

San Francisco Bay Area Municipal Regional Stormwater Permit (MRP)



Presentation to Regional Water Board
March 14, 2007

The Clean Water Act

- Municipal Stormwater (MS4) Permits:
 - may be issued system- or *jurisdiction-wide*
 - must include an “*effective*” *prohibition of non-stormwater* discharges into municipal storm sewers
 - Shall require controls to reduce discharge of pollutants to the *maximum extent practicable* (MEP)

33 USC § 1342(p)(3)(B)

Relevant Court Decisions

- Defenders of Wildlife v. Browner (9th Circuit 1999): Congress **set MEP as the standard for MS4** permits and did not require more stringent limitations to address water quality standards **but gave the State discretion** to impose additional pollutant control provisions if it determines they are appropriate
- City of Burbank v. SWRCB (Cal. Sup. Ct. 2005): Under State law, **economic considerations must be taken into account** with regard to NPDES permit provisions that exceed the Clean Water Act's requirements
- Divers' v. SWRCB (Cal. Ct. of App. 2006): A Regional Board is **not required to impose numeric effluent limitations** in stormwater discharge permit and may utilize a best management practices (BMP) approach

State Water Board Precedents

- Order WQ-91-03: Due to the intermittent and highly variable nature of stormwater discharges, ***numeric effluent limitations are not required*** – a best management practices (BMP) approach is acceptable
- Orders WQ-99-05 and 2001-15: MS4 permits to contain specific language requiring ***water quality standards be addressed over time by an iterative process for BMP effectiveness evaluation and improvement/fine tuning***

EPA Guidance for Municipal Stormwater Permit Renewals

Municipalities should:

- ***describe priorities*** for implementing controls
- ***identify proposed changes*** to the MS4's stormwater management and monitoring programs, ***including de-emphasizing or even eliminating certain program components***

Permitting authorities are expressly encouraged to work with municipalities to make such determinations

Bay Area Cities' Interests

- ***Achieve significant and incremental water quality improvements***
- ***Prioritize requirements to be imposed on local governments***
- ***Reduce the administrative burden of municipal stormwater (MS4) permits so as to focus on actual water quality improvements***
- ***Establish a level playing field***

Key Aspects of Challenge

- ***Combine 6 permits into 1 regional permit (MRP) covering 76 municipalities***
- ***Provide consistency with adopted TMDLs (mercury, diazinon) and address other identified pollutants of concern (copper, PCBs, dioxin, trash)***
- **Recognize that local resources to address water quality needs (in addition to police, fire protection, parks) are limited, so that *the MRP's requirements must reflect a prioritization***

Municipal Cooperation on MRP

- Municipal program managers regularly participated in a Regional Board staff-led ***Steering Committee*** to try and guide the overall draft permit development process
- Municipal staff participated in extensive “***work group***” sessions on individual components of the MRP (but without attempting to prioritize them) to try and reach consensus with interested persons and RB staff
- ***After vetting with and gaining acceptance from all 76 prospective co-permittees*** (including on proposed program enhancements and associated budget increases), ***BASMAA submitted comprehensive, prioritized, and integrated provisions and performance standard tables*** for use in a draft MRP in September 2006

The Municipalities' Submission:

- ***Prioritizes required actions based on water quality needs*** (TMDL and other pollutants of concern to receive more focus and resources)
- ***Incorporates detail*** directly into the permit
 - *mandatory levels of effort/deliverables*
 - *reporting and effectiveness requirements and deadlines*
- ***Adds comprehensive water quality monitoring requirements***
- ***Requires implementation of the “C.3” new and redevelopment numeric treatment standards down to the 10,000 S.F. level***
- ***Requires implementation of hydromodification management plans/programs*** (HMPs) well in advance of the rest of the State

Enhancement Example: TMDL-Related Requirement – Mercury (1 of 9 Proposed Program Components on Mercury)

Control Measures / BMPs	Level of Implementation	Reporting
Mercury Source Identification Program Element	Identify, qualitatively rank, and map potentially key areas with significantly elevated mercury concentrations in surface soil/sediment in Bay Area (i.e., scoping exercise based on existing literature and data).	Report in First Annual Report due 9 or more months after Permit's adoption
Mercury Source Confirmation and Abatement Program Element	Confirm the potential presence of elevated mercury concentrations in selected highly ranked locations via visual inspections and determine whether runoff from such locations is likely to enter municipal stormwater conveyances. Validate suspected source areas via field sampling and analysis. Provide information on potentially responsible parties to agencies and facilitate issuance of cleanup orders.	Report in 2nd Annual Report due after Permit's adoption Report in 3 rd and 4th Annual Reports due after Permit's adoption

Enhancement Example: TMDL-Related Requirements – Diazinon and Related Pesticides Associated with Water Quality Toxicity

Control Measures / BMPs	Level of Implementation	Reporting
Adopt IPM policy or ordinance Include provisions to minimize reliance on pesticides that threaten water quality and encourage use of IPM in municipal operations and on municipal property	If not already in place, adopt policy or ordinance within 18 months of adoption of this Order	Confirm adoption of ordinance / policy in Annual Report

Enhancement Example: Trash and Litter Controls

Control Measures / BMPs	Level of Implementation	Reporting
<p>Trash and Litter Control Phased approach to litter/trash cleanup</p>	<ul style="list-style-type: none">➤ Identify and assess high accumulation areas➤ Identify current and new management actions/BMPs➤ Identify High priority inlets➤ Implement pilot projects➤ Provide trash receptacles➤ Incorporate litter in PIP messages➤ Adopt anti-litter ordinances	<p>Annual Report on all management actions, effectiveness and enforcement</p>

Enhancement Example: Monitoring Related Requirements

Control Measures / BMPs	Level of Implementation	Reporting
<p>Monitoring Program</p> <ul style="list-style-type: none">-Characterize water quality in urban runoff-Assess impacts-Identify sources-Assess progress-Evaluate Effectiveness	<ul style="list-style-type: none">➤Identify current status and trends in water quality➤Conduct long-term Monitoring via SWAMP➤Use SWAMP consistent protocols➤Perform assessments➤Bay-wide monitoring to be coordinated with TMDL implementation	<p>Annual Electronic Reporting</p>

“C.3” and HMP Implementation

- **76 Bay Area municipalities have only recently begun implementing numeric treatment standards down to the 10,000 SF level of projects for all land use types (except single homes)**
 - This required a **substantial increase in municipal planning staff** to review small (< 1 acre) project proposals for compliance
 - Unlike elsewhere in the State, the **Bay Area approach is not limited** to applying these numeric standards only at:
 - larger sites (> 100,000 SF) with industrial/commercial uses,
 - housing developments of 10 or more units, and
 - significant projects on steep hillsides or located adjacent to sensitive habitats
- **Desired focus is on solving challenges related to implementation of both C.3 and HMP requirements**
- **Just beginning to gain experience on implementing these controls and need to assess effectiveness**
- **Changing these requirements now would be confusing and burdensome to developers and municipal planning and redevelopment staff**

Why Prioritization is Vital

- Bay Area municipalities are at or fast ***approaching stormwater-related assessment caps*** and the chances of getting more funding via a 2/3rds vote are not good
- Municipalities are increasingly using ***grant funds*** to pay for projects but these ***are limited***, do not help with O&M, and are ***not sustainable*** for the long-term
- Given our inability to increase assessments and the competition with other municipal general revenue needs (police, fire, parks), ***substantially increasing local stormwater funding is unrealistic***
- The municipalities' proposals include a number of enhancements that will cost more so ***some lower priority items need to be capped, reduced, or even sunsetted*** – everything cannot be a priority at once !

Requests

- ***Request Board member input*** as part of today's workshop, particularly with respect to issues of priorities and prioritization
- ***Request circulation*** of the municipalities' proposed provisions and performance standard tables as part of the staff draft MRP for comment
- Executive Officer to schedule another ***workshop*** to:
 - inform the Board of comments received
 - present staff recommendations
 - obtain direction for Tentative Order content and timing