



City of Alameda • California

April 2, 2009

MRP Tentative Order Comments

Dale Bowyer

San Francisco Bay Regional Water Quality Control Board

1515 Clay Street, Suite 1400

Oakland, CA 94612

Re: Comments on Revised Tentative Order National Pollutant Discharge System Municipal Regional Stormwater Permit Dated February 11, 2009

Dear Mr. Bowyer:

The City of Alameda (City) is submitting these comments with regard to the Revised Tentative Order of the Municipal Regional Stormwater National Pollutant Discharge System (NPDES) Permit (MRP) issued on February 11, 2009. As an island community, the City of Alameda is uniquely situated to receive both the benefits of water quality and the impacts of aquatic pollution. We recognize, therefore, the importance of maintaining water quality programs and keeping pollutants out of San Francisco Bay and its tributary watersheds. However, the City's topography, dense urban environment, and close proximity to the Bay also create challenging constraints for the implementation of many of the water quality protection proposals contained in the MRP.

The Revised Tentative Order remains unnecessarily prescriptive in many areas, requires the implementation of costly pilot projects with limited utility, and mandates the development of numerous written plans, ordinances, and databases that do little to enhance water quality. The City estimates that proposed requirements of particular concern discussed in our detailed comments below would require an annual program expenditure of approximately \$200,000. Without additional revenue, the City will have to rely on the same stormwater program budget to accommodate these new mandates, at the expense of eliminating other on-going, effective stormwater program activities. Considering the projected stormwater program cost increases and the current unprecedented fiscal challenges, the City requests a three-year extension of the current permit, consistent with the written comments of the Alameda County City Manager's Association. This extension would allow for the development of statewide approaches to fund stormwater programs such as water quality monitoring, stormwater treatment, and trash controls. Following are the highlights of the City's key concerns:

- The Provision C.3.b requirement to lower the Provision C.3 applicability threshold to 5,000 square feet for certain projects should be reconsidered due to questionable utility and lack of cost-effectiveness.

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- The Provision C.3.c requirement for local agencies to seek Regional Water Quality Control Board (RWQCB) approval prior to granting project approvals for the installation of certain vault-based treatment measures interferes with local land use decision making and should be eliminated.
- The Provision C.3.i requirement for tracking and implementing site design features on all projects greater than 2,500 square feet should be reconsidered due to questionable utility and lack of cost-effectiveness.
- The extensive monitoring requirements of Provision C.8 should be revised to prioritize monitoring needs, water quality benefits and cost-effectiveness in an efficient and useful manner and to phase requirements over more than one permit cycle.
- The Provision C.10.a requirement for the installation and maintenance of trash capture devices with a five-millimeter mesh screen is highly impractical in the City of Alameda and should be eliminated as it will create a real likelihood of upstream flooding and damages to public and private property.
- The Provision C.10.a.iv requirement for Trash Action Level goals at identified Trash Hot Spots should be modified to exempt trash swept into the shoreline by tides because they are outside a jurisdiction's ability to control and reduce.

The following information provides a more detailed discussion of the City's comments on the proposed new requirements of the Revised Tentative Order MRP. These comments provide: (a) estimates of municipal fiscal impacts or increased staffing loads to implement highlighted provisions; (b) discussions of practicality of implementation for certain provisions; and, (c) suggestions for alternative means to effectively achieve equivalent water quality protection goals. The City's comments are segregated into three categories to highlight those issues which are: (i) of major concern to the City, (ii) of moderate, yet important, concern to the City, and (iii) suggestions to clarify draft provision wording to improve practical implementation efforts. Our comments are as follows:

Proposed MRP Provisions of Major Concern to the City of Alameda

Provisions C.2.d, *Stormwater Pump Stations*, requires the monitoring and analysis of dry weather and rain event flows at all eight of the municipal stormwater pump stations. These requirements, without the identification of the funding mechanism for the additional staff time, heightened expertise, and analytical expense, creates an additional staffing and expense burden to the City. The estimated minimum increase in annual municipal staffing to implement this provision for monitoring, sampling, and reporting is approximately 10% of a full-time staff person.

Provision C.3.b.ii.(1), *Special Land Use Categories*, proposes that the applicability threshold for projects is the creation or replacement of 5,000 square feet of impervious surface. The reduction in the applicability threshold seems unjustified given that the implementation of effective treatment controls becomes significantly more difficult, and less cost-effective, on small sites. The estimated increase in annual municipal staffing to implement this expanded Provision C.3

oversight is approximately 5% of a full-time staff person. The City recommends that the Provision C3 threshold remain at 10,000 square feet for all projects.

Provisions C3.c.i.(6), *Low Impact Development*, requires Permittees to seek approval from the RWQCB prior to granting approvals for the installation of vault-based treatment measures designed to treat more than 50% of the provision C.3.d specified runoff from the site. As proposed, the provision interferes with a local jurisdiction's land use decision authority and should be eliminated. This is a new requirement that was not in the previous Tentative Order, and there is no rationale provided to justify this new requirement. Requiring approval from the Executive Officer puts the City at risk of not meeting its obligations to review and process the permit application under the time limits imposed by State Permit Streamlining Act.

Provision C3.e.i.(1)(d) (i) and (ii), *Alternative Compliance with Provision C.3.b., Transit Village Exemption*, designate certain parking space density criteria. Please revise these requirements to allow greater flexibility for the local agencies to ensure compliance with all planning criteria.

Provision C.3.i, *Required Site Design Measures for Small Projects and Detached Single-Family Home Projects*, requires the implementation of at least one site design feature for all projects that create or replace greater than 2,500 square feet and less than 10,000 square feet of impervious surface. This requirement will be labor-intensive, resulting in significant additional tracking and monitoring efforts. The estimated increase in annual municipal staffing to implement this expanded Provision C.3 oversight is approximately 10% of a full-time staff person. In addition, the water quality benefit derived from this intensification of effort is expected to be minimal and does not justify the increased costs.

Provision C.6.e.ii.(4), *Inspections, Tracking*, requires the development and maintenance of an additional construction inspection database. The City questions the need for an additional tracking system and recommends that the reporting requirement be revised to a summary of the construction inspections performed, and a summary of the violations observed/corrected.

Provision C.8, *Water Quality Monitoring*, expands requirements for regional water quality monitoring and study projects to be supported by the Alameda County Clean Water Program (ACCWP). This expansion of monitoring efforts is estimated to increase the ACCWP's annual monitoring program budget by approximately \$640,000. The estimated additional fiscal impact to the City of Alameda to support this stormwater program effort is approximately \$25,400 annually. No funding mechanism has been identified for the City's additional expense of contributing its share of the ACCWP operating budget to support the implementation of the new Provision C.8 monitoring requirements. Considering the current economic situation, we suggest distributing the monitoring requirements over more than one permit cycle through prioritization of monitoring activities based on the stormwater discharge relevance and cost/benefit analysis associated with these proposed monitoring activities. Phasing implementation of prioritized,

non-source mitigations, would allow local agencies and RWQCB staff to balance data collection with available resources and result in more meaningful information be submitted for review.

Provision C.10, *Trash Reduction*, requires enhanced trash management control measures. These efforts will require additional City staff time. No funding mechanism is identified for the additional municipal expense to support the implementation of these new trash control requirements. The estimated annual increase in municipal staffing to implement, track, and assess the increased trash management control measures is approximately 10% of a full-time staff person.

Provision C.10.a.iv, *Trash Hot Spot Clean Up to Trash Action Level*, requires the achievement of Trash Action Level goals at identified Trash Hot Spots. Results of a 2008 trash pilot study in which the City volunteered to participate indicate that litter along the Alameda shoreline is largely a result of tidal action. It was also noted that the type of litter found on city streets does not correlate with the type of litter found along the shoreline sites. It is observed that the achievement of shoreline trash action levels are not exclusively within City control, and the City should not be held to a regulatory standard for trash swept in by tides. The City recommends that the RWQCB devise appropriate accountability standards that reflect the regional nature of the trash problem.

Provision C.10.a.v, *Trash Capture Requirement*, requires the installation and maintenance of trash capture devices meeting a five-millimeter (5mm) mesh screen criteria. The installation of any device with a 5mm mesh screen is highly impractical in the City of Alameda as it will create a real likelihood of upstream flooding and damage to public and private property. This concern is further substantiated by the City of Los Angeles' technical report stating their observation that 5mm screen openings are problematic, as they tend to clog with minimal debris and may result in local ponding¹. Furthermore, the City's estimated cost for purchasing and installing vertical trash capturing devices, such as the ones used by the City of Los Angeles, will amount to about \$13,500². Additionally, the estimated annual increase in Maintenance staff time for maintaining these devices is approximately 5% of a full-time staff person. Therefore, the City recommends that this very specific engineering specification be modified to require the installation of trash racks to capture trash and to allow flexibility for local jurisdictions to adequately size the opening of the trash capture devices consistent with proven and workable engineering standards, and any existing State standards. In addition, the RWQCB or the SWRCB should provide a new revenue stream to fund this infrastructure mandate.

¹ Catch Basin Inserts Technical Report: Method to Determine CB Inserts Act as Full Capture Devices, Watershed Protection Division, Department of Public Works, Bureau of Sanitation, City of Los Angeles, June 2006: http://www.lastormwater.org/Siteorg/program/poll_abate/PilotStudyInsert.pdf

² Based on 2007 data released in Catch Basin Inserts report by Santa Clara Valley Urban Runoff Pollution Prevention Program: http://www.scvurppp-w2k.com/trash_bmp_toolbox_2007.htm

Provision C.11 *Mercury Controls* and C.12 *PCBs Controls*, require additional regional water quality pilot projects to be supported by the ACCWP. These pilot projects are roughly estimated to increase the ACCWP annual monitoring program budget by approximately \$254,000. The estimated additional fiscal impact to the City of Alameda to support this stormwater program effort is approximately \$10,000 annually. No funding mechanism has been identified for the City's additional expense of contributing its share of the ACCWP operating budget to support the implementation of the new Mercury and PCBs control requirements. Considering the current economic situation, we suggest distributing the monitoring requirements over more than one permit cycle through prioritization of monitoring activities based on stormwater discharge relevance and an analysis of the water quality benefits and the costs associated with these proposed monitoring activities.

Provision C.13.b, *Manage Discharges from Pools, Spas and Fountains that Contain Copper-based Chemicals* requires the installation of sanitary sewer discharge connections for new pools, spas, and fountains. This requirement may create undue long-term financial hardship for the City as we have a fixed allocation for discharges to the East Bay Municipal Utilities District (EBMUD) sanitary system. The more City waste streams that are added to the profile of discharges to the EBMUD system, the less additional development can occur. This may result in potentially significant long-term cost and revenue-loss impacts for the City, especially in light of proposals to redevelop the former Alameda Naval Air Station. Furthermore, the City is not aware that EBMUD is in concurrence with this requirement and we recommend that the RWQCB seek approval from EBMUD prior to mandating this treatment method in the City.

In Provision C.15, *Exempted and Conditionally Exempted Discharges*, individual residential car washing has been deleted. The City requests the restoration of Individual Residential Car Washing conditional exemption to the MRP. As written in the Federal Register of November 16, 1990 publishing the final rules for the federal storm water NPDES program, "It is unlikely Congress intended to require municipalities to effectively prohibit individual car washing or discharges resulting from efforts to extinguish a building fire and other seemingly innocent flows that are characteristic of human existence in urban environments and which discharge to municipal separate storm sewers."

Provisions C.15.b.iii.(1)(b)(ii-iii.), *Planned Discharges of Potable Water*, require reporting and monitoring for certain planned discharges of potable water. Please clarify whether these requirements for monitoring and reporting of planned discharges of potable water apply only to all discharges greater than or equal to 250,000 gallons per day/500,000 gallons total or all discharges of any volume. Monitoring and reporting for all planned discharges of potable water would be highly infeasible and time-consuming.

Proposed MRP Provisions of Moderate/Important Concern to the City of Alameda

Provision C.4.b.iii.(1), *Inspection Plan, Reporting*, requires the annual submittal to the RWQCB of specific revisions or updates to the list of the businesses subject to the local agency's business inspection workplan. This is an additional tracking and reporting exercise that will require additional staff time with no substantive benefit to water quality protection gains and will provide redundant information when compared with the annual inspection list submitted in compliance with Provision C.4.b.iii.(2). Restaurants and retail food facilities typically have a high turnover and we anticipate that significant changes to a complete list of businesses subject to inspection will occur every year. The City suggests that this annual business list update requirement be deleted from the Revised Tentative Order.

Provisions C.4.c and C.5.b, *Enforcement Response Plan*, require tracking, justification analysis, and reporting to the Water Board for corrective action responses taking longer than ten (10) days. This documentation effort is estimated to require approximately 5% of a full-time staff person.

Provision C.12.c., *PCB Controls, Pilot Projects to Investigate and Abate On-land Locations*, should be revised to specifically exempt areas such as former Alameda Naval Air Station (now known as Alameda Point) and the Naval Fleet Industrial Supply Center – Alameda (FISC-Alameda) where the RWQCB, the Department of Toxic Substances Control, and/or other state or federal environmental agencies already have responsibility for overseeing or implementing site remediation efforts for PCBs. Alameda Point and FISC-Alameda are federal facilities undergoing current (and recent) environmental remediation for contaminants including PCBs. The RWQCB is currently involved with regulatory oversight for these remediation efforts. It is not practical nor an efficient use of public funds for local agencies to implement pollutant control studies in areas where, presumably, the RWQCB has already overseen effective remediation.

Provision C.13.a., *Manage Waste Generated from the Cleaning and Treating of Copper Architectural Features, Including Copper Roofs, During Construction and Post-Construction*, requires the adoption and implementation of a municipal ordinance prohibiting the discharge of wastes from the installing, treating, cleaning and maintenance of copper architectural features. This requirement will cause the City to incur additional staffing expense. While the City may not have any objection to adopting such an ordinance, no funding mechanism is identified for the additional staff time to enforce this requirement. The estimated annual increase in municipal staffing to approve and implement this ordinance effort is approximately 5% of a full-time staff person.

Provision C.13.b. *Manage Discharges from Pools, Spas and Fountains that Contain Copper-based Chemicals*, requires the adoption and implementation of a municipal ordinance to prohibit discharges to the storm drain system from pools, spas, and fountains that use copper-based chemicals. This requirement will cause the City to incur additional staffing expense. While the City may not have any objection to adopting such an ordinance, no funding mechanism is

identified for the additional staff time and effort to enforce this requirement. The estimated annual increase in municipal staffing to approve and implement this ordinance effort is approximately 5% of a full-time staff person.

Proposed MRP Provisions that should be clarified to improve practical implementation efforts

Provision C.3.b.ii.(4), *Regulated Projects, New Roads*, includes contiguous sidewalks, bicycle lanes, and creek-side impervious trails within the definition of New Road Projects subject to Provision C.3. Please clarify whether this definition also extends to lagoon-side and bayside trails.

Provision C.7.a.i, *Storm Drain Inlet Marking*, requires inlet markings with “No dumping, drains to Bay” signs by the project developer upon construction and maintenance of these markings through the development maintenance entity. The provision states that the City needs to verify inlet markings prior to the acceptance of the project. Please clarify whether the City will be responsible for ensuring that the inlet markings on privately owned streets are being maintained in perpetuity.

Provision C.15.b.iii.(1)(b)(i-iii), *Planned Discharges of Potable Water*, require reporting and monitoring for certain planned discharges of potable water. Modify this language to make it clear that the local agencies must only notify and report to the Water Board staff information about these discharges that they are responsible for implementing.

Provision C.15.b.iii.(1)(c)(i-ii), *Planned Discharges of Potable Water*, require reporting and monitoring for certain planned discharges of potable water. The City requests that this language be modified to make it clear that the local agencies are only responsible for monitoring discharges that they are implementing excluding potable water discharges by non-Permittees.

Conclusion

The City of Alameda’s comments on the proposed requirements of the Tentative Order MRP highlight major and important concerns of the City. These concerns regard potentially significant City expenditures and/or staffing demands competing with current stormwater program implementation and major challenges for practical implementation of certain requirements. Our comments also provide suggestions to improve practical implementation efforts for water quality protection requirements.

The estimate of the City of Alameda’s annual costs for an additional full-time staff person for implementation of the proposed new requirements commented on above is approximately \$96,000 with benefits; fully burdened this staffing cost would be approximately \$150,000. In addition, the estimate of the City’s annual expenditures above current implementation expenditure levels for the proposed new requirements commented on above amounts to \$48,900,

for a total annual increase of approximately \$200,000, about 10% of the City's current stormwater program budget. This increase does not take into account staff efforts/costs that other City departments may incur as a result of increased coordination efforts necessary to implement proposed new requirements.

In addition, the Revised Tentative Order MRP does not include or identify any State funding mechanisms to implement proposed new initiatives. Unless the Water Board provides for a new revenue stream to fund these additional mandates, the City will not be able to implement new requirements within our financially constrained resources without ceasing other stormwater quality protection efforts.

The City also acknowledges and supports the comment letters being submitted by the ACCWP and the Bay Area Stormwater Management Agencies Association in response to this Revised Tentative Order. The City also references its previous comments submitted during previous public comment periods of the MRP development process, dated February 27, 2008, July 13, 2007, and November 8, 2006, respectively.

The City of Alameda requests the RWQCB staff make this letter an official part of the record for the MRP proceedings. Thank you for the opportunity to provide comments on the Revised Tentative Order of the MRP. If you have any further questions on these comments please contact Barbara Hawkins, City Engineer, at (510) 749-5840.

Sincerely,



Matthew T. Naclerio
Public Works Director

MTN:gc

cc: City Manager