

April 3, 2009

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

Subject: Comments from the City of Palo Alto on the Municipal Regional Permit Revised Tentative Order

Dear Mr. Wolfe:

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Thank you for the opportunity to submit comments on the Regional Water Board's Municipal Regional Permit (MRP) Revised Tentative Order dated February 11, 2009. The City of Palo Alto prides itself in conducting a comprehensive, effective, and proactive storm water pollution prevention program. As stated in our February 29, 2008 letter on the previous Tentative Order, the City of Palo Alto has been focused on local and regional challenges and opportunities for improving the quality of urban runoff that flows to our creeks and the San Francisco Bay for nearly 20 years. In that time, we have received numerous local, state and national awards for our leadership and efforts to manage and minimize storm water related impacts on water quality.

We have worked with Water Board staff over the past four years with the goal of creating a regional permit that achieves consistency in municipal performance throughout the Bay Area and adds some additional requirements to address specific pollutants of concern (POCs) in our region. In our previous comments, we requested that the Tentative Order focus on the following priority areas:

- Consistent implementation of current performance standards;
- Phased-in implementation of measures consistent with currently adopted pesticide, mercury and PCB TMDLs;
- Focused and cost-effective efforts to address trash in or likely to be conveyed by storm water into our waterways, with assessment work and data analysis informing the nature and location of the measures to be implemented;

- Limited, streamlined reporting based on summary presentations of the least amount of relevant material needed to document compliance with permit requirements; and
- Limited and cost-effective monitoring linked to relevant management questions.

At present, these areas remain our highest priority, although the cost-effectiveness of these storm water management measures has become even more critical as a result of the current economic downturn.

We appreciate that Water Board staff made significant changes to the standard operational components of the permit (i.e. Provisions C.2., C.4., C.5., and C.6.), allowing flexibility in implementation toward stated goals and outcomes. However, our concerns regarding other provisions (e.g., monitoring and POC Control Programs) were not adequately addressed, nor was there any attempt to set priorities among them and/or allow phasing-in of requirements over several permit cycles to take into consideration limited municipal resources.

General Comments

Need to Phase-in Enhanced Pollution Controls That Would Increase Municipalities' Costs

Local government storm water management agencies face very real and serious fiscal challenges not only with respect to funding new permit requirements, but in continuing to implement current programs. Existing law, established by Proposition 218 in 1996, requires local voter approval of certain storm water related fees and assessments. Proposition 218 partially exempts certain types of fees, such as those for water, wastewater, and refuse collection, but not storm water-specific fees, from the voter approval requirements of Proposition 218. Although the City of Palo Alto was able to secure the approval of property owners for its monthly storm drainage fee in a 2005 ballot measure, future fee increases are strictly tied to the local consumer price index, and the fee will sunset in 2017 unless it is reauthorized by a vote of the property owners.

Over the last 15+ years the requirements and scope of the storm water quality program have increased significantly from simply developing storm water management programs as envisioned in USEPA's regulations. These increased requirements have significantly increased the cost of compliance for cities and counties. And yet, the City of Palo Alto's available resources for its storm water pollution prevention program are constrained by the provisions of its property owner-approved funding source and Proposition 218. In light of current economic conditions, securing property owner approval for higher fees cannot be considered a feasible alternative at this time.

This systemic inability to significantly raise funds is compounded by the current and deepening recession, which is expected to take years from which to recover. Like your agency, local agencies are being forced to make major cuts in staffing and services. Potential funding for storm water quality protection measures, such as the State's \$90 million Proposition 84 Storm Water Grant Program, which Water Board staff have put forward as the way to fund many of the new MRP requirements, seems to have vanished. The approximately \$140 million in potential funding from the Federal government's American Recovery and Reinvestment Act of 2009 has been diverted from flowing to local governments for new water-related projects to covering State obligations. There is no "new money" to be found and designing and adopting a permit with a significant increase in compliance costs, while the cost and expenditures of every other aspect of government are being held at current levels or reduced, does not demonstrate sound public policy direction.

The Water Board should recognize that municipalities need an opportunity to successfully achieve permit compliance by allowing an adequate phase-in period for municipalities to attempt to secure additional sources of revenue. This is especially true for the POC provisions C.11 (Mercury) and C.12 (PCBs).

Major Concerns about Specific Provisions

In addition to the general comment made above, the City of Palo Alto has the following key concerns about the Revised Tentative Order:

Municipal Maintenance (C.2)

- C.2.d. Stormwater Pump Stations – We appreciate Water Board staff's changes to C.2.d. to focus on the water quality problem of low dissolved oxygen in discharges from pump stations. However, this provision still requires a major effort by municipal agencies with large numbers of pump stations to conduct dry weather monitoring and post-storm inspection and cleanup activities. These activities will not only increase the work load of maintenance crews, they will also require additional equipment and training of staff for sampling and data collection. In particular, Provision C.2.d.ii.(4), which requires inspection of all pump stations in the first business day following a large storm, will be problematic for cities with a large number of pump stations. For example, Palo Alto has nine pump stations, several of which do not discharge directly to a creek or the Bay. We request that this provision be modified to focus on inspection of only pump stations of significant size that discharge directly to water bodies, and that more time be allowed following a major storm event to conduct the inspections.

New Development and Redevelopment (C.3.)

We appreciate Water Board staff addressing some of the comments we provided on Provision C.3. in our February 29, 2008 letter. However, we have major concerns about other revisions to C.3.:

- Water Board Staff Notification/Approval of Projects with Vault-Based Treatment Systems: This new section of Provision C.3. requires that Permittees submit information to Water Board staff on certain individual development projects that use “vault-based treatment systems” for storm water treatment, and in some cases receive Executive Officer approval, before final approval has been granted by their agencies. This requirement limits the treatment options for a site, is likely to create unnecessary project delays, increases the work load for municipal planning staffs, and encroaches on the Permittees’ land use authority. This additional regulatory burden on the Permittees is not an acceptable change to the Permittees’ development project review processes. We request that this section be changed to state the goal of limiting the use of vault-based systems, specify under which circumstances they can be used, and request notification of the use of these systems in the Permittees’ annual reports only.
- Effective Implementation Dates: The permit needs to allow Permittees time to prepare to implement new requirements. Most of the C.3. requirements in the Revised Tentative Order are listed as “effective immediately” (for all Permittees except Vallejo). Although Permittees have been implementing controls on new and redevelopment projects for several years, there are a significant number of new requirements and changes to C.3., and Permittees will need time to revise ordinances, policies and procedures, update handbooks and guidance materials, and educate staff and project applicants about the changes. An extension of the implementation date is especially important for the hydromodification management (HM) requirements, since there have been significant changes in the SCVURPPP HM applicability criteria (project size thresholds and map). We request that Permittees be allowed one year to prepare to implement the new requirements (except for the threshold change to 5,000 SF for special land uses, and the small project requirements, which have other specific implementation dates) during which time the current C.3. provisions would remain in effect.
- Timing of Implementation of New Requirements: The permit specifies how several new requirements (e.g. the threshold change to 5,000 SF for special land uses, and the low impact development requirements) would apply to development projects still in the municipal planning approval process when the new requirements are to take effect. Specifically, the permit exempts only projects that “have received final, major, staff-level discretionary review and approval for adherence to applicable local, state, and federal codes and regulations” from the new MRP requirements.

This provision is fundamentally unfair, in that a local permitting agency cannot change its requirements after an applicant has made a good faith effort to submit a full and complete application that complies with the permitting agency's rules and regulations in place at the time of the application. The MRP language should be changed to exempt from new requirements all projects that have submitted a development permit application that has been "deemed complete" by the permitting agency staff on or before the effective date of the new requirements.

Water Quality Monitoring (C.8)

The new monitoring requirements represent a very significant increase in resource commitment above current monitoring efforts and will require a very significant expenditure of public resources. In addition, as currently drafted, many of the monitoring requirements are: 1) not based on sound science; 2) too prescriptive to allow for adaptive monitoring or collaborative efforts underway via the Regional Monitoring Program for Water Quality (RMP); 3) not necessary (data for data's sake and/or focused beyond pollutants subject to regulation under a federal permit); and 4) not prioritized so as to allow monitoring resources to be focused on the most urgent water quality issues.

We request that Water Board staff rewrite this section to address the aforementioned deficiencies. In addition, we request that the following specific revisions be made to Provision C.8 in the Revised TO:

- Algae Bioassessment and Nutrients (Table 8.1) – change requirement from conducting algae bioassessment and nutrients sampling and evaluation to design of a characterization study to be conducted in the next permit term.
- Long-Term Monitoring (C.8.d) – this section contains requirements that are duplicative of those in C.8.f. Remove this provision and incorporate into Provision C.8.f as needed.
- Pollutants of Concern Monitoring (C.8.f) – add flexibility to language that will allow consistency with methodology agreed upon in the RMP's Small Tributaries Loading Strategy.

Trash Reduction (C.10)

The City of Palo Alto concurs with the need for systematically assessing trash accumulation areas potentially associated with storm water and enhanced actions to better address controllable sources and/or conveyance of storm water-related trash affecting such areas. However, the Revised Tentative Order contains language that will likely result in non-compliance during the permit cycle even though substantial good faith efforts have been made. Specifically, we request that:

- Section C.10.a.(iv) - Trash Hot Spot Clean Up to Trash Action Level be revised to make clear that: 1) the Trash Action Level (TAL) of “100 trash items per 100 feet of creek” is a goal or a trigger for actions, not a water quality objective or numeric effluent limitation; and 2) the TAL be a number of pieces per 100 feet of creek as opposed to the SCVURPPP “Urban Optimal Level”, which includes more subjective metrics that could create consistency issues among programs/cities.
- Section C.10.a.(v) – Trash Capture Requirement be revised to allow for potential revision of the 5mm mesh screen standard in the event that Permittees identify a trash removal device or technique that successfully achieves the goal of removing visible trash from storm water runoff without attaining compliance with the 5mm standard.
- The frequency of assessment in Provision C.10.b(i) be reduced to “at least once per year at each approved trash hot spot”. The current requirement is two times per year.

Mercury and PCBs Controls (C.11 and C.12)

Since mercury and PCBs have adopted TMDLs, we agree that these should be a high priority for control measure implementation. However, the permit provisions as written represent a significant expenditure of public dollars on untested control measures. In an effort to take a more fiscally and scientifically responsible path to address mercury and PCBs in urban runoff, we request that the following revisions be made to Provisions C.11 and C.12 of the Revised Tentative Order:

- Combine C.11 and C.12 into one provision to eliminate duplication and inconsistencies.
- Conduct Pilot Projects to Evaluate On-Site Stormwater Treatment via Retrofit (C.11/12.e) – The Revised Tentative Order states that Permittees, working collaboratively, shall identify at least 10 locations throughout the Permittees’ jurisdictions that present opportunities to install on-site treatment systems (e.g., detention basins, bioretention units, sand filters, infiltration basins, treatment wetlands). Due to the unknown effectiveness and pilot nature of retrofits, we request that the number of locations be reduced from 10 to 4 throughout the Permittee’s jurisdictions (regional) and language be added to allow existing treatment systems to be utilized where applicable.
- Diversion of Dry Weather and First Flush Flows to POTWs (C.11/12.f) - Proposed conditions require that a feasibility study on the diversion of dry weather and first flush flows to the sanitary system be conducted, and require implementation of a flow diversion pilot without regard for results and findings of the feasibility study. It is clear from even preliminary exploratory discussions that any potential storm water diversion to the sanitary system will pose significant engineering, regulatory,

financial, legal and institutional challenges. Therefore, we request that during this permit term a feasibility study be conducted and requirements in subsequent permits consider the findings of the feasibility study prior to requiring implementation of dry weather or first flush diversions.

Conditionally Exempted Discharges (C.15.)

In its February 29, 2008 letter, SCVURPPP commented that the draft MRP contains numerous new requirements associated with conditionally exempted discharges, and that it is unclear what specific problems have arisen to justify the inclusion of these proposed changes in the existing municipal program. SCVURPPP asked that the implementation of BMPs for certain types of discharges be flexible, scaled to the nature of the threat posed, and subject to a municipality's discretion to require as appropriate and necessary given the threat posed (and secondary to public health and safety issues). Despite the fact that SCVURPPP staff and BASMAA met with Water Board staff on several occasions to discuss this section, the Revised Tentative Order contains no changes to address these very important concerns. The changes made to this section simply provide more detail on how the monitoring, tracking and reporting of the various discharges needs to be done.

Our specific concerns include the following:

- The amount of tracking, monitoring and reporting of relatively minor discharges such as pumped groundwater and swimming pool discharges will be a huge burden on municipalities.
- The monitoring of small, incidental discharges of pumped groundwater, foundation drains, crawl space pumped water, and footing drains for the full suite of chemicals listed at a frequency of a minimum of once a month is unnecessary and overly burdensome. We request that the monitoring requirements only apply to the rare situations where a large discharge of potentially contaminated water merits the types of monitoring proposed.
- The revised permit continues to include very prescriptive monitoring and reporting requirements for planned, unplanned, and emergency discharges of potable water, which will have significant impacts on the City of Palo Alto's municipal water operations and maintenance staff. We request that the language be modified to
 - 1) make it clear that the Permittees are only responsible for monitoring discharges that they produce and not discharges by potable water dischargers who are not Permittees; and
 - 2) eliminate overly prescriptive record keeping and reporting that interferes with responding to unplanned potable water discharges, and require monitoring only to the extent that time and resources allow and only where and when it is safe to do so.

- This Provision needs substantial revision emphasizing the implementation of best management practices. We request that our current effective BMP-based program, based on the SCVURPPP Conditionally Exempted Discharges Report submitted and approved by Water Board staff in 2000, be grandfathered and remain in full effect.

Annual Reporting Requirements (C.16)

Although it is appreciated that the Water Board staff has eliminated the Annual Reporting template form contained in the prior MRP draft, there is still concern regarding the proposed approach of developing annual reporting forms by way of a collaborative process between Water Board staff and the Permittees, with final approval by the Executive Officer. The City of Palo Alto would like to reiterate its position that the annual reporting process should not impose a significant incremental burden on local agency staff with little, if any, resulting benefit to water quality. The annual reporting forms to be negotiated with Water Board staff should substantially decrease the reporting requirements to the level of summary presentations of the least amount of relevant material needed to document compliance with permit requirements.

In conclusion, I believe that the Tentative Order includes many potential new or significantly expanded requirements that: (1) are not mandated by law or reflected in USEPA-issued municipal storm water permits; (2) would represent a significant expenditure of public resources that are not available at the local level; and (3) with a few notable exceptions involving pollutants of concern (which still need to be fine-tuned to avoid wasting resources), are unlikely to produce a significant return in terms of increased water quality benefits. It is essential that the MRP requirements be prioritized to address identified, significant water quality problems (TMDLs and trash) and phased over time based on a realistic assessment of current municipal resources and the other burdens being placed on Bay Area cities, counties and special districts at this time.

Thank you for the opportunity to comment on the Revised MRP Tentative Order. While we remain committed to the implementation of activities and programs that reduce storm water pollution from urban runoff to the maximum extent practicable, our fiduciary responsibility to make prudent use of the taxpayers' money obligates us to oppose the adoption of the permit without further revisions as outlined above. I strongly encourage you to direct Water Board staff to work with BASMAA and its agency members to modify the permit by eliminating elements that lack the potential for real-world water quality benefits, focusing the requirements on key areas based upon a logical prioritization process, and allowing the phase-in of the requirements over several permit cycles in light of the reality of limited municipal resources.

Sincerely,

Joe Teresi

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