

July 9, 2024

Submitted via email to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Ms. Courtney Tyler  
Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

**Subject: Comment Letter – Revised Draft Municipal Stormwater Cost Policy**

Dear Ms. Tyler:

Thank you for the opportunity to submit comments on the State Water Resources Control Board's (SWRCB's) Revised Draft Water Quality Control Policy for Standardized Cost Reporting in Municipal Separate Storm Sewer System (MS4) Permits (Revised Draft Policy, Cost Reporting Policy, or Policy) and the Revised Draft Municipal Stormwater Cost Policy Staff Report (Revised Draft Staff Report) that were released on May 9, 2024 as well as the Cost Accounting Guidance for the Revised Cost Reporting Policy (Draft Guidance) released on May 24, 2024. I am submitting these comments on behalf of the San Mateo Countywide Water Pollution Prevention Program (SMCWPPP or the Program) which represents the 20 towns and cities and the County of San Mateo and the San Mateo County Flood and Sea Level Rise Resiliency District (Permittees). The Program recognizes the ongoing efforts of the SWRCB to develop a comprehensive and implementable Cost Reporting Policy for the MS4 programs throughout the State. We appreciate the SWRCB's careful review of comments received in October of 2023 on the initial Draft Policy and its recent efforts to address and incorporate comments as deemed appropriate in the Revised Draft Policy.

As during the initial review of the Draft Policy, SMCWPPP generally supports the California Stormwater Quality Association (CASQA)'s comment letter on the Revised Draft Policy submitted to the SWRCB on July 9, 2024 (with the exception of CASQA's Comment #6 regarding subcategories – see SMCWPPP's Comment #2 below), and respectfully requests the SWRCB consider the comments made and the revisions requested by CASQA in developing the Final Policy for consideration by the SWRCB for adoption. Though we recognize the significant effort that has gone into the Revised Draft Policy, including extensive stakeholder engagement by SWRCB staff, we feel there are several important issues that remain unaddressed in the Revised Draft Policy. We feel most remaining critical issues are adequately commented on in CASQA's comment letter; however, we respectfully request the SWRCB provide additional consideration to SMCWPPP's specific areas of concern as detailed below.

**Comment #1 – Clarify Cost Reporting Policy purpose, scope and regulatory process**

Related to Comment #1 in CASQA's comment Letter, it generally remains unclear from the Revised Draft Policy what the full scope and intent of the Cost Reporting Policy is, with what justification, and through what regulatory process the Policy shall be implemented once adopted. Specifically, the various purposes listed on page 6 of the Revised Draft Policy cause some confusion about the proposed intent and the regulatory process being required of MS4

permittees and/or the Regional Water Boards as a result of the Policy. Based on the Program's review of the Revised Draft Policy, the primary purpose and benefit of the Policy are captured in the last bullet of the list of purposes on page 6 of the Revised Draft Policy:

"The Draft Policy provides direction to regional water quality control boards (regional water boards) and the State Water Resources Control Board (State Water Board) regarding the incorporation of standardized cost reporting requirements into any future issuance or reissuance of respective MS4 permits. The Draft Policy eventually may be incorporated into a future water quality control plan that applies to inland surface waters."

Aside from providing guidance and direction to Regional Water Boards and permittees for implementing current and future cost reporting requirements in a standardized way, another primary purpose proposed in the Revised Draft Policy suggests an entirely new and separate reporting process for MS4 permit cost accounting through the SWRCB:

"The Draft Policy specifies a cost reporting portal that Permittees shall use to annually report all expenditures related to the implementation of MS4 Permits."

There is no discussion in the Revised Draft Policy regarding the intent of the Policy to direct Regional Water Boards to incorporate standardized cost reporting requirements into future new/reissued MS4 permits and to have permittees go through an entirely separate annual cost reporting process directly through the SWRCB. This is a significant administrative process and it is not clearly described why the Cost Reporting Policy would require permittees to submit cost data annually via the proposed cost reporting tool in addition to reporting cost data annually through their respective MS4 permits. Furthermore, it is unclear how exactly the Policy will apply to MS4 permits with existing cost reporting requirements. If the reporting is expected at the statewide and MS4 permit scale, it should be made clear what the expectations are for reporting where MS4 permits with existing cost reporting requirements may not be entirely consistent with the proposed Policy format. Rather than having permittees who have current cost reporting requirements provide "best professional judgement" in translating their MS4 permit cost reporting data into the statewide Policy format, direction should be provided to Regional Water Boards to ensure future MS4 permit cost reporting requirements are made consistent with the statewide Policy. We strongly oppose the presumed purpose in the Revised Draft Policy of creating a duplicative cost reporting process, as this would require significant additional administrative effort and likely lead to less accurate and inconsistent cost reporting data submitted to the State.

### **Recommended Changes:**

Include clarifying language in the Revised Draft Policy regarding the primary intent of the Policy to direct Regional Water Boards to incorporate cost reporting requirements consistent with the Policy in all newly issued/reissued MS4 permits.

Include clarifying language in the Revised Draft Policy specifying the Policy is not intended to result in a duplicative reporting process for MS4 permittees who already have cost reporting requirements that are consistent with the Policy, as established in existing MS4 permits.

Include clarifying language in the Revised Draft Policy regarding the proposed regulatory process for cost reporting in instances where existing MS4 permits do not have cost reporting requirements or where existing MS4 permit cost reporting requirements are deemed inconsistent with the proposed Policy. In such instances, require reporting at the

proposed primary category/line-item level only. See Comment #2 below regarding removal of subcategories altogether.

## **Comment #2 – Remove “subcategories” from Revised Draft Policy requirements**

Though the Revised Draft Policy provides justification for the addition of subcategories, the Program strongly feels including subcategories in the Revised Draft Policy is unnecessary, unlikely to result in useful cost reporting data at the statewide scale and reduces flexibility in the development of MS4 cost reporting requirements among diverse MS4 permits throughout the state. As noted in the Revised Draft Staff Report, the proposed approach for standardized cost reporting across the State presents a significant obstacle in compiling and comparing cost data among permittees and across MS4 permits administered by the Regional Water Boards in a consistent and useful way. The proposed primary cost reporting categories and line items (which are consistent with the SWRCB Office of Research, Planning and Performance Guidance<sup>1</sup> following the State Auditor’s 2018 Report on MS4 Cost Reporting<sup>2</sup>) are sufficient for reporting and tracking MS4 permit expenditures and will likely result in a better interpretation of and ability to compare reported costs across permittees and within and across regions. Additionally, the inclusion of subcategories for some but not all cost reporting categories creates inconsistency in the overall proposed cost reporting format presented in the Policy. When considering the overall intent of tracking and evaluating the cost of compliance with MS4 permits and being able to draw comparisons of BMP vs. programmatic costs for different minimum mandatory MS4 permit components, including subcategories for some components but not others, and without proper justification for including subcategories in some instances but not others, results in a framework that lacks completeness and clarity and may be prone to greater misinterpretation of collected data in addition to creating substantially more administrative burden.

### **Recommended Changes:**

We respectfully recommend removing all subcategories from Table 1 of the Revised Draft Policy and all reference to subcategories as a required cost reporting requirement in the Policy and Revised Draft Guidance. Instead, we recommend the SWRCB include reporting requirements for just the primary categories with a breakdown by line item (as proposed). We further recommend the Policy clearly specify that the Regional Water Boards shall include these primary categories consistent with the Cost Reporting Policy in future new/reissued MS4 permits.

## **Comment #3 – General comment regarding documentation of requirements in Revised Draft Policy materials**

In SMCWPPP’s review of the publicly noticed materials for the Revised Draft Policy, it was noted that the details pertaining to reporting requirements were in some instances documented inconsistently, incompletely or inappropriately across the materials. Reporting requirements and guidance must be documented consistently and completely to ensure clear expectations for permittees and Regional Water Board staff implementing the Policy. At a high level, we agree

---

<sup>1</sup> State Water Resources Control Board Office of Research, Planning and Performance (2020) - [Guidance for Obtaining Phase I Municipal Separate Storm Sewer System \(MS4\) Permit Compliance Costs](#) (2020)

<sup>2</sup> California State Auditor (2018) - [State and Regional Water Boards: They Must Do More to Ensure That Local Jurisdictions’ Costs to Reduce Storm Water Pollution Are Necessary and Appropriate](#)

with CASQA's Comment #4 that there should be clearer definition of the role and use of the Draft Guidance. We also suggest reviewing the materials to ensure consistency and proper placement of requirements and guidance across the Policy materials. For example, the Revised Draft Policy does not mention the example activities suggested in the Revised Draft Staff Report. The Draft Guidance also does not clearly define the process of documenting example activities. Nor does it provide sufficient detail on the proposed subcategories or justification for them under the relevant Cost Categories section (Section 5). Additionally, some reporting requirements are included in the Revised Draft Staff Report but not the Policy itself. We suggest the language in the Revised Draft Staff Report regarding required documentation for cost reporting as proposed be removed from the Revised Draft Staff Report and if deemed important enough, be included in the Revised Draft Policy and/or Draft Guidance instead. These changes will help improve the interpretation and implementation of the Policy through a clearer understanding of the role of the Draft Guidance and the application of the proposed reporting requirements via the Revised Draft Policy.

**Recommended Changes:**

Include additional language in the Revised Draft Policy (and adopting resolution) regarding the purpose of the Draft Guidance in relation to implementing the Policy and the plans to review and potentially update the Revised Draft Guidance on a periodic basis based on evaluation of the data collected during prior reporting periods.

Remove any specific details regarding the requirements for cost reporting and documentation from the Revised Draft Policy Staff Report, and if deemed necessary, include them in the Revised Draft Policy and/or Draft Guidance.

Given the importance of this altogether new and precedent setting statewide policy for standardized MS4 cost reporting, the SMCWPPP Permittees and Program staff sincerely appreciate your ongoing efforts and hope that SWRCB members and staff will consider our recommendations to ensure a useful and implementable municipal stormwater cost reporting policy. If you have any questions, please feel free to contact me at Reid Bogert ([rsbogert@smcgov.org](mailto:rsbogert@smcgov.org)) or 650-863-2126.

Sincerely,



Reid Bogert  
Stormwater Program Director  
City/County Association of Governments of San Mateo County

cc:

Jonathan Bishop, State Water Resources Control Board  
Karen Mogus, State Water Resources Control Board  
Amanda Magee, State Water Resources Control Board  
Dr. Thomas Mumley, San Francisco Bay Regional Water Quality Control Board

Ms. Courtney Tyler  
July 9, 2024  
Page 5 of 5

Keith Lichten, San Francisco Bay Regional Water Quality Control Board  
SMCWPPP Stormwater Committee  
Sean Charpentier, City/County Association Of Governments