

March 18, 2009

Mr. John Muller
Chair
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Ste. 1400
Oakland, CA 94612

Subject: Tentative Order for Municipal Regional Permit

Dear Mr. Muller:

The City of Dublin appreciates the opportunity to review the Tentative Order for the Municipal Regional Permit (Permit) which was released by the San Francisco Bay Regional Water Quality Control Board on February 13, 2009.

The City Council for the City of Dublin reviewed an analysis of the Permit by the City's Department of Public Works at its meeting of March 17. Following this review, the City Council unanimously adopted Resolution No. 31-09, approving the submittal of this letter to the Board by the Mayor on behalf of the City Council.

As an agency of the State of California, we believe that you can fully appreciate that, since we last submitted comments to you a year ago, government revenues have radically dropped while costs have continued to increase. A year ago, we would have described many of the requirements in the permit as fiscally unreasonable; today we must describe them as fiscally unrealistic.

The City of Dublin is committed to performing our share of the effort needed for continued reduction of pollutants and improvements to water quality within the Bay Area. The City has taken a progressive approach to addressing environmental quality issues through its Green Building Program for City facilities, Green Building requirements for new development, and development of two transit centers at the West and East Dublin BART Stations. The City has approved a Bikeways Master Plan and funds ongoing implementation of the Plan, with the intent of promoting bicycle use over vehicle use. The City has dedicated the necessary resources to ensure that it remains in compliance with both the letter and the spirit of its current Municipal Storm Water Permit, and recently worked with both Caltrans and the Regional Board in developing the first cooperative stormwater treatment projects under these agencies' alternate treatment measures program. The City has participated (at its cost) in a

pilot trash assessment study with the Alameda Countywide Clean Water Program, which has generated data that will assist all agencies in addressing trash impacts around the Bay Area.

At the March 2008 public hearing held by the Regional Board on the prior version of the Permit, the City of Dublin (along with numerous other local agencies) expressed concerns regarding many prescriptive and costly components of the Permit that did little to improve water quality. After almost nine hours of testimony, the Board directed their staff to revise the Permit to take into consideration the comments expressed at the meeting, and to set up a process whereby stakeholders could provide input to the revisions. Unfortunately, over a year later, we must express our deep disappointment in both in the process used to develop the current version of the Permit and the content of the Permit.

While Board staff has provided “previews” of the revised Permit over the last year, there has been little opportunity for input from stakeholders. Furthermore, although a full year has passed since the public hearing, a response to comments has not been received from the Board. We have attached our comment letter dated February 6, 2008, for which we are still awaiting a reply.

Board staff had indicated that a 60-day comment period would be provided for the new Permit; given that extensive comments on the last Permit and the substantial rewrites; we believe that this provided marginal time for review and comment. However, when the Permit was issued on February 13, the deadline for submittal of written comments was listed as April 3, which is only a 50-day comment period.

The Alameda Countywide Clean Water Program, at the request of the member agencies, made a specific request to the Board staff on February 17, requesting that the comment period be extended. This request was denied by Board staff on February 23.

After spending a full year to rewrite the Permit, Board staff granting said one-two week extension would not seem to unreasonably delay the adoption and implementation of the Permit. Since the Board was unwilling to grant the extension, our staff has accelerated its review of the Permit and we are able to provide the following comments, only as a result of extraordinary effort to force the time onto an already lengthy City Council agenda for consideration.

As expressed in our comment letter from last year, we remain concerned that many requirements of the Permit will result in questionable or marginal improvements to actual water quality, and may in fact detract from local agencies’ ability to carry out existing or improved local clean water programs due to demands on funding, staff, and other resources. Specific concerns are as follows:

Section C.3, Increased Treatment Requirements for New Development

The threshold for requiring installation and monitoring of water quality measures for new development has been reduced from 1 acre to 10,000 sf, dropping to 5,000 sf in two years.

We do not take issue with the 10,000 sf threshold. However, we do not believe that reduction to the 5,000 sf threshold will capture new development with significant pollutant loadings. Reducing the treatment threshold will result in nominal improvement to water quality in terms of staff time needed for plan processing and review; reporting; and ongoing monitoring. This will also result in installation of redundant site-specific water quality measures, since the Permit will likely result in a whole new set of community-wide controls as well.

In addition to the 5,000 sf threshold for new development, the Permit also contains a provision that new single family homes or small non-residential projects that create over 2,500 sf of new impervious surface provide one or more site design measures that reduce runoff. This will result in additional plan review costs by the City, as the City currently provides plan review for building permits and conditional use permits for a fixed fee.

The Permit also requires the construction of ten (10) "Green Street" projects within the region by July 1, 2013. Two of these projects would likely be located in Alameda County. The requirements for "Green Streets" include not only water-quality features but also streetscape and urban greenway features, pedestrian and bicycle facilities, parking innovations, and other features that have little direct connection with water quality. While it is possible that these features could be incorporated into private development projects, it is uncertain that these developments will be approved and constructed by July 2013 in the current economic climate, leaving local agencies to fund the cost of this requirement. As a practical matter, many of the above features are already being incorporated into new development as a result of local planning efforts; the Permit requirements are redundant and create a dangerous precedence for the Permit requirements to infringe on local planning authority.

An additional requirement of the Permit is severe limitation on the use of underground storm runoff treatment devices and a requirement that new development or redevelopment utilize vegetated treatment measures to treat at least 50% of the runoff from a site. This is in spite of (1) there being no sound evidence that structural controls are not effective and (2) no guarantee that vegetated treatment measures will work indefinitely without ongoing monitoring and maintenance. The Permit denies the choice of treatment measures to be determined by site constraints. While this does not create a specific cost increase for the City, it will impact the ability of built-out properties in the developed areas to redevelop due to the lack of available space for surface landscape treatment measures.

Storm runoff from existing developments built more than twenty years ago predates nonpoint pollution control requirements and is likely not treated. Therefore, we believe that the Board would concur that redevelopment of these properties should be encouraged so that some treatment could be provided. Furthermore, we believe that you would concur that redevelopment of developed sites meets many of the same goals of Low Impact Development that the new permit is encouraging. **To that end, it is unclear why you would approve a permit that appears to do the opposite.**

It is recommended that the restrictions on the use of underground treatment devices be eliminated, and that the choice of treatment should be determined based on site constraints and engineering analysis as opposed to mandate.

The added cost for staff to review and monitor new development is estimated at \$9,000 per year. The added cost of the City's share of "Green Street" projects is estimated at \$10,000 per year.

Sections C.4, C.5, and C.6, Development of Additional Inspection and Spill Response Procedures

The Permit requires development of a formalized Emergency Response Plan (ERP) for use with business inspections, spill response, and construction, which would detail how the City responds to these incidents, as well as other processes, record keeping, and reporting. Included in the ERP are requirements to adopt, by ordinance, escalating penalties for noncompliance.

The City of Dublin, during the 2007-08 Fiscal Year, responded to a total of 36 spills or discharges, of which 34 incidents were abated that year, with the remaining 2 cases requiring physical improvements at the site which were completed by the end of the 2008. The majority of these dealt with oil leaks from parked vehicles, construction debris being dropped in a street, or similar problems. The most extreme incidents involved a sewage spill due to a plugged sewer main, dumping of cooking oil by a restaurant into a private storm drain, and trash generated at a market.

In addition, the City completed 43 business inspections, with half of the businesses in compliance; compliance issues were generally minor operational issues such trash dumpster lids being left open. Each of these situations was either corrected or is in the process of being corrected by the end of the fiscal year.

With regards to construction, the City requires erosion control and pollution prevention plans for all projects, sends out annual notices to development in September requiring that erosion control measures be in place, and conducts ongoing inspection of construction sites throughout the rainy season.

In summary, the City of Dublin's current spill response, business inspection practices, and construction inspection practices are effective, and adoption of additional formal measures would provide no incremental benefit to water quality.

The added cost of adopting additional business and spill response measures is estimated at \$6,000 per year.

Section C.7, Public Outreach

The City of Dublin is required to complete additional local public outreach events (six events compared to four under the current Permit). In past years, the City has met or exceeded this minimum requirement. The City has organized volunteer groups to install storm inlet markers, remove trash from creeks, and clean parks.

The Permit increases the requirements for public outreach events by 50%. In addition, it also requires additional region-level outreach and education, including measurement of effectiveness. We question the practicality of measuring items such as “awareness” or “behavioral changes”. Furthermore, given the major new efforts required to deal with trash and other pollutants of concern, staff suggests that this is not the year to add additional required public outreach work, and to impose additional record keeping and reporting requirements for this activity.

Added costs for public outreach are estimated at \$11,000 per year.

Section C.8, Additional Monitoring Requirements

The Permit requires extensive new monitoring, testing, and reporting efforts by local agencies on local watersheds. This is in addition to the current efforts by the San Francisco Bay Estuary Institute (SFEI) to maintain an ongoing Regional Monitoring Program (RMP) for San Francisco Bay. SFEI recently published its 2008 report, based on hundreds of samples taken in bay water and sediment over the last five years. The report provides tremendous insight on watershed-specific sources of pollutants in the bay and trends for improvement or degradation due to specific pollutants. Given this background knowledge, it is questionable that additional monitoring data will influence pollution reduction efforts that are required by the permit regardless of the monitoring results. Elimination or reduction of the required new monitoring would not impact pollution reduction efforts and would allow available resources to be put into actual water quality improvement efforts.

The added cost of new monitoring efforts to the City of Dublin is estimated at \$19,000 per year.

Section C.9, Pesticides, and Sections C.11-C.14, Pollutants of Concern

The Permit requires that local agencies take on duties currently assigned to State and Federal agencies with regards to abatement or monitoring of certain pollutants of concern. Specifically, the Permit requires that:

- 1) Local agencies monitor and participate in the regulatory process for pesticides and assume responsibility for development and enforcement of regulations currently handled by Federal and State agencies. This activity is beyond the technical and legal scope of local government, and is and should continue to be handled at the State and Federal level. Further, if the Regional Board (a State agency) already has reason to believe that certain pesticides should not be used because of water quality impacts, it should take the case

directly to the State agencies responsible for pesticide control and not rely on local government to perform these duties.

2) The Permit requires that local agencies identify Polychlorinated Biphenyls (PCB's) on private property as part of ongoing clean water business inspections, and coordination with State/ Federal regulatory agencies to facilitate removal of PCB's. Local agency action should be limited to reporting knowledge of potential PCB releases or contamination on private property to the appropriate State and Federal agencies, with abatement of the problem by those agencies.

3) The Permit requires that local agencies develop or participate in a PCB and mercury health risk reduction program for fish consumed from San Francisco Bay. Again, this is an activity that is the responsibility of County, State, and Federal public health agencies, and should not be delegated to the local level.

While the cost for these additional duties is indeterminate at this time, we believe that the delegation by the State to local government of duties that rightfully should be performed at the State and Federal level should not occur without compensation to local government for this mandated work.

Section C.10, Trash Reduction

Under the Permit, the City of Dublin would be required to identify four (4) trash "hot spots" and develop measures to abate trash in these areas, as well as treat 30% of its' commercial/ retail area with full trash capture devices. The City participated with several other local agencies in Alameda County in a pilot trash assessment study. Based on this study, as well as ongoing business inspections and discharge response, staff has identified a number of sites that marginally meet the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) "hot spot" criteria of 100 pieces of trash per 100' of creek length, as required in the permit. Nevertheless, the City of Dublin will attempt to meet the Permit requirements for trash reduction in these areas. However, in addition to trash abatement, the Permit requires that the City conduct ongoing surveying, photo documentation, and other monitoring of the sites, and report on the findings each year. The monitoring includes counting of individual trash pieces by type, number, and location, as required by the SCVURPPP criteria. Based on the pilot trash assessment that was completed in 2008, survey of trash problem areas can be completed in ways that are far less time intensive than detailed counting of trash pieces, and the reporting requirements can be less rigorous without compromising cleanup efforts.

Furthermore, the requirement for development of a Long Term Trash Management Plan by 2013 with the goal of "no" impacts to beneficial uses needs to be realistic in terms of municipalities' ability to control trash. Based on the pilot trash assessment, the City found that the source of trash in waterways was more often than not due to random littering, windblown from other locations, or generated from freeways or school sites (over which the City has no code enforcement authority), as opposed to direct transport to the waterway by a storm drain.

It is not appropriate that Permit compliance is dependent upon a municipalities' correction of a problem over which it does not have full control.

The added cost of the reporting requirements for abating trash "hot spots" is estimated at \$2,000 per year. The cost of developing the Long Term Trash Management Plan is estimated at over \$8,000.

Section C.13, Copper

The Permit requires additional copper-reduction measures, including specific changes to the municipal code regarding washing of buildings with copper architectural features. This is in spite of the San Francisco Estuary Institutes' 2007 Regional Monitoring Report indicating that copper levels in the Bay are below allowable health standard levels, and that copper was removed as a contributing pollutant to the Bay's status as an impaired water body under Section 303(d) of the Clean Water Act. This was further substantiated by the 2008 Regional Monitoring Report, which did not even mention copper as a pollutant of current concern. Copper removal from storm runoff will continue under existing local agency activities; in fact, copper removal may be enhanced as a result of other required activities for mercury, PCB's, etc.

The Permit requires continued participation by local agencies in the Brake Pad Partnership, which is developing means of reducing copper content in brake pads. This is a current cost and may achieve measurable statewide benefits. However, the Permit also requires copper-specific activities along with specific record keeping and reporting requirements, none of which contribute to copper or other pollutant removal or overall water quality improvements. Some of the requirements (such as an ordinance prohibiting washing of buildings with exterior copper) would impact a very limited source of copper and would be impractical to enforce.

The added cost of copper reduction is estimated at \$16,000 per year.

Section C.15, Exempted Discharges

The Permit prohibits discharge of any runoff other than rainwater through storm drain systems, but allows exemptions for certain discharges which are typically "clean" water. This includes groundwater pumping, flow from broken water mains, chlorination tests for new water mains, and runoff from firefighting activities. While these exemptions are reasonable, the permit puts new requirements on local agencies for monitoring and record keeping of these activities, many of which are beyond the control of local agencies (the Permit includes a requirement that fire departments consider storm inlet protection prior to conducting firefighting activities). Failure to monitor and control activities by other agencies could put local agencies in noncompliance with the Permit.

The added cost of monitoring and recording discharges is estimated at \$8,000.

Fiscal Impacts

The City of Dublin has completed an analysis of the fiscal and staffing impacts of the Permit. The City of Dublin currently spends approximately \$179,000 per year on activities directly related to its water-quality program, including staff time, materials, and the contribution to the Alameda County Clean Water Program. This amount does not include an additional \$203,000 per year for maintenance activities such as street sweeping, storm drain inlet cleaning, spill cleanup, and trash removal from City parks, nor does it include costs associated with review of land development which are reimbursed by developers. Based on new or enhanced activities required under the new permit, it is estimated that the annual cost of clean water activities will increase to \$403,000, an annual increase of \$224,000 or 125%. Again, this cost does not include likely proportionate cost increases in maintenance and development review.

The City of Dublin is dependent upon its General Fund to provide funding for stormwater activities. The General Fund is used to fund numerous other municipal services, including public safety. There is no "surplus" of funds available for increased stormwater costs under the new Permit. In order to achieve compliance with the requirements of the Permit, the City will need to transfer funds currently used for other services, which will result in a cutback of those services.

Modifying the Permit to address the items discussed above would reduce the increased annual costs to the City of Dublin by up to \$89,000, without significantly reducing the effectiveness of water quality programs provided by the City.

We hope that this cost comparison gives you some appreciation of the fiscal impacts from the current permit requirements to the City of Dublin and other municipalities, and that these fiscal impacts are not insignificant. Local agencies must work with a finite amount of funding; permit requirements for reporting, monitoring, or "nice to have" items that have no actual benefit to water quality improvements do not serve the public and should be eliminated.

We support the remainder of the Board and its' staff on your ongoing efforts to improve water quality in the Bay Area. We look forward to further discussion on how we can achieve those goals while working within current funding constraints.

Please note that most of these issues have been raised in previous letters from the City of Dublin to Regional Board staff on November 30, 2006, July 13, 2007, and February 6, 2008. Copies of these letters are attached, **none of which has received a reply.**

We appreciate your attention to these comments, and look forward to a renewed dialogue with the Board as we work through the remaining permit issues. Please contact Joni Pattillo, City Manager, at (925)-833-6650 for further discussion of these comments.

Mr. John Muller
San Francisco Bay Regional Water Control Board
Tentative Order for Draft Municipal Regional Permit (February 13, 2009 Release)
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Sincerely,

Tim Sbranti
Mayor

TS/ml
Attach.

cc: Dr. Terry Young, Vice-Chair, San Francisco Bay Regional Water Quality Control Board
Shalom Eliahu, San Francisco Bay Regional Water Quality Control Board
William Peacock, San Francisco Bay Regional Water Quality Control Board
Terry Moore, San Francisco Bay Regional Water Quality Control Board
Jim McGrath, San Francisco Bay Regional Water Quality Control Board
Raneshwar Singh, San Francisco Bay Regional Water Quality Control Board
Bruce Wolfe, Executive Director, Regional Board
Thomas Mumley, Assistant Executive Director, Regional Board
Jim Scanlin, Alameda County Clean Water Program
Joni Pattillo, City Manager
Chris Foss, Assistant City Manager
John Bakker, City Attorney
Melissa Morton, Public Works Director
Mark Lander, City Engineer
Jeri Ram, Community Development Director