

February 6, 2008

Mr. John Muller
Chair
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Ste. 1400
Oakland, CA 94612

Subject: Tentative Order for Municipal Regional Permit

Dear Mr. Muller:

The City of Dublin appreciates the opportunity to review the Tentative Order for the Municipal Regional Permit (MRP) which was released for by the San Francisco Bay Regional Water Quality Control Board on December 4, 2007.

The City of Dublin recognizes the effort by Board staff into the preparation of the new permit, which includes aggressive measures to deal with pollutants of concern, including trash. The City of Dublin is committed to performing its' share of the effort needed for continued reduction of pollutants and improvements to water quality within the Bay Area. The City has taken a progressive approach to addressing environmental quality issues through its Green Building Program for City facilities, Green Building requirements for new development, and development of two transit centers at the West and East Dublin BART Stations. The City has dedicated the necessary resources to ensure that it remains in compliance with both the letter and the spirit of its current Municipal Storm Water Permit, and recently worked with both Caltrans and the Regional Board in developing the first cooperative stormwater treatment project under these agencies alternate treatment measures program.

Following detailed review of the permit, we remain concerned that many requirements of the permit will result in questionable or marginal improvements to actual water quality, and may in fact detract from local agencies' ability to carry out existing or improved local clean water programs due to demands on funding, staff, and other resources. Specific concerns are as follows:

1) Additional Monitoring Requirements

The proposed permit requires extensive new monitoring, testing, and reporting efforts by local agencies on local watersheds. This in spite of the current efforts by the San Francisco Bay Estuary Institute (SFEI) to maintain an ongoing Regional Monitoring Program (RMP) for San Francisco Bay, a program which is well respected by the scientific and environmental communities. SFEI recently published its 2007 report, based on hundreds of samples taken in bay water and sediment over the last five years. The report provides tremendous insight on watershed-specific sources of pollutants in the bay and trends for improvement or degradation due to specific pollutants. Given this background knowledge, it is questionable that additional monitoring data will influence pollution reduction efforts that are required by the permit regardless of the monitoring results. Elimination or reduction of the required new monitoring would not impact pollution reduction efforts and would allow available resources to be put into actual water quality improvement efforts.

The added cost of new monitoring efforts to the City of Dublin is estimated at over \$9,000 per year.

2) Increased Treatment Requirements for New Development

The threshold for requiring installation and monitoring of water quality measures for new development has been reduced from 1 acre to 10,000 sf, dropping to 5,000 sf in two years. The City of Dublin does not take issue with the 10,000 sf threshold. However, we do not believe that reduction to the 5,000 sf threshold will capture new development with significant pollutant loadings, and that the result will be nominal improvement to water quality, increased staff time needed for plan processing and ongoing monitoring, and the installation of privately maintained site-specific water quality measures that will be redundant to publicly-maintained community-wide controls.

The permit also requires treatment of reconstructed pavement, even though impervious surfaces are not increased and no new activities are occurring that would generate additional pollution. The added cost of this requirement will dilute the limited funds already available for pavement rehabilitation and further hinder local agencies' ability to maintain their street systems.

The added cost for staff to review and monitor new development is estimated at over \$7,000 per year. The cost added to the City's pavement maintenance program for storm runoff treatment is estimated at \$30,000 per year.

3) Development of Additional and Spill Response Procedures

The permit requires development of a formalized Emergency Response Plan (ERP) for use with business inspections and spill response, among other processes, record keeping, and

reporting. Included in the ERP are requirements to adopt, by ordinance, escalating penalties for noncompliance.

The City of Dublin, during the 2006-07 Fiscal Year, responded to a total of 21 spills or discharges. In addition, the City completed 23 business inspections and identified 7 items requiring attention. Each of these situations was either corrected or in the process of being corrected by the end of the fiscal year.

In summary, the City of Dublin's current spill response and business inspection practices are effective, and adoption of additional formal measures would provide no incremental benefit to water quality.

The added cost of adopting additional business and spill response measures is estimated at \$13,000 per year.

4) Increased Record Keeping and Reporting

The permit requires additional record keeping and reporting in almost every category of activities. The permit includes a new annual report form, significantly longer than the existing report format. This is despite lack of comment or response to annual reports submitted to the board for the last several years, and comments by board staff that they are unable to find the time to review existing reports.

Record keeping and reporting utilizes staff time that could otherwise be used for activities that result in actual water quality improvements.

The added cost of completing the annual report is estimated at \$13,000 per year.

5) Public Outreach

The City of Dublin is required to complete additional local public outreach events (six events compared to four under the current permit). In past years, the City has met or exceeded this minimum requirement. However, the permit also requires additional region-level outreach and education, including measurement of effectiveness. We question the practicality of measuring items such as "awareness" or "behavioral changes". Furthermore, given the major new efforts required to deal with trash and other pollutants of concern, the City of Dublin suggests that this is not the year to add additional required public outreach work and to impose additional record keeping and reporting requirements for this activity.

Added costs for public outreach are estimated at over \$8,000 per year.

6) Copper

The permit requires additional copper-reduction measures, including specific changes to the municipal code regarding washing of buildings with copper architectural features. This is in

spite of the San Francisco Estuary Institutes' 2007 Regional Monitoring Report indicating that copper levels in the Bay are below allowable health standard levels, and that copper was removed as a contributing pollutant to the Bay's status as an impaired water body under Section 303(d) of the Clean Water Act. Copper removal from storm runoff will continue under existing local agency activities; in fact, copper removal may be enhanced as a result of other required activities for mercury, PCB's, etc.

The permit requires continued participation by local agencies in the Brake Pad Partnership, which is developing means of reducing copper content in brake pads. This is a current cost and may achieve measurable statewide benefits. However, the permit requires copper-specific activities along with specific record keeping and reporting requirements, none of which contribute to copper or other pollutant removal or overall water quality improvements. Some of the requirements (such as an ordinance prohibiting washing of buildings with exterior copper) would impact a very limited source of copper and would be impractical to enforce.

The added cost of copper reduction is estimated at \$24,000 per year.

7) Trash Reduction

The permit requires that agencies develop an enhanced trash control program for at least 10% of the land within their jurisdiction. Half of the targeted area must be treated with structural trash controls.

The City of Dublin would need to provide structural controls treating approximately 300 acres in order to comply with this permit requirement. The cost of installing these structures is estimated at \$2 Million, or \$400,000 per year for the duration of the five-year permit.

The City of Dublin's 10% trash target area would encompass most of the Downtown commercial areas, the West Dublin Transit Center, the East Dublin Transit Center, and both local high schools. The City's staff has reviewed existing trash control measures in these areas and believes that operation and maintenance activities such as placing additional trash receptacles and enhanced litter pickup could accomplish the trash reduction goals, and that the 5% requirement for structural retrofits could be reduced to 2-3%.

The City of Dublin requests that the permit requirement of 5% structural retrofit by 2012 be modified to reduce this to the 2-3% range, allowing the use of non-structural controls to achieve trash reduction within the 10% targeted area. This would allow local agencies an opportunity to assess the effectiveness of these methods and determine if additional structural controls are warranted under the Long Term 15-Year Trash Reduction Plan due in 2012.

Reducing that structural retrofit requirement from 5% to 2-3% would reduce the added cost of permit compliance by \$200,000 per year.

8) Delegation of State and Federal Duties to Local Government

The permit requires that local agencies take on duties currently assigned to State and Federal agencies with regards to abatement or monitoring of certain pollutants of concern. Specifically, the permit requires that:

1) Local agencies monitor and participate in the regulatory process for pesticides and assume responsibilities for development and enforcement of regulations currently handled by Federal and State agencies. This activity is beyond the technical and legal scope of local government, and is and should continue to be handled at the State and Federal level. Further, if the Regional Board (a State agency) already has reason to believe that certain pesticides should not be used because of water quality impacts, it should take its' case directly to the State agencies responsible for pesticide control and not rely on local government to perform its' duties.

2) The permit requires that local agencies identify PCB's on private property as part of ongoing clean water business inspections, and coordination with State/ Federal regulatory agencies to facilitate removal of PCB's. Local agency action should be limited to reporting knowledge of potential PCB releases or contamination on private property to the appropriate State and Federal agencies, with abatement of the problem by those agencies.

3) The permit requires that local agencies develop or participate in PCB and mercury health risk reduction program for fish consumed from San Francisco Bay. Again, this is an activity that is the responsibility of County, State, and Federal public health agencies, and should not be delegated to the local level.

While the cost for these additional duties is indeterminate at this time, we believe that the delegation by the State to local government of duties that rightfully should be performed at the State and Federal level should not occur without compensation to local government for this additional mandated work.

9) Parking Restrictions The Permit includes language that could potentially require that local streets be posted for no parking on street sweeping days. This would require installation of approximately 5,000 signs at a cost of \$100 each, or \$500,000 over the five-year permits (\$100,000 annually).

The City's street sweeping program currently provides for weekly sweeping of major streets and twice-monthly sweeping of local streets. Street sweeping on local streets is scheduled to occur the day after trash pickup, to allow cleaning of any spilled trash. Response to residents' concerns regarding unswept areas is handled by sending the sweeper out to the areas of concern. We do not believe that parking restrictions on local streets would result in an increase in the volume of pollutants removed from the streets.

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The City of Dublin has completed an analysis of the fiscal and staffing impacts of the new permit. The City of Dublin currently spends approximately \$172,000 per year on activities directly related to its water-quality program, including staff time, materials, and the contribution to the Alameda County Clean Water Program. This amount does not include maintenance activities such as street sweeping, storm drain inlet cleaning, and trash removal from City parks, nor does it include costs associated with review of land development which are reimbursed by developers. Based on new or enhanced activities required under the new permit, it is estimated that the annual cost of clean water activities will increase to \$925,000, an annual increase of \$753,000 or 430%. Again, this cost does not include likely proportionate cost increases in maintenance and development review.

Modifying the permit to address the nine items discussed above would reduce the increased annual costs to the City of Dublin by \$364,000-\$444,000, without significantly reducing the effectiveness of water quality programs provided by the City.

We hope that this cost comparison gives you some appreciation of the impacts from the current permit requirements to the City of Dublin and other municipalities. We concur that water quality goals should not be driven by cost. However, please understand that local agencies must work with a finite amount of funding and that, anytime any public agency spends funds on any task, it must spend those funds in a manner that maximizes the return on those funds for the public. Permit requirements for reporting, monitoring, or "nice to have" items that have no actual benefit to water quality improvements do not serve the public and should be eliminated.

Please note that most of these issues have been raised in previous letters from the City of Dublin to Regional Board staff on November 30, 2006 and July 13, 2007. Copies of these letters are attached.

We appreciate your attention to these comments, and look forward to a renewed dialogue with the Board as we work through the remaining permit issues. Please contact Joni Pattillo, Assistant City Manager, at (925)-833-6650 for further discussion of these comments.

Sincerely,

Janet Lockhart
Mayor

JL/ml
Attach.

cc: Shalom Eliahu, San Francisco Bay Regional Water Quality Control Board

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