



# Alameda Countywide Clean Water Program

A Consortium of Local Agencies

951 Turner Court, Hayward CA 94545-2698  
(510) 670-5543 FAX (510) 670-5262

Member  
Agencies:

Alameda

Albany

Berkeley

Dublin

Emeryville

Fremont

Hayward

Livermore

Newark

Oakland

Piedmont

Pleasanton

San Leandro

Union City

Alameda  
County

Alameda  
County  
Flood Control  
and Water  
Conservation  
District

Zone 7 of  
the Alameda  
County  
Flood Control  
District

February 29, 2008

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

SUBJECT: COMMENTS ON MUNICIPAL REGIONAL STORMWATER  
NPDES PERMIT TENTATIVE ORDER

Dear Mr. Wolfe:

These comments are filed on behalf of the Alameda Countywide Clean Water Program (Program)<sup>1</sup> with regard to the Tentative Order for the Municipal Regional Stormwater NPDES Permit for Discharges from Municipal Phase I Permittees in the San Francisco Bay Region (Tentative Order) issued on December 4, 2007 as amended. We request that you distribute a copy of these comments to the Regional Water Quality Control Board (Water Board) members and include our comments in the record of this administrative proceeding. Our legal counsel, Gary Grimm, has filed legal comments on behalf of the Program. In addition, we support and concur with the comments filed by the Bay Area Association of Stormwater Management Agencies (BAASMA) and the legal comments filed by Bob Faulk on behalf of the Santa Clara Valley Urban Runoff Pollution Prevention Program.

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<sup>1</sup> The Alameda Countywide Clean Water Program is composed of 17 cities and county entities in Alameda County including the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union City, Alameda County (for the unincorporated area), Alameda County Flood Control and Water Conservation District and Zone 7 of the Alameda County Flood Control and Water Conservation District. These entities each have jurisdiction over and/or maintenance responsibility for their respective municipal separate storm drain systems and/or watercourses in Alameda County.

The Program and its member agencies strongly support the Water Board's goal of protecting our local creeks and the San Francisco Bay from the potential detrimental impacts of stormwater runoff and in particular from the impacts of litter and illegal dumping. The U.S. EPA has recognized both the Program as a whole and the City of Oakland specifically for national awards. Programs developed in Alameda County have been used as models for stormwater programs throughout the State.

Our success has been due, in large part, to the passion and creativity of our member agency staff that are committed to protecting water quality and the beneficial uses of our water resources. The Program is concerned that some of the very prescriptive requirements in the Tentative Order will hamper our efforts and dampen the enthusiasm of our member agencies. These significantly expanded requirements do not consider the operational, institutional and financial realities of the counties and cities in the San Francisco Bay Area. Furthermore, some of the expanded requirements may result in Permittees diverting resources toward unproductive tasks, which will undermine our mutual goal of improving water quality.

The Tentative Order contains hundreds of new or enhanced requirements, including new requirements to reduce the discharge of mercury, PCBs, copper, and trash. The vast majority of these we either fully support or at least are able to accept. However, there are a number of expanded requirements that are inappropriate or impose a severe financial burden on local agencies without a corresponding benefit to water quality. Most of them require new programs or higher levels of service. We describe our primary concerns below and are requesting revisions to permit provisions as provided in Attachment 1. Additional specific comments and questions are included in Attachment 2.

We are concerned that despite extensive written comments submitted on the administrative draft permits, constructive alternate language proposals submitted by local agencies and numerous discussions between local agencies and Water Board staff, most local agency concerns still have not been addressed. It is our specific request that you and the Water Board members direct your staff to work with local agencies after the March 11<sup>th</sup> hearing to address these concerns so that we can move forward with addressing pressing water quality problems quickly and efficiently without being mired in burdensome and overly prescriptive requirements.

### **Provision C.3: New Development and Redevelopment**

**Background:** Most of the requirements of Provision C.3 were incorporated in our existing permit that was re-issued in 2003. Our member agencies have spent a tremendous amount of time and resources developing and incorporating these requirements for stormwater treatment controls into their planning and project approval process. The requirements for managing increases in flow from development projects (hydromodification amendments) were recently adopted by your Board last year and are just starting to be implemented. The requirements for inspection and maintenance of the treatment controls are increasing as more of these facilities are installed. The full financial impact of these existing requirements on Permittees and the affects on water quality is still unknown. As implementation of this program progresses, we may be better able to ascertain the full water quality and financial implications.

**Concerns:** The Program's concerns with the requirements in the Tentative Order are essentially the same as when the C.3 requirements were adopted in 2003. At that time, Water Board staff proposed a size threshold for treatment of 5,000 square feet and proposed requiring the installation of treatment control devices for road reconstruction projects within the existing right-of-way. Our member agencies vehemently opposed those requirements for the reasons outlined below. After a great deal of acrimonious debate, a mutually agreeable solution was reached. Now, Water Board staff is attempting to insert the same requirements that were rejected previously as being non-productive and not a good use of limited resources. These requirements were inappropriate before and they are inappropriate now.

- Requiring treatment on projects that create or replace between 5,000 and 10,000 square feet or more of impervious surface:  
The Tentative Order currently proposes that two years after Permit adoption, the size threshold of projects requiring stormwater treatment would be lowered from 10,000 to 5,000 square feet for several categories of development. There are a number of compelling reasons why small new development and redevelopment projects that create or replace from 5,000 – 10,000 square feet of impervious surface should be excluded from coverage as Regulated Projects.
  - *The costs associated with operating and maintaining small treatment devices is too high relative to the benefit. A disproportionate amount of*

the implementation costs will be directed at inspecting small treatment devices and conducting enforcement actions against parties that are not conducting adequate maintenance. Once these devices are installed, they will need to be inspected and maintained in perpetuity; thus, the cost of inspection and enforcement will continue to increase dramatically over time. It is inefficient and wasteful to dedicate this level of public resources toward the maintenance of small devices that would be of questionable usefulness even if they were rigorously maintained. There is also an excessive administrative burden associated with executing operations and maintenance agreements for each of these devices.

A related issue is the cost to the Alameda County Mosquito Abatement District (ACMAD). The ACMAD may need to conduct mosquito inspection and suppression activities at each of these treatment devices that create standing water. The Program was advised that this will require ACMAD staff to inspect these sites up to seven times each year. Again, these inspection activities will need to be conducted in perpetuity and each year additional devices will be installed.

- The total area covered by projects of less than 10,000 square feet is very small. Water Board staff conducted a study in conjunction with five Bay Area municipalities to determine the percentage of land area developed that is less than 10,000 square feet. The results of that study indicated that land development on projects of less than 10,000 square feet accounted for less than 1% of total land development. It is a waste of scarce public resources to expend a disproportionate amount of effort into capturing the last 1% of total development. Efforts and resources should be directed to more productive programs.
- Requiring structural treatment controls for road reconstruction projects within existing right-of-way:

Under the Program's existing permit, road reconstruction within the existing right-of-way in areas where there is existing development on both sides of the road is excluded from the numeric treatment requirements. This type of project was excluded for good reason. There are severe logistical constraints when trying to install stormwater treatment controls within an existing roadway. Available treatment systems require gravity fall in order to function,

requiring significant redesign and, in some cases, installation of new storm drainage systems where none exist today. Requiring the installation of these treatment systems in these situations would place a significant economic burden on municipal street maintenance programs that are already severely under-funded and is not practicable.

- The requirement for a regional pilot study of 1,000 – 10,000 square foot projects would be extremely labor intensive and provide no water quality improvement benefit whatsoever. This data collection effort would serve little useful purpose.

**Proposed Resolution:**

- Keep the current 10,000 square foot threshold so as to allow our Permittees to more effectively implement this program.
- Keep the current exemption for roadway reconstruction projects within existing right-of-way.
- Remove the requirement to conduct another pilot study to assess the amount of development that falls into the 1,000 to 10,000 square foot range.

**Provision C.4: Industrial and Commercial Site Controls**

**Background:** Alameda County municipalities have been conducting industrial and commercial facility stormwater inspections for over fifteen years. During this time, staff has conducted approximately 40,000 facility inspections. Alameda County's industrial inspection program has been used as a model for other programs in the State. Under the current permit, municipalities are required to prepare a five-year work plan that lists all facilities deemed to have a potential to contribute to stormwater pollution and develop a list of priority facilities.

**Concerns:** The required inspection frequency for particular categories of industrial and commercial facilities is too prescriptive and is not appropriate. Of particular concern is the requirement to inspect SARA Title III, Landfills and General Industrial Permit facilities every year. SARA Title III facilities include, those with inert compressed gas on site in quantities over reporting thresholds (i.e., 200 scf). This may include such benign facilities as a gift shop with a helium cylinder for filling party balloons, its only "industrial" activity. To require annual inspections based on the presence of a compressed gas cylinder, in this example, would be a waste of public resources and contrary to common sense.

Similarly, it is not appropriate to require inspections of all General Industrial Permit facilities every year. Some of these facilities have a very low likelihood of contributing to stormwater pollution. The Program inspectors are dedicated professionals. They have on-the-ground knowledge and are in the best position to determine which facilities should be high priority facilities. In addition, General Industrial Permit facilities pay an annual fee of \$830 per year to the State, so that the State can provide inspection, data management, and enforcement of stormwater permit requirements at those sites.

**Proposed Resolution:** Remove the designated frequency of inspection by business type. Require that all businesses with a potential to contribute to stormwater pollution be inspected at least once during the five-year permit term. Allow the municipalities to develop their own list of high-priority facilities, with commensurate inspection frequencies, reflecting both risk and compliance histories, as they are currently doing.

### **Provision C.8: Water Quality Monitoring**

**Background:** The Alameda Countywide Clean Water Program has been recognized as having an excellent and proactive monitoring and special studies program since the Program first formed in 1989. For example, Program staff have worked with Water Board staff to identify diazinon related toxicity as a significant concern for Bay Area creeks. After the extent of the toxicity was determined, the Program spent many years conducting studies to determine the specific sources of the diazinon. The U.S. EPA, in their decision to ban diazinon, cited these studies. This success and others were possible because the permit allowed the Program to identify and follow up on water quality issues as they arose.

**Concerns:** The Tentative Order represents a significant increase in Program effort for monitoring and technical studies. While many of the proposed provisions are a continuation of existing efforts, or have been identified in regional stakeholder discussions as logical extensions of existing efforts, others are not directly related to urban runoff. While these studies may be worthwhile for informing comprehensive land-use and watershed management efforts, they are not appropriate in a stormwater NPDES permit. Examples of inappropriate data requirements include “pebble counts” recording 405 individual measurements or observations on rocks at each of 25 sites per year, or creek water temperatures for which the SWAMP program’s reports suggest the main

determinant is streamside vegetation. In the attached table of specific comments, we suggest some prioritization, but the monitoring objectives (listed in Fact Sheet C.8-2) also need to be considered in the overall context of municipal resources available for both monitoring and Performance Standard implementation.

As with other areas in the Tentative Order, excess specificity in monitoring language is inappropriate and in some cases will obstruct cost-effective solutions to monitoring implementation. (For discussion of legal issues raised in Provision C.8 of the Tentative Order, see separate comments by Gary Grimm, filed on behalf of the Program). While the Fact Sheet acknowledges the important contributions of the Program's past monitoring and collaboration with other monitoring initiatives such as the RMP and SWAMP, it ignores the adaptive nature of these efforts, where the results of initial studies informs the details of data collection in subsequent years. Our requested permit language changes that would address these concerns are provided in comments MP1-11.

Some specific methods or approaches prescribed in the Tentative Order are inconsistent with good monitoring design or are poorly linked to specific monitoring objectives. Lack of internal coordination is also seen in overlapping or conflicting provisions in different parts of the Tentative Order. This is particularly true of the pump station monitoring requirements in Provisions C.8.e.iii, C11 and C12 which share similar titles and stated objectives but very little in proposed approach or activities. The Program has proposed specific corrections to achieve the monitoring objectives efficiently through sound scientific approaches (see attachment 1, comment MP-2,3, and 9).

Reporting timelines in the TO are also unrealistic and inappropriate; the annual Urban Creeks Monitoring Reports should have a due date at least 6 months after the due date for the Electronic Data Reports as originally written in the Administrative Draft. The Tentative Order's November 30, 2008 due date for both reports has several detrimental effects:

- It would effectively require local agencies to complete sample processing, lab analysis and QA/QC several months before the November due date for Electronic Data Reports. This increases the likelihood of resource scheduling problems and added rush costs for analysis and QA/QC of data collected in spring and summer.
- It would force local agencies to request adjustment of reporting schedules for any regional collaboratives, per C.8.a.ii. Without assurance that the Executive Officer will consider such adjustments reasonable or that the

- adjusted schedule will be acceptable to stakeholders of the collaboratives, this can effectively discourage local agency participation in regional collaborations (beyond the concern cited in attachment 1, comment MP-1).
- It will greatly reduce opportunities for creek groups, local managers or other stakeholders to review the data or have input to the Urban Creeks Monitoring Reports.

**Proposed Resolution:** Proposed resolutions to our specific concerns are included in Attachment 1.

### **Provision C.10: Trash Reduction**

**Background:** Litter is a serious problem in many communities throughout the Bay Area as well as in local creeks and in San Francisco Bay. Our member agencies are currently conducting many significant litter reduction activities including: participating in Coastal Cleanup events, banning plastic bags, street sweeping, cleaning up hotspot dumping areas, partnering with Caltrans to conduct cleanup along freeways, conducting public outreach campaigns; and installing trash capture devices. Many of these efforts go well beyond those directly related to urban stormwater runoff and receive little credit in the Tentative Order with regard to trash abatement efforts.

#### **Concerns:**

- The requirement to install full trash capture devices to treat all runoff from at least 5% of the land area of every municipality is not appropriate for all municipalities as the level of urbanization and associated litter problems varies widely between municipalities. Structural litter control mechanisms are expensive to construct and maintain and they do not address the issue of litter in our communities.
- The requirements of the enhanced litter control measures are too prescriptive. The tentative order requires that the enhanced control measure areas include weekly street sweeping and parking restrictions. These measures may not be appropriate in many areas where municipalities would like to conduct enhanced litter control activities. In some areas enhanced enforcement or litter pickup would be more appropriate measures than those cited in the Tentative Order.

- The requirement to conduct enhanced litter control in areas where structural control measures will be installed should be removed. This would require municipalities to revise street sweeping routes and install no-parking signs, which would be very expensive, only to remove the signs and revise the routes again a year or so later when the structural control measures are in place.

**Proposed Resolution:** The problem of litter in our creeks and the Bay cannot be solved through controls on stormwater discharges alone. This will require a coordinated effort between local and State agencies. At the stormwater workshop the Water Board held last year, the Water Board recommended establishing a trash task force of State and local agency representatives to address trash related issues. This is an excellent idea that should be implemented. Before jurisdictions spend tens of millions of dollars on control measures that may not make a significant dent in the problem of litter in local creeks, we should work together to develop a comprehensive trash and litter control plan.

The Program is requesting specific changes to the permit language changes to provide flexibility for local agencies to address trash in a cost-effective manner (see attachment 1). The Program requests that the permit requirement of a minimum of 5% structural retrofit by 2012 be eliminated, allowing the use of structural or non-structural controls to achieve trash reduction. This would allow local agencies an opportunity to assess the effectiveness of various structural control methods and determine if structural controls are warranted under the Long Term 15-Year Trash Reduction Plan due in 2012. We also request that the options for enhanced control measures be revised to allow for selecting from a menu that includes items such as enhanced enforcement and litter pickup.

### **Record Keeping and Reporting:**

**Background:** The Program and our member agencies are currently submitting very extensive annual reports. Many aspects of these reports have been revised to respond to Water Board staff requests for additional information; for example, the Program recently revised the industrial/commercial inspection database to allow for the long-term tracking of the resolution of violations or potential violations. The current level of reporting for the Program requires the allocation of several staff members time for several weeks. Each member agency report requires a similar level of effort. These reports are often not reviewed due to lack of Water Board staff resources (fiscal constraints affect staff operations as well

as the municipalities). A stated goal of both Water Board staff and stormwater representatives at the start of the development of the MRP was to have streamlined reporting – this has not been accomplished by the Tentative Order.

**Concerns:** The “streamlined” record keeping and reporting in the Tentative Order results in an annual report that has grown from 30 pages to over 100 pages, before even counting the relevant attachments. In addition, reporting requirements in many of the Provisions of the Tentative Order are extensive. The level of detail requested is onerous and several times as much effort as our current reporting and includes the development of six new databases. Permittee staff resources dedicated to record keeping and reporting will consequently not be available to conduct activities that will actually benefit water quality. This level and type of reporting may turn our stormwater programs into a data gathering and reporting exercise rather than an effort to solve pressing water quality issues; and due to lack of Water Board staff resources, these reports may never be thoroughly reviewed.

**Proposed Resolution:** Direct Water Board staff to work with local agencies to significantly revise and reduce the reporting requirements. Any record keeping and reporting that is not essential to direct water quality improvement should be eliminated.

### **City and County Representation on the Water Board**

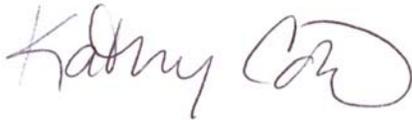
The Regional Water Quality Control Boards were established as nine-member Boards with each member associated with a particular interest. The Board currently has three vacancies. Two of those vacancies are for members associated with local government, which means that there are currently no representatives associated with municipal or county government on your Board. The requirements of Tentative Order represent a potential cost of several hundred million dollars for local governments. This burden should not be placed on local government in the absence of Board members associated with local government.

These vacancies should be filled before the Tentative Order is adopted. The current Board members are very capable of being aware of their designated interests; however, none of them are specifically associated with the interest of local government. Elected members of city councils and county boards of

supervisors best understand the financial and institutional reality that local governments face.

We believe it is essential that the Tentative Order be properly prioritized and phased in order for local agencies to achieve maximum water quality benefit with the resources available. These changes that we discuss above are necessary in order to avoid waste and reflect the realities of municipal budgets while effectively addressing water quality concerns. We look forward to continuing our dialog with you and your staff on the issues described in this letter, and we request your consideration of the Program's recommended changes to the Tentative Order.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy Cote". The signature is written in a dark ink and is positioned above the typed name and title.

Kathy Cote  
Management Committee Chair

Cc: ACCWP Management Committee Representatives

Enc: Attachment 1) Table of Proposed Revisions to T.O.  
Attachment 2) Additional Questions and Comments

