



SAN MATEO COUNTYWIDE
STORMWATER POLLUTION PREVENTION PROGRAM

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December 8, 2006

Mr. Bruce Wolfe
Executive Officer
1515 Clay Street Suite 1400
Oakland, CA 94612

Subject: Comments on the San Francisco Bay Regional Water Quality Control Board's Working Draft Municipal Regional Permit and November Workshops

Dear Mr. Wolfe:

This letter provides the San Mateo Countywide Stormwater Pollution Prevention Program (STOPPP)'s comments on Water Board staff's proposed "working draft" municipal regional permit (MRP) to regulate the discharge of stormwater from 76 municipal agencies located in San Mateo, Contra Costa, Alameda, and Santa Clara Counties, as well as the cities of Fairfield, Suisun City, Vallejo, and the Fairfield-Suisun Sewer District.

Substantive Comments

Water Board Staff Should Optimize the MRP Requirements. Water Board staff's presentations at the two November workshops did not address the significant issue of how to allocate limited municipal resources to enhanced permit requirements. To continue making improvements in stormwater quality with limited resources, some pollutant control activities merit more emphasis than others. As presented by Water Board staff at the workshops, each of the working draft permit's 13 sections is considered equally important. This reluctance by Water Board staff to decide what pollutant reduction activities to emphasize is counterproductive to our mutual interest in continuing to reduce pollutants in stormwater.

If the Water Board's highest priority is to reduce the discharge of Clean Water Act Section 303(d) pollutants for which total maximum daily loads are required, the focus of the MRP should be on requirements that address those pollutants. Board staff should leave other components of the municipal stormwater programs unchanged or even reduce the associated workloads to account for municipal resources that are severely limited under Proposition 218. It is essential to view the Water Board staff's draft permit as a whole, and not only as individual sections. The process of optimizing the MRP's permit requirements should be undertaken as part of the Water Board's public stakeholder process.

One of the benefits of the Bay Area Stormwater Management Agencies Association (BASMAA)'s proposed MRP performance standards is the integrated and comprehensive approach to managing stormwater that reflects BASMAA's knowledge and experience as long-term stormwater permittees with limited municipal resources. BASMAA's proposed MRP reflects its understanding of what programs are actually effective in protecting water quality. While STOPPP recognizes the need to incorporate the views of Water Board staff and other stakeholders, the BASMAA performance standards have already been optimized to focus on the highest priority issues of addressing pollutants of concern and court-directed monitoring changes. STOPPP recommends using the BASMAA document as a basis for optimizing the MRP's requirements.

Support BASMAA Approach. STOPPP believes it is an inefficient use of Water Board staff and municipal staff time to continue reinventing the basic performance standards in the MRP. Fortunately, BASMAA developed a uniform set of performance standards that have been reviewed and generally accepted by all 76 public agencies. Performance standards have been implemented by most municipalities in the Bay Area for ten to fifteen years and there is good understanding by municipal stormwater programs about what constitutes an effective stormwater program. We encourage use of BASMAA's proposed performance standards for industrial business inspections, illicit discharges, construction inspections, conditionally exempted discharges, municipal maintenance, new development, and public information and participation.

Craft Understandable Permit Language. Water Board staff's working draft permit is not well organized and in some places worded in a confusing manner that will hamper municipal staff's understanding and implementation of the 116 pages of proposed requirements. Water Board staff should utilize BASMAA's proposed performance standards for the MRP because they are far more clear, concise, and well organized. We believe a permit that is easy to understand will be more effectively implemented by municipal staff. The MRP should not have duplicative and in some cases contradictory sections, as is the case with the current working draft permit (for example, trash management appears in multiple sections). In addition, it would be useful if the MRP contained a table of contents, definitions for terms used in the permit, and a list of acronyms.

Reduce Water Quality Monitoring Section of Working Draft MRP. There does not appear to be a reasonable relationship between the monitoring proposed in this 30-page section of the draft MRP and how Board staff will use the collected data. It is unclear what specific questions Water Board staff plans to answer with the monitoring data. Board staff should support efficient use of municipal funds by focusing monitoring requirements to provide specific information needed to evaluate or improve the effectiveness of local municipal stormwater programs. Those monitoring goals should be explicitly stated so all stakeholders can provide feedback. Given the high cost of sampling and analysis, every monitoring requirement should be designed to answer a specific, relevant question. If it does not answer a specific question, it should not be required.

STOPPP believes Water Board staff's proposed monitoring requirements would result in an overly broad collection of data that will not lead to improvements in water quality. For example, the draft permit requires monitoring of all water bodies that drain to the bay, water bodies draining Daly City, and San Pedro and Pilarcitos Creeks that drain to the ocean. The required testing includes biological assessments, general water quality, temperature, pathogen indicators, trash assessment (baseline and trends), toxicity testing of water and sediment, pollutants in sediment, geomorphology, substrate characterization, stream flow, and stream survey (walking and mapping). In addition, there is a proposed requirement that STOPPP conduct a minimum of four monitoring projects each year and initiate a minimum of six monitoring projects over five years. Further, there is a requirement for mass emissions and loading studies for numerous pollutants, including pyrethroids, endocrine disrupting compounds, polybrominated diphenyl ethers (PBDEs), polycyclic aromatic hydrocarbons (PAH), copper, sediment, perfluorooctane sulfonate (PFO) and other chemicals whose production, sale, and use are not controlled by municipalities. There is no justification provided for such extensive monitoring requirements, and no demonstration of how performing the monitoring would lead to improved water quality.

STOPPP recommends a more optimized approach to monitoring that supplements the Water Board's long-term status and trends monitoring performed under the Surface Water Ambient Monitoring Program with monitoring in the MRP. The level of monitoring described in BASMAA's recommended performance standards represents an incremental increase in STOPPP's current monitoring efforts that focus on collecting information to help improve implementation of pollutant controls.

With regard to follow-up monitoring projects based on results of status and trends monitoring, it is impossible at this time to identify the types of monitoring projects that would be appropriate. STOPPP recommends evaluating the need for follow-up monitoring projects near the end of the permit cycle, and if necessary and appropriate, include them in the next permit cycle so all interested stakeholders can participate in reviewing and commenting on proposed additional monitoring. It is important that these types of permit requirements include a public notice and comment period.

Leave New Development Requirements Unchanged in MRP. STOPPP believes it is inappropriate to modify Provision C.3 at this time since it was only recently approved by the Regional Board in a public hearing process in 2003. The current C.3 requirements represent a quantum leap forward in stormwater regulation in the Bay Area and municipalities are still in the very early stages of implementing the existing requirements (the current 10,000 square foot threshold only went into effect a matter of months ago). Given that the existing requirements already went through a public process and municipalities have limited experience with projects subject to C.3 requirements, STOPPP believes there are insufficient data at this time to justify Board staff's proposed modifications. The impervious surface data Board staff provided in the November workshops as justification to reduce the applicability threshold illustrated that the current requirements are already capturing about 97% of all of the impervious surface area created and/or replaced in the sampled cities, and the remaining projects are almost exclusively single family homes. Board staff's proposed requirement to make projects that consist of one single-family home, projects that create and/or replace 5,000 square feet, and street replacement projects subject to additional requirements are excessive, unnecessary, detrimental to smart growth, and will require significant municipal resources to implement. Changes to the applicability criteria should be evaluated after municipalities develop sufficient experience applying the 10,000 square foot threshold, for which municipalities expended significant resources educating both municipal staff and development communities. STOPPP strongly urges Water Board staff to allow municipalities time to comply with the existing C.3 provisions and re-evaluate the C.3 requirements in the next permit cycle when sufficient data exist on real-world implementation of the current requirements.

Optimize MRP Required Reporting. STOPPP supports the Water Board's efforts discussed at the workshop on November 15, 2006 to reduce reporting in the MRP to levels less than those currently conducted by municipalities. Overly prescriptive reporting takes time away from efforts to implement stormwater pollution prevention programs and best management practices that help to improve water quality. Unfortunately, Water Board staff's working draft permit describes overly burdensome reporting requirements that STOPPP believes are unnecessary given the poor connection between increasing the level of reporting and reducing pollutants in stormwater. Fortunately, BASMAA's draft performance standards include useful reporting examples that attempt to strike a balance between implementing permit requirements and documenting efforts in a way that allows Board staff to evaluate permit compliance. STOPPP recommends Water Board staff use this document as a guide for developing MRP reporting requirements.

De-emphasize Watch List Pollutants. At the November 20 workshop, Water Board staff discussed a number of pollutants not on the Clean Water Act Section 303(d) list for which Water Board staff proposes municipalities undertake additional studies and implement controls. These watch list pollutants include trash, copper, polybrominated diphenyl ethers (PBDEs), and polycyclic aromatic hydrocarbons (PAHs). The additional requirements for PBDEs were neither included in Water Board staff's draft document, nor distributed at the workshop. STOPPP suggests these watch list pollutants be prioritized lower than the 303(d) listed pollutants in terms of what is required during the next permit period. Water Board staff should recognize municipalities do not control the use of PBDEs, and STOPPP recommends Regional Boards or the State Board work statewide with manufacturers of these chemicals to understand their source, transport, and impact on water quality.

Procedural Comments

STOPPP would like to be informed about and allowed an opportunity to participate in any planned meetings with sanitary sewer agencies, potable water agencies, or others to discuss the preparation of the next administrative draft of the MRP.

It is important that sufficient time be allowed for stakeholders to review the administrative draft of the MRP. When the administrative draft is distributed for comment in January, Water Board staff should provide a five week comment period to ensure municipal management committees that meet monthly will be able to meet and discuss before submitting comments. Public workshops on the administrative draft should be held after the comment period.

Should you have any questions regarding these comments, please contact me at 415-508-2134 or by email at mfabry@ci.brisbane.ca.us.

Sincerely,



Matthew Fabry
STOPPP Coordinator

Cc: STOPPP Technical Advisory Committee