



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

JUN 10 2011

Dale Bowyer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: Draft Feasibility/Infeasibility Criteria Report

Dear Mr. Bowyer:

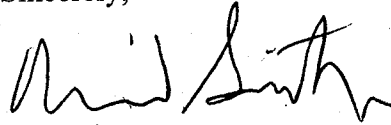
We have reviewed the draft Feasibility/Infeasibility Criteria Report ("Draft Report") submitted by the permittees on April 29, 2011 in accordance with sections C.3.c.i.(2)(b)(iv) and C.3.c.iii.(1) of the Municipal Regional Stormwater Permit (MRP) (NPDES permit No. CAS612008). The Draft Report responds to the MRP's requirement for criteria for determining the feasibility of low impact development (LID) measures consisting of infiltration, evapotranspiration, harvesting and re-use and biotreatment. We believe certain revisions of the Draft Report, as discussed below, are necessary to ensure consistency with the MRP and the requirement of the Clean Water Act (CWA) to reduce pollutant discharges to the maximum extent practicable.

The MRP states that the use of biotreatment to comply with LID requirements may be considered only if it's infeasible to implement harvesting and re-use, infiltration, or evapotranspiration at a project site. The Draft Report's approach for implementing biotreatment, as described on page 12 and in Figure 1 on page 13, is inconsistent with this aspect of the MRP. Page 12 of the Draft Report states that if it is infeasible to fully treat the design storm volume using either infiltration or rainwater harvesting, then biotreatment is to be implemented. Figure 1 summarizes this decision-making process regarding the feasibility of LID measures. Steps 2a and 2b of Figure 1 provide that infiltration measures and harvesting/re-use may each be entirely rejected if either measure is unable to fully manage the entire design storm volume by itself. In such a situation the flow chart allows a project designer to move on to a consideration of biotreatment. These procedures are inconsistent with the MRP and the CWA and will result in gross underutilization of infiltration, evapotranspiration and harvesting/re-use measures which are the preferred techniques in the MRP. The Draft Report (including Figure 1) should be revised to require a maximum use of a combination of infiltration, harvesting/re-use, and evapotranspiration measures. If the combination of infiltration, harvesting/re-use and evapotranspiration is found to be incapable of managing the entire design storm volume, only then may the use of biotreatment be considered for the excess storm volume.

EPA's Technical Guidance for implementing Section 438 of the Energy Independence and Security Act (available at: http://www.epa.gov/greeningepa/documents/epa_swm_guidance.pdf) provides examples of how LID measures can be combined to fully manage a design storm where one measure alone may be inadequate to do so. These examples help to illustrate how the provisions of the Draft Report may result in suboptimal stormwater management in new developments/redevelopments in the San Francisco Bay area which is consistent with the MRP and the CWA and why the Draft Report should be revised as discussed above.

We appreciate the opportunity to provide our views on the Draft Report. If you would like to discuss these comments, please contact Eugene Bromley of the NPDES Permits Office at (415) 972-3510.

Sincerely,

A handwritten signature in black ink, appearing to read "David Smith", written in a cursive style.

David Smith, Manager
NPDES Permits Office (WTR-5)