction activity. *See* Tentative Order at Part 8, section 4, page 47. It is unreasonable to subject those construction sites to two separate regulatory schemes, when the State Water Board already prescribes very detailed water quality requirements to these sites, and retains staff to ensure compliance, and to take enforcement. It is even more unreasonable to require the City to expend limited local resources to regulate these sites, when the scarce local resources could be used for other regulatory activities that are not already subject to the State Water Board's jurisdiction. 2.20

In other circumstances, the Regional Water Board appears to be requiring action that far exceeds federal requirements applicable to municipal storm water discharges in order to substantially modify personal behavior by residents of the City, for which no other avenue exists for the State of California to pursue such limitations. The City should not have to bear the costs for such ambitious requirements. For example, the Tentative Order requires the City to possess the necessary legal authority to prohibit landscape irrigation overflow of potable water (*e.g.,* runoff of potable water from residential lawns and/or other planting areas that would otherwise be unregulated); however, enforcement of such a prohibition would require most residents to completely re-landscape/modify their land. *See* Tentative Order at Part 2, section 1(b)(7). In order for the City to obtain authorization to allow some potable water runoff from irrigation of residential yards, the City must submit BMP plans that commit the City to micro-managing each resident's yard at a level unsustainable by the City's current resources. *See* Tentative Order at Section A.5., Table 1, section "Reclaimed and potable landscape irrigation runoff." The federal storm water program did not envision the Regional Water Board imposing such unreasonable requirements, and the City requests their removal. 2.21

In sum, if the Regional Water Board continues to require these actions, the City may seek a claim for reimbursement of the associated costs. 2.22

Provisions of The Draft Permit Are Not Cost-Effective At Improving Water Quality And Create A Substantial Financial Burden For The City

Many of the required provisions in the Draft Permit are considered onerous, costly and are not expected to significantly improve water quality. City staff has estimated implementation of the additional provisions in the Draft Permit would cost multiple times more than the program proposed in the Term 3 SWMP. As you are aware, the fiscal condition of the City remains a serious concern and reductions to staff and services have recently occurred and may continue. It is unfortunate and the City regrets that it does not have funding currently available for many of the provisions included in the Draft Permit. Examples of costly provisions contained in the Draft Permit are listed below: 2.23

- Requires mapping all existing connections to the storm drain system. This would require videotaping >338 miles of storm drain to identify all connections including roof and foundation drains at an estimated cost of $4,700,000. This huge expense is certainly not commensurate with anticipated improvements to water quality. A more reasonable cost effective program would be to videotape areas with excessive flow or observed illicit discharges. 2.24

- Requires extensive additional requirements which include lower thresholds to address storm water quality/quantity impacts of New Development, Redevelopment and City Capital Improvement Program (CIP) projects. These include extended project design review time, SUSMP Guidance manual revisions, LID manual development and training, additional project tracking, inspection and potential enforcement at an estimated initial cost of $1,065,000 and an annual cost of $710,000. 2.25

  This will have a huge impact on applicable CIP projects that involve paving, potentially requiring acquisition of additional right of way to maintain existing streets and infrastructure. The Draft Permit requires costly storm water treatment over and beyond what is currently required as part of Capital Improvement Program projects (including street reconstruction and paving) that affect more than 10,000 square feet of existing impervious surface or undisturbed land. This requirement would add ~10% to all project costs or a total of nearly $3,000,000 annually to City capital projects and limit the City's ability to maintain its infrastructure.

- The Draft Permit specifies typical BMPs to be implemented on construction, municipal, industrial and commercial sites. Inspections required to evaluate these BMPs will be costly ($350,000) and some may not be effective given local conditions. According to the Draft Permit, alternative measures, which may be more effective, could only be authorized by the Regional Board instead of City field staff who would be most familiar with site conditions. 2.26

Many timeframes in the Draft Permit are unrealistic and unreasonable. Budgeting for new provisions beyond those planned and budgeted in the Term 3 SWMP will take time due to the City's budget adoption process. 2.27

Provisions Go Beyond Maximum Extent Practicable (MEP)

The Draft Permit contains numerous references for implementation of provisions to the Maximum Extent Practicable (MEP). MEP is a flexible concept requiring consideration of technical feasibility, cost and benefits derived through an iterative approach. Many provisions are not flexible and include strict prescriptive language that limits use of alternative approaches that could be more effective. Costs for many of the provisions will be extensive and associated water quality benefits limited, therefore are not considered to meet MEP. 2.28

Permit Language Is Nearly Identical To The Disputed Ventura County And Bay Area Permits

As noted above, a major concern is that the Draft Permit is not consistent with the submitted Term 3 SWMP which was developed with input from the community, stakeholders and many meetings with Regional Board staff. City staff remains concerned that implementing programs applicable to southern California or the Bay Area may not be appropriate in Sonoma County. Staff estimates that three quarters of the provisions within the Draft Permit are identical to provisions in the recently adopted Ventura County permit. 2.29

Excessive Tracking And Reporting Requirements

The Draft Permit continues to contain numerous new tracking and reporting requirements that are onerous and may not improve water quality. The Permittees have received comments from Regional Board staff recently requesting less reporting to reduce the size and content in annual reports. Therefore, the provisions requiring additional tracking/reporting of detailed fiscal expenditures, facilities that are critical sources of pollution, post-construction BMPs, grading permits, encroachment permits, demolition permits, building permits, illicit connections and illicit discharges seem unreasonable. 2.30

In Conclusion

It is noted that the Permittees were provided only 45 days to evaluate the provisions within the 237-page Draft Permit and only 14 days to evaluate the Regional Water Board's response to comments received on the first draft. Considering the length and complexity of the Draft Permit and its extensive implications on City resources, the review period granted by the Regional Water Board is considered insufficient. Given additional time, City staff would have been able to conduct a more comprehensive evaluation and provide recommendations for improvements to ensure the permit reflects the unique aspects of the Santa Rosa area. The concerns noted in this letter and attached spreadsheet represents staff's best effort to evaluate this permit within the limited review period. 2.31

The City remains very interested in improving water quality in the Santa Rosa area and in reducing/preventing storm water pollution. To accomplish this most efficiently and cost-effectively, the City asks that the Draft Permit be modified with appropriate sensitivity to local conditions including current financial constraints. The City requests that the Draft Permit be further revised to develop cost-effective provisions that will supplement our current efforts in protecting water quality from storm water pollution in Santa Rosa. Our staff would welcome the opportunity to continue working with Regional Water Board staff in this regard.

Thus said, the Regional Water Board is asked to withhold its recommendation to adopt the Draft Permit on October 1, 2009 as proposed.

Please note that I intend to testify at the upcoming public meetings scheduled for July 22-23, 2009 and October 1, 2009. My scope of testimony will include the City's extensive concerns pertaining to the Draft Permit and its legal and technical viability as well as its implications to City resources and the City's ability to maintain compliance.

Please contact Rita Miller at 543-3879 if you have any questions or need further clarification. Your consideration of these concerns is greatly appreciated.

Sincerely,

FOR

MILES FERRIS
Director of Utilities

cc: Kevin Booker, Principal Engineer, SCWA
Janice Gilligan, Stormwater Coordinator, Sonoma County PRMD
Jeff Kolin, City Manager, City of Santa Rosa
Greg Scoles, Assistant City Manager, City of Santa Rosa
Rick Moshier, Public Works Director, City of Santa Rosa
Rita Miller, Supervising Engineer, City of Santa Rosa

City of Santa Rosa Comments on Draft Order R1-2009-0050 - July 6, 2009

SECTION	Page	Item#	Issue (note if none)	Requires Clarification (rc)	Unfunded Mandate (um)	Initial/One time Cost ($)	Annual Cost ($)	
GENERAL CONCERNS								
			1) Please revise the timeline to eliminate the date certain requirements and to instead tie the timeline to the effective date of the permit, e.g., "within two years from the effective date of this Order." 2) The Order exceeds the legal authorities cited in the Facts Sheets. For instance, the CFR contains various regulations providing for a description of programs for operating public streets, assuring flood management, monitoring pollutants, maintenance activities, and procedures for reducing impacts on receiving waters, and identifying priorities and procedures to accomplish program goals, all to the extent that is reasonable and practicable. This Order exceeds that authority by providing detailed mandates and requiring specific policies, procedures, ordinances, staff, training, outreach, and advertising to eliminate pollutant loads that have not been identified as originating from the City or tied in any way to the City's storm water or non-storm water runoff.					2.32 2.33
			Concern that some of the requirements may be in conflict with water conservation requirements or with requirements on water rights permits. For example, the current commercial turf prohibition does not take into account the benefit of LID development and the role turf can play in slowing down storm water runoff. RWQCB needs to be aware of and resonably accommodate these conflicts so the City isn't caught between regulatory authorities					2.34
	3	4	Concern that responses to City's comments on first draft of permit were received on 6-22-09, 30 days after the second draft was issued. This provided less than 2 weeks for the CoPermitees to evaluate, this is insufficient for proper assessment and evaluation. Item 4 of the Public Process Section misleadingly infers a timely response of the response to comments.					2.35
			Request a finding be added that recognizes the Basin Plan Amendment and the Low Threat Discharge General Permit. The relationship between the proposed Low Threat General Permit and the MS4 permit should be clarified. At the Regional Water Board's January 8, 2009, public workshop, staff explained that the general permit is intended to apply to activities occurring outside the area covered by municipal separate storm water system (MS4) permits. Section II Application/Enrollment Requirement D.2 refers to issuance of an individual NPDES permit or WDR as a basis for termination of coverage under the general permit. Is the reference to NPDES permits under D.2 intended to include MS4 permits? The City of Santa Rosa objects to the notion that an MS4 permit is a preferred regulatory mechanism and requests that the general order be clarified to state that all discharges meeting eligibility criteria should be regulated under the Low Threat General Permit regardless of MS4 permit coverage.					2.36

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FINDINGS								
	5	17	There is no data/watershed or empirical evidence to back up Finding 17 that storm water discharges cause water quality standards not to be attained. Action taken by the Regional Water Board that is not supported by findings, or the findings made are not supported by evidence in the administrative record, constitute an abuse of discretion. Topanga Association for a Scenic Community v. County of Los Angeles, 11 Cal.3d 506, 515; California Edison v. SWRCB, 116 Cal. App.3d 751, 761 (4th Dt. 1981). In this case, the Regional Water Board made a finding regarding the effect of municipal storm water discharges on receiving waters that is not sufficiently supported by evidence in the administrative record. Specifically, in Finding 17, the Regional Water Board made the finding that "the discharges from the Co-Permittees' MS4s as detailed in the Fact Sheet, contribute to violations of water quality standards and are a contributor of pollutants to the Laguna watershed." The evidence in the administrative record does not support this finding, and the finding is unnecessary to regulate the City's discharge of municipal storm water. For these reasons, the City requests that Finding 17 be removed from the Tentative Order.	rc				2.37
	8	23	It is noted that storm water runoff that enters the MS4 is regulated by the Draft Permit. In a technical sense the permit (Provision A.1) is for discharges *from* the MS4 not *into* the MS4. The finding should be modified to reflect that the permit is for discharges *from* the MS4 *and* there are discharges (e.g. agriculture runoff) *into* the MS4 that the municipalities have limited or no authority to control, similar to the conclusion made in Finding 24.					2.38
DISCHARGE PROHIBITIONS								
	9-10	4	This sentence is confusing. Request language be clarified to state discharges in accordance with Prohibition #5 are allowed with appropriate BMP's	rc				2.39
	10	A5	Under the Porter-Cologne Water Quality Control Act, the California Legislature found and declared that activities affecting water quality "shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible." Cal. Water Code §13000. This section sets the baseline for all state water quality policy, and imposes an overriding requirement on the State Water Board that all water quality regulation be reasonable considering all circumstances. The City believes that many of the overly stringent, prescriptive requirements in the Tentative Order are not reasonable, given the available resources to monitor compliance and take enforcement action, and the limited benefits to be derived by the requirements. For example, the requirements regarding non-commercial car washing by residents and residential landscape irrigation runoff (see Tentative Order at Section A.5., Table 1) are not reasonable requirements given the City's scarce resources, and the environmental benefits that may or may not be gained by regulating such activity. The City requests the Regional Water Board review the City's comments with respect to the "reasonableness" requirement of Water Code Section 13000 in mind, and to make the modifications requested by the City, especially in such cases where the resource demands outweigh any potential benefit.					2.40

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	10	A.5	This section and Table 1 prohibit all non-storm discharges. The section outlines provisions to obtain approval of specific non-storm water discharges by submitting a plan to the EO. This is the first permit known to contain such a strict prohibition. The recently adopted Ventura County permit does not require submittal of a plan to the EO for future authorization. BMPs are outlined in the permit. The City is concerned about the timeframe for getting EO approval. Without EO approval of a plan for these non-storm water discharges the City would not be in compliance with the permit. The BMPs should be worked out and specific authorization included in the permit to ensure compliance upon approval of the permit. Authorization similar to the recent Ventura permit is requested.	rc				2.41
	10	A.5.d	"Upon request by a Co-Permittee, the Executive Officer may consider authorizing the discharge of *additional* (emphasis added) non-storm water flows." "[A]additional" relative to what? Clarification is requested.					2.42
	10	A.5	Table 1 remains cumbersome and difficult to understand. There is no clear distinction between the two columns labeled "conditions under which allowed" and "BMP plan shall include, but not be limited to". The City requests adding "as needed" at the end of any such BMP's or change the column heading to "BMP plans may include, but not be limited to." All these activities may not be appropriate in each situation. BMPs for natural streams: 55 Fed.Reg. 47995 intended to not hold permittees responsible for ground water infiltration, natural springs and stream diversions from the MS4s. This is also inconsistent with page 3 of the Fact Sheet. Please remove these non-storm water discharge categories from Table 1. Other concerns; o Please modify Footnote 12 on page per the redline request as follows: " the term applies to low volume, incidental and infrequent releases that are innocuous from a water quality perspective. Those releases for dewatering or hydro-testing or flushing of water supply and distribution mains and incidental and infrequent releases from well heads shall be allowed with the implementation of appropriate BMP's until such time as a new General Permit is adopted that addresses those types of releases. Discharges from hydrostatic pipe testing shall be subject to separate NPDES general permit coverage (CAG674001) and Discharges from utility vaults shall be conducted under coverage of a separate NPDES permit specific to that activity. o Air conditioning condensate. Minor flow and very clean but required to segregate flow from pollutant sources. The City requests this be removed from the list. The City notes an important change that is supported – the addition of the word "significant" to sources of pollutants that are prohibited (see provisions A.d.(d) and (e)). This is consistent with Federal regulations at 40 CFR 122.26 (d)(2)(iv)(B)(1).					2.43 2.44 2.45 2.46

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	10	Table 1	Propose the following change: "No sources of contaminated ground water near the diversion site." The City could only know if the groundwater is contaminated, not whether sources of contamination exist. What does "[s]egregation of flow to prevent introduction of pollutants" mean? This is ambiguous and should be clarified for all non storm water discharge BMP's within Table 1.					2.47 2.48
	12	Table 1	"Utility Vault Dewatering " The Regional Board should not give permits to Utility companies without requiring an evaluation to determine whether vault dewatering will contain contaminated water.					2.49
	13	Table 1	Reclaimed & potable landscape irrigation runoff. #4 - Change to "Implement structural BMP's **such as appropriate, efficient irrigation application methods/hardware** ~~low flow emitters~~." Low flow emitters usually refers to drip irrigation, which would not be appropriate for irrigating all landscapes (such as turf)					2.50
	14&15	Table 1	Prohibits discharge of pooled water from treatment BMP's. Conditions cover maintenance of BMP's and should only apply to structural BMP's. Would be a fiscal burden especially as more treatment devices are installed. In addition, maintenance shall be performed to ensure BMP effectiveness rather than per the manufacturer's recommendations.			**$500,000**	**$250,000**	2.51
RECEIVING WATER LIMITATIONS								
	16	B.4	Non-ending BMP Iterative Process not consistent with State Water Board Order 99-05. The provision requires the Co-permittees to implement BMPs as identified in the Receiving Water Limitation Compliance Report and storm water Management Plan (SWMP) (see Provision B.3). The iterative process would need to continue unless directed otherwise by the Executive Officer. This provision is different from the language prescribed by the State Water Board and from other adopted permits (including the recently adopted Ventura permit). The implementation of BMPs and programmatic changes require time for implementation (e.g. public outreach message, train public employees, etc.) and resulting changes in runoff quality. Thus it is usually acknowledged that as long as the Permittee identifies and implements additional BMPs to address the water quality exceedances then repeating the process is unnecessary unless determined by the Regional Board. The following language is from State Water Board Order 99-05 and is requested for this Draft Permit: "So long as the Permittees have complied with the procedures set forth above and are implementing the revised SWMP, the Permittees do not have to repeat the same procedure for continuing or recurring exceedances of the same receiving water limitations unless directed by the Executive Officer to develop additional BMPs."					2.52

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TOTAL MAX DAILY LOAD PROVISIONS								
	16	B.4	1995 Laguna TMDL: Please refer to July 6, 2009 transmittal letter for an extensive discussion of the City's concerns regarding the "Laguna TMDL." Compliance with the TMDL is required yet no monitoring is required. Flow weighted composite sampling for Nitrogen and Ammonia would be needed at the 4 attainment points in the Laguna de Santa Rosa.			**$30,000**	**$15,000**	2.53
	17	D-Part 1.1	Program implementation by 1/1/10. Given the enormity and complexity of the new requirements and the limited resources of the CoPermittees, the target date is not possible.					2.54
SWMP IMPLEMENTATION								
PART 2								
	18	D Part 2.1 (7)	Prohibition of Runoff from Landscape Irrigation The Regional Board staff expanded the list of non-storm water discharges that need to be prohibited to include landscape irrigation overflow. At the same time the Draft Permit may allow irrigation runoff to be discharged when appropriate BMPs are implemented (see Table 1, page 13). Thus the Draft Permit is inconsistent. On the one hand it requires the CoPermittees to prohibit irrigation runoff while on the other hand it allows irrigation runoff to occur. In a practical sense prohibiting irrigation runoff will be challenging and from a water quality perspective not much return for the effort (i.e. irrigation runoff is primarily of portable water quality). Please remove this item from the list.					2.55
PART 3								
	20		Proposed requirements include a very detailed and extensive accounting of storm water program activity implementation. This level of effort to breakdown expenditures is not justified in the findings, is not cost effective or reasonable and will be time intensive. Footnote 7 lists ways to fund SWMP activities, however benefit assessments can only be implemented on new developments. Other similar funding mechanisms are also listed, however, realistically there are no additional funding sources available to the City. These provisions may require changing the City's accounting system. Currently catch basin and storm drain pipe cleaning labor charges are combined when City crew's clean our storm drain system and can't be separated. City requests that this provision be changed to address concerns and allow the current method of tracking costs to remain.				**$80,000**	2.56
PART 4								
	20	1	Projected cost to modify programs, protocols, standards and municipal codes			**$100,000**		2.57
	20	2	Regarding the provision for SWMP the City requests that modifications be considered "as needed", rather than "annually or less frequently".					2.58

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SPECIAL PROVISIONS								
PART 1								
	21	2	If the SWMP is incorporated into the Order, then any change to the SWMP must include a public comment period, public hearing and formal adoption by the Regional Board. To promote timely and effective changes to protect water quality and reduce pollution, SWMP changes should be allowed by Regional Board Executive Officer. This provision allows impermissible prospective amendments to the permit.	rc				2.59
	21	3	Best Management Practice Program Substitution requires clarification. It is the City's understanding that Section 3 applies to programmatic substitutions, while Section 4 applies to site specific substitutions, which would require notice but not approval of the Executive Officer. The City understands that the BMP substitution applies to Table 1. This provision would only allow BMP substitutions for less costly alternatives, which may limit use of more effective alternatives.					2.60
PART 2								
	22	1A	Permittees can measure the knowledge base of target audiences, however current social research shows that an increase in knowledge does not constitute an increase in positive behavior. Even if people know the law and the environmental impacts, they may still choose to pollute creeks. The City recently completed a public poll that could serve as a baseline and a future assessment conducted to evaluate if there is an increase in knowledge base.			**$25,000**		2.61
	22	1b	To measurable change the behavior of targeted audiences, the City would have to complete a comprehensive study of people's behavior. The study would require a large sampling of "targeted" residents and need to be structured to distinguish behavior people report versus actual behavior. The cost of this study may not be commensurate with improvements to water quality.			**$80,000**		2.62
	22	1	"shall coordinate with other entities" change to "will coordinate as opportunities arise with other entities" as there is no guarantee another entity will agree to work with a Co-Permittee or there is an actual task where coordination with others is practical. Consider allowing contributions toward public outreach to offset site-required BMPs. (i.e., developer run newspaper article about storm water treatment a television commercial created about where storm water goes and the benefits of storm water quality. Also consider allowing money to be paid into a storm water offset fund for larger municipal storm water treatment projects that would provide more effective, regional benefit.					2.63
	22-23	2(a)(1)	Santa Rosa already has more than 80% decaled catch basins. Part 9 (9) (d)… "Storm drain inlets" should be changed to read "Catch basins" since all storm drain inlets do not have curb or areas to label/decal.	rc		**$25,000**	**$25,000**	2.64
	22	2(a)(1)	Requires posting of "No Dumping" signs at designated creek access points and channels where dumping has occurred. Field services staff conveyed that dumping in creeks is not currently a major concern. These signs may actually invite dumping and detract from the natural beauty of our creeks.				**$5,000**	2.65

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	23	2	Requires a strategy to educate Spanish-speaking communities through "cultural effective methods" – impossibly vague. To develop a strategy the City would have to complete a comprehensive survey to assess the size and type of ethnic minority groups in the community. It would also require the services of social studies professionals and focus groups to assess if outreach methods were "culturally effective." This provision would be very costly and the timeframe "October 1, 2010" is unrealistic			**$50,000**		2.66
	23	2	(c) (1) (C and D) Needs clarification whether list of businesses is to be provided vendor information or given outreach material to be provided to the public. Businesses don't have to accept materials from the City which will take up valuable merchandise space. There is a large cost to design new brochures and print them as well as outreach to the business. Using Point of Purchase outreach can be effective, but this entails staff time and resource costs.	rc	um	**$5,000**		2.67
	24	3 (a) (1)	Costs of outreach material and meeting expenses.			**$7,000**	**$10,000**	2.68
	24	E Part 2.2 (d)(1)	Pollutant Specific Outreach This provision requires an outreach program for the pollutants identified in Table 1 of the Fact Sheet. However, a review of Table 1 shows that the pollutants are primarily temperature and sediment. It's unclear how to develop an outreach program for many of the constituents. The City requests that the pollutant specific outreach program be required to only focus on the pollutants that have been determined to be urban related, typical sources of pollution from homes and businesses, and less on the chemistry of the pollution.				**$5,000**	2.69
	24	5	Requires "impressions on at least 25% of the permanent population" – immeasurable. Suggest, "intended to make impressions on at least 25% …"				**$5,000**	2.70
	24	6 and 7	The City can provide materials to the various school districts in the permit area. However, we have no control over how the materials will get distributed or utilized. Measuring the effectiveness of these outreach materials would be very difficult to determine. There may be administrative obstacles with regard to conducting an assessment of ALL K-12 students' knowledge of storm water pollution and its solutions. There is no assurance the school districts will be receptive to subjecting their entire student body to a survey of this type. Please delete this requirement.				**$60,000**	2.71
	24	8	Behavior Change Assessment Strategy - This section is vague. Measuring behavior should be focused on a very specific behavior, such littering, or proper disposal of paint, or proper disposal of motor oil. An assessment of this type could be built into the community survey in Year 4. If done separately, this type of survey could be a significant expense to the program. See comment on part 2 item 1B for cost ($70,000).					2.72
PART 3								
	26	2 (a) +(b)	"Nurdle " using facilities are not permitted at this point. In the Subregional System these industries are not permitted.			**$1,000**		2.73
	26	E Part 3.2 (d)	Industrial Critical Source Inventory This provision requires the Permittees to update their critical source inventory annually although this provision was requested to be deleted. Annual updates seem excessive and too prescriptive. Instead the CoPermittees should be able to update the inventory to reflect the business climate. Suggest an update every 2 years.					2.74
	26	(a)(1)(g)	In addition to the listed business types, requires an inventory of "other commercial facilities that may discharge pollutants of concern." – vague, impossible to achieve or maintain. Suggest, "other commercial facilities identified as dischargers of pollutants of concern."					2.75

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	26-27		Specifies typical BMP's to be used at Restaurants, Auto Service Facilities, Retail Gas Outlets (RGO) and Nurseries. Inspections would entail a significant cost increase compared to how these facilities are currently being inspected.			**$70,000**	**$350,000**	2.76
	27, 31	E Part 3.3 (a)(1) and Part 3.3 (f)(1)	BMPs to Achieve Water Quality Standards These provisions seem to imply that discharges from BMPs must comply with water quality standards which would be the equivalent of assigning numeric effluent limits to BMPs. The provision reads as follows: Likewise, for those BMPs that are not *adequate to achieve* WQS, Co-Permittees shall require additional site-specific controls. The City requests the following changes to make it clear that the Board is not stipulating numeric limits: Likewise, for those BMPs that are not *protective* of WQS, Co-Permittees shall require additional site-specific controls. The suggested language allows for dilution, averaging periods, and water effect ratio adjustments but at the same time effect compliance with water quality standards.					2.77
	32		The following text is inconsistent with SWRCB's mandate to reduce commercial turf. The City's ability to implement this requirement is subject to limitations imposed by SWRCB and the City requests that this limitation be recognized and accommodated in the permit. "The Co-Permittees shall implement a Planning and Land Development Program with a goal to: (a) Minimize the adverse impacts from storm water runoff on water quality, the biological integrity of receiving waters, and the beneficial uses of water bodies in accordance with requirements under CEQA (Cal. Pub. Resources Code § 21100), and local government ordinances. (b) Minimize the percentage of impervious surfaces on land development projects and implement mitigation measures to mimic the pre-development water balance through infiltration, evapotranspiration, and capture and reuse of storm water. Pre-development water balance . . . ."					2.78
	32	4	Allows referral to Regional Board only after initial enforcement action by the City. This requirement impermissibly shifts the Regional Board's obligations to the City, and requires the City to hire/train additional staff, equating to an unfunded mandate.		um			2.79

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PART 4								
	33 & 44	Part 4 and Part 7 (and elsewhere)	While the City agrees it is appropriate for the City's CEQA process to consider the impacts of a project on storm water quality, it is wholly inappropriate for this permit to prescribe the exact analysis that the City must undertake. The permit requires minimization of the "adverse impacts . . . under CEQA and local government ordinances," and provides a detailed list of purported CEQA considerations. CEQA does not require this level of analysis. Pub Res Code 21100(d) strictly limits CEQA review to "substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5. In addition, Pg 31-32 of the Facts requires creation of an ordinance expanding CEQA review for development and redevelopment to incorporate the terms of the order. This language should be amended to require appropriate review consistent with CEQA statutes. This order seeks to administratively legislate an area outside of the jurisdiction of the Regional Board in contravention of the state's statutory CEQA requirements. In addition, it is unclear whether the requirements in Part 4 would apply to development as discussed in Parts 5 and 6.					2.80
	33&34	Part 4 (3)(b)	Promotes percolation & infiltration of storm water into ground. The City is concerned that this provision is not applicable to the Santa Rosa plain, which has primarily clay soils that have limited infiltration capability. Would require a revision of the SUSMP manual.			**$5,000**		2.81
	34	3	Please clarify- will engineered media filter (not biological filtration) be allowed as a last priority treatment device?	rc		**na**	**na**	2.82
	34	Part 4 (4)	It is not realistic to treat "all impervious surfaces." There may be small areas difficult to treat (i.e. , replacement of an existing non compliant driveway curb cut under encroachment permit for a commercial development where treatment controls are integrated into the site design, but not along the existing public street.) Please modify this language.					2.83
	34	Part 4(3)(b)	Runoff captured by topsoil, debris layers and evapotranspiration will be difficult to calculate.					2.84
	35	Part 4(3)(b)	If the objective is to treat the 24-hour storm to the maximum extent practicable, then why apply a safety factor? If the BMPs aren't functioning as designed, then they should be maintained instead of oversized to compensate for a lack of maintenance.					2.85
	35	5(a)	Projected cost for Entitlement Review regarding storm water concerns.			**$50,000**	**$100,000**	2.86
	36	Part 4 (6)	Pervious pavements filter and detain storm water. Furthermore, groundwater recharge is likely to occur under pervious pavement sections, whether or not a subdrain has been incorporated into the design. Therefore, consideration should be given to allowing some form of credit for pervious pavement. Subdrains are absolutely necessary considering the clay soils in Santa Rosa.					2.87
	36	6	Projected cost for new development final plan review regarding storm water provisions.			**$50,000**	**$200,000**	2.88
	36	Part 4 (6)(a)	The existing requirement to provide source/treatment control BMPs in new/redevelopment projects where 1-acre or more of impervious surface is created or where adjacent to or creating a new outfall in a waterway is appropriate. Given the current state of the economy, with the exception of gas stations and automotive service facilities which have the potential to be a significant source of pollution, reducing the threshold to 10,000sf is not reasonable and maintaining a 1 acre threshold other than the exceptions noted, is requested.					2.89
	37	b	The effective date should be based relative to a completed project application not permit approval. This is in keeping with CEQA and other agency application requirements.	rc		**na**	**na**	2.90

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	37	b	Redevelopment projects are subject to post-construction treatment controls if more than 10,000 square feet are redeveloped. And, will apply if the project alters more than 50% of existing impervious surfaces on site. This will have a huge impact on all CIP projects involving paving. Would require additional design review and possible acquisition of additional right of way to maintain existing streets. Will require SUSMP manual revision.			**$20,000**	**$3,000,000**	2.91
PART 5								
	33-41	E Parts 4&5	Planning and Land Development Program – Points of Agreements Before providing comments regarding concerns/deficiencies of the Draft Permit in the Planning and Land Development Program, the City shall identify some points of agreement/improvement in Draft Permit. First, the prioritization of BMPs (as noted in Part 4.3 (e), page 34) and Part 5.2(b)(3), page 39) is reasonable and will allow the development of a practical BMP program. Second, the draft permit in a number of sections (Part 4.3(b) and Part 5.2, pages 33 and 37 respectively) correctly captures the goal/intent of low impact development strategies and integrated resources plan. The goal is to incorporate design features that mimic predevelopment water balance and/or hydrologic functions.					2.92
	33-41	E Parts 4&5	New Development/Redevelopment Integrated Water Quality/Resource Plan The Draft Permit requires all priority projects to implement a comprehensive list of BMPs. Some permit sections that could lead to confusion are highlighted below: o LID design standard (Part 5.2(b)(1), page 39). This provision is confusing and does not specify a design criterion for LID strategies. The intent of this provision is to have all priority development implement LID for the water quality storm of Part 4.4 at a minimum. And pending the results of the HMP then LID may also be used to accommodate the hydromodification requirement (call it "super LID") . However, the provision could be interpreted in various ways. First it could be read to not specify any LID storm criteria as Part 4 includes more that just the water quality storm criteria and includes the description of priority projects required to implement BMPs. So when the statement reads "projects that meet the new development and redevelopment criteria in Part 4" one could interpret it to just refer to the priority project classification. This provision should be deleted and a new section added to the LID section. The City suggests the following: Part 5.2(5) (new language) (5) LID strategies shall be designed to address the water quality storm specified in Part 4.4. Regarding hydromodification and LID, the HMP will not be precluded from identifying a LID equivalent standard (Super LID) to meet the hydromodification criteria. o Relationship of LID manual, integrated water quality plan, HMP, and SUSMP (pages 37, 38, 40, and 44). The relationship between the LID Technical Guidance Manual (page 38), the Integrated Water Quality/Resources Plan (Page 37-41), Hydromodification Control Plan (page 40) and Standard Urban storm water Mitigation Plan (page 44) is confusing and conflicting. A provision should be provided to clarify the relationship between them.					2.93

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	33-41 continued		o Lack of exceptions to hydromodification requirements (page 40). Most permits provide a provision that describes the situations where hydromodification requirements do not apply. No such exemptions are found in the Draft Permit. Some examples of exemptions include a) Discharges into improved channels. b) Discharges from urban redevelopment projects where the footprint or impervious area is not changed. Alternatively there could be a threshold value determined where hydromod controls are not required but that the impervious area must be reduced from the original site conditions, e.g. 10% change reduction in impervious area. c) Discharges into lakes, estuaries (i.e. areas w/ no erosion potential) The City suggests that Provision E, Part 5.2(c)(1)(D) be modified to provide the flexibility if the permittees so choose to allow exemptions to hydromodification controls. Suggested language is noted below: Provision E, Part 5.2(c)(1)(D)(ix) (new language) (ix) Describe conditions where hydromodification controls are not required.					
	37	2	Projected costs for water resource plan			**$100,000**		2.94
	38	2	shall initiate by January 2010…this is too soon (less than 6 months from current date). Propose changing this to January 2011.					2.95
	38	2(a)(2)	Projected cost SUSMP guidance formalization			**$10,000**		2.96
	38	2(a)(3)	Projected cost LID technical manual			**$200,000**		2.97
	38	2(a)(4)	Projected cost LID training			**$100,000**		2.98
	39	Part 5 (2)-c-(6)	Three different sets of variables are listed in this first paragraph: Flow/Volume/Duration, Flow/Rate/Velocity/Duration, and Flow Rate/Duration. Clarification is needed. It is not possible to create impervious surface, maintain the predevelopment flow rate and maintain discharge duration. When detention is implemented to maintain predevelopment flow rates, the discharge duration needs to be increased unless water is permanently stored on site. Furthermore, infiltration and evapotranspiration cannot be easily assessed. It is possible to include measures which ensure that the flow rate doesn't exceed the predevelopment condition for the event being mitigated, but it will be difficult to demonstrate that it remains "the same".					2.99
	40	Part 5(2)-c-(1)	Each of the hydromodification control plan elements required don't apply in every situation. i.e. not all projects have a stream, so restoration measures will not be required with all projects. Recommend that the text be reworded to read: "Where applicable, the Hydromodification Control Plan shall include".					2.100
	40	2c(1)C	Projected cost Hydromodification Control Plan.			**$100,000**	**$10,000**	2.101
	40	2c(1)E	Projected cost Interim Hydromodification Control Plan.			**$100,000**		2.102

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PART 6								
	41	1	Projected cost maintenance assurance policy			**$20,000**		2.103
	41	1(a)(1)(A)	Requires public entity to assume responsibility for all BMP in private development unless developer assigns BMP maintenance to buyer, tenant or HOA in sale/lease contract or CCRs. The City has no ability/authority to enter private land for maintenance. Even if the City had the authority, this requirement would mandate the creation of an additional City department to comply, which creates an undue financial hardship. Please delete this provision.		um			2.104
	41-43		Re post-construction inspections, and elsewhere in the document related to additional inspections which requires staff training and additional staff. This is an unfunded state mandate and financially impractical. Generally as for dictating the manner in which the City will develop, implement, inspect, train, et cetera, it's employees – Cal Const. Art XI Section 5(b) (4) "plenary authority is hereby granted, subject only to the restrictions of this article, to provide therein or by amendment thereto, the manner in which, the method by which, the times at which, and the terms for which the several municipal officers and employees whose compensation is paid by the city shall be elected or appointed, and for their removal, and for their compensation, and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees." Because this Order effectively dictates that the City will hire and train additional employees to engage in tasks inconsistent with and beyond the scope of the Basin Plan, or state and federal statutes, the Order usurps the City's plenary authority to provide for the number, terms and conditions of its workforce.		um			2.105
	42	2(a)	Projected cost Tracking System				**$100,000**	2.106
	42	2(b)	Projected cost Construction Final Inspection			**$10,000**	**$100,000**	2.107
	42	2(c	Projected cost BMP Maintenance Inspection 2 yrs.			**$50,000**	**$100,000**	
	42	2(d)	Projected cost Maintenance Reporting by 3rd party.			**$50,000**	**$50,000**	2.108
	43	3(a)	Projected cost of Enforcement			**$20,000**	**$50,000**	2.109
	44	5	Projected cost SUSMP Manual Update			**$200,000**		2.110
	44	Part 6 (5)(a)(2)	BMP pollutant removal performance and removal efficiency ranges will be difficult to assess.					2.111
								2.112

City of Santa Rosa Comments on Draft Order R1-2009-0050 - July 6, 2009

SECTION	Page	Item#	Issue (note if none)	Requires Clarification (rc)	Unfunded Mandate (um)	Initial/One time Cost ($)	Annual Cost ($)	
PART 8								
	45-51	E Part 8	Inconsistency between Draft Permit with Draft Construction General Permit The Draft Permit requirements are not consistent with the draft April 2009 Construction General Permit (GCP). The Draft Permit appears to set conditions that were drafted without consideration for the augmented requirements proposed in the CGP. The variation in specificity, especially with regard to minimum BMPs, will lead to confusion for the Co-permittees and developers. As a case in point, the Draft Permit doesn't acknowledge the rainfall erosivity waiver, which would exempt projects that disturb 1 to less than 5 acres from the CGP, instead the Draft Permit requires these projects obtain a CGP and implement the Draft Permit's minimum BMPs. Essentially the Draft Permit should be modified to require all eligible projects (both public and private) to comply with the GCP, nothing more, nothing less. In addition the provision would still include the implementation requirements for tracking, inspection, enforcement. Some permit modifications are highlighted below: o Rainfall Erosivity Waiver (Provision E Part 8.2, page 46) CGP provides for waiver of permit requirements for small project (1 to < 5) acres that have an R-factor of 5 or less. A similar condition is should provided in the Draft Permit, probably under Part 8.2. o Grading Restriction (Provision E Part 8. 2, page 45-46) The Draft Permit requires the Co-permittees to enforce a grading restriction between 10/1 and 4/15 for hillside projects (hillsides 20% or steeper). Variance can be granted when project proponent demonstrates water quality can be achieved. Projects granted variance, must monitor and demonstrate effluent quality of 100 mg/L TSS and 50 NTU. The condition to impose a rainy season grading limitation is not contained in the CGP; furthermore the draft permit sets turbidity effluent quality criterion 5 to 10 times lower than the CGP. The draft permit also requires TSS monitoring which is not required by CGP. The CGP establishes tiered risk levels for projects. Risk determination criteria include risk of sediment discharge and proximity to sensitive receiving water. Under the CGP, sites with risk levels 2 and 3 must monitor turbidity. A numeric action level of 250 NTU applies to these sites, and a numeric effluent limit, set at 500 NTU, applies only to Risk level 3. In summary the grading restriction goes well beyond the CGP and the City requests that it be deleted entirely from the Draft Permit.					2.113 2.114 2.115

City of Santa Rosa Comments on Draft Order R1-2009-0050 - July 6, 2009

SECTION	Page	Item#	Issue (note if none)	Requires Clarification (rc)	Unfunded Mandate (um)	Initial/One time Cost ($)	Annual Cost ($)
	45-51 continued		o Minimum set of BMPs for sites greater than 1 acre (Provision E Part 8.4, page 47)The Draft Permit requires a specific set of BMPs, specified by Fact sheets from CASQA or Caltrans handbooks. The provision is not clear as to whether all listed BMPs are required or if it is a menu of choices. Nor is it clear whether the CoPermittees can require or whether projects will be able to use non-listed BMPs in-lieu of the listed BMPs, even when they might provide equal or superior protection. In general, the CGP identifies minimum BMPs by category rather than specific practice e.g. silt fence vs. perimeter control. In the area of erosion and sediment control, there are notable differences between the CGP and MS4 permit approaches. The CGP identifies expected outcomes and design requirements, but leaves the selection of the practice to the SWPPP developer. To address these comments the following modifications are requested: 4. Construction Sites Greater than 1 Acre (a) Each Co-Permittee shall require the implementation of an effective combination of the BMPs in Table 9 (BMPs at Construction Sites Greater than 1 Acre) at all construction sites greater than 1 acre as needed to prevent minimize erosion and sediment loss, and to prevent the discharge of construction wastes. MS4 Permit requiring coverage under State Water Board GEneral NPDES permit for undefined furture consturction projects. Part 9, Section 2(b), requries the City to obtain coverage under the State Water Board 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 City undertakes including all capital improvement projects if ether 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 City must obtain coverage under the State Board's General NPDES Construction Storm Water Permit for a particular				

2.116

2.117

SECTION	Page	Item#	Issue (note if none)	Requires Clarification (rc)	Unfunded Mandate (um)	Initial/One time Cost ($)	Annual Cost ($)	
	45-51 continued	E Part 8	project is a site-specific factual inquiry that the City 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 City can not currently obtain coverage due to the lack of factual information regarding the project and disability to fashion appropriate BMP's and a SWPP. Subjecting the City to enforcement under the Tentative Order for failure to obtain coverage by a specific date, when the City may be unable to do so, is unreasonable and violates Water Code section 13000. o Incorrect Provision Format (Provision E, Part 8.2, page 45 and 46) Notwithstanding the suggestion to delete the entire grading restriction provision there appears to be a formatting issue with Part 8.2. It appears that Part 8.2(b) should be Part 8.2(a)(2) as noted below. 8.2 Grading Restrictions (a) Each Co-Permittee shall implement a program……. During the wet season (October 1 – April 15), the program shall ensure that the following requirements are effectively implemented at all the construction sites in the categories listed below: (1) No grading shall occur during the wet season for construction projects in the following areas of high erosivity: On hillsides with slopes 20% or steeper prior to land disturbance (If hillside development is not defined by a zoning ordinance, then the prohibition will apply to steep or long continuous slopes, or areas with silty soils, fine sands, or soils lacking vegetative cover). ~~(b)~~ (2) If grading operations in these areas are not completed before the onset of the wet season, grading shall be halted and effective erosion control measures shall be put in place to minimize erosion. Grading shall not resume until after April 15th. Depending on the project area, the developer shall implement the Erosion and Sediment Control BMPs listed in the following Tables 8 and 9. In a similar vein Part 8.2(d) refers to "above goals" but it's unclear what goals the section is referring to.					2.118
	45-51 continued	E Part 8	o BMPs to achieve water quality standards (Provision E Part 8.3(a) and 8.4(a), pages 46 and 47, respectively. The current language seems to imply that construction BMPs must meet water quality standards and therefore numeric effluent limits equal to water quality objectives. The City requests the same language changes for these provisions as noted for provision E, Part 3.3 (a)(1) and (f)(1). 8.3 Construction Sites Less than 1 Acre (a) Each Co-Permittee shall require the implementation of a minimum set of BMPs in combination at all construction sites (see Table 8 BMP's at Construction Sites Less than 1 Acre) to prevent erosion and sediment loss, and the discharge of construction wastes. 14 Erosion Control BMPs for erosion avoidance shall be the highest priority. If the site soils, hydrology, and geography are such that the BMPs in Table 8 are not adequate to meet protect WQS, additional (treatment train, redundant, and/or advanced)BMPs shall be deployed.					2.119

SECTION	Page	Item#	Issue (note if none)	Requires Clarification (rc)	Unfunded Mandate (um)	Initial/One time Cost ($)	Annual Cost ($)	
	Continued		By standardizing BMPs and setting minimums the RWQCB is dictating to the developer what erosion and sediment controls that can and cannot be used. The language indicates that other BMPs could be used in addition to the minimums, but a developer would not use best available technologies concurrent with the standardized BMPs cost effectively. In the current storm water program, the City meets with the responsible parties concerning erosion and sediment controls, and indicates where the likely problems will be and developers or their agents choose which BMPs to install. This is done so the City of Santa Rosa is not culpable in case of failure. By dictating which BMPs will be deployed, the City or the RWQCB may be taking responsibility for any measures that fail.					2.120
	Continued		The revision process section is vague, and needs clarification. The City requires an erosion control plan as a part of the subdivision improvement plans. If revised the engineered drawings are needed every time a change is made out in the field, this would be very costly. When a project is in the active construction phase there would not be enough time for the Property Owner, Engineer or City to submit written changes effectively. Currently a map of the project on site is required and all changes made to the site noted. The City prefers to maintain this current practice to maximize protection of water quality.					2.121
PART 9								
	52	Table	If a facility has a General Industrial Permit and is also permitted by Environmental Compliance(EC), it is unclear whose enforcement authority supersedes the other. Please clarify.	rc				2.122
	56	8-b-3	Section 8 (b)(3) page 56. Not every unregistered pesticide is a problem. Registration is sometimes voluntarily suspended by the manufacturer for economic reasons and when this is the case they can still legally be used. Please accommodate this circumstance in the permit provisions.	rc				2.123
	56	d	Requires a finding that the City is incapable of making (use of pesticides does not threaten water quality.) This requirement should be removed.					2.124
	56-57	9	Requires the City to inspect and clean catch basins for priority A more than is currently being done. This would require an increase in staff time and would likely not result in improved water quality protection.				**$50,000**	2.125
	57	9-c-1	The City understand this to mean that trash receptacles shall be installed in certain transit stops and schools when they are determined by the City to be high trash generating areas.					2.126
	57	9-b-d	Will place the City at risk of non compliance if garbage contractor does not empty containers within 24 hours. Rather than a specific time frame (within 24 hours), please revise to "in a timely manner."					2.127
	58	9-f-d	It will be difficult to quantify while cleaning with Vacuum truck as debris is not always be seen going up the tube.					2.128
	58	9-h	Requires the CoPermittees to inspect and maintain all treatment control BMPs, including post development treatment controls.			**$25,000**	**$100,000**	2.129

City of Santa Rosa Comments on Draft Order R1-2009-0050 - July 6, 2009

SECTION	Page	Item#	Issue (note if none)	Requires Clarification (rc)	Unfunded Mandate (um)	Initial/One time Cost ($)	Annual Cost ($)	
	58	E9 9(h)	Lack of reasonable options for disposal of BMP residual water The Permittees had requested that the options available for the disposal of residual water from treatment control BMPs include the opportunity to dispose the water on the land at agronomic rates (i.e. no runoff). The Draft Permit does not include this option. The request is still reasonable especially in light of the emphasis in Parts 5 and 6 to implement LID and the preferred hierarchy of LID strategies (page 39) that shows landscape and infiltration BMPs as the top two preferred strategies. This is essentially what is being asked for with the residual water. Again suggested language is: (h) Co-Permittee Owned Treatment Control BMPs (3) Any residual water not internal to the BMP performance within a treatment control BMP when being maintained shall be: (A) Hauled away and legally disposed of; (B) Applied to the land at agronomic rates; (~~B~~C) Discharged to the sanitary sewer system (with permits or authorization); or (~~C~~D) Treated or filtered to remove sediments and oil and grease, and meet the limitations set in Table 11 (Discharge Limitations for Dewatering Treatment BMPs) prior to discharge to the MS4.					2.130
PART 10								
	60	2(b)(1)	Requires CoPermittees to map or document all permitted connections to the Storm Drain System. This would require the City to videotape over 338 miles of storm drain pipes. Considered very expensive with no direct benefit to water quality. Please consider requiring the CoPermittees to videotape only those areas with excessive flow or observed illicit discharges.			**$4,700,000**		2.131
	61	4(a)	Requires Copermittees to screen certain storm drain pipes for illicit connections. The City assumes this is a requirement to visually observe outfalls for flow. Please clarify.	rc				2.132
FACT SHEET								
	14&15		The Fact Sheet contains reference to ASBS related to Marine waters, without saying anything further. Those statements should be removed as irrelevant to this permit. If not removed, the City requests that it be noted that the City MS4 does not drain into an ASBS.					2.133
	18		The Fact Sheet inaccurately describes the City's authority to impose fees and assessments to raise revenue in order to fund the new permit required activities. The City cannot simply impose new assessments, fees or charges. An assessment must be put to a vote of the people; if the assessment fails, the City would be without the capital to fund any of the activities. In support of the assessment language, the Regional Board states, "The Fact Sheet demonstrates that numerous activities contribute to the pollutant loading in the MS4." However each of the "facts" referred to are general global statements, and without data or any empirical evidence. The City objects to each of these conclusory "facts." And asks that the information regarding fees/assessments be clarified, in order to not mislead the public and other interested parties about fudning possiblities and monies available to fund permit compliance.					2.134

City of Santa Rosa Comments on Draft Order R1-2009-0050 - July 6, 2009

SECTION	Page	Item#	Issue (note if none)	Requires Clarification (rc)	Unfunded Mandate (um)	Initial/One time Cost ($)	Annual Cost ($)	
	44		Please cite the specific studies that support the statement in the first paragraph that pharmaceuticals are being found in non-storm water discharges.	rc				2.135
	44		Please see previous comment regarding clarity between Low Threat Discharge permit and MS4 permit. Based on the Fact Sheet, it appears both apply. The City requests clarification within the permit for which applies.	rc				2.136
Monitoring and Reporting Program								2.137
	1	A1	Requires flow weighted composite sampling for outfall monitoring at six locations. Task would require purchasing samplers and flow meters at a significant cost.			**$60,000**	**$20,000**	2.138
	2	A2	Requires monthly grab samples at two locations on Santa Rosa Creek.			**None**	**$40,000**	
	3	B2	Chronic Bioassays			**None**	**$20,000**	2.139
	3	C1	Bioassessment sampling			**$10,000**		2.140
	3	D1	Temperature Monitoring				**$2,500**	2.141
	3	D2	Bacteria Aerial Imagery			**$10,000**		
ATTACHMENT D								2.142
	page 1-26		The community survey referenced here is different from the behavior study listed on page 22 /1a. and page 24 /2(8) of the Waste Discharge Requirements document. The community survey that will be completed in Year 4 of Term 3, will cost an estimated $25,000 to complete. It is important that we distinguish between the two studies as they are not measuring the same things. The Community Survey is assessing residents knowledge of the sources of creek pollution and the activities that lead to creek pollution. The Behavior Study would require that the City measure the actual behavior of residents. A study of this type is quite elaborate and costly due to the labor hours and the large scope of behaviors covered in the PIPP.			**$25,000**		2.143
			Totals			**$6,783,000**	**$4,747,500**	

COUNTY OF SONOMA
BOARD OF SUPERVISORS
575 ADMINISTRATION DRIVE, RM. 100A
SANTA ROSA, CALIFORNIA 95403

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July 6, 2009

Catherine Kuhlman, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403

RE: Comments on the revised draft storm water permit

Dear Ms. Kuhlman:

I am writing to transmit the comments of the County of Sonoma on the second draft of the proposed National Pollutant Discharge Elimination System (NPDES) permit Phase I Term 3 (2008-2013) (hereinafter "proposed permit").

As you know, the County commented extensively on the first draft of the proposed permit last fall. The County appreciates that the Regional Water Board took those concerns seriously and met extensively with County staff prior to release of this second draft permit. Numerous substantial modifications were made in response to the County's comments. Further, we recognize the willingness of the Regional Board staff to negotiate an agreement to protect water quality outside the current permit boundary. This demonstrates a good collaborative effort on the part of both agencies. However, the County still believes that a Phase I permit is inappropriate and specific permit provisions remain in this second draft that are onerous, too costly and not commensurate to the size and potential impacts from the County's small urban areas. 3.1 3.2

Sonoma County expects the federal, state and local governments to work together to protect water quality, as no one agency can do this job alone. To that end, the County and Sonoma County Water Agency have gone above and beyond the requirements of our current NPDES permit to ensure pollutant discharges are minimized. Among many other measures, the County regulates development projects during construction, funds street sweeping to keep pollutants out of storm drains, conducts training of staff and the public, manages pesticide use in landscaped areas, and conducts a wide variety of public outreach programs. As you know, no other municipality in Sonoma County, except of course the City of Santa Rosa, Water Agency and the County, or anywhere else in the North Coast Region has a Phase I permit, much less implements measures above and beyond that permit to minimize storm water pollution. These measures cost the County alone approximately $1.9 million per year, of which only a portion is recovered by 3.3 3.4

development applicants.

The County also protects water quality in many other ways. For example, we conduct spill response activities, inspect certain industrial sectors, run a local oversight program for leaking underground storage tanks, regulate on-site wastewater disposal systems, conduct floodplain management activities, prohibit development in the floodway, ensure development does not adversely affect the flood carrying capacity of the floodplains, conduct hazardous materials collection and disposal activities, and the County is on the verge of adopting green building standards. Sonoma County is proactive in protecting the environment and water quality. Given all these efforts, we believe the State should treat the County as a partner, not as a discharger.

As detailed herein, 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 substantial evidence supporting a notion that the County should be regulated as a Phase I community. 3.5

As you also know, many cities in the North Coast Region have larger urban centers and larger populations, but are being regulated under a Phase II MS4 permit. The Regional Board has not required any other county in the region to submit a county-wide MS4 permit application, nor has the Regional Board issued a similar permit to any other entity. It is unfair and improper to include the County's unincorporated urban centers in a Phase I permit, especially since no other county in the North Coast Region has a comparable storm water program. 3.6

Requiring the County of Sonoma to obtain a Phase I NPDES MS4 permit outside of the City of Santa Rosa is contrary to Clean Water Act (CWA) and inconsistent treatment by the Regional Water Board. Further, the requirements of a Phase I permit are not commensurate to the potential discharges associated with small urban areas. The proposed permit proposes to regulate small urban areas in the unincorporated County (populations under 10,000 people) at the same level as the City of Santa Rosa which has a population of approximately 160,000 people and which is the largest metropolitan area in the North Coast Region. As such the draft Phase I permit is onerous and too costly for the potential benefit. It is not cost effective for small urban areas. Furthermore, elements of the proposed permit include numerous regulations for property owners and businesses. Imposition of these regulations creates a disparate economic burden for property owners and businesses located outside the City of Santa Rosa but within the unincorporated portions of the Phase I permit area. 3.7 3.8 3.9

Phase I permits are required for urbanized areas with large populations (>250,000 people for large municipalities and between 100,000 and 250,000 people for medium municipalities) or where the municipality is a significant source of pollutants. The unincorporated areas outside the City of Santa Rosa have a *total* population under 15,000 people (Larkfield/Wikiup – 7,500; Graton – 1,500, area outside of Windsor - ~2,000, area outside Healdsburg - ~1,500). These low populations do not support a Phase I permit. 3.10

The current draft of the Phase I permit refers to the Nationwide Urban Runoff Program (NURP) study to justify the RWB staff assertion that the County is a significant discharger of pollutants.

However, the NURP study does not provide data relevant to the County's small urbanized areas. The NURP studied approximately 30 locations across the United States back in the early 1980's. The storm water sampling data was categorized into several categories, one of which is "Urban Open and Nonurban." The data for this category shows consistently less pollution than the data for the other categories such as residential, commercial, industrial and mixed. Further, the State has not provided any local studies to support the assertion that small urban areas (less than 10,000 people) are a significant source of pollutants. 3.11

Requiring small unincorporated urban areas to obtain a Phase I permit results in unequal treatment compared to other municipalities. The census designated places (CDPs) identified as "urbanized areas" in the 2000 census are required to obtain coverage under a NPDES MS4 permit. However, the CWA regulations allow CDPs to obtain coverage under a Phase II NPDES MS4 permit. All other local municipalities (Healdsburg, Windsor, Sebastopol, Rohnert Park, Cotati) were allowed to file for and obtain coverage under a Phase II NPDES MS4 permit after the census designation. Further, forty-eight of the two hundred eight Phase II permittees listed on the SWRCB web site are a CDP. The Regional Water Board has inappropriately used a Phase I permit to regulate a low population, low risk municipality. The County is seeking consistent regulation under a Phase II permit similar to the incorporated municipalities of Healdsburg, Windsor, Sebastopol, Rohnert Park, and Cotati. 3.12

Regarding costs, the County alone expends $1.3 million dollars annually to comply with the current Phase I permit. The costs to comply with the revised proposed permit are estimated to be $2.7 million dollars annually. These costs, both current and estimated, are not commensurate with the water quality impacts in the urban areas under permit. For comparison, the City of Santa Rosa's average cost is $2 million dollars annually. The County's costs are of the same order of magnitude as the City's, however, the populations in the affected County areas are dramatically smaller than the City of Santa Rosa's population. Further, issues of equitability aside, costs of this magnitude are simply not sustainable under today's fiscal realities. 3.13

The financial implications of this permit cannot be discounted given the severity of the current economic climate. The additional $1.4 million annually required to implement the proposed permit represents a significant burden on the County's budget. The FY 09-10 budget includes reductions of approximately $20 million and approximately 150 positions. Furthermore, with the proposal to redirect gas tax funding from local jurisdictions to the state, our transportation and public works department is facing an additional reduction of approximately $8 million in FY 09-10—and the majority of permit costs are born by this department. The County simply does not have the discretionary revenue to fund the new permit costs.

It is important to note that despite these difficult fiscal realities, the County's overall commitment to environmental protection remains strong. We remain on track to achieve our self-imposed green house gas reduction target by 2015, as demonstrated by the approval of a $22 million comprehensive energy efficiency project to be implemented over the next three years. Our Board approved long term debt financing for this project because of its commitment to environmental protection, but also because it was the right business decision that will yield ongoing operational savings by reducing resource consumption. Over time, these savings will pay for the entire cost of the energy efficiency program and will generate an anticipated $58

million in savings. With limited resources, every taxpayer's dollar spent must live up to the same scrutiny, and the return on investment associated with the proposed permit is not clear.

In summary, Sonoma County 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 County continues to request a fair and equitable permit that reflects a level playing field for similarly sized municipalities and that ensures all parties (federal, state and local governments) share in the responsibility to protect water quality. The County supports protecting water quality, but local government cannot and should not be carrying the burden alone. 3.14

Specific comments are attached. Thank you for your consideration of our comments on this important issue.

Sincerely,

Paul L. Kelley, Chair
Sonoma County Board of Supervisors

cc: Regional Board Members
Sonoma County Board of Supervisors
Sonoma County Administrator
Department of Transportation & Public Works
Sonoma County Regional Parks
Sonoma County Water Agency
Sonoma County Department of Emergency Services
Permit & Resource Management Department
Department of Health Services

Enclosures: Attachment A –Transportation and Public Works Comments
Attachment B – Permit & Resource Management Comments
Attachment C – Department of Emergency Services Comments
Attachment D – Regional Parks Comments

Comments on the 2nd draft of the North Coast WQCB Waste Discharge Requirements

(KG 6/4/09)

Part 4, 6 (8): Impervious surface should be clarified as "new, not pre-existing". Resurfacing or reconstructing of existing impervious surfaces does not generate storm water runoff over and above the existing conditions. The threshold amount of impervious surface should be set at 20,000 square feet, rather than 10,000, so as not to unreasonably burden minor, incidental road improvement projects. On-street, not just off-street, bicycle lanes should be exempt in the apparently intended spirit of promoting non (potentially) water polluting modes of travel. 3.15

Part 9, 2 (b): Add "non-routine" to "long term maintenance projects". Many routine, insignificant (from a water quality standpoint) maintenance activities, pavement and crack sealing for instance, are actually relatively long term. "Non-routine" better captures the presumed intent that significant maintenance activities should require a Construction General Permit. 3.16

Part 9, 4 (a) (2): Exclude pothole and square cut patching and small area overlays as overly burdensome to these typically fast moving operations. The water quality risk posed by these operations would seem to be inconsequential. 3.17

Part 9, 4 (a) (7): Delete "by vacuuming or sweeping " as too exclusive. What's wrong with "shoveling" where appropriate? 3.18

Part 9, 4 (a) (11): Add "unless mitigated by appropriate BMP's". As written this is too restrictive and potentially overly burdensome, particularly if the potential ill effects can be controlled with BMP's. 3.19

Part 9, 5 (c) (1): Should be deleted as too exclusive. Many routine road maintenance activities have little effect on water quality and do not trigger the need for post construction BMP's – chip sealing, spot overlaying, and fog sealing for example. This requirement could be taken as confusing since post construction controls are only considered for non-routine, long term maintenance projects involving one acre or more (Part 9, 2(b)) in conjunction with the required Construction General Permit. 3.20

Part 9, 9 (a) (1): Need to clarify that "debris" is other than sediment, more akin to trash. My notes on the discussions with Regional Board staff on the first draft indicate that debris and sediment are different. Also, subsequent section (f) (1) (B) calls out debris and sediment separately. 3.21

Part 9, 9 (f) (1) (A): As above re. catch basins, clarify that "debris" is other than sediment. Define "other drainage structures" as open drainage facilities (e.g. roadside ditches), as opposed to pipes and culverts. It is expected that closed system storm drain pipes/culverts which receive runoff from curbed streets and roads would be inventoried, inspected regularly, and cleaned as necessary (as they are under the current requirements), but open system pipes/culverts on non-curbed streets and roads, such as simple cross culverts, should not be subject to this type of requirement. Pipes in these situations typically mimic the natural bottom, open drainage ways upstream and downstream, do not necessarily trap debris and, except for large diameter pipes and box culverts, are typically difficult and time consuming to visually monitor. Since visual monitoring will be and can be easily performed in the open channels upstream and downstream, it would seem to serve no practical benefit to invest the resources needed to monitor the interior of these pipes. 3.22

COUNTY OF SONOMA
PERMIT AND RESOURCE MANAGEMENT DEPARTMENT
2550 Ventura Avenue, Santa Rosa, CA 95403-2829
(707) 565-1900 FAX (707) 565-1103

To: Nathan Quarles, Engineering Div. Manager

From: Reg Cullen, PRMD RC

6 July 2009

☐ EO ☐ WMgmt ☐ Admin
☐ AEO ☐ Timber ☐ Legal
☐ Reg/NPS ☐ Cleanups ☐
☐ Date

Subject: Review of hydromodification[1] in the draft Phase I MS4[2] permit, Version 2

TWO POINT SUMMARY OF COMMENTS

1) We need to generate detailed guidance on hydromodification before any new projects (beyond existing SUSMP[3]) are required to examine the impacts to water quantity from the MS4 permit.

2) Need the North Coast Regional Water Quality Control Board to clarify exactly how many parameters (two or three) and which parameters (discharge, velocity, duration, or volume) will require analysis for hydromodification.

A. Review of North Coast Regional Water Quality Control Board (RB1) response to hydromodification comments by PRMD on Version 1 of the draft Phase I permit

On 21 October 2008 the Supervisors from the County of Sonoma sent comments to the North Coast Regional Water Quality Control Board (RB1) regarding compliance with hydromodification as a significant issue for the County. Hydromodification is found as main concern #8 in that letter from the Board of Supervisors and cross-referenced in red by RB1 comment number 3.14. However, Comment 3.14 is not addressed in the hydromodification section of the RB1 response to comments.

3.23

The County has a strong interest in supporting post-construction BMPs via SUSMP implementation and the County Grading ordinance; and RB1 should understand this commitment via interaction with County staff at our scheduled monthly SUSMP meetings. It is an oversight by RB1 that the County Board of Supervisor concerns about hydromodification requirements were not addressed.

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[1] Hydromodification is a change in storm water runoff caused by land use modifications (CASQA, 2009) or altering the flows or the beds or banks of streams from their existing state (based on North Coast Regional Water Quality Control Board 1, abbreviated RB1). Unless managed, hydromodification can cause channel erosion, sediment transport, and impact riparian habitat.

[2] MS4 stands for municipal, separate storm sewer system. Version 2 of the RB1 MS4 was released for public comment on 22 May 2009. Version 1 was released in on 9 September 2008.

[3] SUSMP stands for Standard Urban Stormwater Mitigation Plan in effect June 2005 providing guidance on post-construction BMPs for the Co-Permittees and design community in the Santa Rosa area.

The county and RB1 know the SUSMP Guidelines do not provide detailed guidance on how the applicant should address hydromodification (also known as channel-forming discharge for SUSMP). In the initial response to comments PRMD described we can not expand our program until we provide adequate guidance on hydromodification.

3.24

It would be unconsionable to require more projects address hydromodification in an MS4 permit without providing viable guidance to engineers and the development community. This problem has been explained to RBI many times and the regional water boards convinced the county not to fund consultant assistance with channel-forming discharge until the state produces other guidance documents (with uncertain release dates).

RB1 cross-referenced comment 3.27 responds to the issues of the above paragraphs by stating "The draft permit allows time for development of a hydromodification plan in order to gain from knowledge propagated from other areas." The county needs a documented understanding from RB1 that no additional projects beyond those required by SUSMP will need to address hydromodification until the County can provide adequate direction to the engineering design community in the form of separate hydromodification guidance or an expansion of the hydromodification sections of SUSMP. Requiring more projects analyze hydromodification without providing detailed guidance will cause the loss of much time and money.

3.25

RB1 cross-referenced comment 3.28 summarizes PRMD's comments as PRMD "asserts" that hydromodification goals cannot be met in clay soils..." This comment misses the main point of PRMD's issue with hydromodification (item #3, pg 56 of RB1 compiled comments) in that requiring post-project hydrographs maintain pre-project hydrographs for four parameters (storm water runoff flow rates, time of concentration, volume and duration) will only be possible with appropriatedly designed infiltration galleries in well-drained soils (or with retention ponds). Where retention ponds are not viable (especially for in-fill projects in urban settings) and areas with clay, poorly drained soils (like much of the Santa Rosa Plain) meeting this requirement becomes nearly impossible.

The PRMD comment goes on to state "... we need to more fully develop the hydromodification program then provide public outreach at workshops about hydromodification. Requiring more projects address hydromodification without providing the guidance is a recipe for disaster." RB1 sidesteps commenting on the needs to develop detailed guidance before more projects fall under the requirements of hydromodification within the MS4 permit.

3.26

In summary, RB1 did not address the main issues the County had with hydromodification or it did not address issues at all in our initial response to comments.

B. Comments on hydromodification requirements of Version 2, draft Phase I MS4 permit

Version 2 of the RB1 draft MS4 permit mentions hydromodification once in the Findings (pg. 7/62) in the context of the County proposing implementation of a storm water program element that implements of post-construction treatment controls, such as Low Impact Development (LID) and hydromodification requirements to mitigate storm water from development. However, it is in Part E, Special Provisions that hydromodification requirements are described in detail (especially Part 4 , Part 5, and Part 6 discussed below).

PART 4 – Planning and Land Development Program (pg. 33/62)

Item 2 of this part requires the County to implement Standard Urban Stormwater Mitigation Plan (SUSMP, 2005) for Parts 4, 5, and 6. SUSMP is a discretionary program requiring source control, water quality treatment, an examination of hydromodification (channel-forming discharge) where the applicant is responsible for demonstrating that the post-development runoff rate and velocity from the project site will be limited to pre-development conditions for the two-year, 24-hr storm event, and the conservation of natural areas.

The County has a continued commitment to implement the SUSMP program. However the hydromodification element needs further development as borne out by statements in SUSMP (2005) that the County needs to evaluate approaches to mitigate volume and duration increases; and that the County needs to evaluate areas that may not be subject to water quantity considerations. Also, RB1 is aware the hydromodification section of SUSMP needs more detail and PRMD still firmly feels a need to develop this detailed guidance on hydromodification and educate the design community before the MS4 permit requires more projects abide by the principles of hydromodification analysis. 3.27

Item 3 (b) requires the County minimize the percentage of impervious surfaces on land development projects and implement mitigation measures to "mimic" the pre-development water balance through infiltration, evapotranspiration, and capture and reuse of storm water. The County can mimic pre-development hydrographs by closely resembling those hydrographs. 3.28

Item 3 (d) requires the County to "properly select, design and maintain treatment control BMPs and hydromodification control BMPs to address pollutants that are likely to be generated by land development, minimize post-development surface flows and velocities, assure long-term functionality of the BMPs, and avoid the breeding of vectors." The two hydrograph modification parameters specified in this item are 1) discharge (surface flows) and 2) velocity. The county feels it can assist the design community achieve compliance with these two parameters after developing detailed guidance and providing public education and outreach on hydromodification. 3.29

PART 5 – New development/Redevelopment Integrated Water Quality/Resource Plan (pg. 37/62)

Item 2 of this part requires the County to "develop a new development and redevelopment integrated water quality and water resource plan, for Executive Officer approval, which includes an LID manual, post-construction treatment BMP choice criteria, and a hydromodification control and mitigation plan. The integrated water quality/resource plan shall be included in an updated SUSMP manual, and shall include the following: 3.30

(a) Low impact development measures for (1) all new development and redevelopment projects shall be integrated into project design. This section of the draft permit defines Low impact development (LID) as a storm water management and land development strategy that emphasizes conservation and the use of on-site natural features integrated with engineered, small-scale hydrologic controls "to more closely reflect predevelopment hydrologic functions." The County is willing to abide by this requirement. 3.31

Section (a) (3) mandates the Co-Permittees shall develop a comprehensive LID technical guidance manual no later than October 1, 2011, for use by land planners, engineers and developers for both public and private development and redevelopment projects. The LID guidance manual shall include objectives and specifications for integration of LID strategies including (K) LID design and flow modeling guidance and (L) Hydrologic analysis; which form the basis of hydromodification. I ask RB1 to clearly state no new projects other than SUSMP projects shall be subject to hydromodification requirements until this LID guidance with hydromodification detail is produced by 1 October 2011. 3.32

Section (a) (4) mandates the Co-Permittees shall facilitate implementation of LID by providing key industry, regulatory, and other stakeholders with information regarding LID objectives and specifications through an LID training program. "The LID training program shall begin by April 1, 2012." The County agrees this time is sufficient to provide training after the hydromodification guidance is generated by Oct. 2011. 3.33

Item 2 (c) is entitled "Hydromodification (Flow/Volume/Duration) Control Criteria" and Section (1) requires the Co-Permittees to require all new development and redevelopment projects to implement hydrologic control measures, to prevent accelerated downstream erosion, minimize flooding and public nuisance conditions, to recharge ground water and to protect stream habitat in receiving waters. The County feels it can achieve this goal. 3.34

However, the paragraph goes on to state "The purpose of the hydrologic controls is to minimize changes in post-development hydrologic storm water runoff discharge rates, velocities, and duration." The County feels it can achieve this goal. But, it should be noted that while this paragraph lists the three parameters of discharge rates, velocities, and duration; the section is entitled with a different parameter of volume and does not include velocity. This is an inconsistency that must be clarified so the County can know which parameters must be examined. The county feels it can not adequately comment on the hydromodification section of this draft permit until the inconsistency is resolved. 3.35

This paragraph continues that hydromodification "... shall be achieved by maintaining the project's pre-development storm water runoff flow rates, and duration." This time the inconsistency is that only two parameters are listed (runoff rates and duration). Again, the number of parameters and type of parameters must be clarified so the County can know which parameters must be examined. The county feels it can not adequately comment on the hydromodification section of this draft permit until the inconsistency is resolved. 3.36

The paragraph concludes the Co-Permittees "shall also ensure that total storm water runoff volumes remain the same as the pre-development volumes, when possible." The County feels it can comply with this requirement. 3.37

Section (C) of this section requires the "Co-Permittees shall develop a Hydromodification Control Plan with input from local stakeholders and Regional Water Board staff by October 1, 2013, for Executive Officer approval, to address hydromodification based on accepted practices." The County seeks clarification on how the "Hydromodification Control Plan" of this section differs or integrates with the comprehensive LID technical guidance manual due no

later than October 1, 2011 mentioned above. The plan of this section seems redundant[4] and the County seeks clarification from RB1.

Section (E) identifies an "Interim Hydromodification Control Requirements." This interim plan is required to "protect receiving waters until Co-Permittees complete a Hydromodification Control Plan" mentioned above due 1 Oct 2013. Unfortunately, the deadline for the interim plan is January 1, 2010. While the county is extremely supportive of the use of an interim hydromodification plan until a more detailed plan is produced the deadline may be difficult to attain as the this version of the MS4 permit is scheduled to be adopted on 1 October 2009. The county asks for nine-months from adoption date of the MS4 to produce the interim hydromodification requirements. 3.38

PART 6 – Implementation of New Development/Redevelopment Post-Construction BMPs

Section 1 on Maintenance Agreement and Transfer requires the County obtain signed documents from the developer, public entities, or written text in CCRs/HOAs about transfer of responsibility for maintenance of post-construction BMPs. The County concurs maintenance is an important component of post-construction BMPs but believes prescribing the method and manner is inappropriate for an MS4 permit. The County would like this section struck from the permit and allowed to generate its own methodology for the efficient transfer of responsibility for post-construction BMPs. 3.39

Section 2, (c) 3 requires the County prepare a post-construction BMP maintenance inspection program that shall incorporate, in part, criteria and procedures for post-construction treatment control and hydromodification control BMP repair, replacement, or re-vegetation. This is something the County needs to address over the next permit term. 3.40

CONCLUSION

In order to adequately comment on the hydromodification components of Version 2 of the draft MS4 permit the County needs clarification on:

1. The number and exactly which parameters to be addressed when analyzing hydrograph modification. The County can abide with mimicking natural hydrologic processes at a site but it becomes more difficult until nearly impossible to meet hydrograph requirements when the list of parameters becomes long and there is a strict requirement not to exceed pre-project conditions. 3.41

The County feels it can continue to require post-project conditions be met for two parameters as described in the SUSMP Guidelines: 1) peak discharge and 2) peak velocities. Adding 3.42

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[4] The Co-Permittees have discussed with RB1 how to best combine and use collective resources in addressing hydromodification. We have discussed 1) the Sonoma County Water Agency issuing an initial LID manual that would not go into hydromodification details, 2) the generation of hydromodification details that could be an appendix to the existing SUSMP guidelines and form the basis of public education and outreach, and 3) having the SCWA include a detailed section on hydromodification in the LID chapter of the next verions of their Flood Control Design Criteria (FCDC). The hydromod. details of an appendix to SUSMP could form the basis for the SCWA section on hydromod. in the next version of the FCDC.

volume and duration makes the analysis more difficult.

2. The County feels no new projects should be held to hydromodification requirements (beyond SUSMP projects) until a detailed guidance is developed and presented to the public via workshop. The County is dedicated to supporting the requirements of analysis of hydrograph modification for projects in an orderly manner. 3.43

July 6, 2009

To: Nathan Quarles, Engineering Div. Manager

From: Janice Gilligan, PRMD

Subject: COMMENTS ON DRAFT NPDES MS4 PERMIT – SECOND VERSION

General Comments

On May 22, 2009, the Regional Water Board released a second draft of the Storm Water Permit for Santa Rosa, Sonoma County, and the Sonoma County Water Agency. In the second draft, there are significant new requirements that lack flexibility, are overly prescriptive, and do not appear to take local costs into consideration. In addition, this permit identifies the actions, activities, and best management practices (BMPs) that the County must implement without the flexibility that allows for individual determinations. 3.44

The County of Sonoma continues to be committed to working with the Regional Board to collaboratively create a successful new permit that will achieve our mutual water quality goals. However, at this time we feel that we have invested an extraordinary amount of time and resources into this effort with minimal results. We have repeatedly drawn attention to elements in the proposed permit that are contradictory, unworkable, counter-productive and/or fiscally irresponsible. Unfortunately, the continued insistence on unwarranted regulatory requirements instead of a collaborative partnership between the County and the Regional Water Board squanders an extraordinary opportunity toward achieving environmental improvements. 3.45

Specific Comments

A. DISCHARGE PROHIBITIONS

1. 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 CWA 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 County MS4s. 3.46

2. Table 1 also includes natural springs and uncontaminated groundwater as a type of discharge into the MS4. Please explain why these two items are included in this table, and why the Permittees would need to seek authorization from the Executive Officer to allow such flows into the MS4?

The CASQA BMP Handbook states, "Some non-storm water discharges do not include pollutants and may be discharged to the storm drain. These include uncontaminated groundwater and natural springs." This document is recommended by the Water Board to use as BMP guidance yet the revised draft permit is contradicting it. 3.47

Section 5 states, "In lieu of a strict prohibition of non-storm water flows the Permittees may submit a BMP Plan that is noticed for public review prior to authorization from the Executive Officer to allow specific non-storm water flows into the MS4." The County should not have to abide by this requirement for natural springs and rising groundwater. 3.48

No later than October 1, 2010 each Co-Permittee shall modify storm water management programs, protocols, practices, and municipal codes to make them consistent with the requirements herein, unless otherwise specified in this Order. This time frame is unrealistic given the numerous programs and codes involved. We recommend a phase approach or changing the due date to October 1, 2011. 3.49

Part 5 – Responsibilities of the Co-Permittees
(e) "Provide technical and administrative support for committees that will be organized to implement this Order and it's requirements."

"Committee" has not been defined. What type of committees should be supported, what constitutes a committee, who can organize a committee, how many members make up a committee?

Further, what level of technical and/or administrative support must we provide? These terms also are not defined. Are we required to type the committees letters as administrative support? Are we required to do engineering consulting work for these committees as technical support? 3.50

This provision is too vague and leaves too much room for interpretation. The County must use their limited resources to protect water quality in a cost effective manner and this requirement would detract from other goals we would want to implement. We suggest the following language, "County staff will voluntarily attend and participate in committee meetings when available."

E. SPECIAL PROVISIONS

Part 1 – General Requirements

3. Best Management Practice Program Substitution
This requirement was changed in the first draft permit but added back in as a "program substitution." The County maintains that this is an unnecessary process and suggests the following language: The Co-Permittees may substitute a BMP Program and will notify the Regional Water Board, for Executive Officer review, of any BMP Program substitution and document the reasoning for the substitution, including a demonstration that… 3.51

This would remove the obligation to petition the Executive Officer and include public notice while the Water Board would still have oversight of any substitution.

Part 2 – Public Information and Participation Program (PIPP)

1. "The co-permittees …shall coordinate with SSU and SRJC to implement specific requirements."

The County is already coordinating with 6 departments, 2 co-permittees, RRWA, and 2 Water Boards. SSU and SRJC are under their own Phase II permits and the County has no control over these institutions or their programs. Please explain what is expected here. What are the specific requirements we are being asked to coordinate on and who will do the coordination? 3.52

1. (a) "To measurably increase the knowledge of the target audience about the MS4 and adverse impacts of storm water pollution."

2. (c) (6) "The Co-Permittees shall provide schools with materials, videos, and live presentations to educate a minimum of 40% of all school children (K-12) every 2 years." 3.53

It is not the role of the County (under an MS4 permit) to provide schools with educational materials and the County has no legal authority to dictate educational curriculum in the schools. The County proposes to work with the County Board of Education to provide educational materials on storm water runoff and pollution prevention to schools.

2. (c) (7) "The Co-Permittees shall develop and implement a strategy to measure the effectiveness of school educational programs, including an assessment of student's knowledge…

Item E.2.2(c)(6) requires that the Co-Permittees provide schools with materials so the schools can provide education regarding storm water impacts. At this point, the Co-Permittees have no control on how, or even if, the education is conducted nor do we any authority to change the teaching methods. Further we have no authority to grant us access to the students or teachers. 3.54
Also, assessing knowledge or behavioral change can not be directly related to water quality improvements. It would be extremely difficult, if not impossible, to link someone's knowledge or a behavioral change to a quantitative water quality improvement. Assessing student's knowledge can not be tied directly to water quality.

It is not the role of the County (under an MS4 permit) to assess the effectiveness of school educational programs. In addition to not being school teachers or sociologists, the County does not have the expertise to develop a behavioral change assessment strategy. This provision would require additional staffing and detract from other goals. We suggest it be removed.

2.(c) (8) "The Co-Permittees shall develop and implement a behavioral change assessment strategy…

Here again, we are being asked to assess whether or not there has been a change in the behavior of the public. This is an onerous task and the County does not have the expertise to develop a behavioral change assessment strategy, nor do we see the benefit it would produce 3.55
in protecting water quality or preventing pollution. This activity would detract from other goals that are more important to the County.

Assessing behavioral change can not be directly related to water quality improvements. It would be extremely difficult, if not impossible, to link someone's behavioral change to a quantitative water quality improvement. Assessing behavioral change can not be tied directly to water quality.

3. Business Program
(a) Corporate Outreach

3. (a) (1) (A) This provision for corporate outreach includes "Meetings with corporate management and/or facility operators and local facility managers to explain storm water regulations."

The County is uncertain about where these corporate managers are located, how many meetings would be required, and what level of effort would be necessary. This requirement would be very time consuming and detract from other outreach efforts. We suggest substituting this requirement with sending letters to a percentage of facility operators to explain storm water regulations by year 2011. 3.56

In the first draft permit comments we agreed to include Nurseries and Landscape material yards for public outreach but not inspect their facilities, yet these and other facilities were included as inspection provisions in the second draft that are beyond our ability to oversee or perform. In addition, the facilities listed in Part 3 are among the same facilities listed in Part 2 where we would distribute pollution prevention educational materials. We recommend deleting items B, D, E, F, and G, and changing the Outreach and Education section to say, "The County shall distribute pollution prevention materials to the following facilities within their jurisdiction."

2. (b - d) These sections dictate and/or recommend how each co-permittee shall document the new industrial/commercial inspections including GIS mapping or Internet-based system. The County departments who perform inspections at retail gasoline outlets and restaurants have an established protocol and tracking system. We propose that the Water Board accept or allow the current tracking method used by each permittee and delete the other mandatory tracking requirements. 3.57

3. Inspect Critical Resources

Part 3.3(a)(1) states each co-permittee shall inspect facilities identified in Part 3 twice … Part 3.1(a) wants a industrial/commercial program that identifies applicable facilities. What does applicable facilities mean? The definition, Attachment C, for industrial/commercial facility is very broad and includes most if not all commercial enterprises. Hair salons, law offices, supermarkets, 7-elevens, etc. all meet the definition. Applicable facilities could also mean a critical source, but the term "critical source" is not defined. So Part 3.3(a)(1) means the co-permittee shall inspect all facilities that meet the industrial/commercial facility definition. 3.58

Part3.3(a)(1) starts off by requiring inspections and continues with, "The Co-Permittees shall require implementation of additional BMPs and controls to reduce pollutants in storm water runoff that may be causing or contributing to exceedances of WQS in CWA section 303(d) listed impaired water bodies." The next sentence is very similar. 3.59

Now consider that most, if not every, streams in the region is 303(d) listed for some form of soils (sediment, turbidity, etc). Also consider the RWB staff have stated numerous times that impervious surfaces cause or contribute to increase temperatures and increase sedimentation through hydrograph modification. This provision could mandate that the co-permittees require the retrofit of BMPs to address hydrograph modification for every industrial/commercial facility in our respective permit boundaries/MS4s. This would create a tremendous burden on the County to inspect and enforce these retrofit BMPs and this would create a disparate economic burden to those commercial establishments located within the permit boundary.

4. Interagency Coordination

The County would agree to perform item (c) and (e) of this provision which includes: Investigation of Complaints Regarding Facilities Not Covered Under a State Industrial Permit – Transmitted by the Regional Water Board Staff: and Participation in a Task Force. 3.60

Part 7 – State Statute Conformity

Part 7.2 requires the Co-Permittees to amend, revise or update its General Plan to include watershed and storm water quality and quantity management. The County recently adopted its General Plan 2020. The public and agencies alike were invited to provide comments on the draft General Plan and to participate in the adoption process. 3.61

4. Construction Sites Greater than 1 Acre

The County currently requires a minimum set of effective BMPs and has no opposition to this requirement.

5. Local Agency Requirements

(1) Erosion Control Plan

The County currently requires erosion control plans on all grading permits along with BMP locations. The problem with this provision is that the Water Board seems to be dictating what should be required in our permit applications. "The Co-Permittee shall not approve any erosion control plan unless it contains appropriate construction site BMPs…and maintenance schedules." By adding requirements such as maintenance schedules and a rationale for BMP selection to our permit process the Water Board is prescribing method and manner of conducting business. 3.62

PRMD currently requires an effective set of BMPs and will include a statement on all Erosion Control Plans that says, "The selected BMPs must be installed, monitored, and maintained to assure their effectiveness and meet compliance with local codes or other state regulations." We suggest removing maintenance schedules and a rationale for BMP selection as they are redundant.

Part 10 – Illicit Connection and Illicit Discharge (IC/ID) Elimination Program

2. General Permit Implementation

(a) During our meetings with the Water Board it was agreed to drop the requirement of making our IC/ID procedures available for public review. We do not agree that it is the public's business to review our procedures and comment on them. What purpose would this serve? 3.63

Conclusion:

The County is committed to protecting water quality and has substantially improved upon our program during the last permit term. We believe that a permit can be developed that provides a practicable means for Sonoma County to support its ongoing water quality and pollution prevention efforts. However, as with the first Draft Orders, we remain concerned with the same approach being taken with the second Draft Tentative Order. 3.64

In its adoption of an MS4 permit, the Regional Water Board should carefully balance the need to protect water quality, the activities associated with water quality protection and the financial cost of permit requirements. In many cases, the proposed permit requirements may not result in significant water quality improvements as compared to the cost of implementation. The County needs flexibility to be able to improve water quality in the most cost-effective and efficient manner possible, without being tied to a multitude of prescriptive and administrative actions that are not effective in improving water quality.

Thank you for your consideration of our comments. We look forward to working with the Regional Board and having a fair and equitable permit.

COUNTY OF SONOMA
DEPARTMENT OF EMERGENCY SERVICES
FIRE SERVICES * EMERGENCY MANAGEMENT * HAZARDOUS MATERIALS

MARK ASTON, DIRECTOR/FIRE CHIEF

June 23, 2009

Ms. Catherine Kuhlman, Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Ste. A
Santa Rosa, CA 95403

Dear Ms. Kuhlman,

Thank you for this opportunity to comment on the draft Santa Rosa – Sonoma County MS4 NDPES Stormwater Permit. We appreciate the work of the Regional Board in addressing water quality issues in Sonoma County and look forward to continuing the cooperative and mutually beneficial relationship we share with your agency.

The following are ~~my~~ staff comments on the draft of Order No. R1-2009-0050, "Waste Discharge Requirements," and the associated Fact Sheet as published on the North Coast RWQCB's website:

Page 24 of 62 notes the proposed corporate outreach program "shall target a minimum of four retail gasoline outlets (RGOs) franchisers and cover a minimum of 80% of RGO franchisees in the county…" As a Certified Unified Program Agency (CUPA), the County currently regulates all RGOs within its jurisdiction for operation of underground fuel storage tanks, handling of hazardous materials and, where applicable, generation of hazardous wastes. However, RGOs are not required by law to identify to CUPAs whether they are part of franchises. This would require additional reporting not mandated by Chapters 6.5, 6.7 or 6.95 of the California Health & Safety Code (HSC) or Titles 19, 22 or 23 of the California Code of Regulations (CCR). Further, the efficacy of such a corporate outreach program at the local level may be limited. As an alternative, we recommend that the State Water Resources Control Board consider launching an outreach program to the major oil companies to communicate stormwater best management practices for RGOs. 3.65

Page 26 of 62 notes that "Each Co-Permittee shall maintain a watershed-based inventory or database of facilities within its jurisdiction…" We find this language to be unclear. We currently maintain a detailed database of all of our CUPA-regulated facilities. Our inventory is sorted by street address (as required in the HSC) and does not identify the watershed in which a facility is located. We respectfully suggest that it be reworded to state "…maintain a database of sites or a watershed-based inventory of facilities within its jurisdiction…" 3.66

Page 58 of 62 states that the Spill Response Plan shall contain "Immediate notification to appropriate sewer and public health agencies, Sonoma County Department of Emergency Services (DES) ***and*** the Office of Emergency Services (OES)" (emphasis added). Since we have already created a matrix in Sonoma County through which the appropriate agency is notified, there is not a need to notify every agency of every spill. In addition, OES is now referred to as Cal EMA. Therefore, we suggest the following revision: "Immediate notification to appropriate sewer and public health agencies, Sonoma County Department of Emergency Services (DES) and/or the California Emergency Management Agency (Cal EMA)." 3.67

Attachment C

Page 58 of 62 states that complaint investigations are to be initiated within 24 hours of receiving them, while **page 61 of 62** notes that Co-Permittees shall respond within 1 business day of discovery or a ***report*** of a suspected illicit /illegal discharge…" (emphasis added). Historically, DES has found that many of the complaints it investigates prove to be unsubstantiated. It would be a mistake for DES to commit itself to expending overtime on every after-hours complaint it receives regardless of probable validity. Therefore, we recommend that the more appropriate language found on page 61 also be used on page 58, rewording it to state that complaint investigations are to be initiated within 1 business day of receiving them.

3.68

Thank you for your consideration. Please let me know if you have any questions or comments. You can reach me at my office number of (707) 565-1152 or by e-mail at maston@sonoma-county.org.

Sincerely,

Mark Aston
Director/Fire Chief

SONOMA
COUNTY
REGIONAL
PARKS

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July 6, 2009

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

RE: DRAFT WASTE DISCHARGE REQUIREMENTS
DRAFT ORDER NO. R1-2009-0050
NPDES NO. CA0025054
WDID NO. 1B96074SSON

Dear Ms. Kuhlman:

The Sonoma County Regional Parks Department (Regional Parks) has reviewed Draft Order No. R1-2009-0050 (Draft Order) and respectfully submits the following comments for your consideration in preparation of the Final Order.

Regional Parks is committed to improving water quality associated with our construction projects and facility maintenance. As such, Regional Parks will strive to achieve compliance with the Final Order however; the Draft Order presents challenges to achieving this goal particularly in regards to the time-frames included in the Draft Order and budgetary issues within our Department.

Regional Parks appreciates RWQCB staff participation in the numerous meetings held to discuss the Draft Order and the work RWQCB staff has put into the revision and reorganization of the Draft Order and Fact sheet. While modifications have been made to clarify the regulations and expectations of public development & redevelopment projects undertaken by the Co-permittees, the Draft Order still appears to be written to regulate private development projects permitted by the Co-Permittees. The Draft Order is, in places, confusing for County Departments that will be implementing their own projects that do not require permits or approvals, such as grading permits. 3.69

Regional Parks also requests that the RWQCB commit to reviewing and commenting on the Annual Reports submitted by the Co-Permittees. The Co-Permittees spend a substantial amount of time and money complying with the requirements specified in the Waste Discharge Requirements and in preparing the Annual Reports. Regional Parks feels that the RWQCB's review and comments on the Annual Reports are an integral component to improving the overall storm water program and future storm water permits. 3.70

Following are comments specific to sections of the Draft Order:

1. **Pg 20, Part 3, Item 1 – This provision requires additional breakdown of budgetary expenditures.**

   The annual budget summary report expansion requested by the Regional Board would require extensive staff hours to produce. Regional Parks opposes this requirement and requests an explanation for the justification of this provision. Compliance with this requirement would require Regional Parks to extensively overhaul its accounting and time reporting system. The cost of doing so is very expensive and not cost-efficient. 3.71

2. **Pg 22, Part 2, Item 2(a) – This provision requires labeling of all storm drain inlets.**

It is not practicable to label all storm drain inlets. Example: a drop inlet in the middle of an athletic field. Regional Parks proposes that labels be required on storm drain inlets within or adjacent to sidewalks or parking lots. 3.72

3. **Pg 22-25, Part 2, Item 2, 3 – These provisions require increased public participation and education programs concerning storm water quality.**

Regional Parks continues to operate the Environmental Discovery Center (EDC) at Spring Lake Regional Park. The "Down the Drain" program relays messages about storm water pollution prevention, the "Habitat & Home" program illustrates the importance of wetland management and protection, and two other environmental education programs have storm water modules as well. Each year, the EDC educates thousands of individuals on the importance of storm water quality and environmental protection; during Fiscal Year 07-08, the EDC educated 11,600 participants. Consistent with the SWMP, Regional Parks will continue its commitment to education by providing storm water education through the EDC. 3.73

4. **Page 33 - 37. Part 4 - Planning and Land Development Program. This item requires that Permittees implement a Planning and Land Development Program for all New Development and Redevelopment projects subject to Order No. R1-2009-0050.**

a. Item 5. Entitlement Process. Regional Parks is unsure whether this applies to the conveyance and/or acceptance of easements, which is fairly common at Regional Parks and is a routine paperwork exercise. If this provision is intended to apply to the conveyance and/or acceptance of easements, Regional Parks suggests that the provision is excessive and requests that language be added to specify these requirements not apply to easements. 3.74

5. **Pg 36, Part 4, Item 6 – This provision defines impervious surface and required post-construction treatment control thresholds.** 3.75

Please clarify the conditions in which permeable pavements with subdrains shall be considered impervious. The revised statement in the Draft Order concerning permeable pavements with subdrains lacking a properly engineered soil-based filter medium is inconsistent with the definition provided in Attachment C.

6. **Page 43, Part 6, Mitigation Funding.**

This provision should be numbered "5" and the lettering below it should be (a) – (e). 3.76

7. **Page 44, Part 6, Standard Urban Stormwater Mitigation Plan.**

This provision should be re-numbered "6." 3.77

8. **Page 44, Part 6, Project Coordination.**

This provision should be re-numbered "7." 3.78

9. **Page 44, Part 7 - State Conformity. The Draft Order requires Permittees to incorporate additional procedures to consider potential storm water quality impacts and provide appropriate mitigation measures into California Environmental Quality Act (CEQA) documents.**

3.79

a. Regional Parks maintains that the existing CEQA Checklist provides the opportunity to evaluate the items listed in the Draft Order amongst the various resource categories. RWQCB comment letter states "RWB staff contends that storm water impacts are already required to be evaluated under CEQA". Regional Parks still questions why the Draft Order includes the requirement to change CEQA procedures when we are all in agreement that CEQA already requires the evaluation of storm water impacts.

3.80

b. This requirement seems to exceed the federal CWA provisions (reference to the finding "Permit is Not an Unfunded State Mandate" on page 17 of the Fact Sheet). While Regional Parks recognizes the benefits of reconciling the Draft Order with the County's CEQA process, the RWQCB should demonstrate the nexus of this requirement to the federal Clean Water Act (CWA) provisions.

3.81

c. Compliance of this requirement would result in an undetermined cost to Regional Parks. Due to the missing link with the federal CWA, this requirement is an unfunded local government mandate, which contradicts the finding "Permit is Not an Unfunded Mandate".

3.82

d. Please spell out the meaning of "WQS" in (1)(a)(1)(H).

10. **Pg 45-46, Part 8, Item 2 – This provision discusses grading restrictions during the wet season.**

3.83

The provisions discussed regarding grading during the wet season do not include details key to estimating the departments ability to comply.

3.84

a. Regarding Item 2(a) (1): Please clarify as to the beginning of the wet season. The wet season dates listed in the Draft Order need to be consistent with the definitions provided in Attachment C. Regional Parks does not support an October 1st wet season start date. Consistent with the Grading Ordinance, Regional Parks proposes a wet season beginning October 15th and ending April 15th because the month of October is generally dry. Regional Parks is supportive of having erosion control materials on-hand during the month of October, or whenever rainfall is in the weather forecast. Regional Parks is not supportive of an outright ban on grading during the wet season, and feels the wet season dates should be a general guideline. Actual grading times should be based on real-time weather conditions.

3.85

b. Regarding Item 2(b): Regional Parks proposes the word "developer" be changed to "contractor and/or co-permittee." Co-permittees are not "developers," but public agencies who in many cases are regulating storm water above and beyond current permit requirements. The Regional Board should consider these agencies as partners, not regulate them as developers or dischargers.

3.86

c. Regarding Items 2(c) & (d): It seems that these provisions are stating that co-permittees can conduct grading activities within the wet-season prescribed in the Draft Order if a Grading Prohibition Variance is obtained. If this is correct, please clearly state such in the provision. It should be noted that Regional Parks is not required to obtain grading permits per the 2008 Grading Ordinance and therefore would not be subject to a Grading Prohibition Variance. Regional Parks can document for its own records, the reasoning behind a decision to conduct grading activities within the wet-season prescribed in the Draft Order.

11. **Pg 49, Part 8, Item 5(1) – Erosion Control Plans.**

Please add language to this provision linking preparation of erosion control plans to requirements in the State Water Resource Control Boards General Construction Permit. Please note that Regional Parks is not required to obtain grading permits per the December 2008 Grading Ordinance. Regional Parks does prepare or have its contractor's prepare erosion control plans as needed for specific development and redevelopment projects. 3.87

12. **Pg 54, Part 9, Item 5 - The Draft Order states that commercial areas and other areas subject to high trash generation must be swept at least six times per year.**

Regional Parks does not own or have access to a vacuum sweeper truck, so all street sweeping must be done by hand. Hand sweeping all parking lots, streets, and other paved areas under our jurisdiction would be exorbitantly expensive and require more staff than we currently have available. Additional sweeping would add to the unfunded mandate and places a significant financial hardship on Regional Parks. Regional Parks commits to sweeping parking lots, streets, and other paved areas under our jurisdiction on an as needed basis or upon request. This commitment is consistent with the SWMP, our past & current maintenance practices, and our Departmental budget. 3.88

13. **Pg 56, Part 9, Item 9(a) – This provision requires implementation of a catch basin cleaning and a ranking system.**

Please clarify the definition of "catch basins," as subject to this provision. 3.89

The proposed priority system would cause more staff time to be spent on ranking and documenting the existing drains than the current Regional Parks practice of inspecting and cleaning as necessary. Regional Parks inspects and cleans its catch basins as needed, especially those in high trash and debris areas like the County Center. Some catch basins require more cleaning than the proposed inspection and cleaning program specifies, while some require cleaning less often. Problem catch basins are known by staff and cleaned out frequently. Others are inspected and cleaned as necessary. These additional practices would be an unfunded mandate, and place additional financial hardship on Regional Parks. Regional Parks cannot complete this provision by the October 1, 2010 due date included in the Draft Order, but will work towards completing this item over the 5-year permit term. 3.90

14. **Pg 58, Part 9, Item 9(f)(1)(D)- The Draft Order states that the Permittees shall quantify the amount of materials removed during drain maintenance activities.**

Documenting the amount of materials removed would require additional staff and additional budget expenditures that are not available. Regional Parks actively cleans the storm water infrastructure under our jurisdiction through the use of staff, volunteers, and General Assistance workers. However, quantities of materials removed are not estimated or tabulated. This requirement would add to the unfunded mandate. 3.91

15. **Pg 53, Part 9, Item 2(b) – This provision requires long-term maintenance programs, one or more acres in size, to obtain coverage under the General Construction Permit.** 3.92

a. Please define the time coefficient in the phrase "long-term."

16. **Pg 59, Part 9, Item 11(a) – This provision requires the training or a written verification of training for contracted municipal employees.**

3.93

Please clarify the type of written verification that will meet the requirement of this provision. As listed in the SWMP, the Co-permittees have agreed to put together a database to track the training efforts of staff. Regional Parks will continue with this agreement.

17. **Attachment C, Pg 6, "Local SWPPP" – Definition**

3.94

Please clarify as to whether the definition for "Local SWPPP" should be changed to define "Erosion Control Plan" to reflect the change of terminology in the Draft Order.

Sincerely,

Todd Holmes, Park Planning Manager
Sonoma County Regional Parks

cc: Mary E. Burns, Director
Allan Darrimon, Maintenance Manager
Corbin Johnson, Stormwater Coordinator
Michelle Julene, Environmental Specialist

COUNTY OF SONOMA
DEPARTMENT OF EMERGENCY SERVICES
FIRE SERVICES * EMERGENCY MANAGEMENT * HAZARDOUS MATERIALS

MARK ASTON, DIRECTOR/FIRE CHIEF

NCRWQCB

JUN 29 2009

☐ EO ☐ WMgmt ☐ Admin
☐ AEO ☐ Timber ☐ Legal
☐ Reg/NPS ☐ Cleanups ☐
☐ Date

June 23, 2009

Ms. Catherine Kuhlman
Executive Officer
North Coast Regional Water Quality Control Board
5550 Skylane Blvd. Ste. A
Santa Rosa, CA 95403

Dear Ms. Kuhlman:

Thank you for this opportunity to comment on the draft Santa Rosa – Sonoma County MS4 NDPES Stormwater Permit. We appreciate the work of the Regional Board in addressing water quality issues in Sonoma County and look forward to continuing the cooperative and mutually beneficial relationship we share with your agency.

The following are staff comments on the draft of Order No. R1-2009-0050, "Waste Discharge Requirements," and the associated Fact Sheet as published on the North Coast RWQCB's website:

Page 24 of 62 notes the proposed corporate outreach program "shall target a minimum of four retail gasoline outlets (RGOs) franchisers and cover a minimum of 80% of RGO franchisees in the county..." As a Certified Unified Program Agency (CUPA), the County currently regulates all RGOs within its jurisdiction for operation of underground fuel storage tanks, handling of hazardous materials and, where applicable, generation of hazardous wastes. However, RGOs are not required by law to identify to CUPAs whether they are part of franchises. This would require additional reporting not mandated by Chapters 6.5, 6.7 or 6.95 of the California Health & Safety Code (HSC) or Titles 19, 22 or 23 of the California Code of Regulations (CCR). Further, the efficacy of such a corporate outreach program at the local level may be limited. As an alternative, we recommend that the State Water Resources Control Board consider launching an outreach program to the major oil companies to communicate stormwater best management practices for RGOs. 3.95

Page 26 of 62 notes that "Each Co-Permittee shall maintain a watershed-based inventory or database of facilities within its jurisdiction..." We find this language to be unclear. We currently maintain a detailed database of all of our CUPA-regulated facilities. Our inventory is sorted by street address (as required in the HSC) and does not identify the watershed in which a facility is located. We respectfully suggest that it be reworded to state "...maintain a database of sites or a watershed-based inventory of facilities within its jurisdiction..." 3.96

Page 58 of 62 states that the Spill Response Plan shall contain "Immediate notification to appropriate sewer and public health agencies, Sonoma County Department of Emergency Services (DES) ***and*** the Office of Emergency Services (OES)" (emphasis added). Since we have already created a matrix in Sonoma County through which the appropriate agency is notified, there is not a need to notify every agency of every spill. In addition, OES is now referred to as Cal EMA. Therefore, we suggest the following revision: "Immediate notification to appropriate sewer and public health agencies, Sonoma County Department of Emergency Services (DES) and/or the California Emergency Management Agency (Cal EMA)." 3.97

Page 58 of 62 states that complaint investigations are to be initiated within 24 hours of receiving them, while **page 61 of 62** notes that Co-Permittees shall respond within 1 business day of discovery or a ***report*** of a suspected illicit /illegal discharge…" (emphasis added). Historically, DES has found that many of the complaints it investigates prove to be unsubstantiated. It would be a mistake for DES to commit itself to expending overtime on every after-hours complaint it receives regardless of probable validity. Therefore, we recommend that the more appropriate language found on page 61 also be used on page 58, rewording it to state that complaint investigations are to be initiated within 1 business day of receiving them. 3.98

Thank you for your consideration. Please let me know if you have any questions or comments. You can reach me at my office number of (707) 565-1152 or by email at maston@sonoma-county.org.

Sincerely,

Mark Aston
Director / Fire Chief

RUSSIAN RIVER WATERSHED ASSOCIATION

MEMBER AGENCIES

- City of Cloverdale
- City of Cotati
- City of Healdsburg
- City of Rohnert Park
- City of Santa Rosa
- City of Ukiah
- County of Sonoma
- Sonoma County Water Agency
- Town of Windsor

DAVE RICHARDSON
Executive Director

300 Seminary Avenue
Ukiah, CA 95482
(707) 833-2553

July 6, 2009

Ms. Mona Dougherty
Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

SUBMITTED VIA E-MAIL to mdougherty@waterboards.ca.gov

Subject: Draft NPDES Phase I Permit Comments

Dear Ms. Dougherty:

The Russian River Watershed Association (RRWA) is an association of local public agencies in the Russian River Watershed that have come together to coordinate regional programs for clean water, fisheries restoration, and watershed enhancement. We represent both Phase I and Phase II communities. Three of our member agencies – the City of Santa Rosa, the County of Sonoma and the Sonoma County Water Agency (the "co-permittees") – are regulated by the Phase I permit.

The RRWA is committed to achieving a healthier watershed through implementing effective, regional programs. As such, we agree with the overall goals of the existing and revised permits and support the implementation of Low Impact Development, public education, inspections, and enforcement to achieve improved water quality.

RRWA appreciates the efforts that the Regional Board has made in revising the text of the draft Phase I permit since the release of the original draft in the fall of 2008. In spite of the revisions, RRWA still feels that the permit as written will place unnecessary financial and administrative burdens on the co-permittees without commensurate improvements in water quality and overall watershed health. Additionally, as noted in comments to be submitted by the City of Santa Rosa, there may be provisions in the permit that are inappropriate from a legal/regulatory point-of-view including the Receiving Water Limitation language and the inclusion of the 1995 Waste Reduction Strategy for the Laguna de Santa Rosa. RRWA respectfully requests that the Regional Board consider further revisions to the draft Phase I permit that address the stated concerns of the co-permittees.

4.1

4.2

4.3

4.4

RRWA looks forward to describing these concerns in further detail at the upcoming public meetings currently scheduled to occur on July 22-

23 and October 1st. Because the allowed review period for the revised draft permit and response to comments was short, RRWA did not have time to put together a robust comment letter by the July 6th deadline. As such, RRWA plans to use the next couple weeks to consolidate the common concerns of our Phase I agencies (Santa Rosa, Sonoma County, and Sonoma County Water Agency) as well input from our Phase II communities (Cloverdale, Cotati, Healdsburg, Rohnert Park, Windsor, and Ukiah) for presentation at July 22-23 meeting. RRWA will be represented at the July 22-23 meeting by Jake Mackenzie, Chair of RRWA's Board of Directors, or Phoebe Grow, RRWA Assistant Executive Director. 4.5

Sincerely,

Dave Richardson, RRWA Executive Director
Russian River Watershed Association, www.rrwatershed.org

DEPARTMENT OF TRANSPORTATION
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Flex your power!
Be energy efficient!

July 2, 2009

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

Re: Proposed Renewal of Waste Discharge Requirements, NPDES No. CA0025054 for the City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency

Dear Ms. Kuhlman:

The California Department of Transportation (Caltrans) appreciates the opportunity to comment on the proposed renewal of waste discharge requirements (WDR) for the City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency. The proposed permit applies to dry and wet weather discharges from the municipal separate storm sewer systems (MS4) discharging to Russian River, its tributaries and other waters.

Finding 24 notes that, "Federal and state entities within the Co-Permittees' boundaries and not currently named in this order, may operate storm drain facilities and/or discharge stormwater to storm drains and watercourses covered by this order." As such this order does not pertain to Caltrans as the State Water Board has adopted a separate statewide NPDES permit for its stormwater discharges. 5.1

On October 22, 2008, Caltrans submitted comments to the draft order released by the North Coast Regional Water Quality Control Board (NCRWQCB) on September 9, 2008, and requested clarifications on certain matters. In addition to the comments submitted earlier, Caltrans has concerns about the draft order released on May 22, 2009. The additional concerns are as follows:

The permit, page 36, states as follows:

"6. New Development and Redevelopment Projects
a) New Development and redevelopment projects that are required to implement post-construction treatment controls to mitigate all project related stormwater pollution include: 5.2

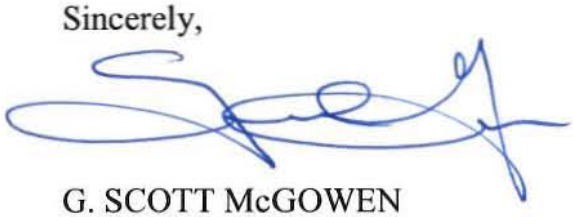
(8) Streets, roads, highways and freeway construction of 10, 000 square feet and more of impervious surface."

The terms highways and freeways are most commonly used in Caltrans projects. The order should clarify that discharges from the Caltrans highways, freeways and construction projects on those system discharging solely to the Caltrans MS4 are covered under statewide NPDES MS4 permit.

Caltrans requests that all the references to the Caltrans Stormwater Quality Handbooks, Construction Site Best Management Practices (BMPs) Manual and Maintenance Staff Guide be removed and replaced with more generic references. This is necessary to avoid Caltrans' handbooks becoming "standard practice" which will limit Caltrans' ability to update or modify practices. Page 47, Table 8 (BMP at Construction Sites Less than 1 Acre) refers to the California BMP Handbook, Construction, January 2003 and the Caltrans Stormwater Quality Handbooks, Construction Site Best Management Practices (BMPs) Manual, March 2003, and addenda. Table 10 (BMPs at Vehicle Maintenance/Materials Storage Facilities/Corporation Yards) refers to the Caltrans Stormwater Quality Handbook Maintenance Staff Guide (May 2003 including future updates and revisions). 5.3

We hope our concerns will be addressed before the final order is duly adopted by the NCRWQCB. If you have any questions, please call Joyce Brenner of my staff at (916) 653-2512.

Sincerely,



G. SCOTT McGOWEN
Chief Environmental Engineer
Division of Environmental Analysis

c: Scott McGowen, Principal Engineer - Stormwater
Joyce Brenner, Office Chief, Program Implementation
Jagjiwan Grewal, HQ Liaison NCRWQCB

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FAX: (562) 266-1303
CONTR. LIC. C-16-638586

file

April 16, 2009

State Water Resources Control Board
North Coast Region
Robert E. Anderson
5550 Skyland Blvd., Suite A
Santa Rosa, CA 95403

Dear Mr. Anderson:

As a commercial fire sprinkler contractor with more than 25 years in the business, I am writing concerning a long-standing water quality issue that has yet to be addressed by the California EPA or its state and regional Water Resource Control Boards. The issue is commercial fire sprinkler discharge, a problem that must be addressed because if left unattended, it will continue to consign billions of gallons of polluting wastewater to California waterways and ground water.

6.1

Federal and state laws require that commercial buildings install fire suppression systems the majority of which include standard ceiling sprinklers. These systems are seldom used, resulting in water typically sitting in piping for five years, or until required testing results in its discharge. During that time, harmful pollutants such as chemicals, rust, oils, disease-causing agents, nitrates, minerals and bacteria build up in the standing water and are discharged onto open surfaces and into storm drains.

It has been estimated that sprinkler technicians flush about 2.35 gallons of water per square foot through piping during testing. California has roughly 460,000 to 550,000 commercial buildings containing between 6.6 billion to 7.0 billion square feet of space (based on extrapolations from the Energy Information Administration report *Overview of Commercial Buildings 2003*). At 2.35 gallons per square foot, about 2.9 billion to 3.2 billion gallons of polluted water are discharged from buildings every year. The vast majority of this amount drains into our oceans and waterways while the remainder is left to percolate into the water table, a source of fresh water for many cities.

Several California municipalities, in compliance with Federal Clean Water Act and the NPDES, require sprinkler technicians to capture polluted fire sprinkler discharge at the source and to transport it to purification centers. Moreover, there are other emerging developments that are more portable, easier to use and capable of processing water at the source. They include the newly developed portable water cleaning process of Hydro(gen) Innovations Inc. and Abtech Corporation's Smart Sponge called the *EcoSmart Filter* which is used in draining maintenance. 6.2

Given that there are newer technologies and easier means for fire sprinkler companies to contain and clean polluted water, it is imperative that the California EPA and Water Quality Boards move to the next step – mandating building owners and managers and fire sprinkler technicians to clean polluted water before discharging it into public storm drain systems. This would also require ensuring that there is oversight and authority to cite and prosecute so that laws are being met and that those involved are acting within the requirements of state law. 6.3

As a fire sprinkler contractor I believe wholeheartedly that I have a responsibility to maintain a clean environment and clean waterways. I fully support any actions by the California EPA and Water Resource Control Boards to ensure there are fewer pollutants affecting the sea, rivers and ground water. 6.4

I would be happy to discuss this matter with you. Please feel free to call me at any time. Thanks in advance for your help.

Sincerely,

Robert M. Sanchez
President
Fire Prevention Services

cc: California State and Region Water Resource Control Board Members

COAST ACTION GROUP
P.O. BOX 215
POINT ARENA, CA 95468

June 30, 2009

John Short
Regional Water Quality Control Board
North Coast Region
5550 Skylane Blvd.
Santa Rosa, CA

Subject: Proposed Renewal of Waste Discharge Requirements, Order No. R1-2009-0050, NPDES No. CA0025054, WDID No. 1B96074SSON For The City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency

Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges from Municipal Separate Storm Sewer Systems

General

Coast Action Group appreciates that the Regional Board recognizes the necessity for taking such action as described in the proposed project, Stormwater NPDES for Sonoma County and the City of Santa Rosa, and making an effort to move forward with such policy. CAG has submitted comments on the previous iteration of this permit, along with comments on the Sonoma County Grading Ordinance. Please include the Grading Ordinance comments in your project review.

The proposed Stormwater NPDES is appropriate and indicated by the degraded condition of the Laguna de Santa Rosa, Russian River (and its tributaries), and other noticed impaired listed water bodies in the proposed boundary area - City of Santa Rosa and County of Sonoma. 7.1

Note: Actions taken to address Laguna impairment from Ludwigia have failed. Ludwigia has repopulated treated areas of the Laguna de Santa Rosa - and then some. The condition with Ludwigia that is exacerbated by nutrient and sediment inputs is worse than ever. 7.2

The Regional, and State, Water Quality Control Board(s) have the responsibility to manage the State's water resources to meet Water Quality Objectives and protect the

Beneficial Uses described in the Basin Plan. Impaired listing status and degraded resources necessitate this proposed Stormwater NPDES Permit and related action plans.

The regional planning bodies, Sonoma County and the City of Santa Rosa (as co-permittees), have not successfully addressed issue through their own regional planning mechanisms (i.e. General Plans and GP updates, and Zoning Code, Ordinance, Stormwater Plans, and NPDES permits). 7.3

This proposed Stormwater NPDES Permit , including water resource conditions assessment, authorities, MEPs, BMPs, and protection guidelines will serve to clarify and indicate what actions these planning bodies should employ regarding the management of these resources (protect surface waters, wetlands, and riparian areas) their specific areas of responsibility. 7.4

Impaired Waterbodies and the Basin Plan

The Stormwater NPDES Permit makes accurate Findings (causes and necessity), authority (statutory regulations), areas of responsibility. The Stormwater Management Plan description and characteristics - including MEPs and BMPs (from various sources), and SRA-SUSUMP (and modifications) are designed to address issues of impairment and controllable sources of pollution (pollutants). 7.5

The Fact Sheet and Background substantiate further impairment and degradation of water resources (surface waters) in the realm of the co-permittees responsibility – and – calls for the implementation of increasingly effective actions to address control of pollutants regulated by this permit – to be managed by BMPs, MEPs and co-permittees regulatory authority under General Plans, Zoning Code, and Ordinance. 7.6

The intent of the Stormwater NPDES permit is to reduce pollution from the various sources, noted in the permit, in compliance with the Basin Plan (Including Anti-Degradation language - and other State and Federal mandates) WQ Objectives and Beneficial Use designation and protection via use of the standards set forth in the Stormwater NPDES permit - with the final objective of meeting Water Quality Standards.

Basin Plan Anti-degradation Policy: *"Controllable water quality factors shall conform to the water quality objectives contained [in the Basin Plan]. When other factors result in the degradation of water quality beyond the levels or limits established [in the Basin Plan] as water quality objectives, then controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from man's activities that may influence the quality of waters of the State and that may reasonably be controlled."* 7.7

The fact that degradation that has occurred under existing permits, programs, and Basin Plan prohibitions indicates that additional control language in the form of this permit is necessary and mandated.

Coastal Zone Management Act – Re-Authorization

The Regional and State Water Boards have responsibility authority under Cal Water Code, The Basin Plan, and Coastal Zone Management Act to address non-point source issue in this region. Upon the Re-Authorization of the Coastal Zone Management Act the US EPA and NOAA noted continuing non-point source impacts to surface waters and State responsibility to deal with such issue using vested authority under Porter-Cologne, Cal Water Code, Basin Planning and the use of area NPDES for Stormwater. The State agreed and also agreed to take action (in specific time frame) – under those authorities. 7.8

Permit Boundary

The Regional Board logically argues for an expanded permit boundary so as to include all waters (impaired or otherwise) under the regulatory authority of the co-permittees – and – to include such waters in future programs and policy (TMDLs, General Plans, Zoning Code, and Ordinance) so as the co-permittees and the Regional Board can assess, manage, and monitor such programs in an economic and effective manor – in compliance with mandates of the Basin Plan, Clean Water Act, and Coastal Zone Management Act. Fragmentation of authority and responsibility will not lead to effective control of stormwater pollution issue in Sonoma County - and on impaired waterbodies. Thus, linking responsibility of co-permittees and their related authorities and programs in a co-operative and flexible process in not only logical – it is the only way possible to address stormwater issue with any chance of success in the mandated attainment of Water Quality Standards in the County. The proposed permit boundary complies with Basin Plan, Water Code, and TMDL (future project) mandates, prohibitions, and requirements. 7.9

Sonoma County Water Agency Requirements

The SCWA does not have broad regulatory authority. SCWA does have authority and ability to control activities on its own property and is responsible for same. 7.10

Discharge Prohibitions: It is spelled out that discharges causing pollution and/or nuisance shall be controlled. Compliance with the Basin plan is mandated and such prohibitions are enumerated in the Basin Plan. Additionally the permit calls for control of non-stormwater flows that may be delivering pollution. Pollutant controls are to be developed by the co-permittees as BMPs – and/or related programs and policy included in General Plans, Zoning Code, and Ordinance – to be assessed and approved by the Regional Board. 7.11

BMPs

The proposed MS4 Stormwater Permit discusses regional planning authorities and mechanisms often by use of BMPs to protect water quality values. However, a

description of what actually constitutes a BMP is usually missing in the planning authority's lexicon. The permit describes the control parameters that BMPs should address. Examples of BMPs might be helpful in the development of policy by the City and the County.

Recommendation: The Regional Board provide complete description of what BMPs for various land use operations that potentially effect surface waters, streams and wetlands might look like. The Regional Board can work with the City of Santa Rosa and the County of Sonoma in development of BMPs that will address issue. 7.12

BMPs, and related programs (General Plans, Zoning Code, and Ordinance) that address issue are to be developed by the co-permittees. This provides workable flexibility in the application of programs that can economically and effectively address pollutant control issue.

Some information for the BMP assessment or formulation can be obtained from:

"Riparian Setbacks: Technical Information for Decision Makers"
http://www.crwp.org/pdf_files/riparian_setback_paper_jan_2006.pdf

"Riparian Buffer Width, Vegetative Cover, and Nitrogen Removal Effectiveness: A Review of Current Science and Regulations",http://www.epa.gov/ada/download/reports/600R05118/600R05118.pdf

Receiving Water Limitations

Co-Permittees shall develop effective programs that address pollutant inputs from stromwater and non-stormwater non-point sources. The objective is that pollutant inputs will be controlled so as to not degrade water quality – and/or to meet Water Quality Standards if the waters are impaired. Monitoring programs will assess water quality and effectiveness of programs and condition of receiving waters. Co-permittees will manage programs so as receiving water will attain Water Quality Standards. If monitoring trends show programs are not working effectively, improvement in program(s) or implementation of program(s) will be mandated. 7.13

TMLS Provisions for discharges to the Laguna

Actions and programs, including BMPs, designed by the co-permittees and approved by the Regional Board will address conditions on impaired waterbodies – Laguna de Santa Roas (and related TMDL). This is part of the reasoning for the expanded permit boundaries and bringing co-permittees into a flexible process that will address impaired waters issues in a non-fragmented way. The co-permittees can immediately start to address pollutant loading issues with BMPs and programs that address and control

7.14

pollutant delivery. There shall be monitoring of both, point and non-point source, pollutant contributions to the Laguna – for assessment of contributions, loading and related controls, and trend determination. This is in compliance with Basin Plan prohibitions, Anti-Deg language in the Basin Plan, and CZARA mandates.

Storm Water Quality Management Program Implementation

General Requirements: Co-permittees are responsible for development and implementation of BMPs and programs in a co-operative and functional manor – through coordination. The boundary and joint issues being similar should lead to cooperative development of programs and implementation of same. 7.15

The co-permittees shall have, or develop legal authority for implementation or enforcement through Code and/or Ordinance. 7.16

Legal Authority: Please note the inclusion of Landscape irrigation overflow control as an issue is appropriate as it address concerns related to "Incidental Discharges" (and related Basin Plan Amendment) in the use of recycled water for irrigation. The inclusion of Onsite Waste Water Systems is also appropriate. The use of progressive and consistent enforcement measures is appropriate. 7.17

Note: Co-permittees should consider methods to recover funds for enforcement cases where there is gross violation, ongoing violation, and un-cooperative violators. 7.18

The co-permittees shall develop programs and a stormwater plan with Code and Ordinance that is enforceable. This also includes funding and staffing to assure implementation compliance.

Ordinance and General Plans

Both, Sonoma County and the City of Santa Rosa have failed to adopt ordinance and planning guidelines that sufficiently deal with construction, agricultural land use practices - and - business operation practices that sufficiently limit pollutant runoff to surface waters during storm events. (**Note: The City of Santa Rosa has made significantly more constructive effort to address stormwater issue than the County of Sonoma**). The County needs additional help in moving forward with policy and actions to address stormwater issues. Such ordinance or code (BMPs) to address business, commercial, and agricultural land use pollutant control and resource protection language shall be developed by the County of Sonoma and the City of Santa Rosa to comply with the Stormwater and NPDES objectives and requirements. 7.19

Note: Attached to CAG's to previous are comments on this permit are comments by Coast Action Group on proposed Sonoma County Grading Ordinance for discussion of control of construction and agricultural impacts to surface waters. Please reference these Grading Ordinance comments in your permit project review. 7.20

Modification and Revisions

This section indicates the flexibility offered by the Regional Board. The City and County are encouraged to work together to design programs that are cost effective and that are effective. Programs that do not work can be fixed or altered to increase effectiveness and address failure and/or inefficiency. 7.21

Special Provisions

General Requirements: Allow for flexibility in program development but calls for monitoring and effectiveness assessment – as per mandates and discussion noted above. 7.22

Public Information and Participation

Public outreach, education, and visual reminders are of necessity. The issue of pollution and water quality must be kept before the public as well as commercial, industrial, and agricultural sectors. 7.23

A Commercial and Industrial compliance tracking program must be developed – with inspections and reporting. Additional controls may be needed for impaired waters. 7.24

"For critical sources that discharge to CWA section 303(d) listed impaired water bodies, the Co-Permittees shall require operators to implement additional controls to reduce pollutants in storm water runoff that may be causing or contributing to exceedances of WQS." This provision is linked to TMDL and policy necessary to address impaired waters and additional controls needed to meet Water Quality Standards. (See regulatory authorities – above) 7.25

Co-permittees shall co-operate with the Regional Board with reporting of violations and enforcement proceedrues. 7.26

Planning and Land Development

Planning and development should occur in a way that limits impacts to water quality. General Plans, Ordinance, and Code should be designed to protect streams, wetland, and near stream environment, limit impacts of runoff from development, limit impervious surfaces, limit hydromodification, encourage low impact development, and utilize programs and methods to control pollutant movement to surface waters. 7.27

The permit should support additional new development mitigation criteria:

- Reduced applicable project size based on land use that will trigger the need for post-construction BMPs.

- Priority on Low Impact Development, landscape-based treatment, and soil and vegetation used in treatment. 7.28

- Requirement that all impervious surface runoff receive full treatment (with priority for LID techniques unless infeasible.)

- Prioritize BMPs to target pollutants of concern.
- Tracking and maintenance requirements.

The permit includes extensive guidelines for development that are appropriate.

7.29

New development shall limit hydromodification and require permittees and planners to address hydromodification issues (mitigate) and stormwater pollutant delivery issue. BMPs, Stormwater Plan, Ordinance, Code, and General Plans shall be basis of authority in planning and development.

> *"Each Co-Permittee shall require all new development and redevelopment projects identified in Special Provisions E Part 4 to implement hydrologic control measures, to prevent accelerated downstream erosion, minimize flooding and public nuisance conditions, to recharge ground water and to protect stream habitat in receiving waters. The purpose of the hydrologic controls is to minimize changes in post-development hydrologic storm water runoff discharge rates, velocities, and duration. This shall be achieved by maintaining the project's pre-development storm water runoff flow rates, and duration. Pre-development hydrology shall be based on an analysis of natural infiltration, soils storage and evapotranspiration rates. The Co-Permittees shall also ensure that total storm water runoff volumes remain the same as the pre-development volumes, when possible."*

The above language complies with necessary legal authorities and impaired waters policy.

BMP maintenance inspections –with enforcement actions - shall be part of the develop process and controls.

7.30

Statute Conformity

Development projects shall conform to CEQA with the disclosure of potential water quality impacts and related mitigations (as compliance with appropriate Stormwater Plan, Code, or Ordinance) that will assure attainment of Water Quality Standards. All responsible agencies and the public will be noticed and included in the informed decision making process.

7.31

Development Construction Program

Limitations on steep and unstable grading and construction and wet weather operations are appropriate to control erosion and pollutant runoff. Approved Erosion Control Plan and actions, included as individual permit conditions, and formalized in City and County Code or Ordinance, are required to control pollutant runoff off in conformance with

7

7.32

Stormwater Plan – under above described legal mandates. Proposed controls are necessary and appropriate for sites less than one acres and for sites greater than one acre. Construction BMPs shall be developed by co-permittees – with inspection and enforcement procedures. Erosion Control Plan must be part of the project description (CEQA compliance).

Criteria for BMPs for larger projects (greater than 5 acres) is suggested by the Regional Board and should be reviewed and approved by the Regional Board. 7.33

Public Agency Activities Program

Public Agency programs should require use of Fishnet 4-C roads manual and has other specific requirements to control pollutants from public agency activities. 7.34

Public Agency should conduct activities to limit available pollutants that can be delivered to watercourses with appropriate road construction and maintenance activity. 7.35

The Regional Board outlines other activities to be carried out by Agencies to limit and control pollutant introduction into surface waters. 7.36

The co-permittees shall have a program to deal with illicit discharges, complaints, and other illegal activity. 7.37

Pollutant Offset Trading

The City of Santa Rosa has request that the Regional Board consider pollutant offset trading for to meet compliance discharge standards. Such offset trading should not be considered if the City fails to make substantial progress with their Stromwater Control Implementation Program. Stormwater discharge impacts to the Laguna de Santa Rosa are by far the largest input of N and P. Without progress in Stormwater Plan implementation any pollutant trading program is useless. 7.38

Economics

Economic analysis for the implementation of projects for water quality resource protection is difficult. It is almost impossible to determine the costs over the range of possible actions that may need to be taken. Variability of range of actions is unknown and almost impossible to estimate. Assessing monitory value to accrued benefits of such policy is similarly vague. Their are accrued benefits to near stream landowners, fisher people, water users, recreationists, fish and wildlife values that would have to be accounted for. What is the value of clean water? 7.39

The proposed NPDES does call for financial responsibility to support needed programs. 7.40

The bottom lines is it is the responsibility of the Regional Board, under State Water Code and the regional Basin Plan, to take action that assures the protection of Beneficial Uses and attainment of Water Quality Objectives/Standards. 7.41

Other references to review for appropriate regulatory guidelines are:

Coho Recovery Guidelines (DFG) - DFG has specific land use recommendations to control pollutant impacts in for areas in Sonoma County - Russian River, Gualala River, and other coho water bodies in the County of Sonoma. This document should be referenced in this permit process. 7.42

Alan Levine
For Coast Action Group

Coastal Zone Management Act – Background (included – below):

EPA & NOAA CZARA FINDINGS - SEE FORESTRY, AGRICULTURE
COMMENT PERIOD - SEE BELOW
CZARA ACTION PLAN - SEE BELOW

The U.S. Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) approve the coastal nonpoint pollution control program submitted by the State of California pursuant to Section 6217 (a) of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA), subject to certain conditions.

This document provides the specific findings used by NOAA and EPA as the basis for the decision to approve the State's program. It also provides the rationale for the findings and includes the conditions that have been established for California to receive final approval of its program.

NOAA and EPA have written this document as succinctly as possible. Where appropriate, NOAA and EPA have grouped categories and subcategories of management measures into a single finding. The structure of each finding follows a standard format. Generally, the finding is that the State's program includes or does not include management measures in conformity with the section 6217(g) guidance and includes or does not include enforceable policies and mechanisms to ensure implementation. In some cases, the finding reflects that the State has identified a back-up enforceable policy, but has not yet demonstrated the ability of the authority to ensure implementation. For further understanding of terms in this document, the reader is referred to the following:

Guidance Specifying Management Measures for Sources of Nonpoint Pollution

For the rest of this attachment, see Coast Action Group Attachment A: EPA and NOAA CZARA Findings

http://www.swrcb.ca.gov/northcoast/water_issues/hot_topics/santa_rosa_ms4_npdes_stormwater_permit/

COAST ACTION GROUP
P.O. BOX 215
POINT ARENA, CA 95468

July 1, 2009

John Short
Regional Water Quality Control Board
North Coast Region
5550 Skylane Blvd.
Santa Rosa, CA

Subject: Proposed Renewal of Waste Discharge Requirements, Order No. R1-2009-0050, NPDES No. CA0025054, WDID No. 1B96074SSON For The City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency

Amendment to Coast Action Group Comments of June 30

Please replace the discussion of the proposed Boundary changes in the June 30 document with the discussion included (below) – as amended comments.

Permit Boundary

Coast Action Group strongly disagrees with the proposal to reduce the boundary from the original iteration of this permit – to include only the Laguna and Mark West Creek watersheds. 7.43

In the first iteration of this permit, and in the Boundary section of this permit, the Regional Board logically argues for an expanded permit boundary so as to include all waters (impaired or otherwise) under the regulatory authority of the co-permittees – and – to include such waters in future programs and policy (TMDLs, General Plans, Zoning Code, and Ordinance) so as the co-permittees and the Regional Board can assess, manage, and monitor such programs in an economic and effective manor – in compliance with mandates of the Basin Plan, Clean Water Act, and Coastal Zone Management Act. 7.44

Fragmentation of authority and responsibility will not lead to effective control of stormwater pollution issue in Sonoma County - and on impaired waterbodies. Thus, linking responsibility of co-permittees and their related authorities and programs in a co- 7.45

operative and flexible process in not only logical – it is the only way possible to address stormwater issue with any chance of success in the mandated attainment of Water Quality Standards in the County.

Likewise, fragmentation of areas to be managed will lead to uneven and ineffective application of stormwater controls that will lead to compromised water quality and inability to effectively address diminished water quality values on all surface water in the County. It can be safely said that there are few high quality waters in the County. And, in fact, if sufficient water quality monitoring were undertaken on all surface waters in the County, most would end up being listed as impaired. Fragmenting application of the this proposed policy begs the question of how will Water Quality Standards be met, considering uneven and ineffective application of policy and actions, on impaired listed waters of the upper Russian River (above Mark West Creek – it is not clear as to the application on other Russian River tributaries in the lower river– Austin Creek, Green Valley Creek, Sheephouse Creek, etc.), and the Gualala River (Both listed as impaired). And, what about Macaamas Creek, Dry Creek, Mill Creek (other tributaries of the Russian River) and Salmon Creek? Are these waters not impaired – and thus not needing nonpoint source stormwater controls to protect and recover their Beneficial Uses. 7.46

Finally, to fragment this policy and apply uneven and ineffective stormwater controls in selected areas of the County (that contain waters not meeting WQS), this policy would not be consistent with Coastal Zone Management Act mandates, Cal Water Code, and the Basin Plan (including Basin Plan Anti-degradation language). The proposed boundary must comply with CZMA, Basin Plan, Water Code, and TMDL (future project) mandates, prohibitions, and requirements. 7.47

If other programs are to be put in place to “offset” use of a limited and fragmented boundary, those programs should be so disclosed in their entirety (to comply with CEQA – as claimed by the wording in this project.)

From: "Al Wanger" <awanger@coastal.ca.gov>
To: <ckuhlman@waterboards.ca.gov>
CC: "Jack Gregg" <jgregg@coastal.ca.gov>, "Peter Douglas" <pdouglas@coastal....
Date: 6/30/2009 8:47 PM
Subject: NPDES No. CA0025054 Comments

Catherine,

I am writing to express support of the Coastal Commission staff for the proposed Stormwater NPDES Permit No. CA0025054 for the City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency Storm Water and Non-Storm Water Discharges from Municipal Separate Storm Sewer Systems. We believe that the Planning and Land Use Program requirements addressing new and redevelopment projects will greatly assist the effort to protect our inland and coastal water resources from the impacts of polluted runoff. We also strongly support the permit requirements for integrating Low Impact Development (LID) and hydromodification controls into the land use planning and development process. Our experience working with local governments, developers, and regulatory agencies, including the Water Boards, has shown that early integration of these techniques into the planning and development process is one of the most effective approaches to reducing the impacts of development in our communities and watersheds.

8.1

8.2

8.3

As you know, the Coastal Commission and coastal RWQCB staffs have recently collaborated in supporting LID training, education and outreach trainings along California's coastal areas. The high attendance rates and strong interest in these workshops are indicative of the increased awareness and support for using LID tools and techniques for addressing water quality issues. We believe that the NPDES permit provides clear direction and strong support for improving water quality protection through these proposed land use planning and development requirements.

8.4

8.5

We look forward to continuing to work with you and your staff, as well as local governments and other stakeholders, on the implementation of these initiatives and permit requirements.

Sincerely,

Alfred Wanger

MARIN/SONOMA MOSQUITO & VECTOR CONTROL DISTRICT

595 Helman Lane
Cotati, CA 94931
1.800.231.3236 or 707.285.2200
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www.msmosquito.com

Jim Wanderscheid
District Manager

July 6, 2009

Ms. Mona Dougherty
Water Resource Control Engineer
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA. 95403

Re: Draft Storm Water Permit for Santa Rosa, Sonoma County, and the Sonoma County Water Agency

Dear Ms. Dougherty:

The Marin/Sonoma Mosquito and Vector Control District (MSMVCD) has reviewed the draft storm water permit for Santa Rosa, Sonoma County, and the Sonoma County Water Agency. There are several elements within the draft permit that will address current issues involving storm water treatment systems and mosquito control. The following provisions in the draft permit have the potential to reduce and perhaps eliminate mosquito and vector habitat within storm water Best Management Practices (BMPs), decrease the potential for mosquito-borne disease transmission, reduce mosquito control operations, and the need for repeated applications of mosquito larvicides to storm water treatment systems. 9.1

- Priority toward Low Impact Development, landscape-based treatment, and the use of vegetated soil in storm water treatment
- Development of tracking, inspection, and enforcement systems for post construction BMPs
- Verification of maintenance provisions for post-construction BMPs
- Regular inspection of post construction BMPs to assess operation conditions including vector risk
- Provide data and observations on local effectiveness and performance of BMPs and conduct a BMP Effectiveness Special Study 9.2
- Visual flow monitoring – monitor flows in streams and storm drains to detect excessive summertime flows or abnormal discharges
- Required investigation and tracking of all discharge complaints
- A BMP plan for all authorized non-storm water discharges
- Laguna De Santa Rosa TMDL and storm drain outfall monitoring

Over the last several years management, maintenance, design, and function of storm water treatment systems has been an issue with respect to mosquito and vector

production and control operations in both Marin and Sonoma counties. MSMVCD has spent substantial staff time and resources toward correcting problematic situations that could have been avoided through proper design, management, and maintenance. MSMVCD strongly supports requirements in the draft storm water permit for verification of maintenance provisions, the development of tracking and inspection systems, and an enforcement program for post construction storm water BMPs. 9.3 9.4

Storm water retention basins, in particular, have been problematic in recent years. MSMVCD has found that retention basins do not drain within seventy-two hours, often hold water through the summer months, contain dense and abundant populations of undesirable vegetation, provide habitat for mosquitoes, and have involved difficult mosquito control operations. 9.5

MSMVCD supports Low Impact Development (LID), landscape-based types of storm water BMPs, and the use of vegetated soil in storm water treatment. Implementing LID treatment and moving away from the use of large storm water retention basins and swales will reduce the potential for mosquito production and mosquito control operations in association with storm water treatment systems in Sonoma County. 9.6

Non-storm water discharges both authorized and unauthorized are of potential concern to MSMVCD. MSMVCD is supportive of language in the draft permit that requires investigation and tracking of all discharge complaints and BMP plans be developed for all authorized non-storm water discharges. MSMVCD requests to be notified of unauthorized discharges. MSMVCD will monitor discharges for mosquito production and notify the appropriate agency should a problem arise. 9.7

Given the current water quality issues, invasion of water primrose (*Ludwigia* sp.), and mosquito production issues in portions of the Laguna De Santa Rosa, MSMVCD is supportive of the Laguna TMDL and the outfall monitoring included in the draft permit. The section of the Laguna De Santa Rosa between Occidental and Guerneville Roads and the flood control channels in Rohnert Park and Cotati are especially problematic with regard to mosquito control and potential public health issues. 9.8

MSMVCD appreciates that mosquito and vector control is included in the draft permit and also the opportunity to review the draft permit and provide comment. If you should have any questions please contact me at 707-285-2209.

Respectfully,

Erik Hawk

Erik Hawk
Special Projects Supervisor/Biologist

NRDC
THE EARTH'S BEST DEFENSE

NATURAL RESOURCES DEFENSE COUNCIL

July 6, 2009

Via electronic mail

Executive Officer and Members of the Board
California Regional Water Quality Control Board, North Coast Region
5550 Skylane Boulevard, Suite A
Santa Rosa, California 95403

Re: Comments on Draft Order No. R1-2009-0050

Dear Ms. Kuhlman and Members of the Board:

We write on behalf of the Natural Resources Defense Council (NRDC) and our over 100,000 California members. We have reviewed Draft Order No. R9-2009-0050, NPDES Permit No. CA0025054 — the latest draft of the Waste Discharge Requirements for The City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency Storm Water and Non-Storm Water Discharges from Municipal Separate Storm Sewer Systems, Sonoma County, NPDES Permit, released on May 22, 2009. We appreciate the opportunity to submit the following comments on the second draft order ("Draft Permit" or "Permit").

I. Introduction.

We commented on the last version of the Draft Permit. In that letter, we highlighted our principal concern with the lack of a specific numeric criterion to require onsite retention of stormwater through low-impact development ("LID") techniques. We also commented on problematic aspects of the hydromodification control criteria and alternative post-construction stormwater mitigation programs—since the substance of these provisions remains the same in the current draft, however, we incorporate our prior comments here and reiterate the need to address these issues in the next draft of the permit.

10.1

10.2

With respect to LID in particular, the Draft Permit still does not include an adequate numeric performance criterion for LID implementation to ensure that the Draft Permit meets the Clean Water Act's ("CWA's") "maximum extent practicable" ("MEP") standard for pollutant removal. In our last letter, we suggested the adoption of an "effective impervious area" ("EIA") limitation that would require onsite retention of the vast majority of the 85th percentile storm ("design storm"). The critical aspect of this standard is that it mandates the onsite retention of a certain quantity of stormwater since

10.3

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this is the most effective way to ensure maximal pollutant reduction. The Draft Permit includes no such requirement and merely prioritizes LID techniques above other BMPs while submitting all structural treatment controls to the decade-old SUSMP hydraulic sizing criteria.

The flaws in the approach taken by the Draft Permit are more apparent in contrast to the recent adoption by the Los Angeles Regional Water Quality Control Board of LID provisions which require onsite retention of nearly all of the 85th percentile design storm.[1] The requirements imposed by the Los Angeles Regional Board also require offsite mitigation when onsite compliance is not feasible. Notably, NRDC, other environmental groups, and all of the permittees in Ventura County *supported* these provisions. As detailed below, many other MS4 permits and stormwater regulations in California and around the country have adopted similar standards, and we strongly urge revisions to the Sonoma County Permit that will make it consistent with these other standards and compliant with the MEP standard. 10.4

II. The Draft Permit Is Inadequate to Control Stormwater Pollution from New Development and Redevelopment and Fails to Ensure Compliance with the Minimum Requirements of State and Federal Law.

The Draft Permit's Planning and Land Development Program (Section E, Part 4) and New Development/Redevelopment Integrated Water Quality/Resource Plan (Section E, Part 5) remain inadequate. As currently written, the Draft Permit does not require any specific level of LID implementation, but the Planning and Land Development Program and New Development/Redevelopment Integrated Water Quality/Resource Plan are particularly critical for addressing the root causes of stormwater pollution, which is why we have focused significant attention on these requirements. As the U.S. EPA has noted: 10.5

> Most stormwater runoff is the result of the man-made hydrologic modifications that normally accompany development. The addition of impervious surfaces, soil compaction, and tree and vegetation removal result in alterations to the movement of water through the environment. As interception, evapotranspiration, and infiltration are reduced and precipitation is converted to overland flow, these modifications affect not only the characteristics of the developed site but also the watershed in which the development is located. Stormwater has been identified as one of the leading sources of pollution for all waterbody types in the United

[1] Los Angeles Regional Water Quality Control Board, Ventura County Municipal Separate Storm Sewer System Permit, Order No. R4-2009-0057, NPDES Permit No. CAS004002, (adopted May 7, 2009), at ¶ III.1-2 (New Development/Redevelopment Performance Criteria).

States. Furthermore, the impacts of stormwater pollution are not static; they usually increase with more development and urbanization.[2]

A. The Standard of Practice in the U.S. Requires the Imposition of Low-Impact Development Techniques Implemented with Clear Metrics for New Development and Redevelopment Activities.

LID has been established as a *superior and practicable* strategy[3] and, therefore, must be required. Accordingly, the United States Environmental Protection Agency ("EPA") has called upon Regional Boards across California to prioritize the implementation of LID, recently threatening to "consider objecting to the [San Francisco Bay region's] permit" if it does not include "additional, prescriptive requirements" for LID.[4] Along with the prioritization of LID implementation, "EPA's primary objective for incorporating LID into renewed MS4 permits, especially for those that represent the third or fourth generation of permits regulating these discharges, is that the permit must include clear, measurable, enforceable provisions for implementation of LID…. [P]ermit[s] should [also] include a clearly defined, enforceable process for requiring off-site mitigation for projects where use of LID design elements is infeasible."[5] In North Orange County, EPA likewise observed that "the permit must include clear, measurable, enforceable provisions for implementation of LID…. We would not support replacing [volume retention-based] approaches with qualitative provisions that do not include measurable goals."[6] 10.6

Other government agencies in California and around the U.S. have come to the same conclusions. The California Ocean Protection Council, for instance, strongly endorsed LID last year by "resolv[ing] to promote the policy that new developments and redevelopments should be designed consistent with LID principles" because "LID is a practicable and superior approach … to minimize and mitigate increases in runoff and runoff pollutants and the resulting impacts on downstream uses, coastal resources and 10.7

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[2] U.S. Environmental Protection Agency (December 2007) *Reducing Stormwater Costs through Low Impact Development (LID) Strategies and Practices*, at v.

[3] California Ocean Protection Council (May 15, 2008) *Resolution of the California Ocean Protection Council Regarding Low Impact Development*, at 2.

[4] Letter from Douglas E. Eberhardt, EPA, to Dale Bowyer, San Francisco Bay Regional Water Quality Control Board (April 3, 2009), at 1.

[5] *Id.* at 1-2.

[6] Letter from Douglas E. Eberhardt, EPA, to Michael Adackapara, Santa Ana Regional Water Quality Control Board (February 13, 2009), at 2-3.

communities."[7] In Washington State, the Pollution Control Hearings Board has found that LID techniques are technologically and economically feasible and must, therefore, be required in MS4 permits.[8] The National Academy of Sciences recently issued a comprehensive report with the same recommendation for stormwater management programs: "Municipal permittees would be required under general state regulations to make [LID] techniques top priorities for implementation in approving new developments and redevelopments, to be used unless they are formally and convincingly demonstrated to be infeasible."[9]

Critically, as demonstrated in the EPA comments quoted above, the prioritization of LID practices is insufficient by itself to meet the MEP standard and *must* be paired with a measurable requirement for the implementation of LID. Since its inception, the MS4 permitting program has been seriously hampered by a pervasive absence of numeric performance standards for the implementation of best management practices ("BMPs") such as LID. For this reason, in December 2007, the State Water Resources Control Board commissioned a report which found that "[t]he important concept across all of [the] approaches [described in the report] is that the regulations established a *performance requirement* to limit the volume of stormwater discharges."[10] The report also noted that "[m]unicipal permits have the standard of Maximum Extent Practicable (MEP) which lends itself more naturally to specifying and enforcing a level of compliance for low impact development."[11] Another study, completed for the Ocean Protection Council, recommended the following standard: "Regulated development projects shall reduce the percentage of effective impervious area to less than five percent of total project area by draining stormwater into landscaped, pervious areas."[12]

10.8

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[7] California Ocean Protection Council (May 15, 2008) *Resolution of the California Ocean Protection Council Regarding Low Impact Development*, at 2.

[8] *Puget Soundkeeper Alliance et al. v. State of Washington, Dept. of Ecology, et al.* (2008) Pollution Control Hearings Board, State of Washington, No. 07-021, 07-026, 07-027, 07-028, 07-029, 07-030, 07-037, Phase I Final, at 6, 46, 57-58.

[9] National Academy of Sciences, Committee on Reducing Stormwater Discharge Contributions to Water Pollution, National Research Council (2008) *Urban Stormwater Management in the United States*, at 500.

[10] State Water Resources Control Board (December 2007) *A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption*, at 23 (emphasis added) (hereinafter "SWRCB LID Report").

[11] *Id.* at 4.

[12] Ocean Protection Council of California (January 2008) *State and Local Policies Encouraging or Requiring Low Impact Development in California*, at 27.

While we appreciate the fact that the Draft Permit does require LID to be prioritized unless the Co-Permittee approves substitute BMPs for the project (Section E, Part 5-2(b)(1)), the Draft Permit remains legally insufficient due to the lack of an onsite stormwater retention requirement for LID implementation. This type of standard guarantees that no polluted runoff will flow from developed sites during the design storm—whenever treat-and-discharge techniques are allowed, there is always a danger that ineffective BMPs, which may technically satisfy the permit's requirements, will be installed and allow considerable amounts of polluted runoff to enter receiving waters. Moreover, even the most effective treat-and-discharge BMPs still allow pollutants to enter the storm sewer system and are, thus, not as effective as retention-based BMPs, as demonstrated in the attached studies by national stormwater expert Dr. Richard Horner.[13] Given that the implementation of retention-based BMPs to accommodate the design storm volume is feasible in most circumstances, requiring onsite retention is necessary to reduce pollutant discharges to the maximum extent practicable. 10.9

B. The Draft Permit Does Not Contain Specific Standards for LID Implementation that Will Ensure the Maximum Practicable Pollution Reduction Benefits.

As noted in our previous letter, the Draft Permit needs to require onsite retention of the design storm volume in order to pass muster under the Clean Water Act. Wherever this is infeasible, the Draft Permit should require offsite mitigation of the volume that is not retained onsite. The new Ventura County MS4 permit includes the type of standard that is lacking in the Sonoma County Permit. It requires that 95% of the volume from the 85th percentile storm be retained onsite through infiltration, harvesting and reuse, or evapotranspiration. If full onsite management of the design storm volume is technically infeasible, the retention obligation may be reduced, but offsite mitigation with equivalent results must be performed (or funds must be contributed to a public mitigation fund in an amount sufficient to offset the project's onsite non-compliance).[14] This requirement resulted from a collaboration and agreement between NRDC, Heal the Bay, and all of the Ventura County permittees. The recently adopted North Orange County MS4 permit includes a similar requirement, except that, in cases of infeasibility, biotreatment 10.10

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[13] *See, e.g.*, R. Horner (2007) *Initial Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for the San Francisco Bay Area*; R. Horner (2007) *Supplementary Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for the San Francisco Bay Area.*

[14] Los Angeles Regional Water Quality Control Board, Ventura County Municipal Separate Storm Sewer System Permit, Order No. R4-2009-0057, NPDES Permit No. CAS004002, (adopted May 7, 2009), ¶ 5.E.III.

practices may count toward a project's volumetric obligation.[15] (We note however, that we do not support the North Orange County permit's allowance of biotreatment as a means of meeting a project's volumetric obligation for the reasons discussed in this letter.)

The specific provisions that fail to establish the necessary, numeric performance standard are the "Post-Construction BMP Choice Methodology" provisions. (Section E, Part 5-2(b).) Nowhere in these provisions or even in Part 5, however, is there a requirement that establishes a level of implementation for LID practices. Indeed, the closest thing to a numeric performance standard is the section on "Numeric Sizing Criteria" (Section E, Part 4-4), which merely mirrors the SUSMP criteria of the State Board's *Bellflower* decision.[16] These are not referenced or included as a numeric performance standard in the LID provisions, though, which simply contain a prioritized list of BMPs, including LID. The Draft Permit, instead, requires that "all storm water runoff … [be] treated using LID design and landscape-based BMPs," unless a project "cannot comply," in which case "substitute BMPs [may be] approved." (Section E, Part 5-2(b)(1)-(2).) The quantity of stormwater that constitutes "all storm water runoff," however, is undefined and surely does not mean all stormwater runoff from an entire year, yet it is not clear what it *does* mean. Additionally, the Draft Permit provides no criteria for determining when a project "cannot comply" with the LID implementation requirement, and fails to require any offsite mitigation or other alternative compliance for projects that do not fully implement LID practices. 10.11

To remedy these problems, Part 5-2-(b) could be revised as follows:

(1) *The Co-Permittees shall ensure that the design storm volume (as defined in Part 4-4(a)) ~~all storm water runoff~~ from New Development and Redevelopment Projects (as defined in Part 4-6) ~~projects that meet the new development and redevelopment criteria in Part 4 and/or the hydromodification criteria in Part 5-2(c), below,~~ is ~~treated using LID design and landscape-based BMPs~~ be retained onsite, without any surface runoff, through infiltration, evapotranspiration, or harvesting and reuse.* 10.12

[15] Santa Ana Regional Water Quality Control Board, Waste Discharge Requirements for the County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Management Program, Order No. R8-2009-0030, NPDES Permit No. CAS618030, (adopted May 22, 2009), ¶ XII.C.

[16] State Water Resources Control Board (2000) Water Quality Order No. 2000-11, at 15-18.

(2) *If a project cannot comply with Part 5-2(b)(1) and substitute BMPs are approved for the project, the Co-Permittees shall document justification for the substitution and retain the records until adoption of an updated Order or until the project is constructed, whichever is longer. The Co-Permittees shall also require that any portion of the design storm volume not retained onsite be mitigated through the Mitigation Funding program (Part 6-4) such that equivalent reductions in stormwater volume and pollutant loadings (in comparison to onsite retention of the entire design storm volume) are achieved.*

Onsite retention standards of this form are becoming prevalent across the country (in Phase II as well as Phase I permits), as discussed below, and since their implementation is not only feasible, but will result in better stormwater pollution reduction, the Sonoma County Permit cannot meet the Clean Water Act's MEP standard without such a performance requirement. 10.13

C. Other Stormwater Permits and Regulatory Documents Around the Country Have Adopted Stronger, Practicable Requirements for the Implementation of Post-Construction Stormwater BMPs, and the Draft Permit Lags Behind these Precedents.

Communities around the country have adopted or are considering provisions that exceed those in the Draft Permit in terms of environmental performance. The widespread implementation of other, more stringent requirements listed below—as well as the technical analyses conducted by Dr. Horner, based on various California localities including the San Francisco Bay area—create a presumption that such requirements would be practicable in Sonoma County.

Many jurisdictions outside of Sonoma County have recognized the paramount importance of mandating onsite retention of a certain quantity of stormwater since onsite retention prevents *all* pollution in that volume of rainfall from being discharged to receiving waters:

- **Ventura County:** Retain onsite at least 95% of the rainfall that results from the 85th percentile storm; offsite mitigation is allowed if complete onsite retention is technically infeasible, but offsite mitigation must provide equivalent results and can only substitute for approximately 25% of the onsite retention volume;[17] 10.14

[17] Los Angeles Regional Water Quality Control Board, Ventura County Municipal Separate Storm Sewer System Permit, Order No. R4-2009-0057, NPDES Permit No. CAS004002, (adopted May 7, 2009), at ¶ III.1-2 (New Development/Redevelopment Performance Criteria).

- **North Orange County:** Retain onsite the 85th percentile storm volume and implement biotreatment BMPs only when onsite retention is technically infeasible; alternative compliance is required when the design storm volume is not either retained or biotreated onsite;[18]

- **Anacostia, Washington, D.C.:** Retain onsite the first one inch of rainfall and provide water quality treatment for rainfall up to the two-year storm volume; offsite mitigation is allowed when onsite retention is infeasible, but only at a ratio of either 1:1.5 (for physical offsets) or 1:2 (for in-lieu fee payments);[19]

- **Central Coast, California (RWQCB, Phase II):** Limit EIA at development projects to no more than 5% of total project area (interim criteria); establish an EIA limitation between 3% and 10% in local stormwater management plans (permanent criteria);[20]

- **Federal Buildings over 5,000 square feet** (under EPA's draft guidance for implementation of the Energy Independence and Security Act of 2007): Manage onsite (*i.e.*, prevent the offsite discharge of) the 95th percentile storm through infiltration, harvesting, and/or evapotranspiration; 10.14

- **Pennsylvania:** Capture at least the first two inches of rainfall from all impervious surfaces and retain onsite at least the first one inch of runoff (through reuse, evaporation, transpiration, and/or infiltration); at least 0.5 inches must be infiltrated;[21]

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[18] Santa Ana Regional Water Quality Control Board, Waste Discharge Requirements for the County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Management Program, Order No. R8-2009-0030, NPDES Permit No. CAS618030, (adopted May 22, 2009), ¶ XII.C.

[19] Anacostia Waterfront Corporation (June 1, 2007) Final Environmental Standards, at 16; *see also*, State Water Resources Control Board (December 2007) A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption, at 20-21.

[20] Central Coast Regional Water Quality Control Board, Letter from Roger Briggs re Notification to Traditional, Small MS4s on Process for Enrolling under the State's General NPDES Permit for Storm Water Discharges (Feb. 15, 2008) (hereinafter "Central Coast Phase II Letter").

[21] Pennsylvania Department of Environmental Protection (December 30, 2006) *Pennsylvania Stormwater Best Management Practices Manual*, Chapter 3, at 7.

- **Philadelphia, PA:** Infiltrate the first one inch of rainfall from all impervious surfaces; if onsite infiltration is infeasible, the same performance must be achieved offsite;[22] and

- **West Virginia (Phase II):** Retain onsite the first one inch of rainfall from a 24-hour storm preceded by 48 hours of no measurable precipitation.[23]

With such precedents in California and in other parts of the country, the Draft Permit's failure to adopt a numeric performance standard beyond the SUSMP hydraulic sizing criteria makes the Draft Permit insufficient under the MEP standard.

D. The Draft Permit's Applicability Criteria Must Set Lower Thresholds to Meet the MEP Standard.

The Draft Permit's applicability criteria stand out as weak compared to other MS4 permits recently adopted or under consideration for adoption in California and must be revised accordingly. Of particular concern is that the Draft Permit's applicability criteria have been substantially weakened from the previous version of the Permit without explanation, such that the current threshold for applicability for most specific land use categories of New Development and Redevelopment projects has increased from 5,000 square feet to 10,000 square feet. (Section E, Part 4.6.) Of further concern is that the Draft Permit's catchall criteria for new development and redevelopment of one acre will allow for a substantial amount of development and redevelopment to occur without being subject to requirements for the design and implementation of post-construction treatment controls to mitigate stormwater pollution. The current criteria cannot be construed as meeting the MEP standard when, for instance, both the San Francisco Bay and North Orange County MS4 permits contain more stringent applicability criteria, setting thresholds for many, if not most, specific categories of development and redevelopment at 5,000 square feet.[24] The Permit should set the catchall at or below 10,000 square feet,

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[22] City of Philadelphia, Philadelphia Stormwater Regulations § 600.5; City of Philadelphia (2006) *Philadelphia Stormwater Management Guidance Manual: Version 2.0*, at 1-1, Appendix F.4.1.

[23] State of West Virginia Department of Environmental Protection, Division of Water and Waste Management, General National Pollution Discharge Elimination System Water Pollution Control Permit, NPDES Permit No. WV0116025, at 13-14.

[24] Santa Ana Regional Water Quality Control Board, Waste Discharge Requirements for the County of Orange, Orange County Flood Control District and The Incorporated Cities of Orange County within the Santa Ana Region Areawide Urban Storm Water Runoff Management Program, Order No. R8-2009-0030, NPDES Permit No. CAS618030, (adopted May 22, 2009), ¶ XII.C, at XII.B.2; San Francisco Regional Water Quality

commensurate with other California MS4 permits (such as the draft San Francisco Permit) and with the significant, cumulative impacts that projects under one acre can have. Applicability criteria for specific land uses that generate especially high levels of pollution should be restored to the lower threshold of 5,000 square feet.

III. The Draft Permit Fails to Include Provisions that Effectively Prohibit all Non-Stormwater Discharges, as Required by the Clean Water Act.

Federal law requires that MS4 permits "shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers." (33 U.S.C. § 1342(p)(3)(B)(ii).) However, the Draft Permit states that, "In lieu of a strict prohibition, the Co-Permittees may submit a plan for Executive Officer authorization that includes categories of non-storm water discharges and associated BMPs to minimize or eliminate non-storm water discharges to the MS4." (Section A.5(a).) This exception violates the clear language of the CWA and its implementing regulations. Section 402(p)(3)(B)(ii) of the CWA requires that permits for discharge from municipal sewers "effectively prohibit non-stormwater discharges," 33 U.S.C. § 1342(p)(3)(B)(ii), and does not create any authorization for simply "minimizing," or otherwise allowing such discharges. 10.16

The Draft Permit states that, "The Executive Officer will consider authorizing the discharge of non-storm water flows [that are listed in Table 1], and are not a significant source of pollutants. Upon request by a Co-Permittee, the Executive Officer may consider authorizing the discharge of additional non-storm water flows." (Section A.5(d).) While we appreciate the Regional Board's attempts to limit the circumstances under which non-stormwater discharges to the MS4 may occur rather than creating a blanket exemption for certain categories of discharge, section 402(p) places a clear, mandatory duty on the Co-Permitees to prohibit non-stormwater discharges to the MS4. The Co-Permittee, or Regional Board, has no discretion to deviate from this requirement. In ascertaining the meaning of a statute, construction must begin with the text. (*Duncan v. Walker* (2001) 533 U.S. 167, 172.) "If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs." (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) There is no ambiguity present in the CWA's requirement that a permit "effectively prohibit nonstormwater discharges," and the Draft Permit's provision of categorical exceptions stands in violation of its terms.

Further, the Draft Permit's attempt to allow for authorization of non-stormwater discharges to the MS4, in opposition to section 402(p)'s prohibition, is not supported by the CWA's implementing regulations under 40 C.F.R. § 122.26(d)(2)(iv)(B)(1). This provision merely states the circumstances under which a Co-Permittee must specifically design a program to prevent certain types of illicit discharges: "the following category of 10.17

Control Board, Tentative Order R2-2009-00XX, NPDES Permit No. CAS612008, San Francisco Bay Draft MS4 Permit, at 16-19.

non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the United States." (40 C.F.R. § 122.26(d)(2)(iv)(B)(1).) The regulation, providing for an enforcement program to "prevent illicit discharges," does not support the interpretation that certain non-stormwater discharges need not be prohibited. Even if the regulations allowed some conditional discharge authorization, they do not provide that non-stormwater discharges are permissible when they fall into a specified category and are not "a *significant* source of pollutants." (Section A.5(d) (emphasis added).) The regulations explicitly state that the identified non-stormwater discharges "shall be addressed where such discharges are identified by the municipality *as sources of pollutants to waters of the United States*" in any quantity, whether or not it is considered significant. 40 C.F.R. § 122.26(d)(2)(iv)(B)(1). 10.18

Nor does the regulation allow, under any circumstance, for the Regional Board or Permittees to authorize the discharge of "additional non-storm water flows" at the Executive Officer's discretion. (See Section A.5(d).) While we question the Regional Board's authority to authorize the discharge of *any* category of non-stormwater flow from section 402(p)'s prohibition against discharges to the MS4 system at all, there is patently no legal basis for the Executive Officer to authorize the discharge of a non-stormwater flow outside of those categories identified in 40 C.F.R. 122.26(d)(2)(iv)(B)(1). Thus, a clear reading of the regulation, and one that elaborates on Section 402(p)(3)(B)(ii) of the CWA rather than contradicting it, is that while non-stormwater discharges must be prohibited by the text of the CWA, illicit discharge enforcement programs need only specifically address the enumerated list of non-stormwater discharges set forth in the regulations where such discharges have been identified as a source of pollutants. As such, we urge the Regional Board to revise the Draft Permit such that it is consistent with both the regulations and the statute it purports to implement. 10.19

Even if the Co-Permittees were afforded authority under 40 C.F.R. § 122.26(d) to exempt non-stormwater sources from the discharge prohibitions required by the CWA, as stated earlier, such discharges must be prohibited where the category of discharge is identified as a source of pollutants to waters of the United States. Of particular concern in this regard is the Draft Permit's allowance for authorizing discharges of reclaimed and potable landscape irrigation runoff, even though pollutants from these sources are a known, significant source of impairment to waters in the Sonoma County region and throughout California.[25] (Section A.5(d), Table 1.) A finding that these discharges are "not []sources of pollutants to receiving waters" as required under 40 C.F.R. 122.26(d)(2)(iv)(B)(1), or even that they are not "a significant source of pollutants" as the Draft Permit would set as the standard for discharge under Section A.5(d), is unlawful and would be inconsistent with facts in the record. First, a non-source of pollutants 10.20

[25] See 2006 CWA Section 303(d) List of Water Quality Limited Segments; Draft Permit Fact Sheet at 26-28, Table 1.

finding would stand contrary to extensive research that has proved the opposite: studies have consistently shown that non-stormwater discharges from irrigation water or lawn water are a significant source of pollutants for which Sonoma County waters are impaired.[26] As the Draft Permit's Fact Sheet duly notes, "Pollutants contained in such discharges include ... nutrients and toxic chemicals." (Draft Permit Fact Sheet at 44.) Lawn and garden use has been identified generally as one of the main sources of pesticides found in urban streams. Lawns have been identified as a "hot spot" for nutrient contamination in urban watersheds—lawns "contribute greater concentrations of Total N, Total P and dissolved phosphorus than other urban source areas … source research suggests that nutrient concentrations in lawn runoff can be as much as four times greater than other urban sources such as streets, rooftops or driveways."[27] Thus, any claim that irrigation water is unequivocally not a source of pollutants to receiving waters cannot be sustained. As a result, any authorization, or potential for authorization, of this type of discharge should be removed from the Draft Permit. 10.21

In total, the Draft Permit's approach does not equal the CWA's mandate that Co-Permittees "effectively prohibit non-stormwater discharges into the storm sewers." (33 U.S.C. § 1342(p)(3)(B)(ii).) Given that pollution from nutrients and other contaminants constitutes a serious and ongoing problem in receiving waters under the jurisdiction of the Co-Permittees, the conditional exemption of irrigation or lawn watering from prohibitions against non-stormwater discharge violates the clear requirements of the CWA and its implementing regulations. As with our comments in Section II of this letter, we underscore that these concerns emphasize the need for specific, LID-based, onsite stormwater retention requirements since these approaches will reduce non-stormwater runoff from new development to zero when properly implemented. 10.22

[26] Id.

[27] Center for Watershed Protection (March 2003) *Impacts of Impervious Cover on Aquatic Systems* at 69; see also H.S. Garn (2002) *Effects of lawn fertilizer on nutrient concentration in runoff from lakeshore lawns, Lauderdale Lakes, Wisconsin.* U.S. Geological Survey Water-Resources Investigations Report 02-4130 (In an investigation of runoff from lawns in Wisconsin, runoff from fertilized lawns contained elevated concentrations of phosphorous and dissolved phosphorous).

IV. Conclusion.

For the aforementioned reasons, the Draft Permit is not yet legally adequate and needs revision to pass legal muster under the Clean Water Act's MEP standard and to produce the significant reductions in stormwater pollution that are feasible and necessary to meet water quality standards. We urge the Regional Board and its staff to revise the Draft Permit to address these concerns, as discussed above. Please feel free to contact us with any questions you might have, and we look forward to working with the Board to produce a Permit that will meet the requirements of the Clean Water Act and protect the region's water resources. 10.23

Sincerely,

David S. Beckman
Bart Lounsbury
Noah Garrison
Natural Resources Defense Council

July 5, 2009

Ms. Mona Dougherty
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Via email: MDougherty@waterboards.ca.gov

COMMENTS ON SONOMA COUNTY MS4 NPDES STORM WATER PERMIT

Dear Ms. Dougherty;

Thank you for this opportunity to comment on the Sonoma County MS4 NPDES Storm Water Permit ("permit"). We have found the permit to be generally very good. However, we are concerned that a number of troublesome pollutants known to exist—even in tertiary-treated sewage effluent and in processed sludge—have been overlooked and that the permit appears not to account for significant, scientific, peer-reviewed research that specifies such materials.

Because storm water runoff collects from a considerable amount of acreage that receives various sewage treatment products (e.g., treated effluent and sewage sludge) runoff flow may contain certain contaminants contained in raw sewage that survive sewage treatment as well as other contaminants that are created by the sewage treatment process itself. Many of these contaminants by themselves, not to mention others that result from the combination, reaction or other transformation of two or more of these compounds, are considered toxic and therefore fall under the purview of existing legislative and regulatory stipulations discussed below. 11.1

We are organizing this letter so that it covers a range of water quality considerations. Additionally, full text copies of the abstracts and papers referenced in the footnotes of this letter accompany this letter for the Board's convenience.

Emerging Contaminants

We are particularly concerned that parts of this permit would allow treated sewage to mix with storm water. Considerable evidence has accumulated over the past 20 years demonstrating: 1) the inadequacy of sewage treatment, including so-called "tertiary" treated sewage; 2) the ability of sewage treatment plants to actually produce new toxicants from the ingredients contained in raw sewage; and 3) the role that sewage treatment plays in increasing and spreading antibiotic resistance. 11.2

The rise of antibiotic resistance in sewage plants was once believed to be a passive process of simply killing off vulnerable pathogens and leaving only a miniscule number of hardy pathogens. No doubt this process continues apace (see below). But as early as 1990, Nakamura and Shirota[1] discovered that multi-drug resistant ("MDR") pathogens do not just survive treatment, they can actually increase as treatment progresses. Additionally, a disturbing number of these survivors carry extra packets of DNA coded for multi-drug resistance called "R plasmids." 11.3

> "Of a total of 900 isolates, 45.7% were drug resistant and 51.1% of them carried R plasmids. The further along that wastewater had progressed through the treatment process the greater the tendency was for appearance of the multiresistant isolates. These isolates also were shown to simultaneously carry transferable R plasmids. Observed resistant patterns of R plasmids were mainly multiple and encoded to resistance to tetracycline, chloramphenicol, streptomycin and sulfisoxazole. ***It became clear that multiplication of R plasmids took place in the activated sludge digestion tank.*** This study show [sic] that drug resistance transfer mediated by these R plasmids may occur in actual wastewater treatment plants." [emphasis added]

Observations of increased resistance after treatment have become common worldwide. For example, da Silva[2], et. al. observed rather dramatic increases of MDR *E. faecium* compared to levels detected earlier in raw sewage. In other words, antibiotic resistant

[1] Behavior of drug resistant fecal coliforms and R plasmids in a wastewater treatment plant, Nakamura S, Shirota H., Department of Food and Nutrition, Ube College, Japan, Nippon Koshu Eisei Zasshi. 1990 Feb;37(2):83-90

[2] Antibiotic resistance of enterococci and related bacteria in an urban wastewater treatment plant, Miguel Ferreira da Silva, Igor Tiago, Antonio Verıssimo, Rui A. R. Boaventura, Olga C. Nunes & Célia Manaia, Federation of European Microbiological Societies FEMS Microbiol Ecol 55 (2006) 322–329, Published by Blackwell Publishing Ltd., 7 August 2005

pathogens actually increased from the amounts detected in the raw state because of treatment. Such examples can be multiplied many fold[3].

Antibiotic Resistance, a Rising Tide

It is difficult to exaggerate the danger of antibiotic resistance. Without antibiotic drugs, modern medicine would revert to a level of care not seen since World War I. In addition to curing a host of often lethal bacterial infections, virtually every surgical procedure performed today would be impossible without antibiotic drugs. Developing resistance to antibiotics eventually will render these drugs obsolete—unless something is done to curtail the spread of resistance.

Many factors contribute to antibiotic resistance but it has been well established that sewage treatment plays an integral role in reducing the efficacy of these so-called "miracle drugs." If permits like the one under consideration continue to allow antibiotic-resistant pathogens and antibiotic-resistant genes to be spread via open dumping, and then to travel to surface waters via runoff, the dramatic increase in antibiotic resistance will continue until we no longer have any "miracles" left. It is cheaper to stop the flow of contaminated material in the first place than it is to fight bugs that have become resistant. 11.4

> "The cost of treating one person with multidrug-resistant TB is a hundred times greater than the cost of treating non-resistant cases. New York City needed to spend nearly US$1 billion to control an outbreak of multi-drug resistant TB in the early 1990s; a cost beyond the reach of most of the world's cities.[4]"

Sonoma County has already experienced a frightening rise in antibiotic-resistant pathogens. Methicillin-resistant *Staphylococcus aureus* ("MRSA") is a "fairly significant" problem in homeless shelters in Petaluma[5]. MRSA now exists in at least five varieties[6] of varying virulence some of which are exceedingly difficult if not impossible to cure, e.g. USA300-MRSA. USA300 is well established next door in San Francisco. New drug resistant pathogens are being discovered with disturbing regularity, including strains that have developed resistance to Vancomycin, once regarded as the antibiotic of last resort.

The danger from antibiotic-resistant pathogens and genes qualifies as a serious pollutant under existing California law and sewage treatment plays an important role in 11.5

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[3] Occurrence and fate of antibiotic resistant bacteria in sewage, Luca Guardabassi, Anders Dalsgaard, The Royal Veterinary and Agricultural University, Department of Veterinary Microbiology, Environmental Project No. 722 2002, Miljøprojekt, Danish Environmental Protection Agency, etc.

[4] DRUG RESISTANCE THREATENS TO REVERSE MEDICAL PROGRESS, Press Release WHO/41, 12 June 2000

[5] Homeless People at Higher Risk for CA-MRSA, HIV and TB, Healing Hands, HCH Clinician's Network, Vol. 10, No. 5 n December, 2006

[6] Understanding The Impact Of MRSA On Limb Preservation, Loan Lam, DPM, Peter Blume, DPM, FACFAS, and Michael Palladino, DPM, FACFAS, Podiatry Today, Issue Number: 7, VOLUME: 20, Jul 01 2007

amplifying this danger. The permit is obliged to discuss possible methods of curtailing the spread of antibiotic resistance via storm runoff and other discharge.

Antibiotic-Resistant Genes

A study by Pruden [7], et. al., describes antibiotic-resistant genes ("ARG") as emerging contaminants in treated sewage. Pruden showed that ARGs not only survive sewage treatment they can be detected in drinking water supplies when the effluent is discharged into surface waters. ARGs are, by definition, injurious pollutants that can be transported via storm runoff.

Antibiotic-resistant genes and antibiotic-resistant pathogens have been detected in so-called "recycled" or "reclaimed" water used to irrigate everything from public parks, golf courses and agricultural acreage. As a result, there is significant risk that storm water runoff carries ARGs. 11.6

Even if MDR pathogens are destroyed during treatment, the genes these pathogens once carried, encoded for antibiotic-resistance, are deposited in the sewage matrix making them available to other pathogens to incorporate and become resistant to specific antibiotic drugs. If ARGs enter the body, they can exchange genetic information with gut flora and transfer antibiotic resistance to persons unlucky enough to ingest them. Waste water treatment plants ("WWTP") are not necessarily free of ARGs. We discuss the implications and efficacy of Ultra Violet ("UV") disinfection below.

Why ARGs and Antibiotic-Resistant Pathogens are Important

Wastewater treatment plants are unique environments that collect a multitude of pathogens from entire sanitary districts—pathogens that would not ordinarily find themselves in close proximity. In addition to this unique population of pathogens is a concomitant collection of antibiotic drugs. Both humans and livestock excrete up to 95% of the antibiotic drugs they ingest[8], and antibiotics tend to be stable compounds making the presence of pure, not metabolized, antibiotic pharmaceuticals significant.

This unique environment, consisting of scores of pathogens mixed with a profusion of antibiotics, initiates a process where weak, susceptible pathogens die off and ever stronger, resistant pathogens are selected. In a very real sense, sewage treatment facilities are evolution accelerators creating antibiotic resistance on an industrial scale.

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[7] Antibiotic Resistance Genes as Emerging Contaminants: Studies in Northern Colorado, Amy Pruden, RuoTing Pei, Heather Storteboom, and Kenneth H. Carlson, Environ. Sci. Technol. 2006, 40, 7445-7450

- Report on Antibiotic Resistance and Recycled Water to Marty Blum, Mayor of Santa Barbara, California by Edo McGowan, Ph.D., May 8, 2009

[8] Pruden, et. al.

A March 24, 2009 study of antibiotic-resistance in WWTP flatly concluded:

> "These results suggest that [the] wastewater treatment process contributes to the selective increase of antibiotic resistant bacteria and the occurrence of multi-drug resistant bacteria in aquatic environments.[9]"

To further underscore the public health threat, an American Medical Association study determined that, in 2005, 19,000 Americans died from Methicillin Resistant *Staphylococcus aureus*[10]. This death toll is greater than the number of Americans who died from complications resulting from HIV-AIDS.

The rise of community-associated MRSA ("CA-MRSA") appears to coincide with the EPA easing Clean Water Act restrictions on sewage sludge and allowing open dumping[11]. The suspicion that hospital-acquired MRSA ("HA-MRSA") escaped the hospital setting because of the open dumping of sewage sludge is compelling. More research is needed to confirm these suspicions but it is clear that "treated" sewage plays a not-insignificant role in spreading antibiotic-resistance and WWTP operators should be taking pro-active steps to curtail the spread of ARGs, MRSA, or any other material contributing to the antibiotic-resistant epidemic.

The Board is aware that widespread open dumping of sewage sludge now occupies considerable acreage in Sonoma County[12] and contaminants contained in sewage products will contribute to storm water runoff. By practice, sludge is not plowed into land but rather applied to the surface where it is more likely to yield pollutants during rain events.

11.7

The permit does not discuss ARGs, antibiotic-resistant pathogens or the means by which the Co-Permittees intend to reduce or eliminate the pernicious effects of these materials. The Co-Permittees are obliged to account for these risks in some detail and

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[9] Wastewater treatment contributes to selective increase of antibiotic resistance among Acinetobacter spp., Zhang Y, Marrs CF, Simon C, Xi C., Department of Environmental Health Sciences, University of Michigan, Ann Arbor, USA., Sci Total Environ. 2009 Jun 1;407(12):3702-6.

-Sewage Plants May Be Creating "Super" Bacteria, Andrew McGlashen and Environmental Health News, Scientific American, April 16, 2009

[10] Infection Killed 19,000 in 2005, Study Says, New York Times, October 16, 2007, Kevin Sack

[11] cf. 40 CFR Part 503, promulgated on February 19, 1993.

[12] cf. Sonoma County General Plan: PF-2q: Encourage application of sludge generated in Sonoma County to agricultural lands in the County. Consider sludge application projects as designated in the Land Use Element of the General Plan for purposes of compliance with Section 66796.41 of the Government Code if they meet all of the following criteria. In the event that one or more of the criteria are not met, a general plan amendment shall be required.
1) The project's primary purpose is to enhance agricultural use. The rate of sludge application shall be designed to enhance existing agricultural operations or designed in conjunction with a detailed management plan for proposed agricultural use.
2) The rate of sludge application shall not result in any future limitations on the potential agricultural use of the area of application.
3) The project shall be subject to the approval of the applicable Regional Water Quality Control Board.

offer means to mitigate or eliminate the potential threats because they pose significant risk to public health.

Treated Sewage Can Systemically Contaminate Plants

Several studies have found that vegetation, including agricultural crops, readily uptake pharmaceuticals, pathogens, antibiotic-resistant genes and other micro pollutants from treated sewage effluent and sludge, sometimes with lethal effect.

The U.S. Environmental Agency ("EPA") presented data[13] at the recent Micropol & Ecohazard 2009 conference in San Francisco that clearly demonstrates the uptake of antibiotics and illegal drugs in various plants watered with treated effluent or fertilized with treated sewage solids. Yates[14] similarly demonstrated plant uptake of both bacterial and viral pathogens as well as parasites. All these contaminants entered the plants as a result of using treated—and declared safe but still contaminated—sewage.

The EPA authors note that they were able to detect:

> " . . Azithromycin and Methamphetamine in Bermuda roots sampled from a field that had been treated for several years with biosolids . . . There were traces of uptake of clindamycin into spinach leaves and possibly lettuce root . . . Trace amounts of roxithromycin were detected in lettuce roots. Carrots showed the greatest amount of uptake of roxithromycin, 110 ng/g, from 1000 ng/L of roxithromycin watered into the carrot plots. All of the plants, except the carrots, from the field crops watered with Tucson wastewater effluent showed uptake of n,n'-dimethylphenethylamine, an industrial chemical used in manufacturing, food industry, etc."

The mechanism of vegetative uptake of pollutants is so well established that some alternative sewage treatment technologies actually rely on doing exactly this to "trap" pollutants in trees or other plants[15].

There is genuine concern that watering vineyard grapes, for example, with treated sewage could contaminate the grapes and ultimately the wine made from them. There is nothing in the winemaking process that would necessarily remove, sanitize, disinfect or otherwise render harmless the host of possible contaminants demonstrated to exist in

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[13] A Case Study: Crop (Lettuce, Spinach, and Carrots) Uptake of Three Macrolide Antibiotics (Azithromycin, Clindamycin and Roxithromycin) and Other Drugs, Tammy L. Jones-Lepp, Charles A. Sanchez, Research Chemist U.S. EPA ORD, NERL, Environmental Sciences Division, Las Vegas, NV and University of Arizona Department of Soil, Water, and Environmental Sciences, Yuma Agricultural Center, Yuma AZ, respectively.

[14] PATHOGENS IN RECLAIMED WATER, M.V. Yates, P.h.D., Professor of Environmental Microbiology College of Natural and Agricultural Sciences, University of California Riverside, Informational handout at lecture, 1989.

[15] Wastewater Management Using Hybrid Poplar, Agroforestry Notes, USDA Forest Service, USDA Natural Resources Conservation Service, April 2000

treated sewage[16]. Exposing grape stock to treated sewage effluent risks polluting both grape and wine.

The risk of contaminating grapes used by the North Bay wine industry could set in motion incalculable economic repercussions. This scenario is particularly credible since every alcoholic beverage business in the world ultimately relies on the perception of pristine water as the foundation for the product. This is true whether the product is beer, wine or whiskey. Contaminated effluent of any description is by definition anathema to this universal principle and very far from the perception of pristine water.

Plant uptake of pollutants in crops eaten raw, e.g. strawberries, lettuce, carrots, etc., require extra careful laboratory analysis to guarantee that these food crops are contaminant free. 11.8

Deaths from Contaminated Plants

In 2008, several hundred dairy cattle in the State of Georgia died from eating hay that had been grown on land fertilized with sewage sludge. The court trials that resulted from this case of mass poisoning documented a clear instance where toxic materials, in this case heavy metals, passed from treated sewage applied to soil into growing plants rendering the feed lethal to consume[17]. Worse, even the milk was contaminated. The Augusta Chronicle, a local newspaper, noted: "In one case, according to test results provided to the AP, the level of thallium—an element once used as rat poison—found in the milk was 120 times the concentration allowed in drinking water by the Environmental Protection Agency."[18]

The permit is obliged to consider storm water runoff quality from any acreage where sewage sludge has been applied with extra scrutiny due to the elevated risk to public health. We commend the Board for the work it has already done in recognizing toxic materials in runoff. However, open dumping of treated sewage products creates an additional complication to these efforts that requires even closer examination. 11.9

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[16] Validity of the Indicator Organism Paradigm for Pathogen Reduction in Reclaimed Water and Public Health Protection, Valerie J. Harwood, Audrey D. Levine, Troy M. Scott, Vasanta Chivukula, Jerzy Lukasik, Samuel R. Farrah, and Joan B. Rose, APPLIED AND ENVIRONMENTAL MICROBIOLOGY, June 2005, p. 3163–3170, Vol. 71, No. 6

[17] R.A. McELMURRAY, III, R.A. McELMURRAY, JR ., RICHARD P . McELMURRAY, and EARL D . McELMURRAY, *V* . UNITED STATES DEPARTMENT OF AGRICULTURE, NO . CV105-15 9, Feb 25, 2008

-UNITED STATES SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS Briefing on "Oversight on the State of Science and Potential Issues Associated with EPA's Sewage Sludge Program" September 11, 2008 TESTIMONY OF ROBERT A. (ANDY) MCELMURRAY, III

-Researchers Link Increased Risk Of Illness To Sewage Sludge Used As Fertilizer, Science Daily, July 30, 2002

[18] "National policy brought sludge to Augusta farms: Ruling for farmer disputes government data" , Augusta Chronicle, Sunday, March 09, 2008

Phthalate Toxicity and Dosage

Researchers, water suppliers and others can be misled by terms like “trace” or “insignificant” when used to quantify amounts of pollutants that remain after sewage treatment. Increasingly, researchers are discovering appreciable effects from pollutant levels previously believed to be below safe thresholds[19]. Additionally, other chemicals known to survive the treatment process, for example phthalates, behave as endocrine disruptors and therefore mimic hormones.

Hormones are some of the most potent chemicals known to science; vanishingly small doses can provoke impressive, often harmful, biological reactions.[20] In the past, agencies, municipalities, boards and other custodians of water quality, supply and safety have been able to discount very small amounts of contaminants and declare them as safe. Nevertheless, mounting research shows that ignoring contaminants like phthalates, even in miniscule amounts, would contradict prudent scientific practice.

Hormones, and the chemicals that mimic them, can be biologically active in parts per trillion[21] (*i.e.*, 1 x 10^{12}). 11.10

The permit does not discuss this threat to public health nor does it present the results of studies done to determine the extent of damage that the permit would contribute to endocrine disruption in human and animal populations. Co-Permittees offer no means to ameliorate or eliminate this threat.

Chlorine and Residual Pollutants

The permit makes no mention of interactions known to take place amongst residues found in treated sewage products and amongst contaminants known to exist in lands irrigated with sewage products or fertilized with sewage solids and therefore that contribute to runoff. 11.11

Chlorinated Triclosan Derivative Products

Triclosan (5-chloro-2-(2,4-dichlorophenoxy)phenol; “TCS”) is a ubiquitous antimicrobial found in soaps, shampoos, toothpastes and many other products. Triclosan is routinely detected in WWTP sludge and effluent and is most likely not removed with the efficiency once assumed to exist, as noted by Heidler and Halden: *“ . . .* conventional sewage treatment was demonstrated to be much less effective in destroying the antimicrobial

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[19] Counterintuitive toxicity: increasingly, scientists are finding that they can't predict a poison's low-dose effects, Raloff, Janet, Jan 20, 2007, Science News, ISSN: 0036-8423

[20] Effects of relatively low levels of mono-(2-ethylhexyl) phthalate on cocultured Sertoli cells and gonocytes from neonatal rats, Li LH, Jester WF Jr, Orth JM., Department of Anatomy and Cell Biology, Temple University School of Medicine, Philadelphia, Pennsylvania, 19140, USA. Toxicol Appl Pharmacol. 1998 Dec;153(2):258-65.

[21] DETECTION OF HORMONE MIMICS IN WATER USING A MINITURISED SPR SENSOR, ADAMA M. SESAY and DAVID C. CULLEN, Cranfield Biotechnology Centre, Institute of BioScience and Technology, Cranfield University at Silsoe, Silsoe, Bedfordshire, U.K., Environmental Monitoring and Assessment 70: 83–92, 2001

[TCS] than the aqueous-phase removal efficiency of the plant would make believe. Furthermore, study findings indicate that the common practice of sludge recycling in agriculture results in the transfer of substantial quantities of TCS to US soils used, in part, for animal husbandry and crop production."[22]

Triclosan and chlorine are known to react and create chlorinated triclosan derivative ("CTD") products. When exposed to sunlight, CTDs will photolyse in water and form polychlorodibenzo-*p*-dioxins, dioxin is a potent toxicant and regulated under CAlifornia's Water Code Section 7. "It is important to determine the amount of CTDs formed from triclosan during wastewater disinfection, because they may give rise to more highly toxic dioxins."[23]

The permit does not mention CTD products or the "more highly toxic dioxins" they may form. There is no mention of any studies performed by the Co-Permittees to determine the polychlorodibenzo-*p*-dioxin load destined for public waters or any suggested methods to eliminate it.[24] 11.12

Chlorine and MRSA

Exposure to chlorine has been demonstrated to magnify the virulence of Methicillin-resistant *Staphylococcus aureus* by inducing amino acid synthesis genes as well as enhancing exotoxins, hemolysins, leukocidins, coagulases, and surface adhesion proteins—the very mechanisms that make MRSA so dangerous[25]. Since sewage treatment facilities in Sonoma County do not guarantee the removal of all *Staphylococcus aureus*, we reasonably can assume that a certain number exist in "recycled" water[26] and therefore will contribute to storm runoff.

The permit does not discuss these enhancements to MRSA nor the increased risk they represent by permitting non-storm water runoff to mix with surface waters. 11.13

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[22] Mass balance assessment of triclosan removal during conventional sewage treatment, Jochen Heidler, Rolf U. Halden, Johns Hopkins University, Bloomberg School of Public Health, Department of Environmental Health Sciences, Johns Hopkins University Center for Water and Health, 25 April 2006

[23] Formation and Occurrence of Chlorinated Triclosan Derivatives (CTDs) and their Dioxin Photoproducts, Jeffery M. Buth, William A. Arnold, Kristopher McNeill, University of Minnesota, Department of Chemistry, buthx007@umn.edu

[24] *Nota Bene*: Only manufacturers of dioxin products (American Chemical Council members) have attempted to depreciate the CTD study. However, the nexus of profit motive versus negative publicity render these deprecations specious.

[25] Toxicogenomic Response to Chlorination Includes Induction of Major Virulence Genes in Staphylococcus aureus, Matthew Wook Chang,, Freshteh Toghrol, and, William E. Bentley, Environmental Science & Technology 2007 41 (21), 7570-7575

[26] A seasonal study of the mecA gene and Staphylococcus aureus including methicillin-resistant S. aureus in a municipal wastewater treatment plant. Börjesson S, Melin S, Matussek A, Lindgren PE. Department of Clinical and Experimental Medicine, Division of Medical Microbiology, Linköping University, SE-581 85 Linköping, Sweden, stefan.borjesson@liu.se

-Antibiotic Resistance in Wastewater: Methicillin-resistant Staphylococcus aureus (MRSA)and antibiotic resistance genes, Börjesson, Stefan, Linköping University, Medical Microbiology, Doctoral thesis, 2009.

-Harwood, supra at fn. 5

Chlorine and the Immune System

When chlorine is used as a disinfectant, weak bacteria die and strong bacteria survive. This process has gone on long enough for microbiology to recognize many chlorine-resistant bacteria[27]. Chlorine-resistant bacteria present a serious health challenge because the body's leucocytes destroy pathogens by injecting them with hypochlorite. When disease-causing bacteria become immune to chlorine then the body has, in effect, no working immune system. 11.14

The permit contains no discussion of chlorine-resistant bacteria, their effect on the human immune system or the MPN of such bacteria found in sewage effluent that will contribute to storm water runoff. The permit lacks estimates of the permit's contribution to chlorine-resistant pathogen populations in general and the overall effect, if any, the permit will have on public health as a result.

Chlorine and Acetaminophen

Regardless of the efficacy that chlorination may have in reducing or destroying pathogens, chlorine has been demonstrated to transform certain common chemicals with significant health risks into vastly more potent chemicals with much greater health risks. Chlorine is known to transform acetaminophen (Tylenol®) into two separate toxicants neither of which were introduced to the waste stream[28]. Acetaminophen is not only one of the most widely consumed drugs in the world, making it relatively prevalent in sewage, it is the leading cause of acute liver failure in the United States[29]. In other words, the WWTP process itself generates toxicants from ingredients found in raw sewage and during the treatment process itself. However, the permit does not account for potential dangers occasioned by chlorine reactions with acetaminophen during the treatment process nor on the fate of such substances once released into the environment. 11.15

[27] Phenotypic and Genetic Diversity of Chlorine-Resistant Methylobacterium Strains Isolated from Various Environments, AKIRA HIRAISHI, KATSUNORI FURUHATA, ATSUHIKO MATSUMOTO, KAZUKO A. KOIKE, MASAFUMI FUKUYAMA, AND KIYOSHI TABUCHI, APPLIED AND ENVIRONMENTAL MICROBIOLOGY, June 1995, p. 2099–2107 Vol. 61, No. 60099-2240/95 Copyright 1995, American Society for Microbiology

[28] Transformation of Acetaminophen by Chlorination Produces the Toxicants 1,4-Benzoquinone and N-Acetyl-p-benzoquinone Imine, Mary Bender, William A. McCrehan, Analytical Chemistry Division, National Institute of Standards and Technology, ENVIRON. SCI. & TECHNOL.,

[29] Acetaminophen-Induced Acute Liver Failure: Results of a United States Multicenter, Prospective Study, Anne M. Larson, Julie Polson, Robert J. Fontana, Timothy J. Davern, Ezmina Lalani, Linda S. Hynan, Joan S. Reisch, Frank V. Schiødt, George Ostapowicz, A. Obaid Shakil, William M. Lee, and the Acute Liver Failure Study Group; HEPATOLOGY 2005;42:1364-1372, September 12, 2005

What You Don't Know Can Hurt You

Numerous reports[30] attest to the persistence of a wide variety of pharmaceutical compounds in treated sewage and treated wastewater. These discoveries sometimes note that the amounts of drugs detected were below therapeutic dosages and therefore —incorrectly—considered them to be harmless. Low dosage notwithstanding, endocrine disruptors, can be biologically active in parts per trillion, as noted *supra* page 6 and in *fn.14*.

Also, the permit does not take into account possible chemical reactions amongst the unusually large numbers of pathogens, pharmaceuticals, illegal drugs, industrial chemicals, endocrine disruptors, antimicrobial products, and other material found in treated sewage and spread on land that contributes to storm water runoff. As noted with acetaminophen and chlorine, some contaminants react with each other and produce entirely new toxicants all of which becomes available to storm water runoff. 11.16

Ultra-Violet Light Disinfection

Ultra-Violet ("UV") light disinfection in the sewage treatment process is often considered more efficient than chlorine and also avoids some of the problems associated with chlorine. However, UV disinfection has no effect on endosymbiont bacteria nor on the genetic material they contain. Antibiotic-resistant endosymbionts present a particular challenge because the ARGs stand an excellent chance of surviving disinfection attempts, whether by UV or chlorine or both. The permit does not discuss the endosymbiont problem nor its solution. 11.17

Regulatory Compliance

Even given the small sample of scientific, peer-reviewed literature referenced in this short letter, there appears to be considerable reason to doubt that the permit complies with the California Health and Safety Code ("CHSC") §§ 5410-5416 inclusive. For example:

> § 5410(d): "Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" shall include any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

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[30] AP: Drugs found in drinking water, Jeff Donn, Martha Mendoza and Justin Pritchard, Associated Press, USA Today, 2008-03-10;

-Where rivers run high on cocaine, NIGEL HAWKES, Times (UK) Online, August 05, 2005;

-PRESENCE OF PHARMACEUTICALS IN WASTEWATER EFFLUENT AND DRINKING WATER, METROPOLITAN ATLANTA, GEORGIA, JULY–SEPTEMBER 1999, Elizabeth A. Frick, Alden K. Henderson, Ph.D., M.P.H., Deborah M. Moll, Ph.D, Edward T. Furlong, Ph.D., and Michael T. Meyer, Ph.D., Proceedings of the 2001 Georgia Water Resources Conference , held March 26-27, 2001

> § 5410(f): "Nuisance" means anything which: (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, and (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and (3) occurs during, or as a result of, the treatment or disposal of wastes.
>
> § 5411: No person shall discharge sewage or other waste, or the effluent of treated sewage or other waste, in any manner which will result in contamination, pollution or a nuisance.

Similarly, the Code of Federal Regulations and the Porter-Cologne Water Quality Control Act prohibit discharges that would impair present or future beneficial uses of water, will cause pollution, nuisance, or contamination, or will unreasonably degrade the quality of any waters of the state. The pollutants and contaminants mentioned in this letter, if permitted to be discharged into receiving waters and not removed or otherwise rendered harmless would appear to violate a host of stipulations outlined in the California Water Code Division 7.

11.18

Exacerbating community acquired antibiotic-resistance; the spread and even creation of antibiotic-resistant pathogens; the creation and spread of chlorine-resistant pathogens; contamination of waterways with endocrine-disrupting phthalates; and threatening both the wine and agricultural produce industries, would each appear to contravene both the spirit and letter of these regulatory stipulations. It appears unclear to us how the permit will satisfy these legal hurdles in its present state.

One Possible Remedy

Upgrading sewage treatment facilities so that the above-named contaminants are completely removed from effluent and sludge in the first place would obviously allow the Co-Permittees to not only comply with current legislation but to substantially increase protection of the public's health. Upgrades should include multiple membrane technologies to enable reverse osmosis; a complete reassessment of UV disinfection; nanofiltration; ozone disinfection and other techniques not specified that remove, disable, disinfects or otherwise sterilizes and renders harmless these contaminants.

11.19

Historical Perspective

In the past, in fact in the very recent past, the use of so-called "recycled" water seemed reasonable and safe to both scientists and environmentalists. However, in light of the scientific investigations herein submitted, so-called "recycled" water now occupies an historical moment analogous to that of cigarettes in the 1950's or DDT in the 1970s.

11.20

In 1957, most people did not take seriously the warnings of Surgeon General Leroy Burney, M.D., when he declared cigarette smoke injurious to health. Indeed, it took decades of scientific evidence and a slow but inexorable gathering of social opprobrium before Americans fully realized the danger and stopped smoking on a large scale. The number of smokers today is miniscule compared to people who smoked in 1957.

In 1948, the Swiss chemist Paul Müller actually received the Nobel Prize in Physiology or Medicine for his discovery that DDT was an effective contact poison for certain insects. At first, DDT seemed to be a boon for public health and comfort. But by 1972, the United States had banned DDT after discovering that it is a carcinogen and that it posed a serious and particular threat to avian life.

The widespread use of partially-cleaned sewage effluent appears to be following a similar trajectory of acceptance and rejection. In the end, we will have to recycle water, not only to comply with regulations, but to survive. “Recycle”, however, means to remove all contaminants, not just some of them.

Sincerely,

H.R. Downs
President
O.W.L. Foundation

Russian River Watershed Protection Committee

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Comments by Brenda Adelman for RRWPC

July 5, 2009

Mona Dougherty
North Coast Regional Water Quality Control Board
5550 Skylane Blvd.
Santa Rosa, CA 95403

Dear Ms. Dougherty:

These comments comprise Russian River Watershed Protection Committee's (RRWPC's) response to the revised Regional Board Order #R1-2009-0050: (formerly Order #R1-2008-0106) entitled:

Waste Discharge Requirements on Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges from Municipal Separate Storm Sewer Systems (MS4s). NPDES #CA0025054 for City of Santa Rosa, County of Sonoma and Sonoma County Water Agency

RRWPC Comments not fully responded to…

RRWPC submitted comments on the first draft permit on 10-22-08. Our comments are included in the document, "Public Comments on Sonoma MS4 Permit Renewal" and occupy pages 105 through 111. In the margin, staff identified 24 comments to be responded to. In looking over the actual responses, one was mentioned twice (10.5), one was listed as not clear (10.6), and comments 10.10 through 10.24 were never responded to at all. Why did that happen and how does this affect the public comment process? What is the legal requirement for responding to all noted comments? If some questions were unclear, as indicated for 10.6, why did no one contact me to ask for a clarification? Regional Board staff met with dischargers about 20 times, why did no one contact us about clarifying our comments? 12.1

RRWPC supports most of this plan…

RRWPC supports most of this permit in regards to actual storm water runoff controls, construction and utilities equipment maintenance runoff controls, and controls on runoff from miscellaneous planned and necessary activities that 12.2

cause pollutants to run into the storm drains, but whose impacts can be addressed and mitigated in advance.

In general, we feel that Regional Board staff has done an excellent job in planning necessary water quality protections through development of this program. We read the Fact Sheet with great admiration as it honed in on so many and even more of the degradation issues we have been deeply concerned about for the last 30 years, while acknowledging that correction of all these problems will occur in an evolving process and cannot all be done at once.

The Fact Sheet correctly points out the tendency of local governments to take a minimalist approach to addressing water quality issues in our environment. The Fact Sheet comes close to being a fully informed analysis of the issues involved (at this point in time) with storm water runoff. It does seem to focus however, on the urban issues, and does not begin to address problems that exist in rural areas, one of which is described later in these comments. 12.3

While this Permit was originally going to address county-wide runoff issues, it has backed off on that approach. Rather several specific projects will be put forth at a future time to address specific problems, and addressing these issues in the region will have to wait. At a minimum, region wide problems should at least be identified in a general way before this permit is finalized. An identification process followed by a prioritization process should have a time line assigned to it, otherwise the situation could languish indefinitely. 12.4

We have another major concern. If we understand it correctly, the current version of the Permit allows for 10,000 square feet of impervious surfaces to trigger LID rather than 5000 square feet. We wonder how much development was eliminated from these new requirements with this change and what the potential impacts will be? Can you give examples of what types of development this would include and what would be excluded? 12.5

We recognize that Regional Board staff put a great deal of time and effort into working with permittees to address their issues, and certain compromises have been made. Yet "the world wasn't created in a day" and you are providing a venue for addressing issues that have been begging attention for a very long time. In these difficult times, we hope you will be able to follow through on the implementation of this program. 12.6

Our number one issue has to do with the accommodation of wastewater reuse in urban areas and the merging of winter and summer pollution problems, which, in our view, tend to be quite different. We believe that the two circumstances should be separated. The body of the lengthy Fact Sheet deals mostly with wet weather and construction related pollution. 12.7

Page 34 states that Receiving Water Limitations must be met and that BMP's will be regularly reviewed to assure compliance. We wonder how standards will be

guaranteed in impaired waterways while still allowing some discharge? Since local wastewater contains nutrients and the Laguna is impaired for nutrients, it would seem as though ANY DISCHARGE should be illegal, not to mention the additional nutrients applied to landscaping and turf that can be carried off site by the runoff. The potential harm is so much greater in the summer when stream flows are very low. 12.8

Our biggest concern is that this permit may be authorized without full revelation of required BMP's needed to address "incidental irrigation runoff". We are further worried that BMP's are never binding; they are hard to enforce, and they will be based on third party agreements that are equivalent to allowing "the fox to guard the chicken house". 12.9

Most of this plan appears to appropriately address pollution circumstances that are either a result of natural storm water runoff and/or new construction and utilities maintenance activities, as well as various commercial activities causing water quality problems that need to be carefully managed. Since greatly increased conservation goals and programs would go a lot further in preserving water resources, and be a lot less environmentally harmful than irrigating with wastewater, especially during drought periods, we would much rather see your Board support prioritization of conservation rather than wastewater reuse. Some of our reasons are included on page 8-9 of this document. Have you done anything to promote the desirability of conservation over irrigation? If not, why not? 12.10

Fact Sheet gives excellent analysis on urban runoff problems…

The Fact Sheet goes into great detail about how and why urban runoff needs to be controlled, and alludes to the need for careful controls required for the irrigation of wastewater. We call attention to the statement on page 13, "*Both state and federal anti-degradation policies acknowledge that an activity that results in a minor water quality lowering, even if incrementally small, can result in violation of Anti-degradation Policies through cumulative effects, for example, when the waste is a cumulative, persistent, or bioaccumulative pollutant.*"

Since wastewater contains many documented unregulated chemicals that are dangerous to human, wildlife, and aquatic life health, it is a given, in our view, that these violations of Anti-degradation Policy will occur. 12.11

On the next page it states that, "*Likewise, the discharge COULD NOT be allowed under State Anti-degradation Policy if: (i) The discharge, even after treatment, would unreasonably affect beneficial uses,…*" (emphasis added) On page 17 in about the fifth line, it reads, "*This includes federal requirements to effectively prohibit non-storm water discharges,….*" It is these statements that we believe should strictly apply to the expanded use of wastewater to offset potable supply. Given the extensive

amount of irrigation runoff in urban areas, we can't imagine how some can seriously believe that there is a way people can be trusted to irrigate properly (without runoff) on a regular basis.

While this complex permit elaborates on the many underlying problems with urban runoff that require strict regulation, we believe that there is only minimal attention paid to the circumstance of existing and expanding use of wastewater for urban irrigation. City of Santa Rosa and numerous agencies convey to the public that the wastewater is almost drinkable and meets clean Drinking Water Standards, implying it can be used anywhere and for almost anything. 12.12

Ironically, compliance with this new permit puts the patina of respectability on a practice that may exacerbate the very problem it is trying to address. In other words, it sets the perimeters for Santa Rosa's new, anticipated wastewater irrigation program. This in turn will foster new opportunities for future discharges, and probable violations of the Anti-Degradation Policy, to our impaired waterways. The State is ignoring this issue through the benign neglect of assigning study of the problem to a small committee of experts. In the meantime, the volumes of studies on the hazards of the problem keep proliferating. 12.13

The disconnect between regulations and enforcement……

The revised permit and the fact sheet contain some very fine analysis of the problem and all the legal authorities available upon which to base new requirements. It all sounds so good on the page, but as implied above, much of it falls apart in real life. (This is even acknowledged in the Fact Sheet, which calls for regular review of BMP effectiveness in limiting polluting discharges.)

The following situation provides a clear demonstration of our concerns. Santa Rosa has had an irrigation program for at least 40 years or more. Since around 1990 they have operated with a reclamation permit. Since most irrigation is hidden on farms, the general public has not really had an opportunity to see if things are working the way they are supposed to. We have relied on the Regional Board (RB1) to oversee the situation. Yet over-irrigation occurs regularly and the RB1 relies on self-monitoring by the City of a third party as described in this permit. These relationships have not always worked as they should. Yet it has appeared to us that enforcement of Reclamation Permits have been spotty or non-existent indeed. 12.14

We have reported over-irrigation on several occasions (Once I was almost hit in the face by wastewater irrigation spray driving down Guerneville Rd.) but never heard if anything was done. On several occasions we have noted spray going right into the creek. When we report such incidents, no one ever gets back to us to give us a full report on what was done, and we don't ever recall seeing a cease 12.15

and desist order or penalties for violations of the Reclamation Permit. (Please correct us if we are mistaken.) I've heard that other people report things also that never seem to be responded to. That diminishes a person's motivation to make further reports. If I find that a frustrating experience, I can only imagine what other citizens feel if they see something that doesn't look right. They report it, and if no one ever gets back to them, it becomes one more example of the failure of government to do its job.

Santa Rosa's irrigation program appears to violate their Reclamation Permit….

On May 26, 2009, the Press Democrat ran a front-page article entitled "Recycling to save a river…" (Attachment #1) Our purpose for including this article is to demonstrate the apparent lack of oversight of the City's reclamation program.

The story featured Saralee Kunde and had a picture of her 15 million gallon wastewater reservoir. I had never heard about this reservoir, so I asked John Short if he knew about it. He said he hadn't and I gave him a copy of the article. The picture of the pond seemed to indicate there were no berms (as Santa Rosa reservoirs have) and we doubt that there were any liners to protect groundwater. We wonder what other requirements were not being met? 12.16

Reservoirs constructed by agricultural people are not subject to CEQA review. If John didn't know about this reservoir, it seems as though its construction may not have been reviewed by your Agency. Either this basin was built illegally, or the system that would allow it to be built without Regional Board review is a very flawed one indeed! Is it possible someone in your office reviewed its design and monitored its construction and John never knew about it?

In any case, Saralee and her husband Richard reported using 25,000,000 to 35,000,000 gallons of wastewater each year for irrigating their vineyard and other uses. She is quoted as saying, "We use it on everything. It's been a priceless commodity for us." The Kundes do not pay to use the wastewater. They use it for frost protection along with other irrigation needs, implying that it is being used illegally, since frost protection irrigation usually runs off into a waterway without being reported and/or carefully monitored.

The article goes on to say, "Kunde is unconcerned that the wastewater they use to irrigate might contaminate their own shallow, 60-foot wells that provide water for drinking, cooking, and showers." She said, "It's tertiary-treated. I have no concerns at all." Then it was explained that they sell the wastewater-saturated grapes to 60 wineries, some of whom produce expensive, award winning wines.

Since many of the unregulated chemicals likely to be found in tertiary treated wastewater have been implicated in causing cancer, we are surprised that many

vineyards don't take this issue more seriously. It is noteworthy that the Board of Supervisors, sitting as directors of the Sonoma County Water Agency, recently shelved the North County Ag Irrigation Project, mainly because of protests by some local winegrowers about the threat of unregulated chemicals on their crop and in their groundwater. The Kunde's vineyard is in the same general North County area, but their viewpoint is 180 degrees opposite of those opposing that project. The Precautionary Principle dictates that such wastewater irrigation on food crops should not be made easier for vineyards until more is known about the link between drinking wine and breast cancer.

In conducting a cursory search on the web, I found five recent articles (all dated in 2009) that appear to refer to different studies on the subject of wine drinking and breast cancer. (Attachments #2-#6) All of them seem to come to similar conclusions; that women drinking as little as one glass of wine a day increase their risk for breast cancer. The increase in incidence per 1000 women up to the age of 75 comes to 11 for breast cancer. This may not seem like much, but risk assessments generally consider 1 in 1,000,000 as indicating a serious impact. I will attach all five articles to these comments. 12.17

Of course, no one has any proof that irrigation with wastewater causes cancer. It is also possible that those who irrigate with wastewater are also likely to use other toxic chemicals to protect their crops from pests. We don't know if a possible interaction of a variety of toxic chemicals coming together with any given person's unique biology causes cancer. It may be years before we know, and that is why the Precautionary Principle is so important. It there is ANY chance that there is a causal relationship between cancer and these chemicals, you should err on the side of caution.

Finally, the "frosting on the cake" is that the Kunde's were referred to as "visionaries" by Miles Ferris, Santa Rosa Utilities Director. His Utilities Department recently honored Sara Lee and Richard with the "2008 Recycled Water Agricultural Customer of the Year Award". We have no intention of disparaging the Kunde's, who we assume are simply unaware of all the risks connected to this irrigation, but we certainly fault the City for encouraging practices that are probably in direct violation of their Reclamation Permit. 12.18

Santa Rosa has used their wastewater for agricultural irrigation for many years but now we are learning more about unregulated toxins in the wastewater (pharmaceuticals, personal care products, endocrine disruptors, anti-bacterial agents, etc.). 12.19

In the meantime, the Laguna has become severely impaired, seeming to indicate that the controls have been inadequate. Much of the nutrient impairment in the Laguna has been openly attributed to wastewater. It is clear that enforcement has been prevalent in regards to Laguna irrigation practices, and protection of the waterway has not been assured. (The Fact Sheet alludes to the TMDL for 12.20

nitrogen done in the mid-1990's. My memory tells me that no nutrient budget was developed and that the TMDL was conveniently based on the amounts of nitrogen already discharged by Santa Rosa. The whole controversial history (including listing and de-listing and lawsuits, etc.) of the listing of nutrients, and especially phosphorus, should not be held up as the poster child of how the TMDL process should work. Our pictures of the Ludwegia taken at Stony Point Rd. in 2008 and 2009 illustrate that fact. (We believe that over-irrigation in Rohnert Park and Cotati may have contributed to that situation.) (Attachment #7) Similar problem exist downstream of the discharge point. There is also significant Ludwegia growth in the lower Russian River. (see picture: Attachment #8) 12.21

Another reason for our concern has to do with the attitude of many business park owners and landscape companies. Consultants to these user groups have been heard to say that many landscapers and business park owners simply don't want to cooperate either on irrigation or conservation and many would rather pay higher fees than comply. One has only to look at the lush green vegetation at most of the business parks to know this is true.

Furthermore, almost every time I attend an early morning meeting at the Llano Treatment Plant, I witness ponded wastewater on their sidewalk in front of their entrance resulting from over irrigation. I have also witnessed similar puddles in front of their Utilities Department offices on Stony Point Rd. On at least two occasions, I have taken pictures of the puddles. (Attachment #9)) 12.22

Summer landscape irrigation with wastewater is major concern….

So RRWPC is most concerned about the "non-storm water runoff" as it applies to urban irrigation with wastewater, which is neither a natural storm water runoff event nor a planned discharge. The one thing we can say for sure about these runoff events, and which make the generic name sound somewhat benign and almost misleading (i.e., "non-storm water runoff) is that both the length of time of occurrence and severity of the impact is totally unpredictable. Therefore the possibility of cumulative impacts as described on page 13 of the Fact Sheet is a very real one indeed. 12.23

It is very difficult to address this issue in the context of a Basin Plan which is about to be amended to allow "incidental runoff" and which currently contains a Summer Discharge Prohibition that appears to prohibit such runoff. How odd that the purpose of this Amendment is ostensibly to assist you in preventing runoff. What ever happened to the Anti-degradation Policy in this regard? 12.24

(The Amendment will be taken up at the same meeting the Permit will be considered. It has been very problematic, in terms of analysis to address these two separately, with no time to even study the landscape permit being processed 12.25

concurrently. We understand that there are other considerations demanding this tight schedule, but we go on record as stating that it is to the detriment of the process that it is occurring this way. We are particularly aggrieved that the response to comments and staff report for the Basin Plan Amendment is coming out four days AFTER these comments are due. This makes it almost impossible to get the word out to the public about possible revisions in the Amendment.)

While we understand staff's reasoning for including incidental runoff in the permit, we believe it's justification utilizes faulty logic, and we are unqualified to address this in a legal sense. (The illegal discharge, when it occurs, ends up in a storm drain and this regulation is needed to control it. Why is the Anti-Degradation Policy inadequate?) There are simply too many scientific findings of late to indicate that facilitating the expanded use of recycled water that contains many potential contaminants is a dangerous move. To allow the expansion of this practice without demanding further treatment, just doesn't make sense. 12.26

Normally, storm water is viewed as just that, a winter program that is a result of natural rainfall events that cause pollution to end up affecting water quality. While we have argued against winter wastewater discharges into our waterways for many years now, we have recognized that until alternatives were available, the options to do otherwise were quite limited. We have finally reached a point, with Santa Rosa at least, where zero discharge in most years is a reality. It is very disturbing to have to start over in terms of summer use, when those discharges had been illegal all along. You are going from calling them illegal but not enforcing violations to calling them legal under some circumstances, while not spelling out how enforcement will occur. Please explain how this is an improvement? 12.27

Permit puts off addressing impacts of "incidental runoff"….

This permit offers two options for addressing potential water quality issues resulting from "incidental runoff". We have a problem with the term "non storm water runoff" since there are many different kinds. We've been reverting to the term "incidental runoff" to apply to irrigation with wastewater in order to differentiate, but that may not be fully appropriate either. 12.28

Furthermore your document substitutes the term "non-storm water discharges" which we feel is very misleading, since it refers partly to wastewater, which is already illegal to discharge. There is an admission that these discharges must be regulated and that potential dischargers can meet requirements in one of two ways. They cannot irrigate, or they can enter into some undefined, unexamined, and possibly unmanageable BMP program that will address issues down the road and give the impression that the matter is being attended to. 12.29

While this permit ostensibly includes a CEQA equivalent, and since the program is seen as improving water quality and therefore not having negative impacts on

water quality, therefore the issue of incidental runoff (non storm water) impacts goes unaddressed in this document. It is put off until some future time when the BMP program will be separately addressed in a public review process. CEQA does not allow the promise of future programs to serve as mitigation. Does the State Board's equivalency allow such an approach? 12.30

Serious risk to human and wildlife health from unregulated chemicals in wastewater….

Everyday there are more studies coming out about the risks of continuing on the path of putting off dealing with the problem of unregulated chemicals. The State Board dealt with it by setting up a "Blue Ribbon Committee" of experts. It's apparent that no regulations will happen for quite awhile. But the information about endocrine disruptors has been around for almost twenty years and the situation becomes more dire every day. Some scientists have stated that this problem is greater than global warming due to the rapid species extirpation mentioned in my prior comments. 12.31

One study I just received only a day ago and I submit it with these comments. It is called simply: "Endocrine-Disrupting Chemicals" and is a scientific study put out by The Endocrine Society. (Attachment #10) To convey the seriousness of this issue, it states, "*The evidence for adverse reproductive outcomes (infertility, cancers, malformations) from exposure to endocrine disrupting chemicals is strong, and there is mounting evidence for effects on other endocrine systems, including thyroid, neuroendocrine, obesity and metabolism, and insulin and glucose homeostasis*." These effects can also be transmitted over generations and some occur in wildlife as well as humans. 12.32

A group called ChemTrust authored a paper called, "Effects of pollutants on the Reproductive Health of Male Vertebrate Wildlife – Males Under Threat". (Attachment #11) It makes the case that males of each of the main classes of animals, including bony fish, amphibians, reptiles, birds, and mammals, have been adversely affected by chemicals in the environment, particularly those with hormone disrupting properties. They acknowledge the unknown effects of synergistic exposures to multiple chemical compounds. Problems encountered were low sperm counts, presence of intersex reproductive organs, structural deformities, poor reproductive success (i.e., early death of offspring or failure to gestate), and much more. 12.33

There's an article entitled, "Environmental and occupational causes of cancer: A call to act on what we know". We include this article not only because of our concern about unregulated chemicals in the wastewater, but also because of the risk to our waterways if the runoff includes soil amendments, bio-solids, and/or 12.34

pesticides, all of which probably contain endocrine disrupting chemicals. (Attachment #12)

We also include an article by Jane Kay of the Chronicle from July 11, 2007, entitled "Danger feared from chemicals getting into the bay". This was based on a study called "Down the Drain", by the Environmental Working Group which we had submitted before. (Article: Attachment #13) Two dozen grab samples were taken from the sewage near businesses and homes in the East Bay MUD sewer system. Samples showed phthalates, bisphenol A, and triclosan, all endocrine disruptors were all in evidence. (Does Santa Rosa regularly test for those toxins?) 12.35

To address the issue of species extirpation, we include an article entitled, "Catastrophic shifts in ecosystems" by Marten Scheffer, Steve Carpenter, Jonathan A. Foley, Carl Folke, and Brian Walker in Nature, Vol 413, Oct. 11, 2001

We also fully support the comments of HR Downs of the O.W.L. Foundation on proliferation of anti-bacterial resistance in the wastewater. This is an extremely serious problem and he can tell the story far better than I can. He developed a CD on the subject which I include with my comments since he ran out of copies. (Attachment #15) 12.36

Stream flow circumstances changing and impacts not considered…

The Russian River is a managed system. Flows have been governed by Decision 1610 since the early 1980's. Conditions have been changing extensively in the river and consequently flow management in the form of changes to "1610" will be changed as well. It is expected that the process to change Decision 1610 will begin next year. Changed circumstances include:

- More and more vineyards have been planted in the last twenty years, which increases water demand on the main stem Russian River as well as tributaries feeding into the river. The demand is especially strong in the late winter/early spring for frost protection, at a time when the advent of critical rains (in a dry year) needed to fill Lake Mendocino reservoir are still unknown. 12.37
- Many of these vineyards have had trouble getting water rights and illegal diversions have become rampant. Since these diversions are not regulated, no one really either knows the amount of water available in the feeder streams, nor how much is being used. Furthermore, there does not seem to be the regulatory will to get a strong handle on the problem. This situation has a major impact on fish survival along with water quality. 12.38

- The Russian River has been listed as impaired for temperature and sediment, the latter of which may be contributing to bacteriological contamination in the lower river. 12.39
- In the last ten years, three fish species have been listed by the Federal Government and the State as threatened and/or endangered and include Steelhead Trout, Coho salmon and Chinook salmon. As a result, a Biological Opinion has been issued by the National Marine Fisheries Service (NMFS) addressing current operations of the Sonoma County Water Agency. Key elements include:
    - Assuring that the mouth of the Russian River remain closed all summer to provide valuable breeding habitat in the Estuary for juvenile Steelhead.
    - In order to maintain a closed Estuary, it is necessary to lower flows to the Russian River from Lake Mendocino. The BO also calls for lowering flows in the lower river to about 85 cfs (as opposed to 125) even in normal rain years. 12.40
    - Requires SCWA to improve at least six miles of habitat in Dry Creek to possibly allow higher flows without harming migrating Coho and Steelhead. It this doesn't work, SCWA should be prepared to implement a pipeline solution to obtain greater flows from Lake Sonoma.
    - SCWA has the complex role of being legally bound to provide water to their contractors while at the same time having responsibility for releases from the dams, which provide water supply to property owners, and serve other beneficial uses such as recreation in the lower river. Furthermore, they are now responsible for programs that address the needs of the disappearing fish.
- This Storm Water permit fails to even address in passing the relationship between flows, especially in drought situations, and the impacts of wastewater "discharges" (incidental runoff) on streams containing very little water. The winter storm water periods at least have the advantage of a certain amount of dilution to minimize the effects of pollutant run off. How will you address this issue? 12.41
- Due to the State Board's granting of an emergency order to the Sonoma County Water Agency in May, it is anticipated that flows in the lower river will go as low as 35 cfs. this year, as opposed to a normal of 125 cfs. This represents the minimum flows designated for a "critically dry year" even though certain aspects of the system were not seen as critical and actual releases so far have been in the normal range. 12.42

The point to including the above mentioned issues is because they have the potential to create circumstances that make maintenance of water quality a severe problem, especially during low flow periods. Already signs have been posted at various intervals on lower river beaches because of bacteriological contamination. How can ANY discharge not contribute to that problem? The non-storm water portion of this Storm water permit does not appear to address any of these issues. 12.43

Furthermore, it appears as though, drought or not, lower flows in the river and streams will occur on a permanent basis and along with this may the threat of summer water shortages on a permanent basis as well. This is turn will mean that there will need to be more focus on conservation and less on wastewater generated. 12.44

Now the major goal of conservation is saving water. This means there will be less wastewater disposed into the watershed. This in turn calls for conservation management practices that are often at odds with wastewater reuse through irrigation. For example, turf is very desirable and even necessary for wastewater irrigation programs. Furthermore, irrigation programs can only be cost effective of large numbers of contiguous properties are willing to use the wastewater in this manner. 12.45

Yet one of the demands of the State Board with this latest Emergency Order is to either eliminate ornamental commercial turf or modify watering to keep it at a minimum. Of course, this does not apply to irrigation with wastewater, but while we are in transition, some of the sites are getting rid of turf so they won't have to pay the high cost of water now that costs are shooting way up. 12.46

So if the whole purpose of the wastewater irrigation program is to offset water supply, in the long run, it's really cheaper and easier to get rid of it altogether, this attempt to write regulations to accommodate its use, we believe is a futile effort, not to mention the benefits to water quality by not having it altogether. 12.47

The truth of the matter, wastewater has many unregulated contaminants in it, including endocrine disruptors and pharmaceuticals that may be extremely harmful to the public, wildlife, and aquatic life and certainly water quality. We request that you give our comments careful consideration before you authorize this permit. 12.48

Sincerely,

Brenda Adelman

List of Attachments:

#1: "Recycling to save a river" by Mike McCoy, Press Democrat, 5-26-09: Pg. A1

#2: "Moderate Alcohol Intake and Cancer Incidence", Naomi E. Allen, Valerie Beral, Delphine Casabonne, Sau Wan Kan, Gillian K. Reeves,, Anna Brown, Jane Green on behalf of the Million Women Study Collective, Cancer Epidemiology Unit, University of Oxford, Oxford, UK, 2-24-09

#3: "Even moderate drinking affects women's cancer risk", British Medical Journal, BMJ Group, Feb. 24, 2009

#4: "Red wine carries same breast cancer risk as white wine", Anne Harding, Health

#5: Karen Denice, CNN, Atlanta, Georgia

#6: "Despite red wine's healthy reputation, study finds it won't lower cancer odds", Serena Gordon, Health Day Reporter, US News & World Report, 7-1-09

#7: Photos by Brenda Adelman, Ludwegia, Stony Point Bridge South of RP Expressway, 6-17-09 and 8-29-08

#8: Photos by Brenda Adelman, Ludwegia, Monte Rio Bridge looking east, 6-14-09 and 6-22-09

#9: Photo by Brenda Adelman, Ponded Wastewater in front of Laguna TP Administration Building, 9 AM, 6-1-09

#10: "Endocrine-Disrupting Chemicals: An Endocrine Society Scientific Statement" Evanthia Diamanti-Kandarakis, Jean-Pierre Bourguignon, Linda C. Giudice, Russ Hauser, Gail S. Prins, Ana M. Soto, R. Thomas Zoeller, and Andrea C. Gore, The Endocrine Society, Copyright 2009

#11: "Effects of Pollutants on the Reproductive Health of Male Vertbrate Wildlife-Males Under Threat", Gwynne Lyons, Chem Trust

#12: "Environmental and occupational causes of cancer: A call to act on what we know", Richard W. Clap, Genevieve K. Howe, Molly M. Jacobs, Dept. of Environmental Health, Boston University School of Public Health, May 10, 2007

#13: "Danger feared from chemicals getting into bay", Jane Kay, SF Chronicle, July 11, 2007.

#14: "Catastrophic shifts in ecosystems", Marten Scheffer, Steve Carpenter, Jonathan A. Foley, Carl Folke and Brian Walker, Nature, Vol. 413, p. 591

#15: CD: "Waterborne: It's in You", produced by HR Downs of O.W.L Foundation and featuring Edo McGowan and Mary Reilly

July 3, 2009

Mr. Robert Anderson and Members of the Board
Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
Via e-mail to: mdougherty@waterboards.ca.gov

Re: Order No. R1-2009-0050 NPDES No. CA0025054 Santa Rosa & Sonoma County MS4 Permit Comments

Dear Mr. Anderson,

I am submitting these comments on behalf of our over 1400 members and in support of our mission to work with the community to advocate, educate, and uphold our environmental laws to ensure the protection and restoration of the Russian River for the health and benefit of all who use and enjoy it. In general we commend the Regional Water Quality Control Board (Board) staff for working to revise this Draft MS4 Permit (Permit) to respond to economic issues while retaining elements that meet the iterative improvement goal. 13.1

We strongly support the following elements of the Permit: 13.2
- Requirement for outfall monitoring
- Expansion of Permit boundary for the four elements listed
- Inclusion of the Commercial/ Industrial Facilities Program
- Requirements for Hydromodification Controls and use of LID

We however are very concerned about the following in the Permit: 13.3
- Lack of strong performance criteria for hydromodification controls
- The current Monitoring Program cannot measure TMDL compliance
- Detection limits employed by Permittees is far greater than level that causes impairment

Our comments are informed by our activities in monitoring land use activities that increase stormwater pollution, rate and volume of flows to municipal stormwater systems and our six years of monitoring stormwater run-off. Our comments are also informed by the recently released report by the National Research Council titled, "Urban Stormwater Management in The U.S." (NRC Report) that provides an exhaustive evaluation of the role of stormwater pollution as a major cause of water quality impairment, the current municipal stormwater program and regulations and its effectiveness at preventing and reducing stormwater pollution through permit improvements. The NRC Report also provides conclusions and recommendations for improving stormwater permitting and land use controls to achieve the legal mandate of the Clean Water Act.

Stormwater in Sonoma County is a significant source of water quality and habitat degradation from increases in pollutants causing water quality impairments, increases in flow volumes and rates leading to erosion and degraded habitats in urban areas. In more rural areas sedimentation pollution from development and land use changes have resulted in increasing volumes of stormwater polluted with sediment that are impacting beneficial uses such as rare or endangered fish according to numerous reports and the draft permit fact sheet. 13.4

The NRC report examines the current U.S. stormwater permit system and concludes that, *"EPA's current approach to regulating stormwater is unlikely to produce an accurate or complete picture of the extent of the problem, nor is it likely to adequately control stormwater's contribution to waterbody impairment*[1]*",* lending strong support to the strengthening of this permit over the pervious permit term. In addition the NRC report states that, *"Future land development and its potential increases in stormwater must be considered and addressed in a stormwater regulatory program",* which supports this permits inclusion of improved post-construction stormwater controls, the requirement to consider LID and expansion of permit boundary area to more fully regulate land use impacts in non-urban areas due to the sediment impairments across the Sonoma County permit region.

Specific Comments

Waste Discharge Requirements

Finding #17

We recommend based on available evidence this sentence be revised as follows: 13.5

> The discharges from the Co-Permittees' MS4s as detailed in the Fact Sheet, contribute to violations of water quality standards and are a contributor of pollutants, *including impairing pollutants*, to the Laguna watershed.

Finding #22 Permit Boundary

We strongly support the expansion of the permit boundaries with respect to the four elements as a cost effective means of addressing discharges to the MS4 outside the current boundary in particular the implementation of post-construction treatment controls such as LID. As stated above in the NRC Report language pertaining to new development this is critical to addressing 303(d) listing impairments such as the existing impairments across almost all streams for sediment, which is closely related to development. The county, state and federal government are spending millions each year to improve habitat for ESA listed Coho and Chinook Salmon and Steelhead Trout so this issue needs to addressed to prevent new development from causing or contributing to the existing sediment impairment. As noted in finding #21 permittee monitoring reports and other data sources show continued pollution issues occur. 13.6

For efficiencies sake in light of Sonoma Counties request to account of the current economic climate we question whether having a separate regulatory program for the four program elements makes sense. We urge both Sonoma County and the Board to place these elements within this Permit.

Finding #26 Land Use Authority

We support the need for the permittees to consider stormwater pollution impacts prior to making land use decisions and this follows the mandate of CEQA as well. 13.7

Discharge Prohibitions

Section A, Table 1

We support the removal of sidewalk rinsing as an allowable non-stormwater discharge. The entire purpose of sidewalk rinsing is to clean dirt and other potential pollutants from sidewalks and regardless of whether high pressure- low volume methods are used it still results in polluted non-stormwater discharges or launches the pollutants that will be entrained in future flows and enter receiving waters. 13.8

Section C: TMDLs

In reviewing the Monitoring Program for this permit, we wonder how the permittees can reasonably assure compliance with the TMDL wasteload allocations or net loads given the current monitoring program? It will be impossible to accurately determine whether the net loads are being met with monthly monitoring at one location that isn't even a compliance point for the net loads. 13.9

Section D Stormwater Quality Management Program Implementation

Part 2 – Legal Authority

We recommend changing the wording in 1. (b)(7) to include concrete sawcutting as follows:

10) Concrete truck cement, pumps, tools, *sawcutting waste fluids* and equipment washout; 13.10

Concrete cutting fluids contain very fine sediment that is an impairing pollutant within the current MS4 boundary and can be contained with simple BMP's such as vacuum pumps that we see some sawcutting firm's use.

Part 3 – Fiscal Resources

Section 1.(a)(3)(B) We support the inclusion the "storm water related activities only" as in our opinion activities already required under NPDES permits for POTW's are added to the budget in annual reports, such as grease disposal prevention programs that are already mandated under sanitary sewer overflow prevention programs. If any cost is incurred to satisfy a separate legal or other permit requirement the entire amount should not be counted as part of the Permit budget as it leads to inflating the budget and supports claims of economic burden that are not valid. 13.11

Section E Special Provisions

Part 2 – PIPP

Section 2(a)(1): Residential Program
We support the requirement to label all stormdrains by 2013. In our field observations many drains are labeled with 3-4" diameter adhesive backed raised labels that have some clear plastic protective material covering the actual image. We have these labels oxidize or get worn down in less than two years and recommend permittees using either embossed metallic labels or larger (covering drop-box lid) painted stencils. It seems apparent that a 3-5" label would not be noticed nearly as well as a large 1 ft x 2ft stencil painted in durable easily read colored paint. If they can't read it, it's a waste of time. 13.12

Part 3 – Industrial/ Commercial Facilities Program
We strongly support this programs inclusion in the Permit. Although industrial/ commercial facilities often have individual or general stormwater permits almost all discharge into the permittees MS4 so have a responsibility to work with and support the Board and State Board staff in inspecting these facilities and reporting violations. If the permittees ignored these facilities how could they assure compliance with water quality standards, it is in their best interest to support this program. 13.13

Part 4 – Planning and Land Use Development Program
In general we strongly support this section of the Permit as most critical to turn the tide on stormwater pollution by eliminating or reducing any new sources of pollution. The reason stormwater is the largest cause of impairment in the state is the past methods of building roads, buildings and parking lot drainage systems. If we do not change this problem will only get worse and water quality impairments would increase contrary to the mandate of this Permit. 13.14

Part 5 New Development/ Redevelopment Integrated Water Quality Resource Plan
We support the efforts in address hydromodifcation in this section and the requirement that new projects employ LID strategies. In the past five years we know that using LID strategies can lower building costs and better protect water quality and beneficial uses than traditional building methods according the information published by the EPA (Reducing Stormwater Costs through LID Strategies and Practices, EPA Pub#841-F-07-006). 13.15

Part 6 Section 5 Standard Urban Stormwater Management Plan
There is no date for completion for adding the information/ standards listed in Section 5.(a) and it should have one to require this section is completed in a timely manner. 13.16

Part 8 Section 2 Grading Restrictions
The requirements spelled out in this section are vital to ensuring that construction sites cease the constant release of sediment due to grading activities conducted during the rainy months as has occurred at most construction sites we inspect (see NRDC/Waterkeeper Alliance v. USEPA that details our inspection results). 13.17

Subsection (c)(1-3) we strongly support imposing numeric limits on ay projects granted a grading Prohibition Variance, there is no other means to

Section 3 Construction Sites Less than 1 Acre

While we believe that construction site requirements should be uniform regardless of size since pollution is pollution and every source causes or contributes to continuing impairment for sediment, we strongly support the slate of *minimum* BMP's for sites under 1 acre. 13.18

Monitoring Program:

Support new stormdrain outfall monitoring to ensure BMP's meet MEP

We strongly support the increase in monitoring requirements specifically for stormdrain outfalls. In reviewing Finding #18 of the Permits WDR, it states, "BMPs must be evaluated for success and, when necessary, additional BMPs implemented to provide required water quality protection." So we see the addition of outfall monitoring necessary to evaluate BMP's to ensure they meet MEP. 13.19

Section A.1 – Support Required Outfall Monitoring

We have always supported stormwater permittees including outfall monitoring as part of the MS4 permit system. Russian Riverkeeper has extensive experience in stormwater monitoring through the First Flush program, Compliance Monitoring project, Urban Creeks Pesticide Survey and Healdsburg Stormdrain Filter Test project. I have personally spent dozens of hours sampling urban streams and outfalls for both stormwater and non-stormwater flows. I am certified in Stormwater Investigation and Monitoring by Professor Rich Horner at the University of Washington. In our experience it is impossible to detect all impacts or nuisance pollution by sampling only receiving waters and should include monitoring of water quality of stormdrain outfalls and sediments.

In the attached article in Environmental Science and Toxicology it is demonstrated that toxicity frequently occurs in non-stormwater flows in sediments directly adjacent to outfalls caused by residential and professional use of pyrethroid insecticides. In our Urban Pesticide Monitoring Project study in 2004-2006 we detected the pyrethroid insecticide Bifenthrin in creek sediments that resulted in 75% mortality to test subjects and only 23% growth rate for survivors compared to controls. This information demonstrates that ONLY sampling receiving water as in past permit terms will never give a complete picture of stormwater impacts that occur in proximity to outfalls or in sediments near outfalls. 13.20

Indeed how can the Permit ensure compliance with WDR Receiving Water Limitations (RWLs) in section B. 1 & 2 without outfall monitoring? As illustrated above, toxicity and violations of water quality standards occur locally adjacent to and immediately downstream of outfalls. How can this Permit ensure compliance with RWLs by only monitoring on mainstem creeks well downstream of the Permit area? Due to mixing and other factors violations of water quality standards could occur near many outfalls but not be detected by current monitoring. 13.21

We strongly support the inclusion of outfall monitoring in the Permit outlined in Monitoring Program A.1 (a)(b)& (c) as it provides a means to evaluate more localized impacts of stormwater that receiving water monitoring would not detect.

Detection limits for impairing pollutants in current annual reports too low

In the Annual Report for Santa Rosa in 2007-2008 Part V, Monitoring Results in Table V.I it shows what appears to be a detection limit of 1.0mg/L of Phosphorous. We ask why the compliance point for nutrients doesn't follow EPA Region IX criteria used in establishing the 2006 303(d) list for nutrient impairment of the Laguna de Santa Rosa? (see attached caEPA303final response.pdf) The limit for Phosphorous was 0.1 mg/L – *ten times lower* than Santa Rosas reporting limit! The net effect of allowing the permittees to use such high detection limits is that Santa Rosa claims that there is no problem with nutrients but the receiving waters could have Phosphorous levels that cause and contribute to the current CWA 303(d) impairment of the Laguna de Santa Rosa for Phosphorous and Low Dissolved Oxygen.

13.22

We strongly urge the Board to specify the detection limits for the Monitoring Program that are protective of beneficial uses and can start by requiring a Phosphorous detection limit of 0.1 mg/L, which is economically and technologically feasible. For example the USEPA website for Volunteer Monitors details an analytical method that volunteers can use that yields a detection limit of 0.01mg/L over a HUNDRED times lower than Santa Rosa. We know Santa Rosa has a very capable laboratory at the Laguna Treatment Plant that should be able to match or exceed the capability of volunteer monitors.

Each pollutant monitored should have the detection limit reviewed before this permit is approved to ensure that detection limits are at levels that can determine if beneficial uses are impacted and if water quality standards or other objectives are met.

Thank you for your consideration of our comments.

Sincerely,

Don McEnhill
Riverkeeper

References:

Weston, D. et al, Aquatic Toxicity Due to Residential Use of Pyrethroid Insecticides, Environ. Sci. Technol. 2005, 39, 9778-9784

National Research Council, "Urban Stormwater Management in The U.S.", October 2008
City of Santa Rosa Municipal Separate Storm Sewer System (MS4) Inspection Report
County of Sonoma and the Sonoma County Water Agency Municipal Separate Storm Sewer System (MS4) Inspection Report

NATURAL RESOURCES DEFENSE COUNCIL; WATERKEEPER ALLIANCE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; STEPHEN L. JOHNSON, US 9th Circuit Nos 07-55183, 07-55261 CV-04-08307-GHK Opinion

Mona Dougherty - Storm Water Runoff comments

From: Mike Frey <mike_frey@valpak.com>
To: "mdougherty@waterboards.ca.gov" <mdougherty@waterboards.ca.gov>
Date: 7/1/2009 10:18 AM
Subject: Storm Water Runoff comments

To the North Coast Regional Water Quality Board

Re: Order No. R1-2009-0050, NPDES No. CA0025054, WDID No. 1B96074SSON

Waste Discharge Requirements for The City of Santa Rosa, the County of Sonoma, and the Sonoma County Water Agency

Storm Water and Non-Storm Water Discharges from Municipal Separate Storm Sewer Systems, Sonoma County

The Sonoma Coast Chapter of Surfrider Foundation strongly supports adoption of the draft Santa Rosa – Sonoma County MS4 NPDES Stormwater Permit. The draft permit is a well-written, comprehensive document that proactively addresses water quality issues in the watersheds and nearshore coastal waters of Sonoma County. 14.1

Our members are residents of the area who depend on clean water and healthy aquatic ecosystems to maintain their quality of life. In addition to the comprehensive requirements of the permit to "effectively prohibit non-storm water discharges into storm sewers and require controls to reduce the discharge of pollutants to the maximum extent practicable (MEP)," we appreciate that the permit expands the former permit boundaries and incorporates the Laguna TMDL and storm drain outfall monitoring.

We have the following specific comments on the draft permit:

- On pages 33 and 34 there is a discussion of the need to "mimic pre-development water balance" and make "pre-development water balance determinations." Elsewhere in the permit this subject is addressed by referring to maintaining "pre-development hydrology." The phrase "pre-development water balance" is not defined in Appendix C. We suggest either adding a definition of this phrase or clarifying this by referring to "pre-development hydrology" throughout the document. 14.2

- On page 39 reference is made to "BMPs that percolate storm water runoff through engineered soil." The term "engineered soil" should be defined in Appendix C. 14.3

- With regard to published resources on Low Impact Development (LID), we would like to make the North Coast Regional Water Quality Control Board and the Co-Permittees aware of on online summary that we have prepared of LID resources. This can be found at: http://vp-owa.valpak.com/exchweb/bin/redir.asp? 14.4

URL=http://vp-owa.valpak.com/exchweb/bin/redir.asp?URL=http://www.surfrider.org/a-z/lid.php

- On page 59, regarding trash management at public events, we recommend requiring not only adequate trash collection facilities and containers, but also recycling containers consistent with local county/city requirements and practices. 14.5

In regards to the changing of the boundaries: If you can implement the program elements for the areas in Sonoma County that are outside the permit boundaries as part of another program, that would be fine with us. Otherwise, we can jump back in when they reopen the Order. 14.6

Thank you for the opportunity to comment on this permit. We fully support this latest MS4 document in its latest form, and appreciate the work that has gone into making this happen.

Michael Frey

Co-Chair

Michael Frey
Senior Account Representative
Valpak of the Bay Area
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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. 15.1

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. 15.2

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. 15.3

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. 15.4

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. 15.5

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 15.6

[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 TMDL[2] 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. 15.7

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. 15.8

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. 15.9

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. 15.10

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. 15.11

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. 15.12

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. 15.13

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. 15.14

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. 15.15

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,

Douglas E. Eberhardt, Chief
NPDES Permits Office

From: Marie Olson <marieolson@earthlink.net>
To: M Dougherty <MDougherty@waterboards.ca.gov>
Date: 7/10/2009 7:38 AM
Subject: July 23, Item 10

We have a cabin on the Russian River below Guerneville. Our entire family and friends are often in the water swimming. We are adamantly opposed to "incidental discharge" of wastewater particularly during the summer months.

16.1

Please note our opposition to this item.

Sincerely,

Harold and Marie Olson
[redacted]

From: "victoria wikle" <victoriawikle@usa.net>
To: <LClyde@waterboards.ca.gov>, <MDougherty@waterboards.ca.gov>
CC: <JShort@waterboards.ca.gov>, <CKuhlman@waterboards.ca.gov>
Date: 7/5/2009 11:15 AM
Subject: Santa Rosa - Sonoma County MS4 NPDES Storm Water Permit and Basin Plan Amendment

While we are in the process of cleaning up and protecting our precious fresh water resources, we need to insure that they are protected from summer runoff which can contain many pollutants. With proper irrigation techniques and setbacks there is no necessity to permit any summer runoff into waterways.

17.1

I urge you to prohibit any summer runoff into the waterways. Heavy fines should be imposed on those that cause summer runoff and risk further pollution to our waterways.

Thanks for considering my comments.

Victoria Wikle
[redacted]