

December 8, 2006

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

Sent via electronic mail to MRP@waterboards.ca.gov

**RE: Additional Comments on the Draft Municipal Regional Urban Runoff
NPDES Permit.**

Dear Regional Board Staff:

Thank you for accepting these comments on the first working draft of the Municipal Regional Urban Runoff Permit (“MRP”). Please note that, because no new working draft has been issued since our last letter, these comments are largely a restatement of the points made by Baykeeper and the Natural Resources Defense Council on November 8, 2006.

In addition to the points below, Baykeeper strongly urges the Regional Board to continue its independent efforts to create a progressive and effective stormwater permit. Despite the municipalities’ insistence, the draft permit submitted by BASMAA can not be the basis for any future permits. Baykeeper has and will continue to strenuously oppose the writing of permits by permittees, regardless of whether they are public or private entities. Permittees can offer valuable insight, but will always be faced with a conflict of interest when it comes to regulations.

A. Numeric Effluent Limits.

The permit should contain numeric effluent limits or, at a minimum, numeric benchmarks. Numeric limits are feasible and provide a clear standard against which compliance with the permit and/or success of the iterative process can be determined. If the MRP does not contain numeric limits or benchmarks, then the permit findings should thoroughly articulate the basis for rejecting them during this permit cycle.

B. Permit Goals and Specific Performance Criteria.

Despite several iterations of Bay Area permits, stormwater pollution is still preventing attainment of water quality standards in the Bay Area. One of the flaws of current permits is that they lack sufficiently specific and quantifiable requirements, without which the determination of (1) compliance with the terms of the permit and (2) efficacy of the permit in reducing stormwater pollution is impossible. To remedy this shortcoming, the MRP should articulate the goals and requirements of the permit in terms of concrete and measurable criteria. As we previously stated, some sections of the draft permit look promising in this respect, while others still remain vague.

C. Non-Stormwater Discharges.

As written, the permit appears to condition compliance with the prohibition on non-stormwater dischargers on the iterative process outlined in section C.1. This is illogical and inconsistent with the section 401(p)(3)(B) of the Clean Water Act (“CWA”) which unambiguously requires permits for municipal sewers to “effectively prohibit non-stormwater discharges into the storm sewers.” To this end, we recommend removal or revision of the sentence reading “Compliance with this prohibition shall be demonstrated in accordance with Provision C.1 and C.9 of this order.”

D. Reporting.

During the public MRP discussion meetings on November 15 and 20, many permittees expressed concern that the draft reporting requirements are too onerous. While the new permit may require investment of additional resources, comprehensive reporting is necessary to ensure that the iterative process is successful. Unless it is clear what BMPs are being implemented at what level, it will be impossible to determine what additional work needs to be done.

E. Low Impact Development.

Low-impact site design practices are effective in reducing the quantity and improving the quality of stormwater runoff. This permit should incorporate low impact development provisions, such as those contained in the Los Angeles MS4 permit.

F. New & Redevelopment Threshold.

We strongly oppose increasing the final new and redevelopment threshold to 10,000 square feet as requested by the permittees. The lower, 5,000 square feet threshold represents progress and has already been incorporated into other regions’ MS4 permits. If, as the permittees claims, decreasing the threshold will not result in appreciable improvements to water quality, then they should submit comprehensive data to support this allegation.

G. TMDL Implementation.

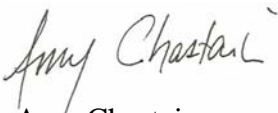
While we recognize that this section is still very much in a preliminary form, it appears to lack concrete and measurable requirements—other than pilot projects—to address sources of impairing pollutants. We urge the Board to identify and set deadlines for actions that can be immediately implemented to reduce loading of pesticides, PCBs, and other pollutants via storm water. We also suggest that the Regional Board consider incorporating and making enforceable the wasteload allocations contained in TMDLs, as was recently done by the Los Angeles Regional Board.

H. Water Quality Monitoring.

We support the detail and comprehensive nature of the receiving water monitoring outlined in the permit, but request that it focus more on monitoring of actual stormwater and monitoring to support BMP effectiveness evaluation. The primary objective of any NPDES monitoring program is to demonstrate compliance with applicable water quality standards and effluent limitations. *See* 40 C.F.R. § 125.63(a)(1)(i)(a). To this end, other regions, including Washington state and San Diego have draft MS4 monitoring programs that require outfall monitoring to characterize discharges from each watershed. Similar monitoring is also contemplated by the federal regulations governing MS4 applications, which require applicants to submit quantitative data from outfalls representative of the land use areas in a watershed. *See* 40 C.F.R. § 122.26. We ask that the Regional Board review other permits that require outfall and BMP effectiveness monitoring and incorporate appropriate provisions into the MRP.

We look forward to receiving a second working draft of this permit.

Sincerely,



Amy Chastain
Bay Program Associate