



December 8, 2006

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

**RE: San Francisco Bay Regional Water Quality Control Board Staff's October 13, 2006 (revised version dated October 16, 2006) "Working Draft" Municipal Regional Permit (MRP), and November 15 and 20, 2006 MRP Stakeholder Meetings**

Dear Mr. Wolfe:

This letter is in response to your staff's request for additional comments following their November 15 and November 20 meetings on the Municipal Regional Permit (MRP). The following comments are provided on behalf of the 21 public agencies comprising the Contra Costa Clean Water Program (Program). BASMAA and individual municipalities will also provide comments that are combined with these by reference.

### **General Comments**

The Program strongly recommends Water Board staff shelf its revised October 13, 2006 "working draft" MRP, which in its current form 76 public agencies strongly oppose. The Program further recommends Water Board staff initiate a new series of workshops focusing on the merits of BASMAA's September 22, 2006 Draft MRP. **BASMAA's September 22, 2006 draft MRP represents a consensus, and the collective thinking, of all 76 public agencies in the Bay Area, which is a monumental accomplishment and resource.** BASMAA and municipal representatives spent six months and countless meetings throughout the Bay Area working to develop a document that is comprehensive, integrated, and contains significantly enhanced and new performance standards that effectively address the key stormwater management issues facing municipalities during the next five year period.

Failure to initiate a new series of stakeholder workshops focusing on the merits of a draft MRP supported by all 76 BASMAA public agencies and a overwhelming majority of Bay Area stakeholders would be a huge miscalculation for the Water Board, which would unnecessarily waste limited available dollars for water quality protection and delay

implementation of significantly enhanced and new Performance Standards.

As indicated in BASMAA's November 8, 2006 comments to the Water Board staff's revised October 13, 2006 "working draft" MRP; and as stated by the Program and other municipal representatives at the November 15 and 20 MRP Stakeholder meetings, the "working draft" MRP is unnecessarily difficult to review and understand because several key elements are missing or have yet to be defined, while other elements are duplicated within several different sections. It is a compilation of individually prepared permit elements that have not been comprehensively reviewed. The Program would welcome the opportunity to review and discuss its suggestions outlined in our draft MRP developed collectively with BASMAA.

### **Preliminary Specific Comments**

BASMAA has submitted detail comments on the content of the MRP via its comprehensive, integrated, and optimized draft MRP (submitted September 22 and resubmitted November 8). These comments are incorporated into the Program's following preliminary specific comments by reference:

#### **New Development and Redevelopment Performance Standards**

Provision	Comment
C.3	Several provisions call for "a database". This needs to be defined in order to understand what exactly Water Board staff is requiring and what resources municipalities may need to comply. Many municipalities lack the needed resources for development and, more importantly, ongoing maintenance of a database system. Water Board staff needs to clearly articulate the objectives or intended reasons or uses for data collected, maintained and reported. These activities can be a resource consumptive, so its use and intended benefits need to be evaluated along with all other provisions.
C.3.a.i.(1)	For clarity and organization, all construction-related Performance Standards should be provided under the "Construction Site Stormwater Pollution Management" Performance Standards.
C.3.a.i.(7)	This provision is unenforceable and should be deleted and replaced with the existing language in Provision C.3.b.i. (see Contra Costa's permit)
C.3.a.i.(7)	"Maintenance and/or restoration of riparian areas and wetlands" is not "a site design measure". Change to "preserve riparian areas and wetlands as project amenities."

Provision	Comment
C.3.b.i	Water Board staff needs to provide greater leadership in defining “to reduce the discharge of stormwater pollutants to the maximum extent practicable”. At the very least, Water Board staff should maintain the language in the existing Finding 7 (Contra Costa Permit).
C.3.b.i.(1)	For consistency and clarity keep “residential developments” versus “multi-unit residential”. This term is not readily used and confusing.
C.3.b.i.(2).i	Redevelopment projects are already served by existing infrastructure (i.e., roads, utilities, public transit, etc...) and are desirable alternatives to sprawl and new developments. This provision unfairly penalizes and provides a disincentive for desirable redevelopment projects. Why place a greater burden on a redevelopment project than a new development project. This is bad public policy and in conflict with smart growth policies and goals. This provision is confusing and arbitrary and should be deleted.
C.3.b.i.(3)	<p>There is no justification for including road surface replacement projects in the list of regulated projects.</p> <p>How would this provision work? Throughout the year and depending on municipal budgets, municipalities are conducting needed road repair and maintenance activities. Collectively, these projects would almost certainly exceed 10,000 sq. ft.; however, individual project areas may not.</p> <p>Should routine repair and maintenance activities, which includes repaving or pavement overlays, be defined a “regulated” project, you will see more roads fall into disrepair due to municipalities inability to afford the project and resulting C.3 provisions.</p> <p>Furthermore, sidewalks, bicycle lanes and many trails are planned, funded, designed and built in coordination with street and road projects. Including sidewalks, bicycle lanes, and trails in the impervious surface calculation, will most assuredly result in fewer road projects designed with desirable impervious surfaces that serve and promote alternatives to the automobile. Inclusion of these roadway amenities is short-sighted.</p>

Provision	Comment
C.3.b.iii	<p>For "Site Acreage" delete the addition of "(or square footage of land disturbance)", or clarify the purpose of this information.</p> <p>For "HMP" delete "attach pre- and post-project hydrographs". This information wouldn't apply to most development projects in Contra Costa County and many other Counties utilizing Contra Costa's HMP IMP approach.</p>
C.3.b Page 24	<p>Bottom of page following C.3.b.iii: There is no justification for reducing the threshold to 5,000. There is also no track record on the existing thresholds of 1 acre and 10,000 sq. ft. This includes an evaluation of actual implementation of the 1 acre and 10,000 sq. ft. threshold, an evaluation of treatment control BMPs being used and their effectiveness in meeting MEP for pollutant removal; an evaluation of treatment control costs; an evaluation of treatment control maintenance requirements and costs, implementation, funding mechanisms, vector control strategies, etc...</p> <p>Also, the "Due Date...." on page 26 needs to be revised to "Beginning the fourth year after MRP adoption until expiration"</p>
C.3.c	<p>There is no justification for lowering the existing 1 acre threshold for construction of single family homes not part of a large common plan of development. Appendix "A" needs to be defined. Are "Single Family Homes" "regulated projects" per Provision C.3.e? The "Due Date..." should be changed to "Beginning the fourth year after MRP adoption until expiration". Annual inspection of single family homes for compliance with stormwater requirements would be unprecedented and highly controversial.</p>
C.3.d.i.(1).ii	<p>Update the "Handbook" reference for this volume hydraulic design to that outlined in BASMAA's September 22, 2006 MRP.</p>
C.3.e.ii.(2)	<p>The Contra Costa Clean Water Program has already established a procedure for municipalities to notify the local Mosquito and Vector Control Agency. Furthermore, Provision C.3.e.iii.(2) requires that municipalities "Provide a list of newly installed stormwater treatment systems to the local Mosquito and Vector Control Agency. Requiring both project proponents and municipalities to provide notification is duplicative and will create unnecessary confusion.</p>

Provision	Comment
C.3.e	<p>Water Board staff needs to include the existing “safe harbor” language contained in Contra Costa’s Provision C.3.e.v.</p> <p>Many changes to the O&amp;M verification provisions are made without any known reason or justification. The O&amp;M provisions have yet to be fully employed by any community in Contra Costa County.</p> <p>Provision C.3.e.iii.(5) is years to early. This type of provision belongs in the next round MRP. Right now we are focused on implementation of a new program.</p>
C.3.f	<p>It is impossible to comment on this provision with only two HMPs yet to be approved, of which, one was approved on an interim basis. The HMPs’ standards and applicability must be comparable.</p>

Provision	Comment
C.3.g.i	<p data-bbox="418 285 1414 499">Again, there is not justification for a complete overhaul of an existing provision, which hasn't even been employed in Contra Costa County. Unless there is a good reason to change our existing language, any change requires the Program and municipalities to re-evaluate and re-interpret a provision, which may have unintended consequences and lead to further confusion and wasted effort.</p> <p data-bbox="418 541 1409 905">The Alternative Compliance Program proposed by Water Board staff and outlined in the flow-chart and footnotes on pages 34 and 35 is based on no actual experience. This provision, as proposed, precludes yet to be identified needed, important, superior, and/or innovative treatment solutions and strategies by eliminating the option for individual municipalities to propose their own specific alternative compliance programs. The Program strongly suggests this option be preserved by crafting language similar to that provided in Contra Costa's Provision C.3.g.vii. There are several potential problems with the proposed program:</p> <ul data-bbox="467 947 1409 1423" style="list-style-type: none"> <li data-bbox="467 947 1409 1087">• The proposed program essentially places a cost cap on compliance with provision C.3.d. at 2%. This was not acceptable to Water Board staff in February 2003. What has changed?</li> <li data-bbox="467 1094 1409 1276">• The proposed program allows offsite treatment at regional facilities or municipal stormwater treatment facilities, but precludes offsite treatment at another site without justification. Why is offsite treatment options limited to regional or municipal facilities?</li> <li data-bbox="467 1283 1409 1423">• The following is yet to be clarified: <ul data-bbox="565 1318 857 1423" style="list-style-type: none"> <li data-bbox="565 1318 792 1350">✓ Footnote #7</li> <li data-bbox="565 1356 792 1388">✓ Footnote #8</li> <li data-bbox="565 1394 857 1423">✓ Notes: first bullet</li> </ul> </li> </ul>
C.3.h.ii	<p data-bbox="418 1461 1414 1602">Municipalities routinely required applicant's to pay for review services on behalf of the municipality. Professional Engineers and Landscape Architects operate under their own professional code of ethics. Water Board staff is out of line in this regard.</p>
C.3.j	<p data-bbox="418 1646 1414 1717">This is a huge undertaking without any justification or discussion of the objectives for this data collection.</p>

Provision	Comment
C.3.j.ii	Change "Name of Responsible Party" to "Name of Applicant or Owner"  What is the purpose for tracking square footage of land disturbance?  What is the purpose of tracking "Status of Project"?
C.3.j Page 32	Same comments as above.  Date of Implementation needs to be corrected.

### Construction Site Inspection Performance Standards

Provision	Comment
C.6.a.i	The section should be re-written using BASMAA's suggested language. At the very least, remove "without lawsuit". This is not possible and should be deleted.
C.6.c	This section should be deleted. Minimum measures will vary from site to site based upon time of year, type and size of project, etc... This provision could result in the implementation of unnecessary measures.
C.6.d	This provision should be re-written. Cities have different mechanisms for requiring appropriate erosion and sediment control BMPs. For example, some municipalities require site development permits, which address a variety of requirements, including grading. Language should simply require that municipalities implement effective construction site stormwater quality control programs.
C.6.e	Project type should also differentiate between sites that are "Active" and "Inactive". This will influence the frequency of inspections needed.
C.6.f	Water Board staff's frequency for large and small sites are unrealistic. Given Building Inspectors current workloads and responsibilities, they can not be relied upon to perform water quality inspections within many public agencies. Furthermore, reporting requirements for screening inspections are unrealistic. See BASMAA's suggested inspection frequency and reporting provisions.
C.6.g	See comment above regarding Building Inspectors. See BASMAA's suggested language.

Provision	Comment
C.6.h.ii.(1)(2)	Providing outreach materials during plan review and/or inspections should be required "as appropriate". The language as written would require materials to be provided in every case wasting paper and resources.
C.6.j.iii	Water Board staff has not provided sufficient justification for requiring development and use of a database, and the resulting additional expenditure of public monies, nor has it been shown how this activity will benefit water quality.

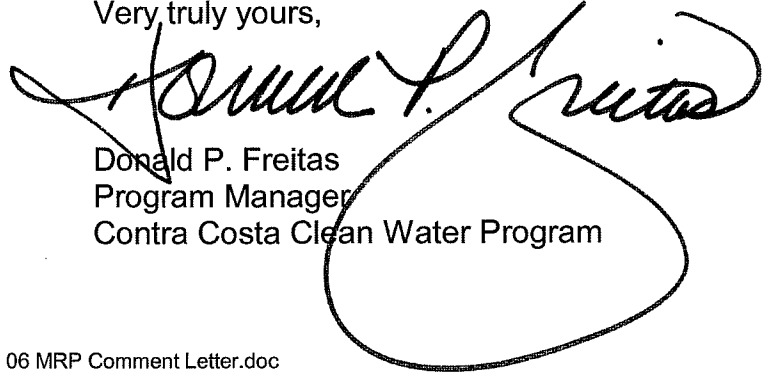
### Water Quality Monitoring Provisions

1. Section 8.b. "Status and Trends Monitoring" – the Draft MRP states that Permittees shall conduct Status and Trends Monitoring on all their water bodies (Option A) OR on each of the water bodies listed in section 8.b.i. (Option B) within the five-year permit term. This conflicts with the recommendations of the Monitoring Workgroup for a 10-year rotation.
2. Section 8.c. "Status and Trends Electronic Reporting" and 8.d. "Status & Trends Comprehensive Reporting" - Requiring programs to submit an Electronic Data Report by October 1<sup>st</sup> of each year is not realistic or achievable. For example, results from the Program's spring 2006 bioassessments were not received until the end of October 2006. Even if expedited analysis were possible, it would place an undue burden on the stormwater programs to submit this data electronically at the same time they are preparing their annual reports. Moreover, it increases the chance for errors in the database, creating problems when the Comprehensive Report is submitted on January 15<sup>th</sup>. Lastly, it's difficult to imagine any incremental value to the public or the benefit to water quality from providing electronic data 3 months prior to the Comprehensive Report. The value is marginal at best. The Program suggests both reports be submitted on January 15<sup>th</sup> of each year.
3. Table #2 "Required Water Body Assessments" – Watershed area to be assessed should be comparable among the programs.



Should you have any questions regarding these comments, please contact me (925) 313-2373.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald P. Freitas", is written over the typed name and title. The signature is fluid and cursive, with a large loop at the end.

Donald P. Freitas  
Program Manager  
Contra Costa Clean Water Program

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