

Town Council

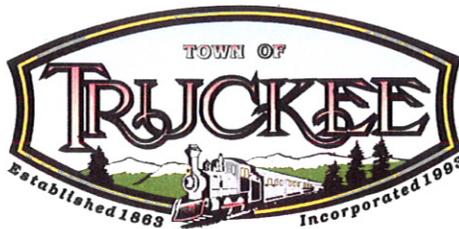
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July 12, 2012

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

Jeanine Townsend,
State Water Resources Control Board
PO Box 100 Sacramento, CA 95812



RE: Comment Letter-Phase II Small MS4 General Permit

Dear Ms. Townsend and Members of the Board,

On behalf of the Town of Truckee, we thank you for the opportunity to provide comments on the Draft Phase II Small MS4 General Permit (Permit), issued for comments on May 18th, 2012. We also thank you for the numerous changes that were incorporated from the comments and meetings on the 2011 draft permit.

The Town of Truckee encompasses 36 square miles of land, is located at elevations that range from 5,800 to 7,500 feet, and has a permanent population of approximately 16,000 residents. The Town is one of the snowiest municipalities in the United States. The Town does not exceed the various thresholds that have been established by the SWRCB which require municipalities to be automatically regulated under the Statewide Phase II NPDES municipal permit. However, an order to comply with the current Small MS4 permit was issued by the Lahontan Regional Water Quality Control Board to the Town in December 2006 due to 'special findings' made by the regional board at that time.

The protection of water quality is an ongoing priority of the Town of Truckee and the broader Truckee Community, and has been since the communities' inception. Towards that end, the Town of Truckee has been working since its incorporation in 1993 with local environmental advocacy groups such as the Truckee River Watershed Council, the Sierra Watershed Education Partnership, and others towards improved environmental stewardship and towards improved water quality in our region. These efforts have occurred on multiple fronts and include, but are not limited to, the following activities:

- Regulation of land development activities which have the potential for detrimental effect on water quality.
- Establishment of local BMP requirements for land development on both commercial and residential properties.
- Sponsoring of training for local residents and contractors regarding best practices as related to storm water

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Police Department: 530-550-2328 / Fax: 530-550-2326 / email: policedepartment@townoftruckee.com

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- Establishment and funding of a local water quality monitoring program
- Pursuing the ongoing retrofit of our local roadway system to incorporate storm water treatment infrastructure
- Ongoing improvement to municipal practices to improve storm water quality.
- Ongoing implementation and funding of wetland restoration, floodplain improvement, and stream restoration projects
- Retrofitting Redevelopment Areas with stormwater improvements as projects allow.

The Town of Truckee has reviewed the current draft Phase II permit that has been prepared by the SWRCB and has numerous concerns regarding the prescriptive nature of the new permit, the cost to local government of compliance with the permit, and the reduction in other services (through diversion of resources to permit compliance) that this permit will result in. We also have concern that the resources necessary to comply with this permit are going to detract from the Town's ability to accomplish water quality benefit through the programs which the Town has been undertaking over the prior two decades.

Most of these concerns are being raised through our participation with the California Stormwater Quality Association (CASQA) which is providing technical comments on the Permit. However, we also wish to raise the following points independent of CASQA as we see these as being the most critical from the Town of Truckee's perspective:

1. Along with this draft permit, a designation flow chart was provided. According to the flow chart, the Town would not be regulated automatically under the thresholds identified in the permit. The Town is, however, listed in an appendix to this permit which contains all municipalities who are intended to be regulated under this permit. The Town's assumption is that it was listed for regulation as a result of the special findings that were made by the Lahontan Regional Water Quality Control Board in 2006 under the existing permit. We do not believe that those special findings should be automatically assumed to continue to exist, and request that the SWRCB remove the Town from the list of entities intended to be regulated by this permit. This would not necessarily mean that the Town would not ultimately be regulated by this permit, but rather would provide an opportunity for the LRWQCB to consider within the context of the new permit requirements whether or not special designation is still necessary or appropriate for the Town of Truckee.
2. The Permit requires a more prescriptive Illicit Discharge Detection and Elimination Program (E.9) than what is required under the existing permit.
 - a. E.9.a requires an outfall map be completed by the permittee. The Town requests that the requirement to provide photographs of all outfalls to provide baseline data be modified to include other options for determining baseline, such as a database. Attributes that populate the database can be searched, queried, and quantified easier than photos.
 - b. Since the release of the draft permit, State Board staff have indicated their intention is that an Outfall Survey is conducted once per permit term. Although the FAQ sheet states this intention, the Order does not. SWRCB Staff have indicated this was intended within the mapping described in E.9.a. However, if a permittee already has a current map, completing a map again would not be necessary. The Outfall Survey, if intended to be conducted once per permit term

- should be a separate task, with the option of being done at the same time as the mapping if the mapping task has not been completed already. Please make the intention clear within the Order language.
- c. The FAQ sheet indicates the Outfall Survey is intended to determine and identify outfalls needing sampling and follow up. It is the Town's understanding based on SWRCB staff responses in the June 15, 2012 workshop that ALL flowing outfalls are to be sampled with the intent to characterize, observe and understand the 'urban slobber' of the permittee's area. Characterization of all the flowing outfalls within the permittees area is above and beyond the Code of Federal Regulations (40 CFR 122.34) for small municipalities. Task E.9.c Field Sampling to Detect Illicit Discharges should be focused on likely sources of pollutants based on the list provided in E.9.a, or other priority areas defined by the permittee. Due to the extensive work and cost involved in monitoring every flowing outfall, the Town requests the following:
 - i. If the source of the outfall water is a naturally occurring water source (springs, snow melt) upon reasonable documentation, monitoring should not be required under E.9.c.
 - ii. Monitoring should only be required to be conducted in the urban or priority areas. The Town has considerable outfalls flowing much longer than 72 hours after storms due to snowmelt and springs many of which are in rural low priority areas. Our estimate is that we would be sampling approximately 120 out of 412 outfalls and this would take two months of full time work.
 - iii. The Outfall Survey should be similar to current dry weather screening visual monitoring, with the intent to help determine the priority areas and areas needing follow up. Water monitoring based on the survey should be done when there is reasonable suspicion of an illicit discharge, such as unclear water, bathtub rings, land use upstream, foam, etc..
 - d. It is helpful for E.9.c to provide indicator parameters that can be used and the action levels, but the section should allow the permittee to determine if all tests are necessary for each outfall tested. As an example, it is unlikely industrial waste will be present in outfalls in rural residential areas. Performing tests to indicate these pollutants would be wasteful.
 - e. Title 40 of the Code of Federal Regulations (40 CFR) 122.34 requires the development, implementation and enforcement of a program to detect and eliminate illicit discharges into a small MS4. Under this section, there are requirements, such as completing a storm sewer system map showing outfalls to waters of the state, prohibiting through regulatory mechanism non storm water discharges to the storm sewer system, and developing a plan to detect and address non-storm water discharges. The guidance in this section (not required), suggests the plan should include: 1) procedures for locating priority areas likely to have discharges, 2) procedures for tracing the source, 3) procedures for removing the source, and 4) procedures for evaluation and assessment. Visual screening of outfalls is recommended during dry weather and conducting field tests of

selected pollutants to determine priority areas. The CFR in no way suggest monitoring to the extent of E.9.c in the draft permit, both in the permit requirement to sample/characterize all flowing outfalls and the constituents tested. The requirements in the draft permit go above and beyond the Federal requirements as well as the Federal guidance and would therefore constitute an unfunded mandate.

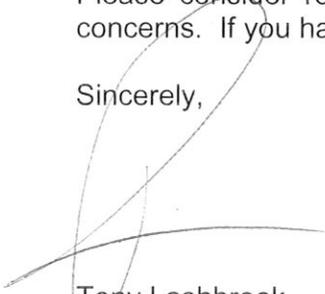
3. The Town requests that E.13.ii include "...permit to **assess whether monitoring is necessary** and if so,....". Also include "**If additional monitoring is determined by the permittee and the Regional Board this shall not expand beyond the existing TMDL or the adopted Basin Plan.**" Per finding 39, page 11, any such revisions to the TMDL monitoring schedule and Attachment G will be incorporated into the permit through a re-opener. This is inconsistent with E.13 which states that the Permittees shall implement TMDL monitoring as specified by the Regional Water Board Executive Officer. Please see the suggestion for revisions in comment #4 below.
4. The Permit leaves tasks up to the Regional Boards to decide after Permit adoption. Some tasks are left vague and there is little guidance or direction to Regional Boards for decision making in tasks, such as Water Quality Monitoring Section E.13.ii and iii, or Education and Outreach Section E.7 for implementing Community-Based Social Marketing. Depending on the decisions the Regional Boards make, there may be significant cost implications to permittees. The Town is requesting that provisions be included within the Permit for these future decisions to be made through a Regional Board hearing rather than solely through the Executive Officer's decision. The permit should also include a clearly defined appeal process outlined in the Permit, especially for Regional Board decisions that will be made after permit adoption. Our understanding is that the State Board is interested in making the Permit requirements more uniform across the State. Providing a public review process for the future decisions that are not defined clearly for the current Permit would assist in making the Permit more consistent and allow stakeholders to be part of future decisions.
5. Please provide a definition of outfall for the permit. Our understanding, based on the EPA definition is that an outfall is a point source per 40 CFR 122.2 at a point where the municipal storm sewer discharges to waters of the United States. Based on this definition and SWRCB staff responses, we understand an outfall to be a direct discharge to waters of the United States via a pipe.
6. Since the inception of the municipal NPDES program, the designation of the NPDES permits have been based on population and density with the intent to focus on the Urban Areas that are likely to discharge pollutants, modify the watershed characteristics, and have a higher impact on waterways. As the permit increasingly includes more permittees that are not automatically designated on an urban and population basis and permittees that are primarily rural with small populations and resources, like Truckee, the distinction should be made within the permit for labor intensive tasks such as maintenance, monitoring, outfall walks, construction inspections, etc., to be performed primarily in high priority areas. Performing monitoring or illicit discharge detection activities with the same intensity in the commercial core

vs. the rural areas appears to be beyond the intent of the permit and Federal regulation. By using the prescriptive nature of the new permit, the permittee is now forced to use valuable resources that may better be used more effectively in reducing pollutants to stormwater for the specific needs of the jurisdiction.

The Town of Truckee is a small rural municipality with unique circumstances that make compliance with the permit as written very expensive and inefficient as well as some sections difficult to impossible to implement. The Town is facing a budget crisis, along with the rest of the State and Country. We have reduced employee benefits this year, laid employees off over the last 4 years, some positions remain unfilled, and some staff have reduced work hours (furloughs). In addition, the State continues to take funds that the Town historically uses to improve water quality, such as the elimination of redevelopment funding that has been used to improve legacy areas. The Town is in no position to take on more permit costs or staff time commitments without additional funding. We are continuing to try to maintain our level of service with the resources we have available.

The Town recognizes the importance of clean water as a resource for our community, tourism, economy and health. We request that the permit revert to the principal of using "To the Maximum Extent Practicable" (MEP) as this takes into account each municipality's financial situation as well as specific pollutants of concern, location, and circumstances. Please consider revising the permit to take into consideration the above comments and concerns. If you have any further questions, please contact Dan Wilkins at 530-582-2902.

Sincerely,



Tony Lashbrook
Town Manager