



Santa Clara Valley Urban Runoff Pollution Prevention Program

Campbell • Cupertino • Los Altos • Los Altos Hills • Los Gatos • Milpitas • Monte Sereno • Mountain View • Palo Alto
San Jose • Santa Clara • Saratoga • Sunnyvale • Santa Clara County • Santa Clara Valley Water District

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 from the Santa Clara Valley Urban Runoff Pollution Prevention Program on the Revised Municipal Regional Permit (MRP) Tentative Order – February 11, 2009

Dear ^{BRUCE} Mr. Wolfe:

Thank you again for the opportunity to submit comments on the Regional Water Board's Revised Municipal Regional Permit (MRP or Permit) Tentative Order dated February 11, 2009 (revised TO). These comments were prepared by the Santa Clara Valley Urban Runoff Pollution Prevention Program (Santa Clara Program) on behalf of its 15 local government member agencies (Co-permittees).¹ The Santa Clara Program's key concerns and issues are summarized in this letter; more detailed comments on each section of the revised TO are provided in Attachment A; requested edits and modifications to the revised TO are provided in redlined/strikeout form in Attachment B; and a request to modify the HMP applicability map is contained in Attachment C.²

Introduction

The Santa Clara Program has 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. In that time, we have received numerous local and national awards for our leadership and efforts to manage and minimize stormwater related impacts on water quality, including:

- Two U.S. Environmental Protection Agency (EPA) *first place* National Stormwater Management Awards (one in 1993 and the second in 2006);
- Two awards from the California Stormwater Quality Association (in 2008 for our trash management guidebook called the "Trash Tool Box" and for our Green Gardener Training and Outreach Program); and

¹ The Santa Clara Program's Co-permittees are: Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale, Santa Clara County, and the Santa Clara Valley Water District.

² You will also be receiving a set of legal comments for the Santa Clara Program under separate cover (from Robert Falk of Morrison & Foerster LLP), and separate letters from individual Co-permittees with comments that are specific to their jurisdictions. In addition, the Santa Clara Program supports and incorporates by reference the comments submitted by the Bay Area Stormwater Management Agencies Association (BASMAA).

- The Integrated Pest Management (IPM) Innovator Award from the California Department of Pesticide Regulation (in 2008 for our Pesticide User Outreach Program).

The Santa Clara Program has also developed performance standards for nearly every element of our current permit. These have been reviewed and approved by Water Board staff as meeting the Clean Water Act's "maximum extent practicable" (MEP) standard governing municipal stormwater discharges and have effectively served as guiding operating principles for our and Co-permittees' implementation efforts. Significantly, because of the approach we have taken, recent EPA audits did not find any major deficiencies in Co-permittee performance. Further, our current monitoring and effectiveness assessment program was audited by EPA and it found that the Santa Clara Program "*has been a leader in the development and evolution of similar programs and permits across the country.*"

Overview

From the start of the MRP development process, the Santa Clara Program and its Co-permittees have supported the opportunity to achieve consistency in municipal performance throughout the Bay Area and understood that, despite being recognized as emblematic of MEP, *some* additional requirements may need to be added to address the TMDLs in our region. However, because we thought it was too prescriptive and too onerous (i.e., even for a proactive program such as ours), we provided substantial technical and legal comments concerning the first TO on February 29, 2008 and presented related testimony at your hearing on the prior public comment version of this TO on March 11, 2008.

Since that time, the Santa Clara Program staff and Co-permittees have worked with your staff on suggested revisions and requested that a revised TO focus on the following priorities:

1. Achieving consistent implementation across the Bay Area with respect to "core" municipal stormwater management program elements (as reflected in Provisions C.2 to C.7 and C.9, C.13, and C.15), with only limited prescriptiveness so that unnecessary and costly changes to the Santa Clara Program's existing, award-winning MEP-based performance standards can be avoided;
2. Limiting the expansion of the proposed Permit's monitoring requirements (Provision C.8) to more affordable levels reflective of the Santa Clara Program's already-leading monitoring and assessment efforts (as judged by EPA) and linking them to relevant management questions;
3. Focusing the proposed Permit's trash management requirements (Provision C.9) more specifically on trash entering our waterways from municipal stormwater conveyances, with assessment work and data analysis (based on our Trash Tool Box) first informing the nature and location of the measures to be implemented so as to try and ensure they will be cost effective; and
4. Better coordinating between, and phasing-in over a more extended time period extending beyond this Permit's term, the implementation of measures addressing the mercury and PCB TMDLs (Provisions C.12 and 13) and limiting the number of associated special studies and pilot projects so as to make those efforts more affordable given the remainder of the MRP's proposed requirements and other priorities (e.g., such as trash).

Review of the revised TO indicates that the Water Board staff has made some considerable modifications and improvements relative to the previous version of the MRP in terms of the above-stated priorities. We particularly appreciate that Water Board staff have made significant changes to the core components of the Permit addressing municipal and industrial operations, as well as construction inspection and public information and outreach, allowing flexibility in implementation toward stated goals and outcomes. Further we recognize and appreciate clear improvements to the proposed MRP's section addressing trash.

However, our previous concerns regarding other Permit Provisions (especially those addressing the monitoring requirements, mercury and PCB-specific programs, and conditionally exempted discharge requirements) have not yet been adequately addressed. There has also not, in our view, yet been a sufficient effort to set priorities among the many *new* special studies and pilot projects being required in this Permit. Nor has there yet been sufficient consideration of phasing some associated requirements in the non-core stormwater management program areas to a point beyond this Permit's term (so as to provide more time to reflect on the lessons to be learned over the next five years and to take into consideration the current limits on municipalities abilities to raise resources, particularly in the absence of State-provided funding given the current fiscal meltdown in Sacramento).

Summary of Recommendations

At present, the above issues remain the Santa Clara Program's highest priorities in terms of the current version of the TO. However, we also have no desire to just "cry poverty" and want to remain a recognized, award-winning "can do" leader in municipal stormwater management. Therefore, to expedite the adoption of an MRP that moves the Bay Area stormwater program forward and behind which the Santa Clara Program and its Co-permittees throw their support, we are submitting our recommended redline/strike-out version of the TO showing those changes that we believe can be made to expeditiously bring this process to a successful conclusion.³

Summary of Key Concerns

- **Monitoring** -- Executive Officer, Bruce Wolfe has previously publicly stated that "the MRP will just move everyone else to the level at which [the Santa Clara Program] is currently at with regards to monitoring." The TO needs to be revised to have Provision C.8 better reflect this objective. The new monitoring requirements instead currently represent a very significant increase in resource demands above the level entailed in the current Santa Clara Program monitoring program⁴. In addition, as currently drafted, a number of the monitoring requirements are still: 1) not based on sound science; 2) too prescriptive for allow for adaptive monitoring; 3) not necessary (data for data's sake and/or focused beyond pollutants subject to regulation under a federal permit) and, 4) not prioritized so as to allow monitoring resources to be focused on the most pressing water quality issues. In addition, the requirement to conduct long term trend monitoring is confusing and appears to be an amalgamation of disparate monitoring requirements that have significant overlap with other monitoring provisions.
- **Trash** -- The Santa Clara Program concurs with the need for systematically assessing trash accumulation areas potentially associated with stormwater and then, based on what is learned in the assessment process, developing enhanced actions to better address controllable sources and/or conveyance of stormwater-related trash affecting such areas. We appreciate some of the

³ The following provides a somewhat more detailed summary of our key concerns with the Tentative Order. Our more more specific comments are contained in Attachment A and will help explain the reasoning behind the suggested edits shown in redline/strike out we are submitting (which is appended as Attachment B). A request to modify the HMP map is also contained as Attachment C

⁴ Water quality monitoring proposed in Provision C.8 poses a significant increase in requirements to all Bay Area stormwater programs. Anticipated SCVURPPP costs to comply with the C.8 provision are estimated at over \$1.2 million dollars per year (not including the permit monitoring surcharge fees collected by the SWRCB for the SWAMP program that is approximately \$35,000 dollars per year). SCVURPPP's costs are significantly greater than the roughly \$400,000 annual estimate prepared by the Water Board staff in the permit Fact Sheet for SCVURPPP.

modifications that the Water Board staff has made in this regard. However, to make it feasible and pragmatic, Provision C.10 still needs more refinement, including with regard to:

- Clarification that the proposed Trash Action Level (TAL) of “100 trash items per 100 feet of creek” is a **goal** and potential trigger for follow up BMP-based actions and not a numeric effluent limitation;
 - Clarification that the TAL refers only to the number of pieces of trash observed 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);
 - Provide flexibility to Co-permittees to reduce the twice per year frequency of the hot spot assessment requirement and the level of assessment required.
- **Pollutants of Concern (POC)** – While we concur with the Water Board staff that pilot projects on Mercury and PCBs should be a high priority for this Permit, to make them feasible and more pragmatic, Provisions C.12 and 13 continue to need refinement, including by:
 - Eliminating potential duplication, inconsistencies and confusion by combining the mercury and PCB provisions (C.11 and C.12) into a single provision;
 - Reducing the collective number of regional pilot projects and investigations (i.e., conduct pilot projects on investigations/abatement, enhanced sediment removal, on-site stormwater treatment via retrofit, and dry weather flow diversions) to no more than 4 per these four areas of concern (listed in the parenthesis above) during the term of this permit cycle and adding clarifying language such that investigations (e.g., treatment systems) can be utilized as pilots to the extent applicable; and
 - Providing more time during this permit’s term to complete ongoing municipal POTW investigations into the feasibility and benefits of conducting dry weather diversion pilots before requiring additional pilots to be undertaken or that broader implementation occur. (C.11/12.f)
 - **Conditionally Exempted Discharges** -- The revised TO’s Provision C.15.b. continues to be a set of highly prescriptive and burdensome requirements being imposed in the absence of any evidence that the existing Santa Clara Program approach to conditionally exempted discharges (approved by the Water Board staff in 2000) is insufficient in terms of protecting water quality. We specifically request clarification that continued implementation of our existing program is sufficient for purposes of compliance with the MRP, and that the alternative prescriptive approaches laid out in the revised TO for specified subcategories of conditionally exempted discharges are optional or, at the very minimum, only required where there is evidence that the discharges in question are polluted to the point of threatening the quality of receiving waters.
 - **New Development and Redevelopment (C.3.)** -- We appreciate Water Board staff addressing some of the comments (e.g., trails and road rehabilitation projects) we previously provided on Provision C.3. in our February 29, 2008 comment letter. However, we still have some major concerns with these new requirements as summarized noted below:
 - A new requirement has been added that requires notification and approval of projects with vault-based treatment systems. The new section, under certain conditions requires Executive Officer approval before final approval can be granted by the local agency. This additional level of regulatory burden is not productive, nor a reasonable change to the Permittees development project review processes. Thus, we request that this section be changed to state the goal is to limit the use of vault-based systems, specify when they

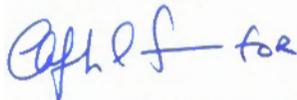
can be used, and, at most, request notification and rationale supporting the use of these systems be provided in the Permittees' annual reports.

- The alternative compliance options should be made available to **all** development projects, including new roads and road widening projects. The language in the revised TO limits the use of alternative compliance options to redevelopment projects and infill site development projects (where "infill" is strictly defined). Road projects are one of the most likely types of projects that would need to rely on to use the alternative compliance option, due to limited right of way for treatment controls and the piecemeal nature of road improvements (for which it is cost-effective to provide treatment at one site).
- The draft Permit needs to provide Permittees additional time to prepare to implement the new requirements (see Attachment A) and not assume that such new requirements are "effective immediately" as currently written. Although Permittees 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. It would be reasonable to provide Permittees some time (e.g., at least 1 year from the adoption of the Permit) to revise ordinances, policies and procedures, update handbooks and guidance materials, and educate staff and project applicants about the changes.

In sum, the Santa Clara Program believes that the revised TO represents a substantial improvement over the previous public comment version. However, it still includes many requirements that need further refinement to make them feasible and focus available municipal stormwater permitting resources on the "biggest bang for the buck" in terms of increased water quality benefits. Instead of whining and foot-dragging, the Santa Clara Program is submitting a redlined/strike-out version of the TO in Attachment B that: 1) reflects those refinements it and its Co-permittees believe will reasonably address their suggestions and allow the MRP to be finalized and brought into effect expeditiously, 2) still reflect a "beyond-MEP" municipal stormwater permit for the Bay Area, and 3) warrant your support and advocacy as Executive Officer for the Water Board's adoption.

We appreciate your consideration of these comments and look forward to your response.

Very truly yours,



Adam W. Olivieri, Dr. PH, P.E.
Program Manager

Attachment (A) – Santa Clara Program's Detailed Comments on the Revised MRP Tentative Order – April 3, 2009

Attachment (B) – Santa Clara Program's Proposed Redlined Additions and Strike-Out Edits on the Revised MRP Tentative Order – April 3, 2009

Attachment (C) – Santa Clara Program's Request To Modify the HMP Applicability Map

cc: SCVURPPP Management Committee
BASMAA Executive Board
Robert Falk, Morrison Foerster
Gary Grimm
Tom Mumley and Dale Bowyer, RWQCB