

November 8, 2006

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

Sent via electronic mail to MRP@waterboards.ca.gov

RE: Preliminary Comments on the Draft Municipal Regional Urban Runoff NPDES Permit.

Dear Regional Board Staff:

Thank you for the opportunity to provide input on the working draft of the Municipal Regional Urban Runoff NPDES permit (“MRP”). Based on our initial review, many aspects of the permit appear encouraging, and we appreciate the effort that staff put into developing this draft. Please note that, because of limited time and the working nature of this draft, these comments are not comprehensive, rather they are a general discussion of some of the areas in which room for improvement exists.

1. Evaluation Metrics

While we acknowledge the challenge in crafting complex MS4 permits, we are concerned that the draft permit language fails to contain specific, quantifiable requirements. As recognized by EPA, such specificity is necessary to provide MS4s with a “clear target to achieve.”¹ It is also necessary to determine (1) whether the permittee is in compliance with the terms of the permit and (2) whether the terms of the permit are stringent enough to ensure compliance with applicable water quality standards.

One way to accomplish the necessary specificity is through numeric effluent limits, which are feasible and would provide a very clear target for dischargers. If, as this permit is currently written, the permit limits are narrative, then it is even more important that the permit articulate detailed and measurable requirements. Past permits have suffered from a lack of detail in terms measurable goals. We hope and expect that this one to be a significant improvement. To this end, we ask that the permit:

¹ Gentile, L. and Tinger, J, *Storm Water Phase I MS4 Permitting: Writing More Effective, Measurable Permits*, at 139. Available at <http://www.epa.gov/owow/nps/natlstormwater03/>.

- Include a statement of quantifiable permit goals and objectives for the permit as a whole. While this iteration of the MS4 permit is not likely to solve the Bay Area's stormwater problem, it should identify and, whenever possible, quantify the level of improvement the Regional Board and the permittees expect to achieve through this permit cycle.
- Articulate specific performance criteria based on an analysis of what constitutes MEP. Each permit task or objective should be translated into specific, measurable requirements and associated deadlines. Vague language and requirements must be avoided. As an example of terms to be avoided, the construction section lacks any detail about what BMPs must be implemented or the frequency of inspections. In contrast, the San Diego draft permit lists sixteen BMPs that must be implemented at each site and establishes a minimum inspection frequency.² To be effective, the permit must describe the activities required of the permittees and set clear and detailed performance expectations for those activities.

2. Water Quality Monitoring

Some of our strongest concerns and objections relate to the draft monitoring program, which suffers from the same flaw as the current program—it is not calculated to determine the permit's effectiveness in reducing or eliminating impacts to receiving waters. One of the primary objectives of any NPDES monitoring program is to demonstrate compliance with applicable water quality criteria.³ The draft monitoring provisions, however, appear inadequate to meet this objective because they require relatively little actual stormwater monitoring.

When viewed in the context of the iterative process, the lack of monitoring sufficient to demonstrate compliance is particularly frustrating. As written, the permit's iterative process is triggered by "a determination...that discharges [from the permittees] are causing or contributing to an exceedance of an applicable WQS."⁴ No one disputes that stormwater pollution is impairing Bay Area water bodies. To our knowledge, however, monitoring conducted pursuant to Bay Area MS4 permits has yet to identify discharges causing or contributing to this impairment and, therefore, has never formally triggered the iterative process.

Despite the importance of monitoring, our review of the permit failed to reveal substantive requirements that the permittees actually monitor stormwater. To remedy this shortcoming, the draft permit should draw upon requirements similar to those currently in other permits, which include monitoring stormwater at MS4 outfalls, pump stations and

² California Regional Water Quality Control Board, San Diego Region, Tentative Order No. R9-2006-0011, NPDES N. CAS0108758.

³ See 40 C.F.R. § 125.63(a)(1)(i)(a).

⁴ *Draft permit* at 2.

other stormwater conveyances.⁵ Only once these requirements are in place and the permit monitoring program is sufficient to determine the permit's effectiveness will the iterative process work.

3. Total Maximum Daily Load Implementation

In addition to monitoring, we are also concerned about the draft Total Maximum Daily Load ("TMDL") implementation section. While we recognize that this section is still very much in a preliminary form, it appears to lack concrete and measurable requirements—other than pilot projects—to address sources of impairing pollutants.

Work in support of TMDL development by the Regional Board clearly identifies stormwater as the single greatest source of PCBs and pesticides impairment to Bay waters. By its nature, the TMDL process relies heavily on permits for implementation of wasteload allocations ("WLA"). The draft permit, however, lacks the level of detail necessary to begin implementing these allocations. Baykeeper asks that the permit:

- Incorporate a provision to implement and enforce approved WLAs for municipal stormwater dischargers. This approach was recently adopted by the Los Angeles Regional Board for implementation of their bacteria TMDL.
- Identify and set deadlines for actions that can immediately be implemented. As previously mentioned, at least two TMDLs—the draft pesticides and PCBs TMDLs—are to be implemented primarily via reductions in stormwater loading. When implementation of a WLA is in the form of BMPs, there must be sufficient evidence to support a finding that the BMPs will be sufficient to implement the WLAs.⁶ Thus, as a matter of policy and law, this permit must require permittees to do more than "evaluate," "study," and "implement pilot projects." It must require implementation of BMPs and other actions that will result in actual load reductions in accordance with the TMDL during the term of this permit.

4. New & Redevelopment Standards

In general, the new and redevelopment provisions represent a significant step forward. In particular, Baykeeper commends the Regional Board for selecting a threshold of 5,000 square feet, requiring development of a database for smaller projects, and applying the provisions to roads. In addition to these requirements, Baykeeper requests:

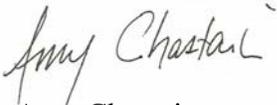
⁵ California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, NPDES Permit No. CAS004001 (December 13, 2001; Amended on September 14, 2006 by Order R4-2006-0074); Tentative Receiving Waters and Urban Runoff Monitoring and Reporting Program No. R9-2006-0011. *See also* Draft Phase I Municipal Stormwater NPDES and State Waste Discharge General Permit for Western Washington (February 2006).

⁶ Citing 40 C.F.R. §§ 124.8, 124.9, 124.18.

- Incorporation of low-impact development requirements. Low-impact site design practices are effective in reducing the quantity and improving the quality of stormwater runoff. The permit should require implementation of such practices for every priority new and redevelopment project.
- Further refinement of the alternative compliance programs. As currently drafted, alternative compliance is available when onsite treatment is impracticable and no regional project is available. Baykeeper asks that staff (1) explain the rationale for their definition of impracticable, (2) justify the decision to allow permittees to develop alternative compliance programs rather than establishing a regional fund or project and (3) elaborate, in the permit, how Regional Board will ensure adequate oversight of the alternative compliance projects.

We look forward to discussing these and other issues. Please feel free to contact me with any questions.

Sincerely,



Amy Chastain
Bay Program Associate