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# Draft Stormwater Permit Draws Cities Together in New Coalition

BY PAULINE ROCCUCCI



City officials throughout California were stunned when the State Water Resources Control Board issued its initial draft of the revised Phase II small municipal separate storm sewer (MS4) permit on June 7, 2011. The highly prescriptive 93-page permit, drafted to replace a 20-page permit that had expired three years earlier, contained a number of stringent, unfunded mandates that more than 200 smaller California cities would be required to meet. The cities had just 30 days to respond to the draft permit requiring them to implement new programs for public outreach, water-quality improvement and monitoring, business inspections and enforcement. With no state money and Propositions 218 and 26 essentially prohibiting cities from paying for the programs through fees, reimbursements or tax increases, funding would have to come from the cities' beleaguered General Funds.

## Looking at the Price

To assess the cost impact, two cities with strong water-quality programs put numbers to the new requirements. In Roseville, staff conservatively estimated that implementation costs would initially more than quadruple, and in the long run more than triple the city's stormwater program budget — from \$800,000 per year to \$3.5 million in year one, with an average permit term cost of \$2.9 million per year. Similarly, the City of Napa estimated implementation costs at \$4 million the first year — an amount 10 times greater than the city's current stormwater budget.

## Businesses Face High Costs

While increased costs are enough to set off municipal alarms in a tough economy, the impact on local businesses raised equal concern. As written, the permit required a long list of businesses to retrofit properties by installing stormwater treatment vaults and covering trash enclosures and loading docks. In addition, they would need to implement operational best management practices and comply with extensive reporting requirements. The implementation and business disruption costs could cause a number of the state's struggling businesses to close.

"We see these permits having significant implications on businesses across the state, affecting their pocketbooks and livelihoods," says Courtney Kienow, director of government affairs for the San Luis Obispo Chamber of Commerce. "We all want clean water, but there has to be a more realistic way to achieve that goal."

Ken Denio, owner of Denio's Roseville Farmers Market and Auction, estimates retrofitting stormwater infrastructure to meet the new standards on his company's 70 acres could cost between \$1.5 and \$2 million. "The frequent inspections and record-keeping will also create ongoing expenses for us and the city. And I know we're not unique," says Denio. "Looking across California, this permit could break cities, put small businesses under and drive employers out of the state. Of course we're in favor of clean water, but let's work together to determine how to do it in a way that makes economic sense."

Landscape architect Erik Justesen, chief executive officer of RRM Design Group in San Luis Obispo, summed up the issue in testimony before the Senate Select Committee on Job Creation and Retention: "These costs are exactly the kind of government regulations that can put us out of business. And for what? Insignificant and immeasurable improvements to water quality and better reports. The cost for benefit of this new program is just not there."

### **Questioning Benefits Versus Costs**

Expanding on Justesen's points, staff at many cities questioned the scientific basis for certain permit aspects, including extensive water-quality monitoring; frequent, redundant business inspections; and an onerous process of categorizing and inspecting catch basins. They also questioned the need to create a costly community-based social marketing program based on — and later validated by — statistically valid phone surveys and focus groups.

Heidi Niggemeyer, program manager of the Monterey Regional Storm Water Management Program, questions some of the mandates, but has a more tolerant view of the permit's genesis. "The permit mirrors many of the points spelled out in the 2008 National Research Council Report to the EPA on urban stormwater management," she says. "It's a dream document that simply can't be implemented in California. Many of the ideas are good ones, and they may be possible in states with stormwater utilities that collect fees or taxes to cover costs. But Prop. 218 prohibits collecting funds without a voter supermajority, which is all but impossible to achieve on an issue like water quality. Without a funding mechanism, the permit becomes untenable."

Though the permit is a regulation in all but name — it's mandatory, enforceable and leaves cities subject to fines and open to third-party litigation for noncompliance — the state's permitting process is not required to conform to the federal Administrative Procedure Act (APA). Because of this fine-line distinction, the State Water Resources Control Board was not required to conduct cost or economic impact analyses.

"In any business, we have to decide whether an action makes economic sense," says Denio. "We determine if the benefits of the action outweigh the cost and how we'll pay for it. My biggest heartburn on this permit is that the State Water Resources Control Board is not tasked with assessing costs or determining the cost-benefit ratio and economic impact. Any government body that has the legal authority to mandate actions should be required to study and support the economic argument."

The State Water Resources Control Board conducted very limited stakeholder outreach before releasing the first draft of the permit, and current rules prohibit stakeholders from talking directly to board members. The initial draft allowed stakeholder input through written comments submitted within 60 days of draft issuance, which was later extended to 90 days, and a three-minute presentation at the State Water Resources Control Board hearing.

### **New Coalition Gathers Voices**

As the full impact of the permit mandates on cities and businesses became clear and magnified by the limited ability to have a voice in the process, staff at the City of Roseville decided its geographic proximity to Sacramento made it the best candidate to help cities address the issue. Roseville staff proposed the idea of a Statewide Stormwater Coalition. The coalition soon attracted a number of municipal government and other organizations that would be regulated under the permit, which could also cover school districts, higher education institutions, fairgrounds, harbors, ports, marinas, military bases and more.

The coalition's first act was to secure bipartisan legislative support for a response extension. At the July State Water Resources Control Board public hearing, Assembly Member Mariko Yamada (D-Davis) requested a 60-day extension on behalf of the Statewide Stormwater Coalition. Coalition members with budgets to make the trip did so. Those who couldn't make the trip asked coalition members who attended to hold up signs and represent them by proxy. In total, 40 signs rose to show the coalition members' support. The board granted a 30-day extension giving stakeholders until Sept. 8, 2011, to respond to the draft permit. During the extension, the coalition worked tirelessly to get the word out to others who would be impacted by the permit.

The coalition also made its case to the Senate Select Committee on Job Creation and Retention on Oct. 6, 2011. Through testimony by Statewide Stormwater Coalition members, the coalition brought the permit issues and underlying process flaws to the Legislature's attention. During the committee hearing, the State Water Resources Control Board admitted the need to substantially revise the permit and meet with stakeholders to evaluate the cost impacts of permit changes.

### **Tentative Success**

The coalition's efforts paid off. In May 2012, the State Water Resources Control Board released a new draft permit for public

review with notable changes. The new draft omitted several permit sections, such as the industrial and commercial retrofitting requirements, and reduced complexity in other sections. Many requirements remain that will be challenging for cash-strapped cities to implement without funding support, but it's too early for the affected cities to provide full cost analyses. Public comments on the new draft are due by July 23.

### **Reforming the Permitting Process**

Costs for the revised permit may be unclear, but one thing became apparent to Statewide Stormwater Coalition members who fought for the changes. While some of the initial permit's most onerous sections were simplified or removed, the time-consuming effort required to effect change underscores the need to overhaul the permitting process. Specifically, coalition members believe many future problems could be averted if the State Water Resources Control Board were required to:

- Meet with all stakeholders statewide to fully understand their various viewpoints and concerns;
- Allow ex-parte communication between the board members and permit stakeholders;
- Produce a cost analysis covering the costs to cities, businesses and other affected entities;
- Include only requirements that are justified by an economic analysis showing that the benefits will exceed the cost to implement the requirements; and
- Include only requirements that an external scientific peer review confirms will result in appreciable improvements to water quality.

These fundamental process changes would help eliminate well-intended but misguided permit drafts and create a more collaborative approach to permit development.

### **Join the Coalition**

To bring about these process changes, the coalition needs more cities, businesses and other organizations affected by the permit to add their voices to the call for reform. To join or learn more about the State Stormwater Coalition, visit [stormwatercosts.com](http://stormwatercosts.com) or contact [Sean Bigley](#), government relations analyst.

