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February 25, 2008

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

Subject: Comments on the Tentative Order for the Municipal Regional Stormwater National
Pollutant Discharge Elimination System Permit

Dear Mr. Wolfe:

The City of South San Francisco has had a proactive municipal stormwater pollution prevention and control program since the first eight-page countywide municipal stormwater permit was adopted in 1993. This letter provides our comments as per the Boards request on the 190-page Tentative Order for the Municipal Regional Permit (MRP). In ways the draft permit does make improvements over the administrative draft permit released in 2006, however, much of the draft permit still reflects disjointed and unprioritized efforts to reinvent existing stormwater pollution prevention and control programs. The draft permit provides an unnecessarily prescriptive and inflexible approach to stormwater regulation. Where new water quality control initiatives are appropriate, such as to address pollutants listed on the state's impaired water body list through the total maximum daily load process, the permit should recognize the need for a multi year phase in period given municipal budget constraints and uncertainties. The City is committed to implementing reasonable and cost prudent stormwater pollution prevention measures, however, the City does not support other areas of the stormwater regulation in the Tentative Order unless there are substantial changes, as described in the following comments.

Need to Streamline and Add Flexibility to Permit to Solve Water Quality Problems

It is essential that new initiatives in the permit be practical, understandable, and allow municipalities flexibility to solve water quality problems. There are a number of critical areas in the permit where modifications are needed to achieve these objectives. The following issues raised by the Tentative Order are of greatest concern to our municipality, and we have provided a detailed discussion of each along with recommended solutions.

1. Characterize Possible Stormwater Pump Station Problems Before Proposing Solutions

What the Draft Permit Proposes. The draft permit would require studies about storm drain pump stations under Provisions C.8.e.iii (Monitoring Projects); Dry Weather & First Flush Investigation, C.11.f. (Mercury Controls) Diversion of Dry Weather and First Flush Flows to Publicly Owned Treatment Works (POTWs); and C.12.f. (PCB Controls) Diversion of Dry Weather and First Flush Flows to POTWs. In addition, the latter two provisions would require that diversions be implemented from five pilot projects to sanitary sewers. The Tentative Order is overly focused on diverting stormwater pump station dry weather and first flush flows to the sanitary sewer without an adequate understanding of the problems, if any, posed by pump station discharges. It will be more practical and cost-effective to first characterize the possible water quality problems associated with storm drain pump station discharges before evaluating a range of possible solutions for any problems found. The range of solutions might include diversions to the sanitary sewer, but the solutions should not be limited exclusively to this possible alternative.

The Tentative Order states that the draft permit's various pump station studies are supposed to be integrated, but in fact they are not. For example, the Monitoring Project version of the study contains Table 8-4 that lists specific pump stations that must be screened for pH, dissolved oxygen, coliform bacteria, and conductivity in order to select ten pump stations for more detailed chemical analysis. The more detailed chemical analysis would not include PCBs or mercury. Based on this more detailed chemical analysis five pump stations would be tested during the third and fourth years of the permit for PCBs and mercury along with a list of other potential pollutants.

The pump station studies under the proposed mercury and PCB controls permit provisions take a different approach. These permit provisions would require Permittees to "select 20% of the existing stormwater pump stations distributed throughout the Permittees' county areas and evaluate drainage characteristics and feasibility of diverting flows to the sanitary sewers to be treated by local POTWs." Based on this work and the studies being conducted as a Monitoring Project, "5 pilot pump stations for pilot studies, and time schedules for conducting pilot studies" would be reported in October 2010. This schedule would be prior to having any mercury and PCB data collected under the Monitoring Project, and the five pump stations selected for the Monitoring Project may not be the same ones that would be selected with incomplete data for the mercury and PCBs control studies. In addition, these studies are proposed in a vacuum without consideration of any existing pump station diversion studies and how the results of these studies could be used to address the issues raised by the permit.

Recommended solution. It is proposed that this tangle of permit requirements be replaced with a requirement for the Permittees to work with the sanitary sewer agencies to develop a work plan to better characterize the possible problems with stormwater pump station discharges and identify a range of possible solutions depending on the types of problems, if any, that are identified.

2. Allow a More Flexible Approach to Trash and Litter Reduction

What the Draft Permit Proposes. The draft permit's Provision C.10 proposes that each Permittee identify high trash and litter catchments totaling at least 10 percent of the urbanized area within its jurisdiction and implement actions to reduce the impact of trash on beneficial uses. The permit would require two types of control actions: one, the installation of "full trash capture devices" on at least 5 percent of the catchment area and, two, the use of "enhanced trash management control measures." The permit would also require that the "enhanced trash management control measures" be implemented as interim controls in the areas where "full capture devices" would eventually be installed.

The permit contains a detailed list of what would qualify as "enhanced trash management control measures." One of these proposed requirements would require "increased public outreach on litter and trash control, particularly noting the impacts on creeks and the Bay in the outreach message" (Provision 10.b.i.(1)). It would be difficult and inefficient to target public outreach messages to only a small portion of a municipality. In addition, it is unclear what the technical basis is for the very prescriptive requirements listed in this section of the proposed permit. For example, what studies have been done that demonstrate the needed threshold of implementation should be for streets to be swept weekly and storm drain inlets cleaned at a minimum of four times per year?

The proposed approach to solving trash and litter problems is overly prescriptive, and does not recognize the variety of possible trash and litter problems and the need to implement cost-effective solutions that are tailored to solve a particular type of problem. For example, in some areas, SMCWPPP has identified residents and their gardeners dumping grass clippings and yard prunings onto backyard creek banks as the source of trash and litter. In other cases, the source of the problem appears to be from a particular school, shopping mall, or freeway.

The Fact Sheet reports that a Water Board study found, "There are trash source hotspots, usually associated with parks, schools, or poorly kept commercial facilities, near creek channels, that appear to contribute a significant portion of the trash deposition at lower watershed sites." Every trash and litter problem would be more cost-effectively handled by allowing the local municipality to identify the optimum solution rather than to require an arbitrary amount of municipal land area to have "full trash capture devices" and that another arbitrary amount of land be subject to very prescriptive "enhanced trash management control measures." The proposed permit's inflexible approach would be detrimental to identifying cost-effective ways of making measurable improvements in high priority trash and litter catchments.

On March 14, 2007 the Water Board heard a status report on the Municipal Regional Stormwater Permit that solicited many comments on the need to improve trash and litter control. Some of the commenters pointed out the variety of societal problems, such as homeless encampments, that in some locations contribute significantly to garbage and hazardous material being dumped along creeks. The Board members suggested that it would be worthwhile to form a multi-agency team to help improve the control of trash and litter. Subsequently, some legislators have also identified a need for a “more comprehensive public policy and regulation to protect the Bay from trash and marine debris.”¹. Has a multi-agency team been created to develop a more comprehensive public policy to deal with trash and litter? If so, what solutions is it recommending and how are these solutions related to what is being proposed in the draft permit?

Recommended solution. The permit should be modified to allow flexibility in addressing trash and litter controls problems so that cost-effective solutions may be implemented that are tailored to solving particular problems. It is recommended that the permit be rewritten to require that each municipality select one high trash impact catchment tributary to the municipal separate storm sewer system that it owns or operates, implement an appropriate solution or require the responsible parties to implement a solution, and then demonstrate measurable reductions in trash and litter. On this basis it is recommended that the permit be revised to eliminate the proposed permit’s requirements for at least 10 percent of the high trash and litter urban land area within a municipality’s jurisdiction to have trash controls along with the proposed requirement that half or more of this 10 percent catchment area be controlled with full trash capture devices.

In addition, since a high priority of the City/County Association of Governments of San Mateo County is to implement sustainable green streets and parking lot projects using the vehicle registration fees collected under AB 1546 (Simitian – 2004), the permit should also state that any municipality that is implementing this type of project would be meeting the permit’s trash and litter requirements during this permit period through the design, construction, and maintenance of its sustainable green street or parking lot project. We believe these multi-objective projects will have a beneficial impact on trash and litter. In addition, trash and litter controls that can be accomplished as part of multi-objective projects are more sustainable and financially viable than single-purpose approaches.

3. Modify Proposed Changes to New and Redevelopment Requirements

What the Draft Permit Proposes. The draft permit contains a section (Provision C.3.b) that describes “Regulated Projects” that must meet permit-specified source control, site design, and stormwater treatment requirements. The draft permit proposes the size threshold for Regulated Projects be reduced from 10,000 to 5,000 square feet of impervious surface starting July 1, 2010 for “Special Land Use Categories” including: auto service facilities; retail gasoline outlets; restaurants; and “parking lots that are stand-alone or part of any other development project” (Provision C.3.b.i.1). In addition, the draft permit also describes specific site design and source control requirements (Provision C.3.a.i.(6 and 7)) for all projects that are “not regulated by Provision C.3.”

¹ Letter dated October 29, 2007 from 13 local legislators to John Muller.

These requirements pose an unnecessary burden on municipalities for the following reasons:

- Municipalities have only recently adopted ordinances and policies and begun regulating projects down to the 10,000 square foot threshold and there is no justification to change the threshold within such a short time frame. Since very few projects this size have completed construction and have Best Management Practices (BMPs) in place, there is still a lack of knowledge about the effectiveness of these BMPs, maintenance issues, and how to deal with constraints on small sites.
- Many more project applications would have to be reviewed if the threshold is lowered. No nexus has been established between a lower square footage threshold for Regulated Projects and significant water quality improvement in an already highly urbanized environment so as to justify the increased staffing and resource burden. If the size threshold is lowered below what the current permit requires, there would be very little increase in the amount of impervious surface that requires stormwater treatment. Based on studies that the Water Board staff conducted and reported on at its November 15, 2006 workshop, the current permit requirements are capturing about 97% of all of the impervious surface area created and/or replaced in the cities studied.
- Given that these “Special Land Use Categories” have to meet site design and source control requirements regardless of the size of the project, it is unclear that there is any technical basis for also requiring stormwater treatment control for projects that fall under these categories. The fact sheet states that these land uses have the potential to contribute more polluted runoff and the 5,000 square foot threshold is considered maximum extent practicable because it is included in the Los Angeles Regional Board Stormwater Permit for these land uses. However, the L.A. permit does not have these additional site design and source control requirements for small sites, and does not demonstrate a nexus between the size threshold and significant water quality improvement.
- Provision C.3.b.i.1. seems to require that all parking lots greater than 5,000 square feet, whether they are surface lots or covered, provide stormwater treatment. If a 5,000 square foot parking lot is designed so that it is not exposed to stormwater (i.e., under a building or a lower level parking structure), there is no reason to have stormwater treatment.

The proposed permit also seeks to further evaluate stormwater treatment at smaller and smaller projects by requiring studies to collect impervious surface data from small projects in the range of 1,000 to 10,000 square feet (Provision C.3.j). These small projects would include single-family homes. Significant effort by municipal staff will be required to collect these data from projects that are not already being reviewed at the planning counter and to verify the accuracy of the data, as previous data collection efforts have shown. It is not worthwhile investing municipal staff resources in collecting this type of data because: 1) the regulation of these small projects can be handled appropriately under the proposed permit’s site design and source control requirements; and 2) it appears that decisions about regulatory thresholds are being made arbitrarily in lieu of proper analysis of impervious surface data and water quality impacts.

In addition, the draft permit proposes to make the stormwater requirements for rehabilitating and reconstructing roads more stringent than required by the current permit. The proposed permit

(Provision C.3.b.i.(1)(b)) would only allow “pavement resurfacing within the existing footprint” to be excluded from the stormwater treatment requirements imposed on “Regulated Projects” (which include arterial streets and roads). The current permit allows the following types of road maintenance and repair projects to be excluded from stormwater treatment: “ ...pavement resurfacing, repaving and road pavement structural section rehabilitation, within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed” (Provision C.3.c.i.3). Since there is no description of the basis for this proposed change in the Fact Sheet, the Water Board staff may have considered this proposed change in wording as inconsequential, but it is not.

Recommended Solution. It is recommended that the permit keep the size threshold for all “Regulated Projects” at 10,000 square feet because the stormwater pollutants from smaller “Special Land Use Categories” types of projects can be adequately handled using good site design and source controls by applying low impact development principles. In addition, it is recommended that the proposed requirements to collect additional impervious surface information for projects smaller than 10,000 square feet be deleted from the permit. The collection of this information is unnecessary because it was collected previously and there is no significant reason to collect additional information now. The Water Board staff previously collected information from the following cities about the amounts of impervious surface being created and/or replaced during the following time periods: Dublin (January – December 2005), Fairfield (July 2004 – June 2005), Livermore (January – December 2005), Menlo Park (April 2000 – March 2005), Palo Alto (October 2001 – December 2005), Pleasanton (January 2003 – November 2005), and Suisun City (July 2004 – June 2005).

Lastly, it is recommended that the original language describing the exclusion of “ ...pavement resurfacing, repaving and road pavement structural section rehabilitation, within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed” (current permit Provision C.3.c.i.3) continue to be used in the new permit. This language is more inclusive than the proposed permit’s language, and continuing the flexibility allowed by the existing permit is essential to being able to maintain existing roads without the additional expense of retrofitting stormwater treatment controls.

4. Minimize the Amount of Reporting and Recordkeeping

What the Draft Permit Proposes. The draft permit contains Attachment L "Annual Report Form" for San Francisco Bay Region Municipal Regional Stormwater NPDES Permit (Report Form). This Report Form is 110 pages in length, and, in addition to this Report Form, there are supplemental reporting tables to summarize business, construction site, and pump station inspections. The Report Form is highly prescriptive, and the amount of reporting and recordkeeping would require a significant amount of staff resources that provides little benefit to protecting water quality. In addition, the Report Form is in many instances inconsistent with the Tentative Order reporting provisions and often requires more information than what is required to be reported for a specific provision.

Recommended solution. The reporting form should be developed following the adoption of the permit so that it reflects what has been included in the permit as adopted. The inclusion of the form with the permit also sends the wrong message to municipalities and stakeholders that the contents of the permit have already been decided, regardless of the comments submitted on the Tentative Order. If the Water Board is resolved to include a reporting form as part of the adopted permit, the reporting form needs to be pared down to about 10 to 20 pages of essential information. The completion of the proposed, lengthy Report Form would require a wasteful use of limited municipal staff resources on reporting and record keeping. One recommendation for making the reporting more manageable would be to have a different reporting form for each year of the permit with each annual report reporting form focused on just one area of the permit so that the entire permit is reported on once over a five-year period. Another recommendation would be to decrease the enormous amount of overly detailed information that is required in the reporting.

5. Simplify and Provide More Flexibility in Regulating Exempted and Conditionally Exempted Non-Stormwater Discharges

What the Draft Permit Proposes. The draft permit's Exempted and Conditionally Exempted Discharges section (Provision 15) would require Permittees to meet very detailed requirements on discharges of conditionally exempted discharges to storm drain systems and watercourses within their respective jurisdictions. These requirements would apply regardless of whether the discharge flows through the municipal separate storm sewer system or whether the discharges are under the control of local municipalities. The draft permit would require that municipalities be responsible for every discharge of pumped groundwater, foundation drain, water from crawl space pumps, and footing drains meeting "water quality standards consistent with the existing effluent limitations in the Water Board's NPDES General Permits..."(Provision C.15.b.i.(1)(c)). This would include the municipality being responsible for expensive water quality testing of suspended solids, total petroleum hydrocarbons, volatile organic compounds, and metals. Further, the municipalities would be required to "maintain records that these discharges, BMPs implemented, and any monitoring data collected demonstrate that the discharges meet the unprohibited criteria" (Provision C.15.b.i.(2)).

The draft permit also includes detailed requirements for planned, unplanned, and emergency discharges of potable water (Provision C.15.b.iii). The proposed requirements include very prescriptive monitoring and reporting requirements. In some cases the potable water dischargers would be different agencies than the Permittees, but the requirements would be imposed on the Permittees. Some municipalities have their own local water utilities, but the rest will be reluctant to take on the oversight responsibility for large water utilities' compliance with the overly prescriptive and expensive requirements proposed in the draft permit.

Recommended solution. The draft permit's proposed level of regulation represents an over zealous approach to managing minor types of non-stormwater discharges that pose a limited threat to water quality. The fact sheet does not describe the basis for the proposed requirements. What is the problem that the Water Board staff is trying to fix? The Water Board adopted a reasonable way to regulate these minor types of non-stormwater discharges in its amendment to

SMCWPPP's permit in July 2004. This 2004 permit amendment provides a simple list of BMPs that would need to be implemented to address minor non-stormwater discharges. We recommend that this provision of the permit be totally rewritten and include a simplified table of BMPs similar to what was done in the 2004 permit amendment.

In addition, language should be added to the permit to provide municipalities flexibility to choose whether they want to take responsibility for ensuring water utilities comply with the requirements proposed for potable water discharges. For municipalities that choose not to assume responsibility for water utility discharges, the Water Board should adopt a General Permit for these types of discharges.

6. Industrial and Commercial Business Inspection Plan (Inspection Plan)

What the draft proposes.

- High, medium and low priority facilities listed/prescribed (added facility types beyond local control – Water Board authority). Minimum freq. of inspections of 1x/5 yrs for facilities with low potential for stormwater pollution and 1x/3yrs for medium potential.
- Inspect high potential sites 1x/yr and requires this frequency of inspection for NOIs, landfills, SARA Title III, and haz mat disposal, storage & recovery.
- Required to determine which facilities need NOI coverage and include in Annual Report.
- Required to inspect mobile businesses.
- The permit requires inspection of “commercial or industrial sites/sources” tributary to impaired waters.
Establishes minimum inspection frequency of once per five years for all facilities.

Recommended Solution.

- There should be flexibility in what businesses are inspected and how frequently similar to what is currently and successfully being implemented. Municipalities should be able to assign businesses to either a high or low priority for inspection. Businesses to be inspected should be limited to ones that discharge to a MS4 that is owned or operated by the municipality that has coverage under the permit similar to what is described in the fact sheet. SMCWPPP recommends that the permit incorporate flexibility by allowing municipalities to use a reasonable potential analysis to choose the types of businesses and particular businesses within the types for inspection from among those listed in C.4.b. ii.
- The proposed permit is overly prescriptive in requiring annual inspections of the listed facilities. As described above, SMCWPPP suggests that the permit allow municipalities flexibility based on a reasonable potential analysis to select the frequency of inspections.
- Considerable judgment is needed to determine which facilities need coverage under the state's Industrial General Permit. The Water Board staff is in the best position to make decisions about which businesses require coverage under this permit. Municipalities have been willing to forward information about businesses that might need to obtain Industrial General Permit coverage when Water Board staff has requested this type of information.
- SMCWPPP recommends that the permit specify that municipalities are only required to inspect mobile businesses whose principle place of business is located in a municipality.

- SMCWPPP suggests that the requirement to inspect “site/sources” be changed to “businesses” that discharge impairing pollutants at above background levels generated by their business operations to a municipality’s MS4.

As recommended above, the permit should be simplified to require that inspections occur either once every five years or annually for businesses that merit inspections. The basis for the once every three year inspection category is not described in the fact sheet, reduces municipalities flexibility, and seems overly prescriptive and unnecessary.

7. Street Sweeping

What the draft proposes.

- Map designated streets and roads with sweeping frequency by Nov, 30 2008.
- Sweep high priority streets a minimum of 2x/month.
- Sweep low priority streets at least twice before rainy season.
- 75% of replaced street sweepers shall have particulate removal of regenerative air sweepers or better.

Recommended solution

- It is unclear why the Water Board needs these maps and what it would do with them. Municipalities cannot afford to develop maps that have no purpose. SMCWPPP suggests that this proposed permit requirement be deleted.
- The fact sheet does not describe the technical basis for sweeping high priority streets twice a month and what impact this frequency of sweeping will have on improving MS4 stormwater quality. For example, how does sweeping frequency impact water quality during the dry season? Twice a month sweeping may represent a significant increase for some municipalities. SMCWPPP recommends the deletion of this requirement and replacement with a requirement that allows municipalities to continue the currently allowed frequency of sweeping.
- Most cities have already developed a frequency of sweeping that meets local needs; it is unclear that there is a water quality benefit to making these changes. As described above, the permit should be modified to allow the current frequency of sweeping to continue.

Municipalities need to consider all of their operational needs and local conditions when deciding on the purchase of street sweepers. Regenerative air sweepers are not good for all situations, and SMCWPPP is unaware of any technical studies that demonstrate that using regenerative air sweepers improve MS4 stormwater quality. SMCWPPP recommends that the draft permit requirement be modified to state that the Water Board encourages municipalities to consider purchasing regenerative air sweepers when purchasing new sweepers.

Need to Phase in Enhanced Pollution Controls That Would Increase Municipal Costs

The Water Board should recognize that municipalities need a way to fund significant, new, Permit requirements. This is particularly important given the current difficult financial times and lack of available funds that could be diverted from existing stormwater tasks to new stormwater tasks or from other existing municipal budget priorities to stormwater. The Water Board should

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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.

The potential funding sources that do not require voter approval are limited and unlikely to provide a substantial fraction of the funds needed to implement the permit. It is likely that the proposed Permit provisions requiring significant additional expenditure would need voter approval, such as a bond fund to pay for capital projects and/or a tax or assessment to pay for long-term maintenance. For example, the Fact Sheet reports that the Cities of Los Angeles and Oakland trash capture device installations were funded in large part through voter-approved bond measures.

Municipalities need time to develop financial plans, educate property owners and/or voters on the need for additional funding, attempt to secure voter approval of bonds and/or additional taxes and assessments, and, if successful, start to collect sufficient funds to undertake the projects needed to comply with the permit. The permit's compliance dates should be adjusted to provide at least a reasonable multi year phase in period at a minimum to attempt to secure and accrue the necessary revenue to meet significant these new permit requirements.

We appreciate your consideration of our comments, and those of many other agencies who we are well aware have the same concerns as ours and look forward to discussing these issues further at the March 11 public hearing.

Sincerely,

Terry White
Director of Public Works
City of South San Francisco

cc: City Council
City Manager
Technical Service Supervisor