



City of Pittsburg

65 Civic Avenue • Pittsburg, California 94565



February 29, 2008

E-TRANSMITTAL & REGULAR MAIL

Mr. John Muller, Chairman
California Regional Water Quality Control Board
San Francisco Bay Region 2
1515 Clay Street, Suite 1400
Oakland CA 94612

Attn: Dale Bowyer, MRP Tentative Order Comments

Re: Written Comments regarding Proposed Municipal Regional Permit (MRP)

Dear Chairman Muller, Board members and staff:

For the past 15 years, the City of Pittsburg and other member agencies of the Contra Costa Clean Water Program have worked together to improve water quality through the reduction or elimination of polluted runoff under a countywide NPDES permit. Each year, the City of Pittsburg's stormwater utility assessments generate \$800,000 that is committed in full to NPDES permit activities.

New Municipal Regional Permit Requirements

In December 2007, your agency aired a proposal to adopt a new Bay Area-wide Municipal Regional Permit ("MRP") covering 77 public agencies in the Bay area. The City of Pittsburg must voice its strenuous opposition to the MRP as proposed. It is overly complex and exorbitantly expensive, requiring numerous academic and esoteric creek studies in lieu of real-world water quality improvements.

With this letter, Pittsburg joins its neighbors in their objections to the proposed MRP, which at 388 pages is far more prescriptive than previous permits, and includes unnecessarily detailed requirements. The City supports and includes by reference the comments submitted to the Board from the Contra Costa Clean Water Program and the Bay Area Stormwater Management Agencies Association (BASMAA) regarding the draft MRP.

As written, the MRP is far too broad, and if implemented in its present form, will be overly burdensome and financially infeasible for this (and most other) cities. Pittsburg respectfully, but strongly, urges Board members to direct RWQCB staff to work with local agencies to revise and prioritize MRP requirements.

An important first step would be to allow local jurisdictions a more reasonable period of time to meet MRP provisions, particularly for trash controls in the storm drain system. Our staff's itemized assessment of the proposal is enclosed with this letter to assist you in your re-evaluation of this proposal.

Financial Constraints

Apart from time constraints, another primary objection is that the MRP appears to ignore practical and financial constraints facing public agencies today. For example, Pittsburg's stormwater utility assessments, which generate \$800,000 annually, are at their maximum allowable limit. The Contra Costa Flood Control Act was previously modified to create our counties current funding source for NPDES compliance efforts. This and other similar funding mechanisms are no longer available to public agencies in the post Proposition 218 environment. City staff has estimated that implementation of the MRP will require an additional \$750,000 to \$1.5 million each year – far outpacing the current fee which is entirely dedicated to existing NPDES permit activities.

With Proposition 218 restrictions in force, staff is doubtful that a new or increased stormwater fee would be approved by voters. In addition, the current economic slowdown and housing slump have reduced local revenues and stretched City resources to their limit to provide even the most basic services, such as police and fire protection. The MRP is nothing more than an unfunded mandate for municipalities and agencies and we cannot simply absorb these additional costs for regulatory compliance, without significant elimination of other City programs and services.

Our City of Pittsburg General Fund Operating Budget is forecasted to face a \$4.0 million dollar deficit in FY 2008/09. The \$1.5 million in proposed costs associated with NPDES compliance under the new MRP regulations exacerbates our budget deficit shortfall, and serves as an opportunity cost which would supplant the following cost considerations in our General Fund Budget, as follows:

- **Elimination of ten (10) budgeted police officers in our community, or**
- **Elimination of our Recreation Department and ALL staff positions, and**
- **Closure of a Community Swim Center, and**
- **Closure of Senior Center Operations**

While this community remains committed to reducing pollution in our creeks and regional waterways, the onset of additional, expensive new requirements, many with questionable or unproven water quality benefits, without a source of dedicated funds will likely force local governments to eliminate and supplant other needed General Fund programs and services when they can least afford to.

In short, the MRP is a prescription for impossible financial choices that will force cities to choose between creeks and crime prevention in the years ahead. Creating an adversarial relationship with the voting public over funding choices is a recipe for disaster, not only for cities, but for the environmental community as well.

We urge you to reconsider your regulatory compliance for municipalities under the new MRP requirements, and direct staff to work with regional municipalities and leaders to develop a new plan that can achieve reduced water pollution, without the certain and significant financial impacts to our communities. In addition, we urge the California Environmental Protection Agency/State Water Resources Control Board to work with the State Legislature to develop a legislative vehicle through which local governments in California can finance and implement NPDES requirements, and makes it possible for local government to comply with regulations.

Should you have any questions regarding this matter, please contact City Manager Marc Grisham at (925) 252-4850.

Sincerely,



Will Casey
Mayor

Enclosures: City of Pittsburg, Specific Comments on the December 14, 2007 Tentative Order for the Municipal Regional Permit

cc: Pittsburg City Councilmembers
Assemblymember Mark DeSaulnier, 11th District
State Senator Tom Torlakson, 7th District
City Manager
Assistant City Manager
Public Works Director
Assistant Planner

City of Pittsburgh
Specific Comments on the December 14, 2007 Tentative Order for the
Municipal Regional Permit

C.2.f. Catch Basin or Storm Drain Inspection and Cleaning.

This requirement arbitrarily requires annual inspections and cleaning of all catch basins and storm drain inlets before the wet season. As written, this provision would require the City to fund the purchase of an additional vector vehicle and to employ an additional storm vector vehicle crew.

City crews currently take the entire year to clean the entire system, and use a targeted approach that focuses on problem areas, working in a logical way from the upper reaches of the system to the lower reaches. This added prescriptive requirement would preclude the City from the current approach to inlet, basin, and line cleaning that allows City crews to effectively clean the storm drain system and focus on problem areas. Mandating that all inlets and basins to be inspected and cleaned before the wet season, regardless of the need or actual conditions, requires the City to clean non-problem areas, and prevents the City from using existing resources in a prioritized manner to achieve water quality objectives. This prescriptive approach would require that the City fund an additional vector vehicle at a cost of approximately (\$300,000 per year, 38% of the existing budget), without a clear link between that additional cost and the improved efficiency of storm drain system cleaning. The City requests that this provision be re-written to provide flexibility to perform the inspections and maintenance within a longer timeframe, or to clarify what is the precise timeframe of "before the rainy season."

C.3.b.i(4) New Road Projects

New sidewalks and bicycle lane projects should be excluded from the C.3 requirements. Application of C.3 treatment requirements to sidewalks, bicycle lanes and bicycle and pedestrian pathways will significantly increase the costs of these facilities and will reduce the ability of the City to include these important components in many projects. Sidewalks and bicycle lanes are an essential part of the City's efforts to reduce automotive use, which will help to reduce brake pad, oil, grease, and vehicle emission impacts on water quality.

C.3.b.i(5) Road Expansion and Rehabilitation Projects.

The provisions requiring that road expansion and rehabilitation projects comply with C.3 are often unachievable due to right of way limitations of existing roadways, and would directly reduce the amount of roadway rehabilitation projects the City is capable of performing. The requirement to reduce the threshold from 5,000 square feet will have a significant effect on the City's ability to carry out roadway improvement projects. Furthermore, the 5,000 square foot threshold is typically not technically feasible to implement, since segregating drainage from new and old portions of the roadway is often impractical, further

complicating the application of treatment controls to rehabilitation projects. Roadway rehabilitation projects within constrained right-of-ways (that make it technically infeasible to include C.3 systems) should be excluded from this requirement.

C.4.b.ii(1).a Industrial and Commercial Business Inspection Plan, Industrial Sites and Sources.

As currently written, this provision would require the City to maintain a list of industrial sites that are Notice of Intent (NOI) facilities permitted by the State RWQCB. The State receives fees to inspect these facilities that are defined under 40 CFR 122.26 (b)(14), and the NOI permitting process is implemented by the State. The City of Pittsburg does not have the expertise to inspect industrial facilities, nor is it the role of the City to inspect industrial facilities subject to the State Board's General Industrial Stormwater NPDES Permit. This provision should be removed since City inspectors do not have the expertise or qualifications to perform inspections for industrial facilities, which include operating and closed landfills, and hazardous-waste treatment, disposal, storage and recovery facilities.

C.4.b.ii(1).b(5) Industrial and Commercial Business Inspection Plan

This requirement focuses on the quantity of inspections, and is overly prescriptive in a manner that makes it difficult for the City to use limited resources in a more effective manner to achieve water quality objectives. The proposed wording is overly prescriptive, in that it mandates quantifiable inspection frequencies that will not necessarily result in improved water quality. For example, allowing co-permittees more flexibility in the frequency of required inspections would allow the City to use limited resources to focus on more effective inspections, i.e., those occurring before 6:00 a.m. or on weekends, when many commercial businesses (fast food restaurants, grocery stores, service stations, etc.) are performing the activities that could potentially threaten water quality. By requiring the City to use limited resources to achieve quantitative inspection frequencies, the current prescriptive wording will mandate that the City focus on using resources to achieve quantitative results, instead of focusing resources on qualitative results. The City suggests re-writing the inspection frequency requirements to allow for greater intervals between inspections. This will allow co-permittees to have the flexibility to use resources in a way that will effectively reduce violations and improve outreach and education during non-business hours when cleaning contractors and restaurant staff who may be unaware of NPDES requirements are working to clean these sites. Mandating quantitative frequencies of inspections will not necessarily result in inspecting at times when cleaning staff can be observed in process (i.e., most cleaning of parking areas and other areas of concern do not occur during normal business hours).

C.5. Illicit Discharge Elimination

The development of an Enforcement Response Plan (ERP), including the review and adoption of the required legal ordinances and enforcement capabilities, as written under sections C.5.a.ii and C.5.b.ii., is currently written so that these ordinances are in place by November 30, 2008. It is unreasonable to develop an ERP and draft, review, allow for public review and hearings, and approve the prescriptive ordinances outlined in provision C.5.b within a five (5) month timeframe. Sections C.5.a.ii and C.5.b.ii should be changed to allow a minimum of 18 months from the adoption of the MRP to allow for the necessary development of the ERP and the required adoption of enforcement ordinances.

C.8 Water Quality Monitoring

The "Urban Creeks Monitoring Report" required in section C.8.e.iii(1) is a lengthy and time consuming endeavor that will yield little or no tangible benefits to water quality. It is unrealistic, if not impossible, to perform the extensive mapping, compilation of data, generation of tables and figures, development of hypotheses, and evaluations on an annual basis. These onerous reporting requirements will require substantial amounts of staff time and will result in an academic exercise which will have little or no benefit for water quality. The City strongly recommends that this requirement be removed from the permit so that resources can be better used for other provisions that will result in actual improvements to water quality.

Additional studies required under C.8 through C.14

New studies required in provisions C.8 through C.14 require many new studies, plans and reports that are beyond the capability and staff resources of the City required for these very specialized studies. These prescriptive studies, which will not result in tangible benefits to water quality, should be limited to only the most important provisions and eliminate or provide more flexibility for lower priority studies.

C.10 Trash Reduction

Trash reduction requirements should be contingent on the procurement of capital funds with additional time allowed for phased implementation to ensure that trash capture devices will be technically effective systems placed in appropriate areas and developed with consideration of maintenance requirements.