



**COUNTY OF MENDOCINO**  
**DEPARTMENT OF PLANNING AND BUILDING SERVICES**  
 860 NORTH BUSH STREET · UKIAH · CALIFORNIA · 95482

Public Comment  
 Draft Phase II Small MS4 General Permit  
 Deadline: 7/23/12 by 12 noon

ROGER MOBLEY, ACTING DIRECTOR  
 Telephone 707-463-4281  
 FAX 707-463-5709  
 pbs@co.mendocino.ca.us  
 www.co.mendocino.ca.us/planning

July 10, 2012

Jeanine Townsend, Clerk to the Board  
**STATE WATER RESOURCES CONTROL BOARD**  
 1001 I Street, 24<sup>th</sup> Floor  
 Sacramento, CA 95814



**RE: COMMENT LETTER – 2<sup>nd</sup> DRAFT PHASE II SMALL MS4 GENERAL PERMIT**

Thank you for the opportunity to provide comments on the Revised Draft Phase II Small MS4 General Permit (Permit). We also thank your staff for their responsiveness to questions, and for making themselves available above and beyond the scheduled Staff Workshops during the comment period. State Board staff and North Coast Regional Board staff provided an additional workshop for the members of the North Coast Stormwater Coalition, a partnership of local governments and non-profits from Humboldt and Mendocino Counties. Your staff provided helpful insight into the intent and requirements of the Permit.

Mendocino County is a renewal Permittee. As required, we developed a Stormwater Management Program that was adopted in 2005. We have been working diligently to accomplish the tasks that we set out in our Program and in doing so we have met numerous challenges and setbacks. However, we are committed to maintaining and improving water quality. Our working landscape of ranches, vineyards, timber, family farms, and a struggling salmon fishery depend on clean (and abundant) fresh water. We understand and support the need for clean water, however, the means of achieving that goal must be sensible and cost-effective.

Our primary concern with the Permit is the fact that it constitutes yet another unfunded mandate being imposed by the State upon local governments. This issue is exacerbated by the fact that the State would like to impose these unfunded requirements at a time when all levels of government are struggling with decreased revenues caused by an economic downturn of historic proportions. For purposes of illustration on this point: a Fitch Rating Report that was released in March of this year noted that the County of Mendocino’s allocated workforce positions have been decreased by several hundred, and wages have been reduced between 10 – 15% for all employees. Total employment within the county is reported as having declined steadily since 2002, leading to 13% fewer jobs today than 10 years ago. In summation, Fitch states the County’s financial operations remain strained despite recent improvements, and they expect it will take “several years” to restore liquidity and fund balances within Mendocino County to adequate levels. While a precise estimate of the cost to achieve compliance with this new permit within Mendocino County cannot be generated at this time, it is clear that compliance will create significant new financial burdens throughout the County system.

Overall, the effort that went into the revision was helpful. However, many areas remain where permit compliance should be made more readily achievable, especially for small jurisdictions with limited resources. These areas include reducing the number of tasks, providing more flexibility, reducing and in some cases modifying reporting requirements, extending the length of time provided to achieve compliance, and additional collaboration between state and local governments. The following list expands these concerns:

- A number of the required tasks do not provide a water quality improvement for small jurisdictions like Mendocino County. The reporting requirements are often unnecessarily onerous.
- The reporting requirements should match what the State and Regional Boards will be able to accommodate in their annual reviews of programs so that local jurisdictions can receive productive feedback and respond in a timely manner rather than wait for an audit process.
- The permit term should be extended to ten years, or two permit terms, to achieve full compliance. This could allow everyone involved (municipal staff, land owners, engineers, architects, developers, etc) to learn these new requirements (*many of the requirements will be new to small communities*) and learn how to properly implement stormwater management methods.
- Flexibility is imbedded in the definition of “MEP.” One size does not fit all when it comes to Phase II permittees. A less prescriptive, more permittee-developed approach would result in better water quality outcomes. Phase II permittees should be allowed to identify what areas are high priority using pre-defined criteria provided within the provisions.
- SWRCB is proposing to increase the specificity of the Permit from the requirements of the previous small MS4 permit, and in many areas the proposed requirements exceed what is required of Phase I permittees. Increased Permit requirements are particularly difficult for small jurisdictions with limited staff and resources. Regional consistency with the Phase I and Phase II permits should be developed, which would allow jurisdictions to create partnerships and share resources.
- With this in mind, the SWRCB and the Regional Boards should take responsibility to provide additional resources (reporting templates, educational handouts, free training opportunities, etc.) to the local governments. The state and local governments should work cooperatively to achieve Clean Water Act goals and build capacity, rather than simply passing requirements without proper implementation support. We recognize that budgets are tight at every government level, but the burden should not be placed solely on local governments to develop all of the information required in the Permit.
- Extending the length of the Permit would allow the tasks to be spread out over a longer period of time, so that not so many requirements would be required in the first two years – this would also allow costs of implementation to be spread out over time. As proposed, the Permit requires significant person-power in the first three years to assure full compliance. This is a significant cost for small jurisdictions that do not have the fiscal resources of larger jurisdictions.
- More time to achieve compliance would allow permittees to form partnerships to implement the Permit in an incremental and cost effective manner. There are a number of resources available on the local level– community groups, non-profits, special districts, even municipal departments, that could be leveraged to assist small jurisdictions with implementation of the Permit requirements. Providing more time is a simple solution to allow local government to work within their means. On the whole Mendocino County is a economically disadvantaged community, cash flow is limited but if we are allowed time to seek out and effectively use the resources available in our County this would

create a more effective implementation program in the long-term.

- The permit requires approximately 22 plans and inventories to be completed by the end of the permit, 19 are to be completed by the end of the third year. Nearly every task (there are approximately 45 tasks, not including E.15 as this section does not apply to Mendocino County at this time) requires some amount of reporting. Many of the tasks require very detailed reporting procedures to capture pieces of information that may or may not actually help in determining that the method is improving water quality. As proposed, ~ 40 tasks are required to be started and/or completed by the third year of the permit, leaving five additional tasks for year four and five. Therefore, we request that the tasks be more spread out over the Permit duration, the Permit duration be extended, and that the reporting requirements be reduced to those that actually provide a relationship between information tracking and water quality, and not just an exercise in paperwork.

The following section provides more specific comments:

**E.6 Program management Element:** There appears to be a disconnect between E.6.a Legal Authority and E.6.b Certification. The Legal Authority section requires the Permittee to review and revise ordinances or other regulatory mechanisms to meet the requirements of this order within the second year. The Certification section requires the Permittee to cite each Stormwater related ordinance which implements the requirements of the Permit by the first year. These two sections should share the same timeline, and the timeline should be in sync and should allow the Permittee adequate time to accomplish the task of reviewing, revising, and adopting ordinances. For a small jurisdiction, this deadline should be extended to the end of the third year.

Although we have legal authority to accomplish a number of the implementation measures, the Permit is more specific than the language contained in the County's documents. Specifically, the Construction Site Runoff Control program and Post-Construction Elements will require stakeholder outreach and education in order to effectively adopt an ordinance in our County. This will require time and person-power to review all the documents, suggest revisions, legal review, stakeholder meetings, and public hearings to make the modifications. Additional time is necessary.

**E.6.c. Enforcement Measures and Tracking:** This section should allow local jurisdictions to use their existing code enforcing procedures rather than create a duplicative process.

E.6.c.ii(d) - This language inappropriately places the responsibility of verifying and tracking applicants for other State permits (State CGP or IGP) on the Phase II Permittee. These permits are appropriately the State's responsibility to track and enforce especially since the State receives permit fees. Phase II communities do not have the authority or sufficient resources to carry out this task. Please remove this language.

**E.7 Education and Outreach:** The State should provide free training to local jurisdictions on Community-Based Social Marketing (CBSM). Although CBSM has not been mandated in the Permit, it has been left up to the Regional Board to determine if it will be required, in which case it may be required. In the very least, it has obviously been identified by the State as an effective tool and therefore the State should provide the resources and training necessary to implement CBSM effectively.

E.7.a.(ii) tasks are unclear and will be difficult, time-intensive, and costly to implement. To “measurably increase the knowledge of targeted communities” is not a reasonable expectation with the resources available in small jurisdictions. The level of required implementation would require additional staff to implement the section as written. Please remove and/or reduce this section to mirror what is required of Phase I communities in our Region.

The SWRCB should also provide easily accessible public outreach materials that Permittee can obtain and modify to use in their jurisdiction. The SWRCB should bear the responsibility of maintaining an inventory of useful educational materials that are relevant to Permit requirements (e.g. materials available in multiple languages, LID BMPs, etc.).

In section E.7.b.2.a) (ii) (a) please clarify if all plan reviewers and permitting staff must be a certified QSD, or if (as allowed in the following sub-paragraph) that a designated person on staff may have the certification. To require municipal staff to be QSD/QSP certified is problematic as this certification requires the individual to have additional certifications such as EnviroCert International certifications, or the individual would need to be a hydrologist or professional engineer for example. Many, if not all, of the permitting staff and building inspectors do not hold the pre-requisite qualifications and although many of the staff would like to be certified QSD/QSP they would not qualify. Allowing for a designated person on staff to hold the certification is helpful, however it would be more effective if additional staff could be certified. One way to allow more individuals to accomplish the QSD/QSP certification would be to provide a specific training class (SWRCB should develop a free training class) that would certify that the individual was trained on the topics necessary to enter the QSD/QSP training and exam. Other relatively simple alternatives would be to set a standard of experience in reviewing permits or conducting inspections, or include in the QSD/QSP prerequisites the EnviroCert International for Certified Municipal Separate Storm Sewer System Specialist or an equivalent (preferably with no cost associated).

E.7.b.2.b) Construction Site Operator Education. This section is unclear. While the County would and does provide educational materials, outreach and educational opportunities to assist developers in complying with the rules and requirements of the Permit, the language of this section is unclear and the reporting requirements should be eliminated as they do not represent the implementation measures provided nor is there any clear connection between what is required to report and actual proper implementation of BMPs. The reporting requirements under enforcement (E.6), construction site runoff control (E.10) and post-construction (E.12) are much more effective at determining if BMPs are being implemented correctly. Implementation of BMPs is a better indicator of proper implementation than the number of people that attend training. This is an example of where the reporting requirements of the Permit could be eased to allow local jurisdiction to focus on more effective and important aspects of the Permit that have a direct impact on water quality.

**E.9. Illicit Discharge Detection and Elimination:** This section requires the Permittee to track whether a facility has obtained a NPDES permit from the state. While this is certainly helpful to the State and Regional Board, it shifts yet another burden to local government. The only way in which this new responsibility can be seen as reasonable is if the State ensures that IGP and CGP permit inventories are up to date, accessible, and searchable by zip code and/or address.

Section E.9.b, implementation measure (d)- it is burdensome to update the inventory annually, as this is unnecessarily too often to update an inventory of this type. In many cases, the inventory would not change year to year, and would take up needless staff time to accomplish. The inventory should be completed as

proposed but updated only once in the fifth year (or 10<sup>th</sup> year ( or 2<sup>nd</sup> permit term) if term is extended as we recommend).

Section E.9.c: This entire section is above and beyond what is required by the Phase I permit and would be extremely costly to implement. Many storm drain outfalls are not accessible due to overgrown vegetation and limited access. There would be no way to physically sample them all while they were producing flow. This is an impossible requirement to meet. The parameters listed are not all applicable to our region. The action level for Potassium is lower than for drinking water. The action level for turbidity is inconsistent with the Construction General Permit (1000 NTU vs 250 NTU). This section should be removed as it is infeasible to implement.

**E.10. Construction Site Stormwater Runoff Control Program:** Please clarify the lower limit of disturbance for construction projects – many types of projects that disturb less than 1 acre would not create a water quality impact, and may not even require a permit. The information gathering and reporting in this section is far too detailed and excessive. Many of the pieces of information that are required to be gathered in this section (E.10.c) are required in Enforcement Measures and Tracking section (E.6). Therefore the reporting requirements of this section are duplicative, onerous, and not cost-effective. This is another example of where the reporting requirements can be eased and/or removed to allow focus on more effective and important aspects of the Permit that have a direct impact on water quality. It will be more effective to categorize any violation/correction by type, rather than have to piece out and report separately for this section.

**E.11. Pollution Prevention/ Good Housekeeping for Permittee Operations Program:** Some of the tasks in this section require detailed information to be gathered and the timeline provided is not reasonable or realistic. For example, section E.11.b. Map of Permittee-Owned or Operated Facilities requires that by the second year the Permittee shall submit a map that details the Stormwater drainage system of each facility as well as the receiving water body. This task will require extensive field work to accomplish. As such, it should either be removed from this Permit round, or have the timeline extended to allow completion of the map by the fifth year of the Permit term. This task corresponds with additional tasks in the section, and the timeline for those additional tasks should also be modified or removed accordingly.

E.11.d Stormwater Pollution Prevention Plans. This section is duplicative of various other sections and should be removed from the Permit. All staff is required to be trained, and several other plans including an IDDE plan, spill response plan are required to be developed. This section makes all of these processes duplicative and burdensome to develop for each specific site.

E.11.e. Inspections, Visual Monitoring and Remedial Action. The reporting requirements of this section are excessive. Reporting requirements should be reduced to those listed as: a, b, f, g, h.

E.11.f. & g. Storm drain system Assessment and Prioritization & Maintenance. The County of Mendocino encompasses a huge geographical region, and portions of our MS4 system exist throughout the entirety of that area. The funds available to maintain this vast system are extremely limited, and forcing the County to prioritize that portion of our system which lies within the arbitrary boundaries of this permit would make it likely that funding wouldn't be available to address the highest priority needs of the County (with the largest impacts on water quality).

These sections require extensive field work. If these are top priorities for SWRCB staff, then perhaps a

distinction in timeline completion could be applied based on population size. For example: jurisdictions with a population of over 50,000 within the urbanized area subject to the permit could be required to comply with the currently proposed timeline, while jurisdictions with a population under 20,000 within the urbanized area subject to the permit would be allowed to complete by the end of the permit term (10 years, or two permit terms per our recommendation.)

**E.12.f. Implementation Strategy for Watershed Process.** This section is unclear and should be deleted. If State and Regional Boards intend to create Watershed Management Zones and associate numeric criteria, please ensure that each region is given more than adequate opportunities to participate in the process and that those numeric criteria are appropriate at the local level – and complete with financial assistance.

**E.12.j. Planning and Building Document Updates.** The required items listed in these sections are land use planning issues are not under the authority of the State Board and should be removed in favor of water quality objectives. The Permittees shall maintain their authority to select land use policy that is appropriate for their communities that meet water quality requirements. The tasks are inappropriate and constitute a very large and infeasible work load.

**E.13. Water Quality Monitoring.** Water quality monitoring should not be required of every Permittee that discharges to a 303d listed water body, or this section should be more specific to a water body listed for a certain type of urban stormwater related pollutant, for example a water body is impaired by trash, or aluminum. In northern California many of the rivers are listed as impaired by sediment and temperature which is a largely a legacy of historic land uses. As the County does not issue water rights permits – which take cold water out of streams, nor does the Permit apply to all types of land uses – this section is not appropriate to apply to this region without waste load allocations or other similar analysis. It is our understanding that the Regional Board would not require water quality monitoring, this section should be removed.

**E.14. Program Effectiveness Assessment and Improvement:** This section is excessive, overly detailed, burdensome and should be applied only to those jurisdictions required to implement section E.13 as a number of the implementation measures apply directly the information gained from water quality monitoring. The reporting requirements of this section are excessive. This section is also duplicative as the reporting requirements of each previous section provide the requested information in this section. In other words, each section is intended to document compliance with permit conditions – section E.14 duplicates these reporting requirements. The combination of all the required implementation measures and reporting requirements are extremely burdensome, as it requires essentially a self-audit on an annual basis. As the State is proposing the specific requirements, it should be the State's responsibility to review the required reports to ensure that the desired results are being achieved. It is not reasonable to require small governments with extremely limited staff to complete this type of analysis annually.

E.14.b is particularly inappropriate for small jurisdictions. It requires learning yet another tool to calculate annual runoff. This section is again burdensome, time-consuming and not appropriate for every jurisdiction statewide. Delete this section or apply based on population size.

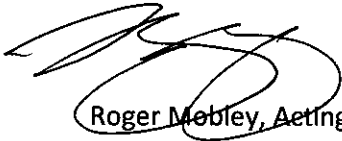
E.14.c. is quite expensive and requires significant person-hours, and significant amount of follow-up time, above and beyond what is already required within the permit. This section should be removed from the permit requirements.

The measures contained within this section are appropriate for reviewing this permit for the next permit round. Perhaps after five years of implementing the Permit, the State and Regional Boards could assist local jurisdictions in completing this section so that the following permit incorporates lessons learned from this round of implementation. To require this level of review and analysis in combination with all the other requirements of this Permit will take away from effective implementation and will overly burden small governments like Mendocino County. Removal of this entire section would be a large step in making this Permit more achievable and realistic on a local scale.

Some of the tasks provided in the Permit are onerous for small communities; and as a result there should be some distinction for communities with a population less than 20,000 within the urbanized area subject to the Permit. These small communities have limited staff and funding available to dedicate to the Permit. Spreading out the required tasks over the entire permit, rather than front loading all the tasks within the first three years would go a long way in making the permit requirements achievable. Extending the Permit duration to 10 years would also alleviate costs and provide for a more incremental approach to achieve compliance. Providing more time for Permit compliance would allow jurisdictions to establish partnerships on the local level to implement different aspects of the Permit, this would help to ingrain stormwater management on the local level and would be more effective in the long-term.

On behalf of the Mendocino County Board of Supervisors we offer these comments in an effort to make the new Permit implementation achievable for small jurisdictions with limited resources. As we have noted, there are numerous opportunities to reduce the reporting requirements and eliminate some of the most onerous of tasks. These suggestions would create a more implementable Permit while still making great strides toward maintaining and improving water quality. Improving water quality is a shared objective, but without reasonable requirements for implementation that recognize budget and person-power constraints, implementation efforts will likely fall short of desired outcomes.

Sincerely,



Roger Mobley, Acting Director  
Mendocino County Planning and Building Services  
Mendocino County Water Agency