



December 12, 2012



Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I St, 24th Floor
Sacramento, CA 95814

Via E-Mail [commentletters@waterboards.ca.gov]

**SUBJECT: CITY OF SANTA MARIA COMMENT LETTER
REVISED DRAFT PHASE II SMALL MS4 PERMIT**

Dear Ms. Townsend:

This letter sets forth the City of Santa Maria's ("Santa Maria") comments on the revisions made since May 21, 2012 to both the Revised Draft Phase II Small MS4 Permit ("Draft Permit") and the Draft Fact Sheet for the Draft Permit ("Draft Fact Sheet"). Santa Maria appreciates the many positive revisions State Board staff has made to the Draft Permit and Draft Fact Sheet. Santa Maria believes the additional changes requested in this letter will help create a cost-effective program that will provide measurable water quality benefits.

This letter focuses on the key issues of concern to the City. Santa Maria is an active member of both the California Stormwater Quality Association ("CASQA") and the Statewide Stormwater Coalition ("SSC"). Santa Maria joins in, and incorporates by reference, the comment letters submitted by CASQA and SSC.

Key Issues of Concern to the City of Santa Maria

Santa Maria's prior comment letters have explained the fiscal challenges facing Santa Maria, and have underscored a key aspect of the City's program to demonstrate economy of effort. That is, Santa Maria's program seeks to spend scarce public resources on those efforts that provide the greatest water quality benefit. The revisions to the Draft Permit do a much better job of linking public expenditures to measurable water quality benefits. However, Santa Maria believes the additional changes requested below strike a more appropriate balance between resources allocated and effective water quality outcomes. Without additional revisions, each of these items could drastically increase compliance costs without a corresponding demonstration of measurable water quality benefits.



Regional Board Executive Officer Discretion

Sections E.1.b on page 20 and E.7 on page 28 have been revised to establish some basic procedures to be followed when a Regional Board Executive Officer (“EO”) requires deviations from the uniform standards of the Draft Permit. Specifically, Section E.1.b has been revised to establish a procedure to be followed when a Regional Board EO compels a Permittee to continue its existing SWMP. Section E.7 now requires a “statement of reasons” when a Regional Board EO compels a Permittee to implement Community Based Social Marketing (“CBSM”).

Santa Maria continues to believe that both of these provisions, as revised, should be deleted or significantly constrained. With regard to the continuation of existing programs, Santa Maria believes that this option should only be considered when requested by a Permittee. At a minimum, short deadlines must be established in which Regional Board EOs may compel continuation of a SWMP. Permittees need regulatory certainty on which program they are to implement. In addition, updating the SWMP should not be required when continuation of the SWMP is compelled. The obligation should merely be to continue the existing program.

With regard to CBSM, Regional Board EOs should not be provided the option to compel this expensive effort even when a “statement of reasons” is provided.

Outfall Mapping and Sampling

Sections E.9.a and E.9.c on pages 36-37 and 39-41 have been revised to clarify outfall mapping requirements and outfall field sampling obligations. These revisions and other similar requirements of the Draft Permit linked to the term “outfall” should be reconsidered in light of the new definition of “outfall” contained in Attachment I. The new definition of “outfall” is based on the definition of that term in 40 CFR 122.26(b)(9), which in turn is based on the definition of a “point source” in 40 CFR 122.2. Without reasonable limitations based on pipe size, this new definition will make the outfall mapping and sampling requirements of the Draft Permit overly broad and difficult to meet. Attachment J limits the scope of this definition to outfalls measuring 18 inches or more in diameter with regard to Ocean Plan monitoring. Similar constraints should be included for the other mapping, sampling and monitoring requirements of the Draft Permit.

Industrial and Commercial Inspections

Section E.9.b.(ii).(e) on page 39 has been revised to add back into the Draft Permit a form of industrial and commercial inspection program. The revisions would require Permittees to inspect certain designated industrial and commercial facilities at least once during the Permit term. These revisions should be deleted from the Draft Permit. Indeed, the Draft Fact Sheet represents on page 11 that the industrial and commercial inspection program has been deleted from the Draft Permit to reduce costs. Such a program, even in this revised form, should not be added back into the Draft Permit.



Recommended Construction Inspection Frequencies

Section E.10.c.(ii) on page 47 has been revised to insert certain “recommended” construction inspection frequencies. To avoid ambiguity about enforceable requirements of the Draft Permit, these “recommended” inspection frequencies should be deleted. This would be consistent with the statement on page 11 of the Draft Fact Sheet that the “mandatory” construction inspection frequencies have been deleted from the Permit. If the State Board believes it is important to provide a “recommendation” about when inspections should occur, it should include those “recommendations” in the Fact Sheet or other guidance document, not in the Permit itself.

The Central Coast Region’s Post-Construction Requirements

Section E.12.j on pages 79-80 has been revised to incorporate new Attachment J and thereby adopt the Post-Construction Stormwater Management Requirements for Development Projects in the Central Coast Region (Post-Construction Requirements). Santa Maria joins in the comments of CASQA and SSC regarding the many technical and legal problems associated with having the State Board adopt the Post-Construction Requirements through its action on the Draft Permit.

Because Santa Maria is located within the Central Coast Region, this issue is of particular concern to the City. Santa Maria has contended for many years that it and other Permittees within the Central Coast Region be placed on an equal footing as other Permittees throughout California, and not be subject to the untested provisions of the Post-Construction Requirements. Santa Maria’s preference is to be subject to the post-construction requirements of the Draft Permit. However, Santa Maria has also invested a good deal of time and money in seeking to craft an alternative approach within the context of the Post-Construction Requirements that it wishes to have the Central Coast Regional Board consider. The adoption of the Post-Construction Requirements by the State Board complicates this process, since it raises the Central Coast issues to the State Board level. This limits the flexibility of the Central Coast Region to amend and implement the Post-Construction Requirements.

Therefore, Santa Maria recommends that the State Board not adopt the Central Coast Region’s Post-Construction requirements or create a special “carve-out” for this Region. Rather, the Central Coast Regional Board and the Permittees within the Region should be allowed to work out on a regional level how the Post-Construction Requirements should be implemented after Permit adoption.

Monitoring Requirements

Section E.13.(1)-(4) on pages 82-83 has been revised to attempt to clarify the Draft Permit’s monitoring requirements. However, the revisions create an ambiguity about the monitoring requirements applicable to Santa Maria, a City with a population greater than 50,000. New language in Section E.13 provides as follows: “Traditional Small MS4 Permittees that are already conducting monitoring of discharges to ASBS,



TMDL and impaired water bodies are not required to perform additional monitoring as specified in E.13.a and E.13.b.” Santa Maria believes that the use of the word “and” is erroneous and that the word should be “or” as used in other portions of Section E.13. Please make this important correction to clarify the City’s monitoring obligations.

TMDLs and Receiving Water Limitations Language

Section E.15.c on page 98 and Attachment G have been revised to allow additional time for Regional Boards to work with Permittees to develop TMDL-specific permit requirements. This is an important issue to Santa Maria because the City is facing several important TMDLs, including the recently adopted Fecal Indicator Bacteria TMDL for the Santa Maria River. The manner in which those TMDLs are ultimately incorporated into the Permit as enforceable requirements is very important to the City. In this regard, Santa Maria also requests that the State Board address the receiving water limitations language of Section D of the Draft Permit now, prior to Permit adoption. This is particularly important in connection with TMDLs and their relationship to requirements of Section D. At the State Board’s recent workshop on the receiving water limitations language, there appeared to be broad consensus among stakeholders, including U.S. EPA, that linking receiving water limitations language to TMDL implementation plans made regulatory sense. The adopted Permit must provide a pathway to compliance. To provide regulatory certainty, the City asks that the State Board address this issue now.

Conclusion

The Draft Permit and Draft Fact Sheet include many positive revisions. Santa Maria thanks the State Board staff for making those revisions. It is believed the comments in this letter will help make the Permit clearer and more understandable to all parties. We appreciate the opportunity to provide these comments and look forward to revisions based upon them.

Sincerely,

RICHARD G. SWEET, P.E.
Director of Utilities

- c. Tom Fayram, Deputy Director, County of Santa Barbara Public Works
Shawn D. Hagerty, Best Best & Krieger
Rick Haydon, City Manager, City of Santa Maria
Katcho Achadjian, Assemblyman, 35th Assembly District
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