



March 9, 2009

Mr. Bruce Wolfe  
Executive Officer  
San Francisco Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

**Subject: City of Livermore comments on the 2009 Tentative Order for the  
Municipal Regional Stormwater NPDES**

Dear Mr. Wolfe,

The City of Livermore is submitting these comments with regard to the Tentative Order for the Municipal Regional Stormwater NPDES issued on February 11, 2009. The City of Livermore requests that you include these comments in the record of this administrative proceeding.

The City of Livermore is a co-permittee of the Alameda Countywide Cleanwater Program. The Alameda Countywide Cleanwater Program is a recognized leader in protecting water quality. The Program has received national recognition and awards from the United States Environmental Protection Agency. The policies, procedures, and programs developed in Alameda County have been used as models for stormwater programs throughout the State of California. The City of Livermore has been a leader within the Alameda Countywide Cleanwater Program and has consistently maintained a high level of effort and compliance in implementing an effective stormwater program.

In December 2007, Board staff issued the first Tentative Order of the Municipal Regional Stormwater NPDES permit. The City of Livermore, along with numerous other co-permittees, submitted written comments and provided verbal testimony at the March 2008 Public Hearing expressing many concerns with the Order. Since that time, Regional Board staff has made some positive changes to the permit, and their efforts in that regard are appreciated. Unfortunately, based on the latest version of the Tentative Order, it appears that the vast majority of the concerns expressed in past written comments and at the March 2008 hearing were dismissed and/or ignored by staff.

The Tentative Order remains unnecessarily prescriptive in many areas, requires the implementation of costly pilot projects of dubious utility, and mandates the development of numerous written plans, ordinances, and databases which don't enhance water quality.

It also requires the co-permittees to implement costly and ineffective trash controls, which are likely to increase the risks of flooding and damage to private property without a level of constant maintenance that cities and counties simply cannot afford or provide. As drafted, this Tentative Order has significant cost implications and operational impacts on the City of Livermore and other co-permittees, while offering very limited benefits in terms of improving water quality when compared to existing permit requirements.

As you are aware, the United States is in the midst of a severe economic downturn. The economy shrank at a 6.2% rate in the 4<sup>th</sup> quarter of 2008 alone. Locally, the San Francisco Bay Area is experiencing the negative impacts resulting from this crisis. Many Bay Area residents are facing unemployment, realizing extreme losses in property values, and even losing their homes to foreclosure. Local municipalities are facing a similar financial crisis with severe losses in revenue and significant budget cuts. The decision to issue a Municipal Regional Permit that includes significant new costs and requirements at a time when local agencies are already facing an unprecedented fiscal crisis is particularly troubling; especially since there appears to be no overwhelming or immediate need to issue the permit now.

While many of the existing municipal stormwater permits have technically expired, all of the provisions of those permits remain in full force indefinitely, as long as the permittees have applied for a permit reissuance. Alternately, the Regional Board could simply reissue or extend the current stormwater permits for an interim period of perhaps 3 years to allow economic conditions to stabilize before undertaking a new permit with significant new requirements. On behalf of the entire Livermore Council, I strongly urge the Regional Board and staff to consider this option before recommending adoption of the permit.

If the Board and staff are intent on moving forward with the permit despite the economic realities of the day, then significant changes to the requirements are still needed. In these troubling times, it becomes even more imperative that we utilize public funds and resources in the most prudent, efficient, and effective manner possible. With these facts in mind, it is very interesting to note the following quote taken from the Tentative Order regarding the Trash Provision in section C.10.a.:

*"The actions required in this 5-Year permit term are unlikely to eliminate the impact of trash on beneficial use or achieve the Basin Plan Water Quality Standards for this pollutant...."*

Unfortunately, this is not the only provision of the Tentative Order that, if implemented as required, will result in increased financial burdens while failing to achieve any measurable results in terms of improving water quality. Requirements that are costly and known to be ineffective, such as these, certainly need to be removed from the Tentative Order before adoption.

Specifically, the City of Livermore believes the following provisions of the Tentative Order for the Municipal Regional Stormwater NPDES are seriously flawed and should be eliminated or fundamentally revised prior to adoption:

**Provision C.2.d.: Stormwater Pump Stations**

This provision requires the monitoring for Dissolved Oxygen twice a year between July and October at all stormwater pump stations. If the dissolved oxygen is less than 3.0 mg/l, the permittee must implement corrective actions, such as "continuous pumping" during low flow rates and increase the monitoring frequency to weekly until two consecutive weeks with dissolved oxygen above 3.0 mg/l are obtained.

During the dry season, the storm drain system inevitably receives "nuisance" runoff from irrigation. This runoff will collect in pump stations and mix with deciduous foliage and sediment that collects in the storm sewer system. Due to very low "nuisance" flows in comparison to observed stormwater volumes and pump station capacities, water may sit in pump station wet wells for long periods of time before the pumps "cycle" and pump out the accumulated water. It is expected that these conditions will result in low dissolved oxygen; basic water chemistry and experience would predict this situation, and collecting monitoring data to confirm this situation seems to be a wasted effort.

The solution suggested in the permit of "continuous pumping" is infeasible and would likely result in damage to pump station equipment if implemented. Pump stations normally function with a wet well and float system to collect water to a certain level before activating the pump. Adjusting pump stations to a "continuous pumping" mode to eliminate the residence time and maintain dissolved oxygen (DO) would result in the pumps cycling on and off repeatedly due to the large pump capacity in relationship to the nuisance irrigation flows. Recall that these pump stations are designed to pump stormwater flows from 10 to 20 year rainfall events, not to handle the flow running down the gutter from neighborhood over-irrigation. This continued cycling of these large pumps would not only waste large amounts of electricity, but would lead to premature wear on the pumps and electrical equipment. It would be unfortunate for pump station equipment to fail during a major storm event and cause flooding and property damage due to the use of a "continuous pumping" strategy to solve a relatively insignificant problem.

Furthermore, this solution is unnecessary in areas like Livermore, where the vast majority of local creeks and Arroyos are dry between July and October. Spending hours of staff time to collect samples, adjust pump station programming in July, and readjust pump station programming in October (or before rain events) simply to ensure that there are adequate dissolved oxygen levels in water that will form a small puddle in a dry channel or soak into the ground within a few hundred yards seems unnecessary.

The requirement to monitor a situation, which is expected and basically uncontrollable, and further, requiring the City to implement infeasible solutions, is not good

environmental regulation, and is just not practicable. This requirement provides no water quality benefits while burdening the City with increased monitoring and labor costs and should be deleted.

### Provision C.3: New Development

#### Applicable Projects:

This provision lowers the threshold to 5,000 sq.ft. for new development and redevelopment projects required to meet the C.3 Provisions for treatment.

This single requirement has likely received the most consistent comments from the dischargers on the previous versions of the permit. Yet, despite significant testimony that this requirement is ineffective, unnecessary, and burdensome it continues to appear in the permit; which is perhaps symbolic of how the entire MRP development process has gone in the opinion of many dischargers. Also, adding additional requirements on small development projects seems particularly unwise at a time when development applications are at historic lows and there is a nation-wide effort to *encourage* economic development by all means available.

This requirement is particularly and demonstrably unnecessary for the City of Livermore, where a study by Regional Board staff found that the existing 10,000 sq.ft. threshold captured 97% of all the impervious surfaces installed in the City. Requiring additional controls on small projects, as well as the reporting and tracking requirements for the City to capture the last 3% of impervious surfaces is not an efficient use of resources. Also, the implementation of more-effective, vegetated treatment controls becomes significantly more difficult, and less cost-effective, on small sites.

This is an area of the permit that demonstrates some of the significant inconsistencies in Board staff's guidance and requirements. Board staff consistently discourages the use of vault-based treatment systems and inlet filters in favor of vegetated stormwater controls, and has gone so far as to specify language regarding the percentage of sites that can be treated using vault-based systems in other permit sections. As an agency that consistently required vegetated controls well before most in the Bay Area, Livermore supports the philosophy that vegetated controls are superior and desirable. However, in light of that philosophy (and the specific language regarding vault-based controls in the permit) reducing the threshold to 5,000 square feet, where vegetated controls are *difficult* or *impossible* to effectively implement makes little sense.

This requirement should be eliminated from the permit once and for all, unless the Board and staff are interested in implementing ineffective, "symbolic" stormwater controls on these small projects. Board staff consistently cites the use of "rain-gardens" or bio-retention areas on these small sites in response to repeated comments from experienced professionals that this requirement is ineffective. While these features may be effective

for limited portions of these smaller sites, in most cases they do *not* fully solve the problem nor make this requirement workable.

Green Streets Pilot Projects:

This provision requires the permittees to cumulatively complete 10 pilot green street projects that incorporate Low Impact Development techniques for site design and treatment.

The existing permit establishes the requirement that all newly constructed roads, which create 10,000 sq.ft. or greater of impervious surface, comply with the requirement to provide stormwater treatment for the runoff. Given the current economic conditions faced by municipalities, expensive Pilot Projects, which are also redundant with other established requirements, should be eliminated from the Tentative Order.

Stormwater Treatment-Implementation Level C.3.c.i. (4-6):

This provision requires the City to obtain approval from the Executive Officer prior to granting final approval to any project that proposes using a vault-based system for 50% or greater of the total Provision C.3. runoff requiring treatment.

This City is opposed to this provision as it is an interference with local land use decision making. This is a new requirement that was not in the previous Tentative Order, and there is no rationale provided to justify this new requirement. The Board states that the C.3 requirements are not intended to restrict or control local land use decision-making authority. This requirement, however, is in direct conflict with that statement, and therefore, should be removed from the Tentative Order. Also, contrary to the statement that the permit is not intended to restrict or control land use decision-making authority, the reduction of the applicable project size to 5,000 square feet in conjunction with this section of the permit will vastly increase the number of projects that would be subject to Executive Officer "approval" before local agencies could take action.

Collection System Screening C.5.e.:

This provision requires the City to develop and implement a screening program utilizing the U.S.E.P.A/ Center for Watershed's publication entitled "Illicit Discharge Detection & Elimination, A Guidance Manual for Program Development and Technical Assessment". It further requires that the City establish one screening point per square mile of the City's Urban and Suburban Area less Open Space Area. The purpose of such a screening program is to provide a means to identify and stop illegal discharges to the storm sewer system.

This is another area of the permit in which Board staff should utilize the expertise of the stormwater program staff, many of whom have over 15 years of practical experience actually implementing programs, rather than academically proposing "how" to do things

in such detail. The screening-point approach may be good for an agency just starting to implement an illicit discharge program to identify on-going illicit connections. However, since our programs have been in place for over 10 years, any agency running a professional program has long ago eliminated illicit connections.

This provision, as written, is overly prescriptive and unnecessarily burdensome. The City has demonstrated through past illicit discharge investigation activities that surveying outfall screening points and underground storm sewer system points for illicit discharge activity has been both inefficient and ineffective in discovering and reducing illicit discharge activity. Conversely, time spent performing "above-ground" survey inspections of commercial and industrial business parks has yielded much more success in identifying and stopping illicit discharges. This is a much more effective and efficient utilization of resources in identifying, stopping, and abating illicit discharge activity. The City has communicated the results and successes of its past illicit discharge activity in various reports to the Board over the years.

This provision should be modified to allow permittees to implement measures that are effective in identifying and controlling illicit discharges.

#### **Provision C.9 Pesticides Toxicity Control**

This provision requires that permittees annually report on the quantities/type of pesticides used and the IPM procedures implemented. Permittees are also required to submit training records for employees receiving IPM training within the last 3 years.

The California Department of Pesticide Regulation has already established existing reporting requirements on municipalities regarding pesticide use similar to this provision. This reporting requirement is, therefore, redundant and unnecessary; as such information is already being submitted to the California Department of Pesticide Regulation. If the Regional Water Quality Control Board is interested in this data, the Board should work collaboratively with this fellow State agency, The California Department of Pesticide Regulation, rather than requiring municipalities to track, record, and report this information twice.

This requirement should be deleted.

#### **Provision C.9.f. Interface with the County Agricultural Commission**

This provision requires that permittees maintain regular communication with the County Agricultural Commission to (1) obtain input/assistance on urban pest management practices and use of pesticides, (2) inform the Commission of water quality issues related to pesticide use, and (3) report violations of pesticide regulations associated with stormwater management. It further requires that permittees annually provide a summary of improper pesticide usage reported to the County Agricultural Commission.

The activity required by this provision is beyond the technical and legal scope of local government. If such information is required by the Board, this type of coordination should be occurring at higher levels within State Government. That is, the Regional Board should work collaboratively with the California State Department of Pesticide Regulation and amongst the various County Agricultural Commissions. The delegation of such coordination activities to the local municipal government level is well beyond the scope of our legal authority, and therefore, this provision should be removed from the Tentative Order.

**C.10 Trash Reduction:**

This provision requires permittees to install trash capture devices on catchment areas equal to 30% of the Retail/Wholesale Commercial Land Use as defined by ABAG 2005 Land Use Statistics. The trash capture devices shall be designed to retain particles by 5mm mesh screen with a hydraulic capacity of not less than the peak flow rate resulting from a one-year, one-hour storm event in the drainage catchment area. The installation of these devices must be completed by 2013.

This provision also requires that permittees identify "Trash Hot Spots". Permittees must identify one "hot spot" per 100 acres of Retail/Wholesale Commercial Land as defined by ABAG 2005 Land Use Statistics. The "hot spots" must be at least 100 yards of creek length and spaced no more closely than ¼ mile from each other. By February 1, 2010, permittees must report the following: (1) Hot Spots' Name/Location, and (2) Submit 4 photos documenting each hot spot's upstream, downstream, and midstream conditions. These "Trash Hot Spots" will be posted on the Board's website for public comment. By July 1, 2012, permittees shall achieve the "Trash Action Level" as defined as the Urban Optimal Level from SCVURPPP. Thus, permittees will be required to maintain these sites so that there exist less than 100 pieces of trash per 100 ft. of assessment reach and no visual impact from trash.

**C.10.vii. Trash Source Reduction:**

This provision requires permittees to take efforts to adopt, strengthen, and increase enforcement of local laws governing solid waste and litter. If permittees adopt significant laws (i.e. plastic bag or Styrofoam product bans) by 2012, the trash capture device requirement can be reduced from 30% to 20%.

**C.10.b. Trash Hot Spot Assessment**

This provision requires permittees to utilize the SCVURPPP "Urban Rapid Trash Assessment" model to assess "Trash Hot Spots" twice per year at the beginning and end of the dry season commencing Summer 2009.

The entire C.10 Trash Reduction provisions place significant financial burdens on the City in terms of capital costs (installation of trash capture devices), operational costs

(trash capture device service and maintenance), increased record-keeping costs, and represents an ineffective and inefficient use of staff time to inspect creeks to count and categorize trash. Furthermore, the installation of devices which screens materials 5 millimeters in size poses significant risks in terms of flooding and damage to private property, as well as associated financial liabilities, when these devices become obstructed with leaves or debris during normal storm events.

Provision C.10 is unrealistically ambitious and fails to recognize the last 40 years of anti-littering efforts that have been unable to eliminate this societal problem. The Regional Board itself acknowledges that this provision will not effectively reduce trash or improve water quality as indicated by the following quote which prefaces this provision in the Tentative Order:

*"The actions required in this 5-Year permit term are unlikely to eliminate the impact of trash or beneficial uses or achieve the Basin Plan Water Quality Standards for this pollutant....." (C.10.a)*

While removing all trash from our creeks is a noble goal, it is simply not one that municipalities can afford at this time, and there is great uncertainty whether our communities would be willing to support with increased funding when asked.

Costly requirements that are known to be ineffective, such as the C.10 Trash Provision, must be removed from the Tentative Order.

#### **C.11.c. Mercury Control Pilot Projects and C.12 Polychlorinated Biphenols:**

This provision requires that permittees, working collaboratively, shall identify 10 locations throughout the jurisdiction that present opportunities to install on-site treatment (detention basins, wetlands, etc.). It also requires the implementation of 5 Pilot Projects for dry weather diversion from stormwater pump stations to POTWs and to evaluate the reduced loads of mercury and PCBs resulting from the diversion.

The diversion of dry weather stormwater pump station flows fails to acknowledge the technical and legal restrictions on the use of POTW infrastructure and capacity for stormwater. Furthermore, since POTWs are not designed to treat or remove pollutants such as mercury and PCBs, this is not an overall practical environmental solution to this perceived problem. The net result of such a diversion merely results in a media transfer of the pollutant.

Also, since Bay Area POTWs are being required to develop mercury reduction plans under the Mercury TMDL for San Francisco Bay, it seems contradictory that POTWs are now being asked to both reduce and accept mercury-containing discharges by separate Regional Board actions. Based on the draft MRP, Livermore will be modifying our

mercury control plan for the Livermore Water Reclamation Plant to include a prohibition on dry weather stormwater diversions.

This requirement should be removed from the permit.

### **C.15 Exempted & Conditionally Exempted Discharges**

This provision requires new/rebuilt swimming pool, hot tubs, spas, and fountains to have a sanitary sewer drain. It further requires that permittees keep a record of the authorized major discharges of dechlorinated pool, spa, and fountain water including the BMPs implemented and that these records be available to the Board for inspection.

The record-keeping requirements associated with this provision are cumbersome, unnecessary and have no beneficial impact on water quality.

The requirement to have drains for pools and spas would be more effectively addressed through a change in the plumbing code rather than adding it to stormwater permits. As with pesticide usage, the Board should work with other state agencies to address this issue statewide.

This requirement should be removed from the permit.

### **Conclusions**

The City of Livermore remains committed in its efforts in implementing an effective stormwater program that serves to benefit water quality. The City of Livermore is very concerned that many of the requirements of this Tentative Order will result in marginal or no improvements to actual water quality, and may even restrict staff's ability to continue the implementation of its current, effective stormwater program due to increasingly burdensome demands on funding, staff time, and other resources. Overall, the City finds the Tentative Order to be seriously flawed and requiring major, fundamental revisions.

Adopting this Tentative Order as written, which will place undue financial burden on local municipalities at a time when the country is in the grips of a severe recession and local municipalities are faced with drastic budget cuts and declining revenues, would be irresponsible. Without drastic improvements in the economy, many agencies would be unable to maintain compliance with the permit after only a year or two, and would then be subject to potential citizen lawsuits under Clean Water Act provisions.

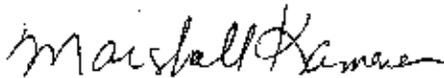
The City of Livermore encourages the Regional Board to consider administratively extending or reissuing the existing permits and permit conditions on an interim basis for up to three years to allow some improvement in economic conditions for local agencies

March 9, 2009  
Mr. Bruce Wolfe  
Page 10 of 10

prior to adopting the MRP. This interim period would allow Board staff to continue to work with municipalities on developing a practical and effective Municipal Regional Stormwater NPDES Permit.

I appreciate your attention to these comments and look forward to working with Board on these issues. Please contact Darren Greenwood, Assistant Public Works Director, at 925-960-8100 for further discussion of these comments.

Sincerely,



Dr. Marshall Kamena  
Mayor, City of Livermore

Darren Greenwood  
960-8120

dgreenwood@  
ci.livermore.ca.us

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE  
STATE OF CALIFORNIA

A RESOLUTION TO THE SAN FRANCISCO REGIONAL WATER QUALITY  
CONTROL BOARD  
(Regarding the Municipal Regional Stormwater NPDES Permit Tentative Order,  
NPDES Permit No. CAS612008)

BE IT RESOLVED by the Livermore City Council that the City of Livermore:

- 1) Supports the Regional Water Quality Control Board's goals to reduce pollution in our creeks and the San Francisco Bay from point source pollution from new and existing development.
- 2) Concludes that many of the "enhanced" requirements specified in the February 11, 2009 Municipal Regional Stormwater NPDES Permit Tentative Order will result in overly burdensome costs for municipalities while yielding little, if any, measurable benefits in terms of water quality.
- 3) Determines that the new permit requirements impose an unfunded State mandate on the City of Livermore in the amount of approximately \$700,000 per year during a period of significant, nation-wide fiscal crisis.
- 4) Concludes that the Regional Water Quality Control Board's goal to establish one permit governing the entire San Francisco Bay Region fails to acknowledge the diversities that exist amongst the various municipalities in the region.
- 5) Opposes the lowering of the threshold to 5,000 square feet for new and redevelopment projects required to meet the stormwater treatment requirements in Provision C.3, as over 97 percent of such projects in Livermore are already adequately addressed under existing permit requirements.
- 6) Opposes the C.10 Trash Reduction requirements to address litter given the significant costs associated with implementing these requirement, especially considering that fact that the Board itself indicates in the permit that *"The actions required in this 5-Year permit term are unlikely to eliminate the impact of trash or beneficial uses or achieve the Basin Plan Water Quality Standards for this pollutant..."*
- 7) Authorizes the Mayor to submit a letter requesting a revised Tentative Order, which incorporates the City of Livermore and other municipalities concerns regarding costs and effectiveness, be drafted by the Regional Water Quality Control Board and resubmitted for public comment.

On the motion of Vice Mayor Marchand, seconded by Councilmember Leider, the foregoing resolution was passed and adopted on the 9<sup>th</sup> day of March, 2009, by the following vote:

AYES: Councilmembers Horner, Leider, Williams, Vice Mayor Marchand, Mayor Kamena  
NOES: None  
ABSENT: None  
ABSTAIN: None

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
INTERIM CITY CLERK  
SUSAN GIBBS

  
\_\_\_\_\_  
SR. ASSISTANT CITY ATTORNEY  
JUDITH J. PROPP

DATE: March 10, 2009