



**Community Development Department
Engineering Division
One North San Antonio Road
Los Altos, California 94022-3087
(650) 947-2780
Fax (650) 947-2732**

April 1, 2009

Mr. Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: **REVISED TENTATIVE MUNICIPAL REGIONAL PERMIT**

Dear Mr. Wolfe:

Thank you for the opportunity to submit comments on the Regional Water Board's Municipal Regional Permit (MRP) Revised Tentative Order dated February 11, 2009. These comments were prepared by the City of Los Altos, which has a proactive municipal stormwater pollution prevention and control program. We have been focused on local and regional challenges and opportunities for improving the quality of urban runoff that flows to our creeks and the San Francisco Bay for nearly 20 years. As a member of the Santa Clara Valley Urban Runoff Prevention Project (SCVURPP) we have received numerous local, state and national awards for our leadership and efforts to manage and minimize stormwater related impacts on water quality.

We have worked with Water Board staff over the past four years with the goal of creating a regional permit that achieves consistency in municipal performance throughout the Bay Area and adds some additional requirements to address pollutants of concern (POCs) in our region. We believe that the Tentative Order should focus on the following priority areas:

- Consistent implementation of current performance standards;
- Phased-in implementation of measures consistent with currently adopted pesticide, mercury and PCB TMDLs;
- Focused and cost-effective efforts to address trash in or likely to be conveyed by stormwater into our waterways, with assessment work and data analysis informing the nature and location of the measures to be implemented.
- Limited and cost-effective monitoring linked to relevant management questions.

At present, these areas remain our highest priority, although the cost-effectiveness of these stormwater management measures is even more critical during the current economic downturn.

We appreciate that Water Board staff made significant changes to the standard operational components of the permit (i.e., C.2., C.4., C.5., and C.6.), allowing flexibility in implementation toward stated goals and outcomes. However, our concerns regarding other provisions (e.g., monitoring and POC Control Programs) were not adequately addressed, nor was there any attempt to set priorities among them and/or allow phasing-in of requirements over several permit cycles to take into consideration limited municipal resources.

General Comments

Need to Phase in Enhanced Pollution Controls That Would Increase Municipalities' Costs

Local government stormwater management agencies face very real and serious fiscal challenges not only with respect to funding new permit requirements, but also in continuing to implement current programs. Existing law, established by Proposition 218 in 1996, requires local voter approval of certain stormwater related fees and assessments. Proposition 218 partially exempts certain types of fees, such as those for water, wastewater, and refuse collection, but not stormwater-specific fees, from the voter approval requirements of Proposition 218. Since the passage of Proposition 218, the California Supreme Court and the Courts of Appeal have issued several decisions that have very closely scrutinized proposed fee increases and assessments and have strongly favored taxpayer protection as intended by Proposition 218.

Over the last 15+ years the requirements and scope of the stormwater quality program have increased significantly from simply developing stormwater management programs as envisioned in USEPA's regulations. These increased requirements have significantly increased the cost of compliance for the City of Los Altos. We are quickly reaching the maximum funding levels approved for funding their stormwater management programs and Proposition 218 and other factors severely constrain local governments' ability to fund at higher than current levels.¹ In view of these factors, legislative/voter relief cannot be considered a feasible alternative at this time.

This systemic inability to significantly raise funds is compounded by the current and deepening recession, which is expected to take years from which to recover. Like your agency, the City of Los Altos is being forced to consider making cuts in staffing and services. Potential funding for stormwater quality, such as the State's \$90 million Proposition 84 Storm Water Grant Program, which Water Board staff have put forward as the way to fund many of the new MRP requirements, seems to have vanished. The approximately \$140 million in potential funding from the Federal government's American Recovery and Reinvestment Act of 2009 has been diverted from flowing to local governments for new water-related projects to covering State obligations. There is no "new money" to be found and designing and adopting a permit with a significant jump in the cost of the

¹ Over the last six years, there have been three attempts to pass State legislation (ACA 10, ACA 13, and SCA 12) that would allow the State to place before California voters for approval a State Constitutional Amendment on the ballot. None of the three legislative attempts were successful in moving the bills out of their house of origin (Assembly or Senate), let alone to a full vote of the Legislature, to potential approval by the Governor, and to a vote of the people. No such bill is proposed in the current 2009-2010 legislative session. Thus, legislative/voter relief cannot be considered a feasible alternative at this time. In addition, while we appreciate the efforts of the Water Board staff to help seek funding for stormwater, including grant funds, those funds, if received are small and short-lived when compared to the very significant and long-term capital and operations and maintenance expenditures necessary to address the plethora of requirements that have been included in the Revised Tentative Order.

requirements, while the cost and expenditures of every other aspect of government are being held at current levels or reduced, does not demonstrate sound public policy direction.

The Water Board should recognize that municipalities need an opportunity to successfully achieve permit compliance by allowing an adequate phase-in period for municipalities to attempt to secure additional sources of revenue. This is especially true for the POC provisions C.11 (Mercury) and C.12 (PCBs).

Major Concerns about Specific Provisions

In addition to the general comment made above, the City of Los Altos has the following key concerns about the Revised Tentative Order:

New Development and Redevelopment (C.3.)

We have major concerns about revisions to C.3:

- Water Board Staff Notification/Approval of Projects with Vault-Based Treatment Systems: This new section of Provision C.3. requires that the City of Los Altos submit information to Water Board staff on certain individual development projects that use “vault-based treatment systems” for stormwater treatment, and in some cases, receive Executive Officer approval, before final approval has been granted by their agencies. This limits the options for a site, is likely to create unnecessary project delays, increases the workload for our planning staffs, and encroaches on the City of Los Altos land use authority. Since the City of Los Altos is a totally built-out city, there is very limited available space for incorporation of land-based treatment. Therefore this additional regulatory burden on the City of Los Altos is not an acceptable change to our development project review processes. We request that this section be changed to state the goal is to limit the use of vault-based systems and request notification of the use of these systems in our annual reports only.
- Effective Implementation Dates: The permit needs to allow the City of Los Altos time to prepare to implement new requirements. Most of the C.3. requirements in the Revised Tentative Order are listed as “effective immediately” (for all Permittees except Vallejo). Although the City of Los Altos have been implementing controls on new and redevelopment projects for several years, there are a significant number of new requirements and changes to C.3., and we will need time to revise ordinances, policies and procedures, update handbooks and guidance materials, and educate staff and project applicants about the changes. An extension of the implementation date is especially important for the hydromodification management (HM) requirements, since there have been significant changes in the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) HM applicability criteria (project size thresholds and map) which impacts the City of Los Altos. We request that we be allowed one year to prepare to implement the new requirements (except for the threshold change to 5,000 SF for special land uses, and the small project requirements, which have other specific implementation dates) during which time the current C.3. provisions would remain in effect.

Trash Reduction (C.10)

The City of Los Altos concurs with the need for systematically assessing trash accumulation areas potentially associated with stormwater and enhanced actions to better address controllable sources and/or conveyance of stormwater-related trash affecting such areas. However, the Revised Tentative Order contains language that will likely result in non-compliance during the permit cycle even though substantial good faith efforts have been made. Specifically, we request that:

- Section C.10.a. (iv) - Trash Hot Spot Clean Up to Trash Action Level be revised to make clear that: 1) the Trash Action Level (TAL) of “100 trash items per 100 feet of creek” is a goal or a trigger for actions, not a water quality objective or numeric effluent limitation; and 2) the TAL be a number of pieces per 100 feet of creek as opposed to the SCVURPPP “Urban Optimal Level”, which includes more subjective metrics that could create consistency issues among programs/cities.
- The frequency of assessment in Provision C.10.b (i) be reduced to “at least one per year at each approved trash hot spot”. The current requirement is two times per year.
- The City of Los Altos believes it is not a cost effective to require each Permittee the same requirements for hot spot cleanup. Though we do not want to say we have areas that trash might accumulate, we believe that “one cleanup approach fits all” is an impracticable approach. We believe there each municipality does not have the same degree of trash build-up. Rather than requiring each municipal to expend funds on areas with their city, it might be more cost effect to conduct a regional approach by concentrating trash cleanup at selected areas.

Conditionally Exempted Discharges (C.15.)

In its February 29, 2008 letter, SCVURPPP, on behalf of the City of Los Altos, commented that the draft MRP contains numerous new requirements associated with conditionally exempted discharges, and that it is unclear what specific problems have arisen to give rise to these proposals for changes in the existing municipal program. SCVURPPP asked that the implementation of BMPs for certain types of discharges be flexible, scaled to the nature of the threat posed, and subject to a municipality’s discretion to require as appropriate and necessary given the threat posed (and secondary to public health and safety issues). Despite the fact that SCVURPPP staff and BASMAA met with Water Board staff on several occasions to discuss this section, the Revised Tentative Order contains no changes to address these very important concerns. The changes made to this section simply provide more detail on how the monitoring, tracking and reporting of the various discharges needs to be done.

Our specific concerns include the following:

- The amount of tracking, monitoring and reporting of relatively minor discharges such as pumped groundwater and swimming pool discharges will be huge burden on municipalities.
- The monitoring of small, incidental discharges of pumped groundwater, foundation drains, crawl space pumped water, and footing drains for the full suite of chemicals listed at a frequency of a minimum of once a month is unnecessary and overly burdensome. With the numerous basements that that have been constructed throughout the city, it is impracticable to monitor these. We request that the monitoring requirements only apply to the rare situations where a large discharge of potentially contaminated water merits the types of monitoring proposed.

- The revised permit continues to include very prescriptive monitoring and reporting requirements for planned, unplanned, and emergency discharges of potable water, which will have significant impacts on the operations of the City of Los Altos's private water purveyor. We request that the language be modified to make it clear that the City of Los Altos are only responsible for monitoring discharges that we are responsible for and not discharges by the city's private potable water dischargers; and
- This Provision needs substantial revisions emphasizing the implementation of best management practices. We request that our current effective BMP-based program, based on the SCVURPPP Conditionally Exempted Discharges Report submitted and approved by Water Board staff in 2000, be grand fathered and remain in full effect.

In conclusion, the Tentative Order includes many potential new or significantly expanded requirements that: (1) are not mandated by law or reflected in USEPA-issued municipal stormwater permits; (2) would represent a significant expenditure of public resources that are not available at the local level; and (3) with a few notable exceptions involving pollutants of concern (which still need to be fine tuned to avoid wasting resources), are unlikely to produce a significant return in terms of increased water quality benefits. It is essential that the MRP requirements be prioritized to address identified, significant water quality problems (TMDLs and trash) and phased over time based on a realistic assessment of current municipal resources and the other burdens being placed on Bay Area cities, counties and special districts at this time.

Thank you for the opportunity to comment on the Revised Tentative Order. Please contact Larry Lind (650) 947-2624 if you have questions.

Sincerely,

Jim Gustafson
Engineering Services Manager