

March 5, 2008

John Muller, Chairperson
San Francisco Bay Regional Water Quality
Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Dear Mr. Muller:

The Contra Costa County Flood Control and Water Conservation District offers the following comments to the TENTATIVE ORDER R2-2008-XXXX NPDES PERMIT NO. CAS612008:

Starting with the initial National Pollutant Discharge Elimination System permit (NPDES Permit No. CA0029912), issued by the San Francisco Bay Regional Water Quality Control Board (Regional Board) on September 23, 1993, waste discharge requirements in Contra Costa County have been addressed by the Stormwater Management Plan of the Contra Costa Clean Water Program (CCCWP--formerly the Contra Costa Cities, County, District Stormwater Pollution Control Program). The collaborative approach of the CCCWP has been very successful. The implementation costs of the Stormwater Management Plan are apportioned in accordance with the population of the cities and unincorporated county. This financial arrangement reflects the fact that non-point source pollution is fundamentally the result of human activities.

The Contra Costa County Flood Control and Water Conservation (FC District) does not have a permanent resident population and has not been subject to requirements of prior Municipal NPDES permits. Nevertheless, the FC District plays an integral part in implementing the Stormwater Management Plan. Under interagency agreements the FC District provides staff for the CCCWP, technical assistance and fiduciary support for each city and the unincorporated county by collecting stormwater utility assessments, accounting costs and disbursing assessment revenue.

The proposed NPDES PERMIT NO. CAS612008 contains requirements specific to “Non-population-based Permittees” contained in Sections C.7.a, “Storm Drain Inlet Marking”, C.7.e, “Public Outreach Events”, and Sections C.10.b.i(1), C.10.c and C.10.d. These requirements are clearly applicable to the FC District. The FC District has the following concerns regarding these specific requirements:

Section C.7.a, “Storm Drain Inlet Marking”:

In general, FC District facilities are not open to the public and the drainage inlet structures do not conform to typical street inlet structures with curbed openings. There is little risk of the public discharging contaminants into FC District inlets and almost no opportunity to notify the public of the fate of contaminants discharged into the FC District’s catch basins without specially constructed signing. The cost of such signing far exceeds the reasonable benefit to be realized. However, the District has entered into joint use agreements with other public agencies (East Bay Regional Park District and municipalities) for public access to certain FC District lands. In areas of established public use, there may be reason to provide storm drain inlet marking and the FC District will work with the joint user agencies to mark inlets where standard street inlets exist.

Section C.7.e, “Public Outreach Events”:

Table 7.1 indicates a requirement for the FC District to hold six (6) Public Outreach Events during each year of the permit. With the exception of homeless encampments, trespassers and the users of the recreational facilities of other agencies, the FC District has no population. There does not seem to be a clear nexus for requiring the FC District to provide these outreach events. Fixed signage at public entry points to FC District property would be a more direct and effective communication to our population.

Section C.10.b.i(1), “Implementation and Assessment”:

The FC District provides services to the entire county. However, the FC District operates and maintains facilities serving tributary areas constituting approximately 80% of the urban and suburban area of the county. Section C.10.b.i should be reworded to read:

Non-population-based Permittees, such as county flood control districts, shall address 1 percent of the Urban and Suburban Land Area tributary to their drainage facilities.

In addition, agricultural areas and non-urban parks should not be considered part of the "Urban and Suburban Land Area".

Section C.10.c, "Long-Term Plan for Trash Impact Abatement":

No plan, program or device will completely eliminate impacts from litter. The requirement for a long term trash impact abatement plan should include realistic goals that are practicable.

Section C.10.d, "Reporting":

The last sentence in the fourth paragraph of Section C.10.d should be reworded to read:

Non-population-based Permittees shall report compliance with the requirement for trash control from at least 1 percent of the Urban and Suburban Land Area tributary to their drainage facilities.

Other Sections of NPDES PERMIT NO. CAS612008:

Since the remaining provisions of the NPDES permit do not specifically reference "Non-population-based Permittees, the intent of the Regional Board to apply these requirements to the FC District is not clear. For completeness, the following comments are provided:

The FC District is not a general purpose government entity and has severely constrained revenue sources that were established in the 1960's and early 1970's principally for maintaining single purpose storm water conveyance facilities to the standards applicable at that time. The FC District has no permanent resident population and no land use authority.

Section C.1, "Water Quality Exceedances":

The FC District is a common carrier for storm water, receiving storm water from municipalities and the unincorporated county areas adjacent to its facilities. From a practical perspective, the FC District is unable to affect storm water quality from adjacent areas. From a governance perspective, the FC District does not have the authority to control storm water quality within municipal and unincorporated county areas that drain to our facilities.

Section C.2, "Maintenance Operations":

The FC District constructs, owns, operates and maintains large regional drainage conveyance facilities. Maintenance services are performed for the FC District by the Contra Costa County Public Works Department (CCCPWD). CCCPWD provides appropriate staff training and performs the maintenance operations in accordance with the requirements of the RWQCB.

Section C.3, "New Development":

The FC District has no land use authority.

Section C.4, "Industrial and Commercial Site Controls":

There are no industrial or commercial sites on FC District property.

Section C.5, "Illicit Discharge Detection Elimination":

The FC District has no enforcement authority outside its own property. Section C.5.d, "Collection System Screening" – The FC District is not a significant source of illicit discharges. The FC District will assist adjacent municipalities and the unincorporated county in their activities to identify end of pipe water quality. However, the FC District should not be responsible, in this or future permits, for the costs of such screening that exceed the proportion of the FC District's owned land area to the entire watershed area tributary to the point of interest.

Section C.6, "Construction Site Control":

FC District capital projects are subject to individual permits from the RWQCB. Projects proposed within FC District property are required to secure appropriate RWQCB permits.

Section C.7, "Pubic Information and Outreach":

Except as noted above the FC District should not be subject to the requirements of this section.

Section C.8, "Water Quality Monitoring":

The FC District should not be responsible, in this or future permits, for the costs of water quality monitoring that exceed the proportion of the FC District's owned land area to the entire watershed area tributary to the point of interest.

Section C.9, "Pesticides Toxicity Control":

The FC District fully complies with this section, except for Section C.9.h, "Public Outreach", that is not applicable since the FC District does not have a permanent resident population. The FC District uses chemical herbicides to manage its facilities in accordance with NPDES Permit No. CAG 990005, adopted by the State Water Resources Control Board on May 20, 2004, in compliance with the regulations of the California Department of Food and Agriculture and under the oversight of the County Department of Agriculture. Testing and reporting on the FC District's activities are readily available to the SFBRWQCB and additional requirements would be duplicative and unnecessary.

Sections C.11 through C 14, "Mercury, PCB, Copper and PBDE Control":

The FC District should not be responsible, in this or future permits, for the costs of water quality monitoring that exceed the proportion of the FC District's owned land area to the entire watershed area tributary to the point of interest.

Should you have any questions regarding this communication, please contact me at (925) 313-2203 or Greg Connaughto at (925) 313-2271.

Sincerely,

Mitch Avalon
Deputy Chief Engineer
Contra Costa County Flood
Control & Water Conservation
District