



April 2, 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

Mr. Wolfe:

Please accept the San Mateo Countywide Water Pollution Prevention Program (Countywide Program)'s comments on the above-referenced Tentative Order on behalf of the 21 municipal copermittees in San Mateo County. These comments acknowledge constructive changes Water Board staff incorporated in the February 11, 2009 draft permit and request additional important changes. This letter and its enclosures detail specific revisions to the proposed permit language that are necessary to allow San Mateo County copermittees to direct increased resources toward trash and litter control in the short term while gradually increasing other pollutant control and water quality monitoring efforts in a more measured and phased manner. The Countywide Program's proposed changes are essential to allow an effective and focused increase in pollutant control efforts that recognizes the municipalities fiscal realities and our limited ability to secure additional resources for stormwater management under Proposition 218's voter approval requirements. Given the complexity of the 190-page permit and its 21 provisions, the degree to which Water Board staff has already incorporated improvements or needs to make additional revisions varies markedly among the different provisions as summarized below.

### **Significantly Improved Permit Provisions**

We appreciate the improvements Water Board staff incorporated into several of the permit's provisions. In particular, the following permit provisions, which cover many routine stormwater activities that have been well established in municipal stormwater programs for more than ten years, have benefited from redrafting the permit. The redrafted permit will allow municipal staff the flexibility to use their unique skills and practical stormwater experience to improve water quality while avoiding a bewildering and arbitrary reinvention of local stormwater programs.

**Provision C.2 Municipal Operations.** This permit provision was streamlined, in part, by no longer including specific requirements for street sweeping, types of street sweepers that need to be purchased and used, and by deleting record keeping and reporting requirements associated with street sweeping. In addition, further streamlining and flexibility have been accomplished by deleting specific requirements for cleaning storm drain inlets and storm drainage facilities other than storm drain pump stations.

**Provision C.4 Industrial and Commercial Site Controls.** This revised permit provision incorporates flexible requirements for developing an Industrial and Commercial Business Inspection Plan, including selection of businesses and inspection frequency.

**Provision C.5 Illicit Discharge Detection and Elimination.** This permit provision simplifies requirements for Enforcement Response Plans and deletes unnecessary requirements for preparing Illicit Discharge Control Plans.

While these three permit provisions show considerable improvement, there are still a number of worthwhile changes we request be made to these provisions as described in the enclosed List of Issues Table.

### **Somewhat Improved Permit Provisions**

The following important permit provisions have changed overall in a positive direction compared with the December 2007 draft. The Countywide Program recommends a number of additional changes to 1) eliminate unintended adverse consequences of the proposed requirements, 2) benefit from effort Water Board staff already invested in identifying trash impaired waterways, and 3) provide a longer phase-in period for new requirements.

**Provision C.3 New Development and Redevelopment.** One of the positive improvements in this key permit provision includes the proposed elimination of a requirement to install stormwater treatment controls when arterial streets and roads are rehabilitated. The Water Board staff's proposed alternative of requiring green street pilot projects aligns with the Countywide Program's interest in pilot testing the use of green streets and parking lots. A number of recommendations for improving the green street and other Provision C.3 requirements are described in the enclosed List of Issues Table.

**Provision C.10 Trash Reduction.** The Countywide Program appreciates the improvement in this permit provision to require a more focused implementation of full-capture trash devices in retail and commercial areas rather than the December 2007 draft permit's proposed implementation based on using a percentage of a municipality's urban and suburban land area. The List of Issues Table contains recommendations for how to use the Water Board's recently completed process to identify trash impacted waterways as a basis for the permit's "hotspots" for priority cleanup.

### **Countywide Program's Highest Priorities for Permit Modifications**

The following major permit provisions have changed relatively little, and in some cases have become more burdensome, since the December 2007 draft. How the permit requirements for these four proposed permit provisions are structured is essential to the success of stepped up efforts to better control high priority pollutants while integrating an expanded water quality monitoring program that should guide these pollution control efforts. We believe that it is essential that these four permit provisions be streamlined in order to focus on high priority water quality problems and more reasonably phase in increased pollutant control and water quality monitoring efforts over a longer time period. The proposed modifications incorporate an iterative approach to achieve improved water quality controls, and they are more cost effective considering municipal resource limitations. Specific recommendations are contained in the enclosed List of Issues Table.

**Provision C.8 Water Quality Monitoring.** This proposed permit provision is by far the most expensive with an estimated cost to the Countywide Program of about \$4 million over

five years. Unfortunately, the extensive monitoring requirements to assess the quality of creeks' chemical, biological, and geomorphologic conditions are unlikely to lead to improved water quality. In addition, this provision's numerous monitoring projects will have uncertain water quality benefits. The increased amount of monitoring and projects should be reduced and phased in more gradually as described in the enclosed List of Issues Table to better prioritize monitoring efforts.

**Provisions C.11 Mercury Controls and C.12 Polychlorinated Biphenols (PCBs)**

**Controls.** The requirements for the numerous pilot studies should be combined into one permit provision and the increased level of effort scaled back somewhat to be more judicious and cost-effective. The schedule for what needs to be accomplished should reflect a more realistic schedule of what needs to be accomplished over more than one five-year permit cycle to address these historic, legacy pollutants.

**Provision C.15 Exempted and Conditional Exempted Discharges.** This permit provision contains approximately seven pages of proposed requirements that are overly prescriptive, unnecessary, and disproportionate to the threat posed by these minor types of non-stormwater discharges. We recommend that this permit provision be totally rewritten and simplified similar to the enclosed table titled "BMPs and Implementation Procedures for Conditionally Exempted Discharges" that was prepared by the Countywide Program and approved by the Water Board in 2004 as an amendment to the Countywide Program's permit.

The following sections describe additional issues that should be considered when recrafting key portions of the permit.

**Federal Clean Water Act Maximum Extent Practicable Requirements**

The revised draft permit released for public comment on February 11, 2009 appears in some ways to be oblivious to what maximum extent practicable stormwater pollutant controls mean considering current economic conditions. The federal Clean Water Act requires, in part, that permits "shall require controls to reduce the discharge of pollutants to the maximum extent practicable..." The types of factors that the State Water Resources Control Board's staff has identified as needing to be considered in achieving the maximum extent practicable standard include regulatory compliance, public acceptance, cost, and technical feasibility.

The ability of the Countywide Program and local municipalities to finance existing, much less new, stepped-up stormwater pollutant and flow-duration controls has been severely limited by current economic conditions. Municipalities are faced with declines in their revenue from sales and property taxes. In addition, the state continues to divert for its own use resources that typically would be made available to local public agencies. This has resulted in municipal staff layoffs and the use of furloughs to minimize further layoffs.

The Countywide Program hired HFH Consultants to evaluate potential stormwater funding options. HF&H Consultants' completed a report in June 2008 that describes existing and potential funding sources, restrictions, and specific examples of use of these funding sources by other agencies. The report concludes, in part, the following:

*"Surveys indicate the public is unwilling to pay fees directly for stormwater requirements. Significant lead time (e.g., multiple years rather than months) is required to try to secure these*

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*funds with no guarantee of success. In the current economic environment and given the recent results of public surveys, success will probably be minimal.”*

We appreciate the Water Board staff’s willingness to try to help municipalities secure grant and federal stimulus funding for the new stepped-up pollutant controls. Unfortunately, new funding resources from state grants are currently on hold because of the state’s lack of creditworthiness. Once opportunities are again available to try to obtain state grant funds, such as the Proposition 84 stormwater grants, the amounts of grant funds available will be extremely limited, e.g., \$10 million will be available statewide for total maximum daily loads. The opportunity to fund total maximum daily load projects in the Bay Area are limited because of the few pollutants that have completed the total maximum daily loads process necessary to be eligible to compete for these grant funds. Another potential source of funding, the federal American Recovery and Reinvestment Act of 2009 subsidy funds, will be used primarily to restart State Water Resources Control Board projects that lost previously committed state grants or will be directed to other priorities. It is important that the Water Board recognize that what is now considered “maximum extent practicable” is less than it was when the December 2007 draft permit was released for public comment.

#### **Support and Incorporation by Reference Other Stormwater Comments**

The Countywide Program also agrees with and supports the comments that have been submitted by the municipalities that are members of the Countywide Program, the Bay Area Stormwater Management Agencies Association, the Santa Clara Valley Urban Runoff Pollution Prevention Program, including Bob Falk’s comments on legal issues, and the comments provided by the Alameda Countywide Clean Water Program, including the comments provided by Gary Grimm on legal issues.

The Countywide Program also wishes to incorporate by reference into the administrative record for adoption of the municipal regional stormwater permit these and all prior comments that it or its member agencies have made including the letter transmitting the Countywide Program’s revised Hydromodification Management Control Area Map. All of the comments that were referred to in these previous submittals should also be included in the administrative record.

We look forward to continuing the constructive dialogue with you and your staff to resolve the issues described in this letter and its enclosures. Please call me if you have any questions or comments.

Sincerely,



Matthew Fabry  
Countywide Program Coordinator

Enc: List of Issues Table  
BMPs and Implementation Procedures for Conditionally Exempted Discharges