



Town of Moraga

Office of the Town Engineer

July 13, 2007

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

Subject: Municipal Regional Permit (MRP) – Regional Water Board
Working Draft (Revised Version Dated May 1, 2007)

Dear Mr. Wolfe:

This letter is to provide written comments from the Town of Moraga on the Regional Water Board staff's May revision of the draft Municipal Regional Permit. We also endorse the Comments of BAASMA and CASQA. These comments are the comments we sent regarding the October version as there has been virtually no response to the earlier comments by way of text revision.

General Comments:

First, we are concerned about the prescriptive nature of the draft permit, particularly within the area of municipal maintenance. The current permit establishes categories of activities that are to be engaged in and reported based on the performance standards in that permit. The proposed MRP establishes specific activities within the categories, frequencies for conducting those activities, and requirements for recording information in detail with summary annual reporting. All of the new requirements are established in isolation without consideration of the impact of these specific activities and frequencies on agency staff ability.

The proposed permit necessarily means that new tracking and recording systems will have to be designed, implemented and maintained. A fair reading of the proposed permit indicates 31 new activities or specific mandates instead of general categories, 12 new programs, 51 new guidance, management or recording documents, 3 new data bases, and 30 new reports. The increased level dramatically raises the risk of an agency being unable to comply and gives rise to the concern that any failure to comply will result in a violation of the permit.

Second, it has been our experience that, in the words of Board staff, a lack of an accumulation of violations necessarily means there is a lack of enforcement. Staff has implied that rather than accepting that there truly may not be a problem, local agency staff has not been effectively enforcing the permit. The mandated increase in effort puts us at greater risk of implied failure to enforce the permit, and creates the need to expend limited resources searching for things that may not be there in order to increase enforcement documentation.

Third, the permit makes changes in areas, particularly New Development Construction Controls, either without a basis for the change, or without letting recent newly implemented provision take full effect. The proposed permit data requirements also means that many new development related databases will have to be designed, implemented and maintained to track data presumably related to further changes that may be contemplated without any basis established that what is currently being done is not effective, or that new and more stringent requirements have any basis for being assumed as more effective.

Fourth, the requirement for trash ascends to a new level of community policing implied for municipal maintenance staff. Is maintenance staff to be responsible when a moving vehicle is involved, which we would argue is a common source of trash. Will the agency be found in violation of municipal maintenance staff because of the nature of their work can not report statistics on enforcement of the litter code.

The permit proposal mandates many activities without taking into consideration the practicality of the mandate. For instance, agencies are to report street flushing incidences and sewer discharges without consideration as to how the agency staff is to know about such events. Absent an agency such as a fire, water or sanitary district informing the local agency about a planned event, the only way to know would be to constantly patrol the street looking for such activities. Such activities do illicitly happen and are already reported when found. Wording should be clarified that enforcement and recording in many of these activities such as flushing, mobile wash discharges, sidewalk washing trash disposal enforcement and the like would be on the basis of when encountered.

In some respects, the intent/layout presentation of the proposal is unclear or confusing. For instance, some tasks have an implementation level and parallel recording/reporting level. In other cases there may be a task, and some subtasks, but there be multiple implementation levels that take some scrutiny to see how they apply to the task or to other tasks down the list. Similarly the recording and reporting does not seem to parallel the task at all, but seems more appropriate to tasks farther down the list. For instance for Category 2, Street and Road Repair and Maintenance, task "a." refers asphalt/concrete removal, repair and installation, but the apparent parallel reporting item include "Report inspection and re-signing progress". Later on in this category there is a task annually inspect and repair inlet signage, which is probably the item for the "re-signing" reporting item.

Comments on Municipal Maintenance Activities

Street and Road Sweeping and Cleaning:

Many agencies have services performed by contract providers. Previously we would accept the operator training and equipment maintenance records for evidence of compliance. The permit proposal now mandates training of contract service providers to ensure full compliance rather than accepting the contractor records, a doubling of effort, particularly in the case maintenance training and maintenance verification which would be necessary to ensure full compliance.

The requirement to replace sweepers with new equipment phased over 5 years is economically unreasonable, and in contract cases likely unenforceable.

The information gathering and reporting requirements create a burden that does not seem to have a clear purpose. If a contract for sweeping is let based on a set of specification, what is accomplished by adding to the record the type of sweeper used. Further, assuming the specification is not defective, what measures are envisioned to be implemented and reported on that will improve efficiency.

Assuming that staff, based on their years of experience, already knows the areas with the highest sweeping needs, and sets schedules accordingly, what is to be accomplished with creating prioritization maps and documents and reporting that information annually.

Street and Road Repair and Maintenance

The proposal for repair and maintenance is to prepare BMP's to cover the handling of materials. The inspectors at least every other year attend training in construction site control. It is unclear what is to be accomplished by creating procedures in how to execute the work for water quality protection. This is an area where on site properly trained and present supervisors and inspectors will accomplish far more and be more effective in ensuring that construction materials do not pollute the waterways than creating written guidance. Annual certification of compliance with the BMP's means that there will be new recording and reporting of these activities in compliance with BMP's that may be of little value.

Sidewalk/Plaza Maintenance

This category implies a number of activities. It implies a procedure to be created, measured against and reported on. It also means that the local jurisdiction will be responsible for determining the population of people who do the plaza/sidewalk washing, and then be made aware of when those activities will occur, and observing and reporting on those activities. It also requires that the local agency ensure the proper disposal of the wash water.

It is unclear how the local agency can know the full spectrum of potential users of mobile, or personally owned, surface water blasting equipment. It is not clear how a local agency will control the disposal of the wash water. While we do not dispute that these are proper thing to do, we do dispute why the local agency should be held accountable to standards that are in many way entirely beyond the control of the agency. It is not at all clear how creating written procedure will alter that.

Bridge and Structure Maintenance

Similar to the Street maintenance proposal, the proposal for bridge repair and maintenance is to prepare BMP's to cover the handling of materials. It additionally covers graffiti removal. The inspectors, at least every other year, attend training in construction site control. It is unclear what is to be accomplished by creating procedures in how to execute the work for water quality protection. This is an area where the already properly trained and present on site supervisors and inspectors will accomplish far more and be more effective in ensuring that construction materials do not pollute the waterways than creating written guidance. Annual certification of compliance

with the BMP's means that there will be new recording and reporting of these activities in compliance with BMP's that may be of little value.

Ensuring that the graffiti removal crew has the necessary equipment, training in how to use it and understand the one simple instruction that runoff must be collected and properly disposed would seem to effectively address the situation. Creating procedures measuring against them and reporting on it is a needless accumulation of documentation that will do nothing to improve water quality.

Landscape Maintenance

There is the requirement to "maintain vegetative cover on medians and road embankments to prevent soil erosion". Many medians and embankments adjacent to roadways either do not have a formal planting area or no longer have viable landscaping. Does the permit proposal imply that jurisdiction will have initiate extensive landscape program to vegetate and then maintain earthen slopes and medians where either there never was landscaping or the landscaping has died?

Litter Trash Control

This category creates a new set of specific performance standards for trash and litter control as a mandate, and again with the threat of non-compliance in the event inability to perform all the requirements. Also, the creek/shoreline cleaning event that contributed to a community outreach performance standard is now a stand alone requirement, while maintaining the previous level in community outreach activities. This results in a net increase in such community outreach activities. While many outreach activities through public information and local newsletter can be increased relatively easily, the mandated multiple cleanup activities are vastly labor intensive to both to organize, where volunteers are used, and to execute. Many local agencies lack the resources to perform existing ongoing maintenance activities and take on the two creek cleanup activities with the risk of non-compliance in the event of inability to execute two such community activities. In the prioritization of business centers, what sort of trash and litter reduction programs are contemplated by staff as meeting this proposed requirement?

Catch Basin Inspection and Cleaning

This section imposes new requirements for collecting information that will impose a great burden on staff, and it is unclear that the level of detail will provide any benefit beyond the current judgment of staff. Specifically, the inspection, cleaning and stenciling of inlets is proposed to be tracked by inlet with summary level information to be provided to indicate problem areas. This will require the creation of a database, and may require the renumbering and remapping of the storm drain system so that database manipulation can be meaningfully related to geographic locations. Further, it requires the creation of written maintenance and inspection plans that would seem to be the creation of a document for the sake of creating one with little meaningful benefit and the revising of cleaning schedules for heavy impact areas based on prior years experience. It seems apparent that municipal maintenance staff already knows the high impact areas. Creating the need for procedures and documentation of things experienced staff does is of little benefit and only consumes time.

The proposal that pilot programs be developed, toolboxes be developed and a subset of retro-fit options be develop is an extraordinary proposal. Under the construction SWPPP recommendations, it is already recommended that filter material that will capture debris should be removed during the rainy season, and that gravel bags be placed to prevent clogging of drains and flooding. With this consideration we are not then talking about simple and relatively inexpensive retro-fit options. Local agencies prioritize their capital improvement program projects base generally on public safety first, preservation of infrastructure second, and expansion of programs last. Rarely do local agencies have discretionary funding available for program expansion, meaning that costly retro-fit is not a possibility. Options may be available for planned capital projects that will be providing frontage improvements where none exist or where failing improvements are already planned for renovation, or where there is new development. Retro-fitting sound functioning inlets does not make sense for the little benefit that will be obtained when annual pre rainy season cleaning is already being performed.

Pump Station and Conveyance Systems

This section mandates activities and schedules. These may be at odds with pump station maintenance activities that municipal staff already implements in order to ensure the safe functioning of these facilities. Part of staff's normal maintenance activity is to clear trash from trash racks. Staff sets schedules and activities as needed based on their experience as operators of the system. Setting minimums may create unnecessary expenditures of time. Further, it is unclear if this proposal extends to privately owned pump stations.

Inspecting the trash racks of the conveyance system after every rain is an unnecessary expenditure of resources as there is no evidence that trash racks fail or collect significant material as a general rule after every storm.

Setting a requirement to explore diversion of dry weather and first flush flow has a limited range of opportunities. This can only be implemented if there is a facility for the diversions to flow to.

The document and reporting proposal clearly establishes the need to create, implement and maintain yet another database.

Rural Public Works Maintenance and Support

This section proposes the requirement for the creation of a number of BMP's and SOP's where properly trained supervisors and inspectors are more effective than written procedures for activities whose reasonable implementation is intuitive. It is also unclear why a separate inspection activity prior to the rainy season is proposed for implementation with separate documentation when every year agency street maintenance staff inspects their roadways in accordance with an MTC required pavement management program. Further, staff well knows the condition of roads within the jurisdiction, and mandating further documentation and purpose specific inspection prior to the rainy season will accomplish little other than diverting scarce resources.

Comments on C,3 New Development and Redevelopment Performance Standards

The proposed MRP makes changes to the existing C.3 Provision, which are only now mobilizing the required changes of August and October of this year. It would seem prudent to let the existing changes be observed for a reasonable period of time so that, at the very least, the provisions are implemented and their effects observed. Without that performance experience, there is no basis to alter the existing C.3 provision.

None-the-less, the proposal makes changes that we see as detrimental. First, the proposal at C.3.b (3) changes the requirements related to streets and roads. The current permit exempts sidewalks, bicycle lanes, trails, bridge accessories, guardrails and landscape features from the C.3 provisions. The draft proposal now exempts them only if they are not constructed as part of a road, street or highway project. This runs contrary to public policy of mobilizing alternative travel methods to reduce congestion and air pollution, which, in fact, contributes to water pollution. The proposal penalizes non-vehicular transportation projects, will create a great disincentive to building such projects, and may make those transportation amenities unviable.

At C.3.iii, Reporting, the proposal refers to sample tables and instructions, but no such materials were found. The proposal requires a considerable amount of new information be collected and reported for regulated projects. The information implies that a database will need to be designed, implemented and maintained. This will be a burden and it is unclear what benefit the added information will provide.

Under the following section titled Effective Date, the draft proposes to lower the regulated project threshold to 5,000. In Board workshops, staff presented data that if the threshold is lowered, about 4% more projects will be captured. An Environmental NGO representative suggested that with such a low amount of capture, the benefit of the effort was not likely to be either cost effective or materially beneficial and that efforts would best be spent elsewhere. We completely agree with this criticism.

At C.3.c.i, the draft proposes that single family homes be required to implement one or more prescribed BMP's. Currently, single family projects that are not regulated by C.3, are required by local ordinance to implement BMP's such as no direct connection. The Board staff proposal does not list what their intended BMP's are so it is hard to evaluate the impact, however, on single family lots, the options are limited and we are concerned about accepting such a provision without knowing how far reaching are its consequences.

At C.3.e (4), the proposal requires a database for all treatment systems. Again this requires the design, implementation and maintenance of a database related to the operation and maintenance of the facilities. Taken by itself, this may not be an issue, but when added to the proliferation of databases that the draft requires and that are in themselves unique, it becomes an enormous administrative problem for the local agency.

At C.3.j, the proposal requires yet another database for projects between 1,000 and 10,000 square feet, with the same attendant burdens and problems as all the other required databases.

Commercial/Industrial Inspection Program

At C.4.b.ii.II, the proposal requires ensuring that a SWPPP is available and onsite. It is not clear that a SWPPP has been required for all commercial/industrial facilities to date. While the current ordinance allow a SWPPP to be required when appropriate, there is no such blanket requirement. This will create a new level of administration and policing.

At C.4.d, the proposal directs what the content of inspector training should be. It also directs the co-permittees to develop a Bay-Area specific Guidebook. Current training agendas cover the topics listed, but it is unclear why co-permittees need to suffer the expense to develop a guidance manual for inspectors.

Construction Site Stormwater Pollution Management

This entire section is a duplication of the activity required by the State General Construction Permit, but makes no mention of or reference to that permit. This creates the potential of uncoordinated requirements, and local agencies potentially being held to two conflicting sets for requirements. All of the requirements and authorities required here are present elsewhere in existing ordinances and other parts of the proposed MRP. At the very least, to avoid conflicts and confusion, this section should invoke the General Construction Permit, or state "as required by the State General Construction Permit".

At C.6.f, the proposal includes inspection frequencies. Current practice is to inspect during the construction season for general site housekeeping practices, before the rainy season for implementation of the SWPPP in preparation for the rainy season, during regular site engineering inspections and after each storm. Dictating three screening inspections a week has no basis. At C.6.j, in the reporting of the inspections, the proposal is now determining what format of inspection form for hard copy and electronic forms and the establishment of a yet another database to record the information. Unless the Board is willing to provide these tools, it seems an intrusion and imposition on the local agency in how it is to do business.

Water Quality Monitoring

The proposal contains requirements that clearly are beyond the ability, and resources of the local agency. The financial impact of these requirements is too great to estimate but will create an enormous burden and perhaps could best be absorbed by the resources of the state.

Please consider these comments in your further deliberations.

Very truly yours,

F. J. Kennedy, P.E.

Town Of Moraga
Stormwater Program Coordinator

Bruce Wolfe, Executive Director
Municipal Regional Permit
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Page 8 of 8

cc: Jill Mercurio, P.E.
Town Engineer