



City of Millbrae
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April 3, 2009

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

Subject: Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit

Dear Mr. Wolfe:

The City of Millbrae appreciates the opportunity to review and comment on the proposed Municipal Regional Permit (MRP) for stormwater but at the same time we are disappointed with your decision to publish the revised Tentative Order without first addressing those comments we and other municipalities provided in February 2008. The response to comments was finally released on March 18, 2009, over a month after the Tentative Order was released for public comments. We sincerely request that you extend the comment deadline by another 30 days to allow more time for not only the City of Millbrae but also other municipalities to review and comment on the voluminous document.

The City of Millbrae offers the following comments on the February 11, 2009 revised draft Municipal Regional Permit. Our intent is for these comments to be constructive resulting in an improved and achievable permit.

While there have been a number of important improvements to the permit compared with the December 2007 version, further movement in this positive direction is considered essential. The San Mateo Countywide Water Pollution Prevention Program's (Countywide Program) comment letter highlights many of the improvements that have been made.

At the local level it is essential to have a permit that is practical, predictable, and cost-effective. In addition, it is important to us that the permit avoid placing a unfunded mandate on local public agencies for regional pollutant control and cleanup.

The following categorizes some common issues which occur in the revised draft municipal regional stormwater permit.

1. A number of the permit's provisions, such as Provisions C.3 New Development and Redevelopment, C.6 Construction Site Control, and C.15 Exempted and Conditionally Exempted Discharges, remain overly prescriptive and will require additional staff time

dealing with a voluminous amount of information tracking and reporting which seems unrelated to improving water quality.

2. Despite a decline in the number of technically questionable permit requirements, there still remain a number of areas that need modification.
3. The control actions needed to comply with some of the permit's requirements are unpredictable because they may be triggered by monitoring results, such as Provision C.8.e.i.(3). An additional uncertainty is posed by having to achieve an arbitrary and potentially unrealistic trash and litter clean up level.
4. Some of the permit's implementation and reporting dates are not practical and should be extended.

Examples of Permit Problems and Requested Changes

The following illustrates some specific examples of problems the current draft of the permit poses for the City of Millbrae and our recommended changes. For a more comprehensive list of issues and requested permit changes, please refer to the Countywide Program's List of Issues Table that was included with the Countywide Program's comment letter.

Provision C.2 Municipal Operations

1. Section C.2.d.i. requires all pump stations to be operated, inspected and maintained to eliminate non-stormwater discharges containing pollutants but the Federal Clean Water Act only requires that permits "shall include a requirement to effectively prohibit non-stormwater discharges into storm sewers. We request that the permit be modified to state that permittees shall implement a program to effectively prohibit non-stormwater discharges to the Stormwater pump stations that they own and operate where these discharges are disallowed by the MRP.
2. Section C.2.d.ii.(3) states that the implementation level requires that corrective actions be applied if dissolved oxygen levels are at or below 3 mg/l. This requirement should be conditioned on having a discharge from the pump station that causes a receiving water problem. We request that the permit language be modified to state that corrective actions will only be necessary if the pump station is discharging water with low dissolved oxygen that is causing an unacceptable reduction of dissolved oxygen in the receiving water.
3. Section C.2.d.ii.(4) states that implementation level requires that pump stations be inspected in the first business day after ¼-inch or larger storm events. This level of prescriptiveness is unnecessary. The permittees should have flexibility, based on their experience, to decide when to inspect the stormwater pump stations that they own and

operate. We request that the permit language be modified to delete a specific amount of stormwater that triggers a requirement to inspect stormwater pump stations.

Provision C.3 New Development and Redevelopment

1. Under the current permit Provision C.3 requirements do not apply to privately-sponsored projects for which a development application had been deemed complete prior to the Provision C.3 start date. The revised draft permit introduces a lower threshold, of 5,000 square feet of impervious surface, for requiring specific types of development projects to meet Provision C.3 requirements. The new threshold would go into effect on July 1, 2011 (C.3.b.ii.(1)d) , and an exemption is provided for projects that have “final, major staff-level discretionary review and approval for adherence to applicable local, state, and federal codes and regulations, prior to July 1, 2011.” This would occur later in the review process, after project applications have already been deemed complete. Introducing a new requirement after an application has been deemed complete is in opposition to the Permit Streamlining Act, which the state legislature adopted to ensure clear understanding of requirements for development review approvals. The new requirement should be changed to allow applications that have been deemed complete per the Permit Streamlining Act prior to July 1, 2011, not to comply with new stormwater requirements.
2. Any widening of an existing road with 10,000 square feet or more of impervious surface will require treatment of all of the stormwater runoff from the road. The permit should be modified to only require treatment of stormwater runoff from an area equivalent to the widened section and not the entire road if the widened area is less than 50 percent of the entire road’s impervious surface.
3. Section C.3.b.ii.(4)(a),(b), and (c) requires new bicycle lanes regardless of whether they are built as part of a new street or roadway or added to an existing roadway should be excluded from compliance with Provision C.3 in order to create an incentive for alternative modes of transportation that reduce the emission of green house gases and other vehicle-caused stormwater pollutants. We propose excluding bicycle lanes as part of the calculation of impervious surfaces that require compliance with C.3 under C.3.ii.b.(4). Under “specific exclusions to this category add bicycle lanes under the various options listed as qualifying for a specific exclusion along with sidewalks and trails.
4. Section C.3.b.ii.(4)(b) specifies widening of existing streets or roads with additional traffic lanes does not include the 50% size threshold. On this basis any project of this type that is 10,000 square feet or larger will require treatment of all of the runoff from the existing road. There needs to be limits on when treatment of runoff from existing roads should be triggered similar to the language for “Other Redevelopment Projects” (C.3.b.ii.(3)). We propose modifying language in this permit section and the fact sheet to

allow treatment of stormwater from just the widened area, and not the existing road if the widened area is 50% or less of the existing road.

5. Additionally, we would like to make you aware that many municipalities are struggling in this distressed economy to optimize the limited resources we have for streets and roadways maintenance and construction and these additional requirements will have negative impact to the ability of these many municipalities to maintain their street networks. Millbrae like all municipalities in the Bay Area will not object to many of the proposed MRP requirements if the State funds them or provides us the ability to increase fees to support them which do not require a vote of the taxpayers. Currently, Proposition 218 does not make an exception for storm water fees as it does for water and waste water and garbage. Millbrae's only source of storm water management revenues is from a pre-Proposition 218 parcel tax. Any changes to this tax, currently requires voter approval. Other area voters have not been approving such increases on similar measures.

Provision C.6 Construction Site Control

1. The permit proposes a requirement that each municipality implement a construction site control program at all construction sites. The permit should focus on construction sites of a sufficient size to pose a reasonable threat to water quality and are located where stormwater runoff from the site flows into a municipal separate storm sewer system owned or operated by the municipality.
2. The list of information from each construction site inspection that must be tracked and/or reported is too prescriptive and is deemed unnecessary to protect or improve water quality. For example, there is no value to collecting information about the "inches of rainfall since the last inspection." The list of items should be minimized as requested in the List of Issues Table submitted by the Countywide Program.

Provision C.10 Trash Reduction

1. The permit proposes a trash clean up (action) level for what it terms trash hotspots that should be expressed as a goal and not an inflexible mandate because of uncertainty about what levels of trash reduction are needed to protect beneficial uses and what levels are reasonably achievable.
2. The requirement to install full capture devices on 30% of the ABAG 2005 Retail/Wholesale Commercial Land Use area is too ambitious at this stage. The installation of full capture on 20% of this land use is a reasonable level of implementation as part of what the permit characterizes as an initial pilot scale deployment.

Provisions C.11 and C.12 Mercury and PCBs Controls

1. The permit requires a feasibility study and diversion of dry weather and first flush stormwater flows from five stormwater pump stations during this permit period. This requirement should be limited to conducting a paper feasibility study. Such a feasibility study is essential to resolve whether there is sufficient capacity in the sanitary sewer collection system and at wastewater treatment plants to handle these types of diversions. In addition, a feasibility study needs to evaluate the cost-effectiveness of doing diversions.
2. The permit requires that municipalities ensure the clean up of mercury and PCBs contamination located on private properties by exercising direct authority to accomplish a clean up or by providing information to appropriate authorities. Municipalities should be held accountable for what they are able to control. On this basis, this requirement should be modified to state that municipalities will attempt to identify private properties that may be contaminating their municipal separate storm sewer system with mercury and/or PCBs and forward this information to the Water Board.

Provision C.15 Exempted and Conditionally Exempted Discharges

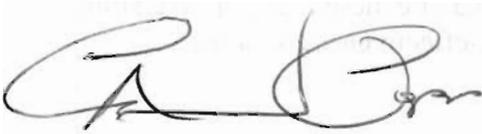
1. Our municipality should not be required to make sure that local potable water purveyors who discharge potable water conduct the burdensome amount of sampling, testing, and reporting required by the permit. It would be more efficient for the Water Board staff to adopt a general permit for potable water dischargers, who are not municipalities, and to make potable water dischargers apply for permit coverage so that they are directly responsible for meeting the types of requirements the Water Board believes necessary.
2. The deletion of individual residential car washing as a conditionally exempted type of discharge is ill considered. In 2004 the Water Board adopted the Countywide Program's BMPs and Implementation Procedures for Conditionally Exempted Discharges, which includes individual residential car washing. We believe that a better approach is for the permit to recognize that individual residential car washing will occur and to promote the use of appropriate BMPs rather than to disallow these types of discharges.

We request that you direct your staff to modify the permit based on this and other comment letters submitted by members of the Countywide Program, the List of Issues Table included with the Countywide Program's comment letter, comments submitted by the Bay Area Stormwater Management Agencies Association, and the Santa Clara Valley Urban Runoff Pollution Prevention Program's comments. These and prior comment letters are included by reference.

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We appreciate your consideration of our comments, and look forward to discussing these issues further at the May 13 public hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Popp". The signature is fluid and cursive, with a large initial "R" and "P".

Ronnald Popp
Director of Public Works

cc: Millbrae City Council
City Manager
City Attorney