

April 2, 2009

Mr. John Muller, Chair
San Francisco Bay Regional Water Quality Control Board
1515 Clay St., #1400
Oakland, CA 94612



**Re: Municipal Regional Stormwater NPDES Permit–Revised Tentative Order
(February 11, 2009)**

Dear Chair Muller and Members of the Board:

The Contra Costa Council is a nonprofit, public policy advocacy organization whose mission is economic vitality and quality of life for the region. We have 400 members from business and industry, local government, education, labor and nonprofit community organizations.

The Council supports the objective of protecting San Francisco Bay and our local creeks from the harmful impacts of runoff, litter and illegal dumping. We also support the objective of consolidating individual permits into one regional permit.

In February of last year, we commented on the then Tentative Order and our concern about the onerous burden that would be placed on local government and the private sector and urged the board to delay and develop a permit that would be workable and cost-effective. We appreciate the many improvements that have been made in the proposed permit, but offer some additional comments and concerns:

1. The “Grandfather” Provision: Provision C.3.b.ii.(1) reduces the threshold that triggers coverage under the permit to 5000 square feet of impervious surface for particular types of projects *unless* the project has received “final, major, staff-level discretionary review and approval for adherence to applicable local, state, and federal codes and regulations, before July 1, 2011.” (footnote omitted) The section goes on to say, “Final, major, staff-level discretionary review and approvals are decisions by a public agency’s or governmental body’s staff that require the exercise of judgment or deliberation to approve or disapprove a particular development project, as distinguished from a determination that a development project has a complete application.” A footnote further explains that, “Final, major, staff-level discretionary review and approval include technical and/or engineering review and approval and may be referred to under different names depending on the Permittee and type of project, including the following: design, development permit, discretionary permit, parcel map, tentative map, and tract map review and approval.”

Comment: This language is ambiguous and subject to various interpretations. It does not clearly define the point in the approval process where the project proponents will know they will be able to implement a project without further changes to the stormwater design. Certainty and predictability is an important consideration for commercial projects. The number of projects that will be grandfathered in will be relatively small and does not justify the confusion that will be created by the new language. The permit should revert to the prior language grandfathering projects for which the application is complete or has been deemed complete under the Permit Streamlining Act.

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2. Redevelopment Projects: As currently drafted, the permit requires any redevelopment project to comply with the new stormwater requirements for the entire project, or provide equivalent offsite treatment, if it disturbs 50% or more of the pre-existing impervious surface. If less than 50% is disturbed, the project still must implement the permit's requirements for the stormwater runoff from the "disturbed" portion.

Comment: In-fill and redevelopment projects bring significant environmental and quality of life benefits, including improved air quality due to more efficient use of public transit, shorter commutes, and less clogged freeways. In addition, they bring significant economic benefits to a cash-strapped community that may be used to defray the added costs of implementing the new requirements of this permit. Each redevelopment project is different and comes with a different set of physical and economic constraints. *Any* improvement in stormwater management as a result of redevelopment is an improvement over the pre-existing conditions. Redevelopment projects should be encouraged and, rather than trying to squeeze all redevelopment projects into a one-size-fits-all regimen, the permit should simply require that such projects ameliorate stormwater impacts to the maximum extent practicable, the standard established by the Clean Water Act.

3. Application of 3.C.bi.i (requirements for Low Impact Development)

As currently drafted, the Municipal Stormwater Permit appears to require municipalities to impose Low Impact Development (LID) requirements on industrial facilities. The LID requirements would apply to any industrial facility disturbing more than 10,000 square feet of impervious surface. If less than 50% of the facility is disturbed, the facility would be required to treat the runoff from the disturbed portion using LID standards. If more than 50% of the facility is disturbed, the runoff from the entire facility would need to be treated using LID methods.

Comment: This is a clear example of trying to paint with too broad a brush. Applying standards that were intended primarily for residential and commercial development to industrial development is inappropriate. Industrial facilities are different. For example, they often handle hazardous material that need to be contained in the event of a spill. Even without accidents, deleterious materials may be present. Requiring such facilities to direct runoff to vegetated areas and maximize infiltration, for example, could make containment of spills and other materials more difficult and lead to unfortunate consequences.

Industrial facilities are almost universally subject to stormwater control requirements either under the statewide Industrial Activities Storm Water General Permit or under an individual NPDES permit. They are obligated to implement Best Management Practices developed especially for industrial facilities. They are inspected annually by professionals trained in the stormwater control methods specific to industrial facilities. These experienced inspectors are often employees or contractors of the U.S. Environmental Protection Agency. Addition of another



layer of, at best, duplicative and, at worst, dangerous regulatory requirements is not sound public policy. The Municipal Stormwater Permit should exempt industrial facilities covered by the statewide Industrial Activities Storm Water General Permit or under an individual NPDES permit regulating stormwater runoff.

4. Industrial Inspections: Section C4b.i requires municipalities to conduct stormwater inspections of industrial facilities.

Comment: As noted above, these facilities are already covered by the Statewide General Industrial Stormwater permit issued by the State. The State receives a fee to inspect these facilities and does so on a regular basis. Municipal staff does not have the expertise or resources to inspect complex industrial facilities. Requiring duplicative and redundant inspections of industrial facilities would be a waste of scarce municipal resources and is likely to lead to inconsistent results.

Thank you for your consideration of our comments.

Sincerely yours,

A handwritten signature in cursive script that reads "Linda Best".

Linda Best
President and CEO