



B A S M A A

Alameda Countywide
Clean Water Program

Contra Costa
Clean Water Program

Fairfield-Suisun
Urban Runoff
Management Program

Marin County
Stormwater Pollution
Prevention Program

San Mateo Countywide
Stormwater Pollution
Prevention Program

Santa Clara Valley
Urban Runoff Pollution
Prevention Program

Vallejo
Sanitation and Flood
Control District

November 8, 2006

Bruce Wolfe, Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay St., Ste. 1400
Oakland, CA 94612

**Subject: Municipal Regional Permit (MRP) – Regional Water Board
Working Draft (revised version issued October 16, 2006)**

Dear Mr. Wolfe:

This submits the Bay Area Stormwater Management Agencies Association's ("BASMAA's") preliminary written comments on the Regional Water Board staff's "most current version of the working draft permit" (revised version issued October 16, 2006). We expect that additional written comments will be submitted by many of the municipalities that are members of the stormwater programs that comprise BASMAA's membership and incorporate them into these comments by reference.

As you know, on September 22, 2006, three weeks before your staff's dissemination of the document on which comments have been solicited, in response to an offer made at the end of the September 8, 2006 Regional Water Board Stormwater Subcommittee Workshop,¹ BASMAA submitted its and its member agencies' consensus suggestions for the draft text to be used in the MRP, specifically including:

- Draft performance standards tables for all MRP elements, including (1) the "baseline" municipal stormwater program elements identified in USEPA's permitting regulations *and* (2) additional elements that address implementation of TMDLs adopted by the Regional Water Board *and* for other previously identified pollutants of concern; and
- Draft "Provisions" of the MRP which would (1) encompass the submitted Performance Standard tables and give them legally enforceable effect, (2) address the trial court decision in the prior BayKeeper litigation concerning the current San Mateo and Contra Costa municipal stormwater permits (such as by setting forth a specific and highly detailed monitoring program), and (3) define parameters for implementation of additional State-mandated municipal stormwater program components concerning hydromodification and watershed management.

Bay Area

Stormwater Management

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¹ The offer was to receive additional comments "on the general concept of urban water quality management and how it relates to specific Board initiatives, such as our pending municipal regional permit." lyris@swrcb18.waterboards.ca.gov, September 1, 2006 e-mail noticing Stormwater Subcommittee Workshop, September 8, 2006.

For the reasons stated below and because we believe the many months of effort that BASMAA and its local government member agencies put into developing and reaching a Bay Area-wide local government consensus on these recommendations have largely been cast aside, we are resubmitting the attached document and again ask that it, rather than your staff's October 16, 2006 document, be made (1) the basis for further discussion and development of the MRP, and, in any event, (2) part of the official public record in the MRP and Regional Board Stormwater Subcommittee processes:

- The Regional Water Board staff's "most current version of the working draft permit" was publicly noticed as "not a polished document" and continues to have significant design and format deficiencies that make it an unnecessarily difficult document to review, understand, and on which to conduct a public discussion with tens, if not hundreds of people.
- The Regional Water Board's working draft includes many potential new or significantly expanded requirements that (1) are not mandated by law or reflected in US EPA-issued or other California Regional Water Quality Control Boards' municipal stormwater permits, (2) which would represent a significant expenditure of public resources that are not available at the local level (in part due to Proposition 218), and (3) that involve little, no, or, at most, only speculative potential water quality benefits. Examples of these include, among others, the following:
 - Replace 50% of existing street sweepers with new equipment purchases, regardless of the condition of existing equipment—a move for which there is no scientific justification;
 - Implement trash removal programs in creeks and stormwater conveyance systems—a proposed requirement with likely significant adverse impacts for which the environmental (CEQA) analyses has not been conducted;
 - Assess industrial facilities' compliance with the State's General Permit—a service for which the State itself receives funding to conduct such assessments;
 - Lower the threshold for municipal application of the "C.3" new and redevelopment requirements in local planning approval processes from 10,000 square feet or more of impervious surface to 5,000 square feet—while implementation of the 10,000 square foot threshold is still underway and before it is evaluated. This new requirement is proposed without any assessment of the effectiveness of existing requirements that have just commenced implementation.
- BASMAA and its local government member agencies are extremely disappointed that, given the opportunity we provided, Regional Water Board staff largely did not consider or use our September 22, 2006 submittal for their working draft or even attempt to address in the draft they did release, the comments we had previously submitted concerning the so-called "unresolved issues" on which they had previously specifically requested our input. We understand the Regional Water Board's current MRP development schedule ostensibly calls for unresolved issues to be discussed at workshops in mid-November designed "for negotiation of and seeking common ground." But again, given the release of the working draft in the form it was circulated, seems to us to have put the cart before the horse. Our participation and input seems to be falling on deaf ears.

As we have expressed to you on many occasions, in many forms, and demonstrated by the significant amounts of time and resources we have devoted to this process for the past two years, BASMAA and its local government member agencies are committed to the development and adoption of a sound and ambitious MRP for Phase I stormwater programs in the Bay Area. We offered our September 22, 2006 submittal in that spirit and to expedite the permit development and drafting process. The submittal we offered, to a large degree, reflects the discussions that occurred within the MRP work groups over the past year and a half and, unlike the staff's working draft, seriously attempts to move those discussions forward by resolving, in a way municipalities are likely to be willing to accept, the "thorny" or unresolved issues that the work groups were unable to resolve.

In summary, BASMAA believes that our submittal achieves the following objectives:

- Stormwater Subcommittee Workshops issues – The draft tables and provisions address and offer solutions to resolve most of the issues raised at the workshops relating to urban runoff.
- Organization – The 13 performance standards tables are generally organized and formatted the same way, greatly facilitating review and understanding (and ultimately compliance and Regional Water Board oversight). Staff's working draft does not achieve this objective.
- Consistency – In addition to a consistent organization and format, the tables and provisions are drafted in a consistent writing style and level of detail, and are cross-referenced to ensure the content is comprehensive and internally consistent. Staff's working draft does not achieve this objective.
- BayKeeper Decision – As indicated above, the draft performance standards tables and provisions fully address the trial court decision in the prior BayKeeper lawsuit regarding San Mateo and Contra Costa permits. Several aspects of the staff's working draft do not appear to achieve this objective.
- Prioritization/Optimization – The dual impacts of voter-imposed Proposition 218 restrictions on limiting local government revenue-raising abilities for stormwater management programs and the concurrent anticipated increase in work load and resource demands being placed on these programs are managed by building the concept of optimization into the draft performance standards tables and, especially, prioritizing the new/increased requirements to be set forth in the MRP based on recognized water quality impairments (i.e., TMDL and certain other pollutants of concern). Regional Water Board staff have instead attempted to comprehensively revamp the entirety of the existing municipal stormwater program structure under the apparent assumption that everything is a priority for change and have not yet been willing to engage in prioritization/optimization discussions, as is evidenced in their working draft. This is not acceptable to the BASMAA member agencies.

- MRP Goals – In addition to these broad objectives, the BASMAA submission also achieves the following more specific goals for the MRP:
 - Consolidates six Phase I municipal stormwater permits (including one US EPA-issued permit) into one consistent permit for 76 co-permittees, including phasing of requirements where necessary – a major accomplishment and step forward;
 - Incorporates detail currently in Stormwater Management Plans (SWMPs) into the permit by being more specific in requirements including new performance standards tables establishing (a) the required activities, (b) how much of each activity is required, and (c) reporting and effectiveness evaluation requirements for each activity;
 - Adds significant new actions or enhances and/or re-focuses existing actions and program elements to address 303(d) listed pollutants and TMDL Waste Load Allocations;
 - Adds far more specific and comprehensive stormwater monitoring than currently exists as recommended by the monitoring work group, including monitoring for 303(d) listed pollutants;
 - Address several other Regional Water Board and community priorities that previously have been identified, such as:
 - * enhanced trash management program elements;
 - * full implementation of the previously phased-in new and redevelopment performance standards (e.g., site design, source control, and engineered stormwater treatment measures); and
 - * initial implementation of the first-in-the-State hydromodification management programs the Regional Water Board has only recently approved or is anticipated to approve before the end of this year.

In sum, combining the performance standards tables and provisions from six Phase I permits (including one USEPA permit) into one set for 76 agencies and moving them out of individual stormwater management plans and into a single permit structure has by itself been quite a challenge. However, BASMAA's September 22, 2006 submittal does not stop there and, as the list above makes clear, it also represents a significant and substantial step forward in the level of effort to be required for all the co-permittees. As a result, the co-permittees remain very concerned about the resources that will be necessary to implement these performance standards and provisions over the term of the MRP, even if adopted in BASMAA's suggested form. Requirements above and beyond BASMAA's proposed performance standards, such as many of those set forth in the staff's working draft, would be both unmanageable and unaffordable for most co-permittees, and for that reason alone (as well as the many others listed above), we are requesting that BASMAA's submission rather than the working draft be used as the basis for further MRP discussion and development.

BASMAA comments – Municipal Regional Permit – Regional Water Board Working Draft

Finally, consistent with the October 13, 2006 direction we received from the Regional Water Board's Counsel, in addition to becoming part of the public record for the MRP proceeding per se, we are formally requesting that this letter and its attachments readily be provided to all Regional Board members in the context of its Stormwater Subcommittee process and concurrently be posted on the Municipal Regional Urban Runoff Phase I NPDES Stormwater Permit portion of the Regional Water Board website so they are readily available to all interested stakeholders.

As we have stated to you earlier and above, we have very significant concerns about the potential utility and productivity of the planned November 15 and November 20 workshops if they are based on staff's very rough and over-reaching working draft. We strongly recommend that you consider directing Board staff to utilize the September 22, 2006 BASMAA submittal in the upcoming November MRP workshops/public meetings instead.

If you have any questions regarding these comments, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald P. Freitas". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Donald P. Freitas, Chair

Attachment: BASMAA MRP Provisions and Tables

cc: Shin-Roei Lee, Acting Assistant Executive Officer; Chief – South Bay Watershed
Management Division, Regional Water Board
Tom Mumley, Acting Assistant Executive Officer; Chief – TMDL and Planning Division,
Regional Water Board
Wil Bruhns, Chief – North Bay Watershed Management Division, Regional Water Board
Dale Bowyer, Section Leader – Southeast Bay Section, Regional Water Board
Alexis Strauss, Director – Water Division, USEPA Region IX
BASMAA Executive Board