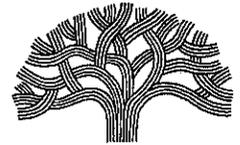


CITY OF OAKLAND



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February 29, 2008

John Muller, Chair
Bruce Wolfe, Executive Officer
San Francisco Bay
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, California 94612

Dear Chairman Muller and Members of the Board,

Thank you for the opportunity to submit our comments on the Water Board's pending Municipal Regional Permit (MRP). The City of Oakland is very supportive of this effort to improve the environment in both Oakland and the San Francisco Bay. Our comments are intended to ensure that Oakland and other cities have access to as many options as possible to achieve success in this shared effort.

Oakland is proud that our creativity and innovation in addressing water quality led to our nomination by Water Board staff for the EPA's 2007 Excellence in Stormwater Management Award. Our successes and failures have shown us that there is no silver bullet or one-size-fits all strategy to improving the environment. Restricting the toolbox available to us will limit our ability to continue to explore this growing field. Our past success is in part owing to the flexibility of previous permits that have allowed us to leverage a variety of resources. If the new permit does not allow for this continued innovation, Oakland will lose the flexibility needed to seek out and test new approaches to water quality management.

We are also aware that some municipalities may not be providing appropriate levels of water quality protection. We agree that all cities in the Bay Area must be held to standards to ensure improvement of the Bay Area's environment. As written, however, the MRP is creating restrictions and reporting requirements that may unduly hinder Oakland's efforts to pursue a variety of innovative approaches to address this complex problem.

We encourage the Board to set the standards and to let the individual municipalities determine the most effective and appropriate means by which to achieve them. This approach will give those cities that are meeting the standards the necessary flexibility to continue to innovate and succeed. At the same time, the Board will have the ability to dedicate its valuable resources toward the enforcement of these standards in municipalities that do not meet the standards.

The following comments include some of those being submitted by the Alameda County Clean Water Program as well as comments specific to the City of Oakland.

Provision C.3: New Development and Redevelopment

Background: Most of the requirements of Provision C.3 were incorporated in our existing permit that was re-issued in 2003. The Countywide program and Oakland have spent a tremendous amount of time and resources developing and incorporating these requirements for stormwater treatment controls into its planning and project approval process. The requirements for managing increases in flow from development projects (hydromodification amendments) were recently adopted by your Board last year and are just starting to be implemented. The requirements for inspection and maintenance of the treatment controls are increasing as more of these facilities are installed. The full resource impact of these existing requirements on Oakland and the affects on water quality is still unknown. As implementation progresses, we may be better able to ascertain the full water quality and financial implications.

Concerns: The City's concerns with the requirements in the Tentative Order are the same as when the C.3 requirements were adopted in 2003. At that time, Water Board staff proposed a size threshold for treatment of 5,000 square feet and proposed requiring the installation of treatment control devices for road reconstruction projects within the existing right-of-way. A mutually agreeable solution was reached. Water Board staff is now attempting to insert the same requirements that were rejected previously as being non-productive and not a good use of limited resources.

- Requiring treatment on projects that create or replace between 5,000 and 10,000 square feet or more of impervious surface:

The Tentative Order currently proposes that two years after Permit adoption, the size threshold of projects requiring stormwater treatment would be lowered from 10,000 to 5,000 square feet for several categories of development. There are a number of reasons why small new development and redevelopment projects that create or replace from 5,000 – 10,000 square feet of impervious surface should be excluded from coverage as Regulated Projects. A disproportionate amount of the implementation costs will be directed at inspecting small treatment devices and conducting enforcement actions against parties that are not conducting adequate maintenance. Once these devices are installed, they will need to be inspected and maintained in perpetuity; thus, the cost of inspection and enforcement will continue to increase dramatically over time.

- Requiring structural treatment controls for road reconstruction projects within existing right-of-way:

Under the City's existing permit, road reconstruction within the existing right-of-way in areas where there is existing development on both sides of the road is excluded from the numeric treatment requirements. This type of project was excluded for good reason. There are logistical constraints when installing stormwater treatment controls within an existing roadway. Available treatment systems require gravity fall in order to function, requiring significant redesign and, in some cases, installation of new storm drainage systems where none exist today. Requiring installation of these treatment systems in these situations may not be practical and could place a significant economic burden on already under-funded municipal street maintenance programs.

Proposed Resolution:

- Keep the current 10,000 square foot threshold so as to allow our Permittees to more effectively implement this program.
- Keep the current exemption for roadway reconstruction projects within existing right-of-way.

Provision C.4: Industrial and Commercial Site Controls

Background: The City of Oakland has been conducting industrial and commercial facility stormwater inspections for over fifteen years. Under the current permit, municipalities are required to prepare a five-year work plan that lists all facilities deemed to have a potential to contribute to stormwater pollution and develop a list of priority facilities.

Concerns: The required inspection frequency for particular categories of industrial and commercial facilities is too prescriptive and is not appropriate. Additionally, the language in Section C4.b is unclear in several cases regarding the frequency and category of facility inspection. Of particular concern is the requirement to inspect SARA Title III, Landfills and General Industrial Permit facilities every year. SARA Title III facilities include, those with inert compressed gas on site in quantities over reporting thresholds (i.e., 200 scf). This may include such benign facilities as a gift shop with a helium cylinder for filling party balloons, its only "industrial" activity. Annual inspections of this type of facility will not further water quality benefits and will divert resources from activities that will. Similarly, it is not appropriate to require inspections of all General Industrial Permit facilities every year. Some of these facilities have a very low likelihood of contributing to stormwater pollution. The City inspectors are dedicated professionals. They have on-the-ground knowledge and are in the best position to determine which facilities should be high priority facilities.

Proposed Resolution: Remove the designated frequency of inspection by business type. Require that all businesses with a potential to contribute to stormwater pollution be inspected at least once during the five-year permit term. Allow the municipalities to develop their own list of high-priority facilities, with commensurate inspection frequencies, reflecting both risk and compliance histories, as they are currently doing. Additionally, clarify language in Section C4.b to ensure that the requirements are not more expansive than intended.

Provision C.10: Trash Reduction

Background: Litter is a serious problem in many communities throughout the Bay Area as well as in local creeks and in San Francisco Bay. Oakland is currently conducting many significant litter reduction activities including: banning plastic bags and styro-foam take-out containers, enhanced street sweeping, targeted enforcement and cleanup activities, volunteer cleanup events, multi-agency partnerships, public outreach campaigns; and installing structural trash capture devices.

Concerns:

- The requirement to install full trash capture devices to treat all runoff from at least 5% of the land area of every municipality is not appropriate for all municipalities as the level of urbanization and associated litter problems varies widely between municipalities. Structural litter control mechanisms may not be feasible in all urban settings.
- The requirements of the enhanced litter control measures are too prescriptive. These measures may not be appropriate in many areas where municipalities would like to conduct enhanced litter control activities. Targeted enforcement and cleanup efforts, multi-agency collaborations, youth employment programs, litter fees, etc. may be more effective in some Oakland neighborhoods than those cited in the Tentative Order.

Proposed Resolution: The problem of litter in our creeks and the Bay cannot be solved through controls on stormwater discharges alone. This will require a coordinated effort between local and State agencies. At the stormwater workshop the Water Board held last year, the Water Board recommended establishing a trash task force of State and local agency representatives to address trash related issues. This is an excellent idea that should be implemented. Before jurisdictions spend tens of millions of dollars on control measures that may not make a significant dent in the problem of litter in local creeks, we should work together to develop a comprehensive trash and litter control plan.

Oakland is also requesting specific changes to the permit language to provide flexibility for local agencies to address trash using an array current and future technologies and strategies. The City requests that the permit language requiring that half of the enhanced trash management catchment area be managed only by structural controls and the criteria restricting enhanced trash management efforts to just the lower reaches be eliminated. The City of Oakland believes that having access to all current and future strategies and technologies is essential to achieving more in trash reduction. It is also important that we

not divert efforts to only the lower reaches of the watershed and potentially miss opportunities to implement strategies that can realize trash reduction in both the lower and upper watershed. Allowing the flexibility to utilize a variety of both broad and site specific strategies including structural controls, street sweeping, litter collection, enforcement, outreach, target clean-ups, inlet cleaning, etc will lead to more success.

Record Keeping and Reporting:

Background: The City is currently submitting very extensive annual reports. Many aspects of these reports have been revised to respond to Water Board staff requests for additional information. The current level of reporting for the City requires the allocation of staff members time for several weeks. A stated goal of both Water Board staff and stormwater representatives at the start of the development of the MRP was to have streamlined reporting – this has not been accomplished by the Tentative Order.

Concerns: The “streamlined” record keeping and reporting in the Tentative Order results in an annual report that has grown from 30 pages to over 100 pages. In addition, reporting requirements in many of the Provisions of the Tentative Order are extensive. The level of detail requested is onerous and several times as much effort as our current reporting and includes the development of six new databases. Permittee staff resources dedicated to record keeping and reporting will consequently not be available to conduct water quality activities.

Proposed Resolution: Direct Water Board staff to work with local agencies to revise and streamline reporting requirements.

We share your goals and want the same thing – to improve the stormwater quality in our City and in the San Francisco Bay. We look forward to the opportunity to sit down with Board staff to work out these issues and the specific language of the permit.

Sincerely,



Lesley Estes
Stormwater Program Manager
City of Oakland