



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

July 13, 2007

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) – Administrative Draft

Dear Mr. Wolfe:

The Bay Area Stormwater Management Agencies Association (BASMAA) would like to take this opportunity to express its appreciation to you and staff for meeting with us several times last month to discuss the details of the May 1, 2007 Administrative Draft (Draft) of our Municipal Regional Permit (MRP). We found the discussions informative and helpful. We also found the organization and formatting of the Draft a significant improvement over the October 16, 2006 version of the MRP.

As we expressed to you in our discussions, although we found some improvements in the May 1 Draft, overall, most of BASMAA's principal concerns remain, including:

- The new monitoring requirements represent a very significant increase in current monitoring efforts and will require a *very* significant expenditure of public resources, necessitating curtailment of other, lower priority aspects of Bay Area municipal stormwater programs that you and your staff have yet to identify for us. As we discussed, while water quality monitoring is undoubtedly an important component of the current draft MRP, these requirements are not without cost and need to bear a reasonable relationship to the management requirements that municipal stormwater programs are charged with addressing under the federal Clean Water Act. (To the extent the monitoring requirements go beyond that, they still must be reasonable and feasible under the Water Code and they are a new program and/or higher level of service subject to the requirement of a subvention of State funds. *See County of Los Angeles v. Comm'n on State Mandates*, Cal. App. 4th (Cal. Ct. App., May 10, 2007.) In addition, as currently drafted, many of the monitoring requirements are unnecessary, will provide little or no useful information, and are not prioritized so as to allow monitoring resources to be focused on TMDL implementation.
- Proposed changes in/expansions of the application of numeric design standards for stormwater treatment on new and redevelopment projects (Provision C.3 Requirements) have not been justified and there remains no reason to make any changes in the C.3 Program at this time since it is still relatively in its infancy. In particular, this suggested aspect of the MRP

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continues to ignore the huge burden a lower square footage threshold will place on municipal planning staffs (since many more project applications would have to be reviewed) and no nexus between a lower square footage threshold for regulated projects under Provision C.3 and significant water quality improvement has been shown in an already highly urbanized environment so as to justify such an increased staffing and resource burden. Moreover, even if justification for this could be presented, to date, there has been no identification of what aspects of the current municipal stormwater programs would be curtailed to free up the resources needed for implementing the expanded scope of this program. (In addition, since U.S. EPA has not prescribed it, the lowering of the threshold and corresponding increase in the number of projects to be subjected to municipal review and regulation obviously constitutes a new program or higher level of service that requires State subvention of funds.)

- The draft MRP includes requirements for the development of numerous databases, use of specific types of reporting formats, and significant additional reporting, all in the context where currently required reports are rarely timely reviewed due to your own limitations with respect to Water Board staff resources. Again, as discussed at our meetings, the intended usefulness, practicability, and implied resource burdens (on both municipalities and your staff) of the revisions are not clear and, in any event, do not consider the significant incremental burden to be placed on Bay Area municipalities in relationship to the benefit to be derived (which is not itself clear). The management questions for these new tracking and reporting requirements is also either non-specific or not articulated, thus not even allowing for a clear understanding and ability to prioritize the need for and eventual use of the information. No potential curtailments of other aspects of the municipal stormwater program have yet been identified to free up resources for addressing these new requirements (and federal law does not prescribe requirements for building such databases or using such formats, so they again constitute new programs or higher levels of service being mandated by the State).
- The draft MRP contains numerous new requirements associated with exempted and conditionally exempted discharges. It was unclear during our meetings what specific (and, to the extent any actually exist, significant and recurring) problems had arisen to give rise to these proposals for changes in the existing municipal program and some of the proposed changes do not seem to have thoroughly been thought through. One example is the proposed requirement to subject emergency fire fighting flows to certain requirements rather than an outright exemption. Another example involves the proposal to require potable water utility discharges associated with water main maintenance and testing to meet specific receiving water based standards (e.g., pH) where other State Department of Health Services regulations concurrently require the maintenance of different water quality levels for pH and other constituents in the same water for the protection of public health. While we agree that the implementation of BMPs on certain types of discharges to protect receiving waters are important, requirements for such implementation need to be reasonable and practicable and should not take precedence over public health and safety issues.
- While the administrative draft MRP no longer requires municipalities to go out and buy replacements for half of their existing street sweeper fleets, it now prescriptively provides

that when replacing existing street sweepers during the permit term, all municipalities must replace at least 75% with high performance sweepers. No scientific justification supports this overly intrusive and potentially expensive capital expenditure funding requirement (which still represents a new program or higher level of service subject to State subvention); nor is the requirement linked to community-specific, and thus pollutant-specific, management objectives or a proposal to drop or reduce the level of effort on other existing components of the municipal stormwater program that staff have concluded are likely to be less effective than high efficiency street sweepers in addressing such objectives.

The above are, perhaps, the most obvious examples we covered in the course of our discussions last month. But, overall, and including with regard to the level of detail and prescriptiveness now proposed to be put into aspects of the draft MRP that address other aspects of the municipal stormwater program (e.g., industrial and construction inspection, municipal maintenance, public information and participation, illicit discharge control), a principal concern of BASMAA is that there still does not seem to be an adequate recognition that the proposed contents of the MRP (at least as set forth in the May administrative draft) will not just add more clarity, but will, in fact, require significantly more municipal resources. (Of course, this also suggests that, by increasing specificity and prescriptiveness, new programs and/or higher levels of service are in effect being required.)

The same is true with regard to the administrative draft MRP's proposals concerning trash action levels and their implications. While BASMAA concurs with the need for more systematically assessing trash accumulation areas potentially associated with stormwater and then taking enhanced action to better address controllable sources and/or conveyance of stormwater-related trash affecting such areas, inclusion of an overly-prescriptive approach based non-scientifically established numeric "action level" triggers that require the implementation of types of capital-intensive and/or otherwise expensive municipal stormwater program actions specified before the nature of the problem and its causes are even assessed makes no sense. (Nor have the resources needed for such requirements been freed up by scaling back in other program areas.)

As we have communicated many times previously in this process, municipal resources are *finite*, so establishing priorities (such as TMDL implementation) and ranking (and including and excluding or curtailing requirements according to the ranking of priorities) them are, from BASMAA's perspective, both a key element and practical reality that needs to be confronted if a municipal regional stormwater permit for the Bay Area is to be successfully developed.

As indicated above, while we hope that the results of our discussions with staff last month will address many of our expressed concerns and move the process along considerably further, we want to be clear for the record that the requirements as set forth in the May administrative draft MRP appear to be a long way from that successful outcome. Specifically, to summarize the above, the May administrative draft MRP 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) would represent a significant expenditure of public resources that are not available at the local level (in part due to Proposition 218), and (3) involve little, no, or, at most, only speculative potential water quality benefits.

BASMAA letter – Regional Water Board MRP – Administrative Draft

Also, please remain aware that although we are communicating with the co-permittees proposed to be covered under the MRP, BASMAA's comments do not necessarily represent the views of all the co-permittees, and areawide programs and/or co-permittees may be providing their own comments on the Draft.

We look forward to continuing to work with you and your staff, and to further discussions as the MRP develops.

If you have any questions, 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 loop at the end.

Donald P. Freitas, Chair

cc: Tom Mumley, Assistant Executive Officer
Shin-Roei Lee, Chief – South Bay Watershed Management Division
Wil Bruhns, Chief – North Bay Watershed Management Division
Dale Bowyer, Section Leader – Southeast Bay Section
BASMAA Executive Board