

City of Palo Alto

Office of the City Manager

September 15, 2011

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
P.O. Box 100
Sacramento, CA 95812-0100



Subject: Proposed FY 2011-12 Waste Discharge Permit Fund Program
Regulatory Fee Schedule for Stormwater (State Water Resources
Control Board Meeting, September 19, 2011, Agenda Item 9)

Dear Ms. Townsend:

The City of Palo Alto strongly opposes the proposed 34.9% fee increase for area-wide municipal separate storm sewer systems (MS4s) contained in the proposed 2011-12 Fee Schedules to be considered by the State Water Resources Control Board at its September 19, 2011 meeting. The proposed fee schedule will result in a total increase of over \$68,000 for municipalities in Santa Clara County alone, an amount that was not anticipated and has not been included in local agency budgets for this fiscal year. This increase is particularly troublesome as it comes at a time when municipalities are already challenged to make ends meet in a struggling economy, and when Bay Area municipalities are also confronted with the costs of compliance with the new requirements imposed by a recently adopted Municipal Regional Stormwater Permit.

The City of Palo Alto opposes the proposed fee increase for the following reasons:

- There has been a structural surplus in the Stormwater account of the Waste Discharge Permit Fund for the last nine years due to excess fees collected from stormwater dischargers, which has been used to fund deficits in other accounts. California Water Code section 13260 (d)(1)(B) requires that the total amount of annual fees collected shall equal the amount necessary to recover costs incurred in connection with waste discharge requirements and waivers of waste discharge requirements. State Board staff's own report on Agenda Item 9 recognizes the stormwater fee imbalance by stating "Between FY 2004-05 and FY 2009-10, the Storm Water Program collected approximately \$22 million more in revenue than it incurred in expenditures. This amount contributed to the large reserve balances carried in the WDPF during these years. It also allowed the State Water Board to minimize fee increases during this time period."

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It is established and agreed that stormwater fees have been set at inappropriately high levels for many years and that those excess fees have been used by the State to subsidize other water quality programs. We strongly believe it is the duty and responsibility of the State to budget and expend whatever monies are collected from stormwater permittees on addressing stormwater quality. Any increased costs to the State's stormwater program could have easily been funded out of this significant surplus.

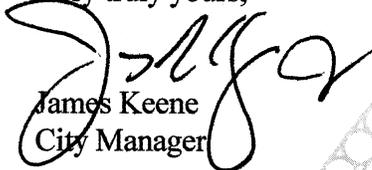
- The stormwater fee increase does not correspond to an increase in services to MS4s. There is a significant difference between the amount of money being paid in permit fees to the State and the level of service provided by Water Board staff at the region level. Local jurisdictions are continually told that Water Board staff does not have sufficient resources to oversee compliance with municipal, industrial, and construction stormwater permits. Collectively, Santa Clara County municipalities currently pay over \$196,000 in permit fees annually (including the SWAMP surcharge), which will increase to over \$264,000 under the State Board staff's recommendation. We have one half-time Regional Board staff person assigned to assist our local stormwater program.
- The public notice process on the proposed fee increase is insufficient for jurisdictions to adequately review and provide meaningful comment. Stormwater Permit holders were not notified directly of the proposed increase. The only way permittees became aware of the proposed increase was through e-mail subscriptions to State Board notices. The State Board's agenda was e-mailed out on Friday, September 9, at 4:30 pm with comments on agenda items due by noon on September 15 – three and a half business days later. This type of public process for an issue that has a financial impact on permittees is inappropriate and unacceptable.

We respectfully request that the State Board do the following to address our concerns:

1. Do not adopt the proposed fee increase for stormwater dischargers.
2. Adopt a plan to provide fee credit to stormwater dischargers to over a period of two to five years to address previous overpayment.
3. Direct State Board staff to provide information on the public noticing procedures for proposed fee increases, including whether all municipal stormwater permit holders were directly notified of the proposed increase and provided sufficient opportunity to review and comment on the staff recommendation.

4. Direct State Board staff to provide information detailing the relationship between stormwater fees submitted by Bay Area municipal stormwater permittees and staffing/resources at the San Francisco Bay Regional Water Board.
5. Direct State Board staff to annually provide detail on the previous year's expenditures and the projected expenditures for the following fiscal year, to make sure that stormwater program fees are being spent to support stormwater-related activities.
6. Direct State Board staff to develop performance measurements so that expenditures can be correlated to staffing levels and the level of service provided by State Board staff.

Very truly yours,


James Keene
City Manager

cc: Mike Sartor, Phil Bobel, Joe Teresi

