

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 Water District on the Revised Municipal Regional Permit (MRP) Tentative Order – February 11, 2009

Dear Mr. Wolfe:

Thank you for the opportunity to submit comments on the Regional Water Board's Municipal Regional Permit Tentative Order (Revised TO) dated February 11, 2009. These comments were prepared by the Santa Clara Valley Water District (District) and summarize key concerns and issues that will likely affect the District. We also support the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) comment letter and attachments, and share many if not all of the same concerns as the other SCVURPPP co-permittees.

Introduction

The Santa Clara Valley Water District (District) is a flood management, wholesale water supply, and stream stewardship agency. Pollution prevention is a critical component of our stream stewardship mission. The District is also a certified Green Business in Santa Clara County and shares the Water Board's interest in improving the water quality in our urban environment. The District Clean Safe Creeks program includes several activities that support water quality improvements, such as, removal of trash from District owned streams in Santa Clara County, cleanups of illegal encampments along creeks, graffiti removal, mercury removal and other water quality related efforts.

The District is the management committee chair of the SCVURPPP and is proud that SCVURPPP has received numerous local and national awards for its leadership and programs to minimize stormwater impacts on water quality. This includes two US EPA First Place National Stormwater Management Awards, one in 1993 and the second in 2006. Most recently, SCVURPPP received two 2008 awards from the California Stormwater Quality Association for the trash management guidebook called the "Trash Tool Box" and the Green Gardener Training and Outreach Program. It also received the 2008 Integrated Pest Management (IPM) Innovator Award from the California Department of Pesticide Regulation for our Pesticide User Outreach Program.



District Comments on Revised TO

The District appreciates the Water Board's efforts in developing the Revised TO. The District also appreciates the various changes in the Revised TO since the December, 2007, draft. The District has been proactively planning for implementation of the proposed requirements; however, we do have concerns with several sections, and feel compliance may not be achievable in the time frame identified in the Revised TO.

The District is committed to stream stewardship and pollution prevention, and has been a leader in incorporating low impact development design for nearly a decade. In 2002, the District voluntarily constructed storm water swales for parking lots and buildings during the Headquarters Building construction project. In 2008, the District voluntarily installed a large sand filter for treatment of stormwater at our new laboratory. In addition the District continues its large investment into the SCVURPPP. The District, like many agencies, has financial challenges due to the economy. Further, water utility revenue will also decrease due to drought-induced mandatory water conservation.

The District will find it very challenging to fund the requirements of this Revised TO. In consideration of the current fiscal challenges, it would be constructive if the permit incorporated a prioritization of the pollutants that should be addressed through this, or several, permit cycles. A more tiered approach to implementing the monitoring, trash, and other requirements is recommended to incorporate better studies, and pollutant reduction results, through the adaptive management concepts the Water Board encouraged in the past.

The District is concerned that significant work already completed by the SCVURPPP, its co-permittees, other scientific agencies and institutions, and even other Water Boards, has not been fully utilized to determine current water quality characteristics, and pollutant reduction strategies, in a fiscally responsible way. We are specifically concerned that Water Board staff did not take full advantage of data collected by other Water Boards relative to trash challenges in southern California. Some of this trash data may provide a greater understanding on pathways and control of sources, in a fiscally prudent fashion, that will still lead to reasonable reduction of the pollutant.

The District also believes a more thorough review of data submitted to the Water Board from the SCVURPPP in the last several annual reports may provide the information to answer the management questions regarding other legacy pollutants. Significant public resources have already been expended on studies, and to respond to existing or previous permit requirements. It is prudent to maximize this information in the development of regulations for the Revised TO rather than expending additional new resources for this purpose.

C.8 Water Quality Monitoring

The new monitoring requirements represent a significant increase in resource commitment above current Santa Clara Program monitoring efforts and will require an extraordinary expenditure of public resources. In addition, as currently drafted, a number of the monitoring requirements are still: 1) not

based on sound science, 2) too prescriptive to allow for adaptive management in the monitoring program, 3) not necessary to answer management questions (data for data's sake and/or focused beyond pollutants subject to regulation under a federal permit) and, 4) not prioritized or focused on the most pressing water quality issues. The Revised TO does not provide credit for monitoring work completed under current and previous stormwater permits. The District agrees with the SCVURPPP that previous monitoring should be taken into account and credited toward compliance with provisions in the Revised TO. Public resources should be used wisely and stormwater programs should not have to "start from ground zero" and disregard valuable, previously collected data.

C.10 Trash

Table 10-1 prescribes the installation of either trash booms or outfall devices as a requirement of permit compliance for the District. The District does not own or have jurisdiction of any outfalls, and it is inappropriate to require the District to install trash nets on them. The District believes the use of Start at the Source strategies, improved product stewardship, enforcement of existing anti litter laws, legislative controls (single use bag ban) and the use of full capture devices prior to the end of pipe, are more appropriate to combat trash rather than installing booms in the creeks. Booms present CEQA challenges, are potential threats to wildlife, and will need to be removed during the rainy season since they could become flood water conveyance hazards. The District and other co-permittees are planning to conduct an evaluation of up to two trash booms in our systems but these booms would be removed in the winter. Also, the District should not be burdened with the maintenance costs associated with operation of the booms when a full capture device in some part of the MS4 system is more appropriate.

The total number of trash assessments in a given watershed should be based on population. Requiring additional trash assessments for flood control districts places a greater burden on taxpayers in those communities by directing them to fund additional assessments above the requirements already placed on the cities. A better approach is to reduce a city's number of trash assessments if an agreement can be reached that the flood control agency will share in the work load to complete a portion of the cities assessments.

The District has the following specific recommendations for modification of the Trash section:

- Provide language that makes it clear that some flood control districts do not own storm drain outfalls and therefore shall not be required to install full capture devices on the property of other co-permittees.
- Provide language that indicates that Water Board staff is aware of the potential problems booms can cause to fish and wildlife and during rain events and acknowledge that booms are a last resort and not a full capture device.
- Clarify that the Trash Action Level (TAL) of "100 trash items per 100 feet of creek" is a goal, or a trigger, for actions, and remove the implication that it is a water quality objective or numeric effluent limitation.
- Clarify that the TAL be the 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.

- Reduce the twice per year frequency of assessment requirement to “at least one per year at each approved trash hot spot.” The resources needed to conduct a second round of trash assessments could be better spent on installation of full capture devices, or on working out the enforcement challenges.

C.11 and C.12 Mercury and PCBs

Listed below are several suggestions from SCVURPPP that seem to be a more prudent approach to the Mercury and PCBs pilot work.

- Combine the mercury and PCB provisions into one provision to eliminate duplication, inconsistencies and potential confusion.
- Provide significant time during this permit cycle to complete ongoing municipal Public Owned Treatment Works (POTW) investigations into the feasibility and benefits of conducting dry weather diversion pilots and require that any such pilots be part of other PCB/Mercury pilot investigations to minimize duplication. (C.11/12.f)

C.15 Exempted and Conditionally Exempted Discharges

The District is very concerned with the level of tracking and monitoring proposed in the Revised TO. The District independently, and along with SCVURPPP, developed a series of water utility discharge guidance documents, and has very specific training materials, which provide adequate protection to the surface water resource. The Water Utility Discharge guidance documents were created at significant expense to both the District and SCVURPPP. These documents have been shared with Water Board staff and have not received any critical comments. It would be much more appropriate to have co-permittees across the permit area adopt a similar Water Utility Discharge program rather than implementing the new tracking and monitoring requirements.

The notification procedures are extremely burdensome, specifically those in section C.15.b.iii.1.b.i which require permittees to be responsible to provide outreach notification to various parties when a discharge from a private water utility is planned. This notification procedure cannot possibly be policed by permittees and should be stricken from the Revised TO. Issues relative to private water purveyors should be handled in a separate NPDES permit issued to those private water purveyors.

The C.15 section needs substantial revision emphasizing the implementation of best management practices. The District requests that the current effective BMP-based program, based on the SCVURPPP Conditionally Exempted Discharges Report submitted and approved by Water Board in 2000, be grandfathered and remain in full effect.

In summary, the Revised TO contains new or significantly expanded requirements that would represent a significant financial burden to local agencies at a time of economic crisis. It is essential that the Revised TO 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. In addition, the Revised TO:

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- did not fully consider existing information from recent federal, state and local studies,
- has a far too prescriptive and burdensome monitoring program with a compressed time frame that will likely not allow for adaptive management, and is unlikely to produce a significant return in terms of increased water quality benefits,
- prescribes trash capture devices across jurisdictional boundaries and imposes very prescriptive use of trash booms without consideration of CEQA and flood conveyance issues, and
- unnecessarily increases reporting and notification requirements for water utility discharge programs that are already fully and effectively functioning in Santa Clara County.

It appears that many areas of the Revised TO could use less stringent requirements. They are cumbersome and will be problematic for the District and SCVURPPP co-permittees. These same requirements will be much more difficult for agencies that are not involved in a mature program such as the one in Santa Clara County. Many other Bay Area co-permittees will likely find it virtually impossible, and incredibly discouraging, to even try to implement many of the requirements within the 5 year permit cycle of this Revised TO.

We appreciate your consideration of these comments on the MRP Tentative Order, and look forward to your specific responses.

Sincerely,



Frank Maitski
Deputy Operating Officer
Office of Environmental Management and Emergency Services

cc: M. Klemencic, J. Fiedler, S. Dharasker, B. Calhoun