



July 20, 2012

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



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RE: Comment Letter on Second Draft Phase II Small MS4 General Permit issued on May 18, 2012

Dear Ms. Townsend and Members of the Board,

This letter provides comments on the Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4) General Permit dated May 18, 2012.

The City of Rohnert Park is known for its environmental stewardship, and we believe strongly in clean water. As one sign of this, when the 2010 California Green Building Standards Code (CALGreen) became effective for newly constructed buildings throughout California, the City adopted and amended CALGreen to require CALGreen + Tier 1 level of compliance, committing the City to storm water low impact design well in advance of the requirements of this permit. We believe Low Impact Development will have a positive effect on water quality. While we are active in areas that positively affect water quality, we are concerned about aspects of this permit which we believe will be excessively burdensome and actually detract from our ability to adequately protect the environment.

The City recognizes the State Board staff's efforts in preparing this draft Permit are well-intentioned, and that there was much stakeholder outreach. Our municipality provided detailed line-by-line comments on the previous draft to and through the Russian River Watershed Association. Upon review of the updated draft however, it appears our major concerns with the permit have not been addressed. Rather than provide detailed line-by-line comments, we are writing this letter directly to express our concerns.

However, our major concerns with the draft permit are:

1. The draft permit pays too much attention to low risk activities at the expense of large risk activities
2. Paperwork and reporting requirement are excessive
3. The balance between paperwork and effective maintenance is skewed and misplaced
4. The costs for excessive paper work cannot be reasonably funded

An example of each of these concerns is provided below to thoroughly explain the reason for our concern. Only one example is provided for each concern, although we could have provided more.

1. *The draft permit pays too much attention to low risk activities at the expense of large risk activities.*

A few years ago the Federal EPA relaxed requirements on low risk Industrial User inspections for wastewater in order to concentrate on users posing a greater risk. This permit does the opposite. It requires attention and reporting of very low risk elements which will detract from the ability of municipalities to monitor higher risk elements.

Section E.10 in the draft permit requires the development of an enforceable construction site storm water runoff control ordinance for all projects that disturb less than 1 acre of soil. There is no lower limit for this provision. As written, a literal interpretation could require that a permit for a water service leak repair, disturbing 10 square feet of pavement, have storm water runoff control and that be reported to the State. Below, we discuss the tracking, paperwork and reporting that would need to be done as a result of this construction.

We suggest that the permit follow the lead of EPA and be revised to focus on those activities which mitigate the greatest threats to clean water.

2. *Paperwork and Reporting Requirement are Excessive*

The paperwork and reporting requirements contained in the permit exceed those in other State regulatory frameworks. There are many laws pertaining to public works construction so this provides a ready comparison. *Section E.7.b.2.b* requires construction outreach and training for contractors working in the city. It requires that the City provide an annual report on training topics covered, dates of training contractors attending training, and results of surveys to demonstrate potential behavioral changes. The requirement is vague as to the extent of training required and to whom training must be given. This places a burden on the City to monitor, enforce and report training of contractor personnel for storm water training.

Municipalities monitor contracts for the following:

- Health and Safety – Certainly health and safety are important. Failures can result in death. Yet Cal OSHA does not require the municipalities to report on OSHA training of contractors and results.
- Labor Laws – Municipalities are required to check certified payrolls to ensure labor laws are being adhered to. Yet municipalities are not required by the State to report that labor laws are adhered to. The reporting occurs only on the finding of a violation.

Occupational safety and labor laws require the City to monitor contractors and report or enforce only when problems occur. This draft permit requires the City to monitor, report, and even survey contractors regarding storm water training efforts. This requirement vastly exceeds requirements for State health, safety and labor laws. This seems excessive and unbalanced.

3. *The balance between paperwork and effective maintenance is skewed and misplaced.*

As noted above there are two types of work required by the permit: (1) Work that actually protects the environment, and (2) paperwork. We believe that the paperwork cost is excessive and detracts from the resources that can be devoted to actually protecting the environment.

As an example, currently we have a professional engineer who is a QSD review all grading plans. We have a public works inspector who is QSP-trained who reviews all construction and grading sites. Inspections are made before, during and after rainfall events. Problems are addressed and corrected. Usually a word of training is sufficient, but where the contractor seems slow to act we threaten to call in the Regional Water Board. This has been 100% effective. We have never had a problem. The permit requires that we have the legal authority to do this work and that we inspect at project milestones. We already exceed that. However, the permit also requires the following reporting requirements:

- (a) Total number of active sites disturbing less than one acre of soil requiring inspection;
- (b) Total number of active sites disturbing one acre or more of soil;
- (c) Number and percentage of violations;
- (d) Number and percentage of each type of enforcement action taken as listed in each Permittee's Enforcement Response Plan;
- (e) Number of sites with discharges of sediment or other construction related materials, both actual and those inferred through evidence;
- (f) Number and percentage of violations fully corrected prior to the next rain event but no longer than 10 business days after the violations are discovered or otherwise considered corrected in a Permittee-defined timely period.
- (g) Number and percentage of violations not fully corrected 30 days after the violations are discovered.
- (h) Number of follow-up inspections that demonstrated the operator continued to implement BMPs according to plan and the number of follow-up inspections that required further enforcement.

The tracking and reporting requirement doubles the workload involved in these inspections. Doing this tracking and reporting will reduce the time available for inspection and correction. We suggest that tracking, paperwork and reporting requirements be reduced so that resources can be focused on those activities which will mitigate the greatest threats to clean water.

4. *The costs for excessive paper work cannot be reasonably funded*

The Fact Sheet for the draft permit states that a survey completed by CUCS estimated the annual cost per household for the six storm water programs in the Phase 1 permit ranged from \$18 to \$46. Based on this, the Fact Sheet estimates a median cost below \$32 dollars per household to implement the new draft permit. Across the state this would represent a burden of nearly \$400 million dollars. There is no tax base for this extra expense. The burden to the City of Rohnert Park would be about \$500,000. There is no funding source for this outside of the general fund. Municipalities like Rohnert Park will be forced to choose between the requirements of this permit and other functions such as police and fire protection and roads maintenance, at a time when municipalities are facing unprecedented budget pressures. Clean water is important, but the paperwork burden associated with this permit does not clean water and is much of the expense of the program.

Further, we question whether the cost estimate is accurate. The City of Santa Rosa is a neighboring city under the Phase I permit. Santa Rosa has 14 people assigned to meet the requirements of their Phase I permit and currently spends \$27 per household on their storm water system. City staff in Santa Rosa has reviewed the draft permit for small systems and based on their review, they believe that they could not meet the new permit requirements with

based on their review, they believe that they could not meet the new permit requirements with their staff of 14. They strongly believe that the requirements contained in the new draft permit exceed those of the existing Phase I permit. This is why we are particularly concerned about the tracking, paperwork and reporting requirements contained within the permit.

Physical work that protects water quality is roughly related to the size of a city. For instance, *Section E.11.g.ii* lists requirements for storm drain maintenance. This work is related to the size of the storm drain system and therefore roughly related to the size of the city. This is also an example of physical work that will positively affect water quality. Systems that must be set up and maintained to meet the tracking, paperwork and reporting requirements contained within the permit represent a burden which is not directly related to the size of the City. Regardless of City size a municipality must set up these systems and do these reports. Therefore, the cost per household in smaller municipalities will be greater than for larger municipalities. This cost inequity is driven by excessive paperwork requirements.

As noted in the examples above, paperwork can be over half the cost of implementing this permit. Additional costs result from requiring activities that focus on small threats to water quality.

Phase II agencies such as the City of Rohnert Park want to implement cost-effective water quality improvement measures. To do this, many Phase II entities will need not only a permit that focuses on activities which mitigate the greatest threats to clean water – as opposed to generating administrative burdens – but also financial assistance. The City asks the State Board to substantially revise the Draft Permit by reducing tracking, paperwork, and reporting requirements. We also echo the RRWA comment letter in its request for the State Board to work with the legislature to create a mechanism to fund stormwater programs. These would go a long way in making this permit achievable, practical and useful in protecting the environment.

Sincerely,



Gabriel A. Gonzalez
City Manager
City of Rohnert Park

cc: Rohnert Park City Council