



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

December 7, 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
permit development process**

Dear Mr. Wolfe:

In response to your staff's request for additional comments following their November 15 and November 20 meetings on the MRP, the Bay Area Stormwater Management Agencies Association (BASMAA) submits the following comments on the process that staff is using to develop an NPDES permit. BASMAA has already submitted detailed comments on the content of the MRP itself via our comprehensive, integrated, and optimized draft (submitted September 22 and resubmitted November 8). Now, three months later, we continue to await clear, substantive, and traceable responses to our detailed comments. Below are our comments on the process and our recommendations on how best to make progress.

- 1) **November meetings were ineffectual; rationale for changes lacking** – No meaningful discussions on the proposed Regional Water Board staff language have occurred over two days of Regional Water Board staff meetings. While the Regional Water Board Staff provided individual perspectives on the various performance standards in the MRP, the presentations were only a brief overview and did not provide the necessary detail and rationale supporting the need for the numerous staff proposed changes nor did the discussions tie the need for the changes back to the TMDL implementation (except for the pollutants of concern (POC) sections themselves). When staff did proffer the rationale for a proposed change or when stakeholders asked for it when it was not proffered, often the rationale did not support the change or no clear rationale was provided.
- 2) **Water Board draft needs significant work** – The Regional Water Board staff needs to first recognize and then complete a review of all MRP proposed requirements in order to effectively coordinate and optimize the numerous requirements. As currently written, the Regional Water Board staff draft MRP is a disparate mix of non-optimized (prioritized) individual perspectives on permit needs. In the recent workshops, Regional Water Board staff suggested that our collective objectives for the first MRP are very similar and yet the proposed requirements in the various sections of staff's draft MRP do not reflect the existence of shared objectives among staff, let alone with permittees or stakeholders.

Bay Area
Stormwater Management

Agencies Association

1515 Clay Street

Suite 1400

Oakland, CA 94612

510.622.2326

www.basmaa.org

- 3) **BASMAA document is significant accomplishment and resource** – The design, organization, and content of the BASMAA document are based on our collective objectives for the first MRP. A permit based on this document will advance stormwater management by optimizing local stormwater programs on the key issues of concern to permittees, stakeholders and the Regional Water Board:
- new and redevelopment, including hydromodification (“C.3”);
 - monitoring; and
 - pollutants of concern (TMDL implementation).

The BASMAA document represents the collective thinking of all 76 Phase I co-permittees in the Bay Area and provides a well thought out comprehensive, integrated, and optimized document that provides the municipal Bay Area local government perspective on practicable and realistic stormwater management. The BASMAA document contains a single set of enhanced Bay wide performance standards that effectively address the key stormwater management issues facing municipalities during the next five year period, and establishes a foundation to build upon for the following five years. Accordingly, the Regional Water Board management should recognize the BASMAA document for the significant resource that it is and utilize the BASMAA document as the foundation for MRP discussions.

- 4) **Public policy approach is misguided** – The Regional Water Board staff appears to be relying on the “we are in the middle” approach to establishing public policy. This approach is outdated and not rational. Making decisions based on this approach rewards outlier positions and penalizes cooperation and collaboration. A more realistic and pragmatic approach is to begin with a clear set of shared prioritized objectives, an agreed upon time frame, a strategy for implementation (including a proposed mechanism to measure progress), and a feedback mechanism. The various performance standards and needed requirements could then be discussed within this context. This approach could at least lead to a more informed and realistic public policy.
- 5) **Feedback mechanism needed** – Numerous comments and stakeholder input has been requested and received by the Regional Water Board staff over the past two years. It is not clear how the staff intends to address, in a clear, traceable, and transparent manner, the numerous comments received from the stakeholders. Several stakeholders again asked the staff during the past two days of meetings and again no clear response was forthcoming.
- 6) **Systematic review and development needed** – Regional Water Board staff noted that it was their intent to prepare a revised administrative draft by mid January 2007. We request that the staff utilize the BASMAA document as the starting point. The staff should then propose changes to that document along with the appropriate supporting rationale. Stakeholders should then be given at least five weeks to review the documents (to allow for monthly areawide program management committee meetings to occur) with public workshops following the comment period.
- 7) **Need for more, integrated discussions** – Given the input received at the recent public meetings it is clear that additional time is needed to discuss all the proposed staff requirements. In particular, numerous stakeholders expressed a clear desire to have

BASMAA comments – Regional Water Board MRP development process

additional meetings on the new and redevelopment, monitoring, conditionally exempt discharges, and trash requirements. For these discussions to be fruitful, they should occur after we have developed shared objectives so that these discussions may be put within the context of the need to optimize the entire set of MRP requirements.

BASMAA and its member agencies have demonstrated by the significant amounts of time and resources we have devoted to this process for the past 2½ years that we are committed to the development and adoption of a sound and ambitious MRP for Phase I stormwater programs in the Bay Area. However, as we have expressed to you on many occasions, in many forms, BASMAA and its local government member agencies are extremely disappointed in the design and conduct of the various processes – both internal and external (public) – that staff has invented to develop this NPDES permit. The lack of a coherent internal process has resulted in a Regional Water Board draft that is an unorganized, disparate mix of individual sections. The lack of a solid, consistent external process has resulted in far too little progress being made on this permit after over 2½ years of collective effort. We are particularly disappointed that staff has, for the most part, refused to listen to our advice on how to significantly improve both their internal and external processes – advice that is based on sound, standard, and proven organizational and project management principles and techniques.

Therefore, we formally request:

1. no more Regional Water Board drafts until staff has provided clear, substantive, and traceable responses to the detailed comments of all stakeholders,
2. no more unproductive and “ad-hoc” meetings (as defined in Regional Water Board staff revised MRP schedule, 11/29/06 revision attached) until all stakeholders try and reach agreement on shared objectives for this permit, and
3. a special workshop be convened of the full Board in February to discuss and set shared objectives for the Municipal Regional Permit. BASMAA is fully prepared to work with your staff to prepare materials for this item and to help conduct the item in any way that would be constructive.

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 readily be provided to all Regional Water Boardmembers 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.

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

BASMAA comments – Regional Water Board MRP development process

Attachment: Regional Water Board MRP Schedule and Task Description (November 29, 2006 Revision)

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