

February 28, 2008

Mr. Bruce Wolfe, Executive Director
San Francisco Bay Regional Water Quality Control Board
1515 Clay St., Ste. 1400
Oakland, CA 94612

Subject: Municipal Regional Permit (MRP) – Tentative Order

Dear Mr. Wolfe:

Santa Clara Valley Water District (District) would like to thank the Regional Water Quality Board (RWQCB) for this opportunity to comment on the Municipal Regional Permit Tentative Order. The District appreciates the RWQCB's efforts to improve water quality in our local streams, lakes, reservoirs, and the San Francisco Bay. We fully support the goals of the program, and we offer the following comments on the most recent draft of the Municipal Regional Permit that we believe will make better use of our limited resources to address this important issue, .

1) District Authority

Several provisions in the MRP require permittees and/or co-permittees to have the authority to regulate various provisions or issue citations. We would like to clarify certain limitations of District authority as it relates to the permit conditions.

- The District does not have regulatory authority to issue citations. City and County law enforcement entities have sufficient power to issue citations on our behalf for the purposes of this permit.
- The legislative authority, the *District Act*, distinguishes the District from many other municipal agencies in several key areas. The District is not granted:
 - i. the jurisdiction for development permitting and construction inspection,
 - ii. the ability to create general plans to guide growth and development,
 - iii. Or police powers.
- The District does not maintain ownership or operation of municipal separate storm sewer systems. This distinction should be acknowledged within the Fact Sheet and Rationale sections:
 - i. *Implementation*, page 2;
 - ii. *Regulated Parties*, page 12; and/or
 - iii. *Permit Coverage*, page 12.

With this in mind, the joint program between the Cities and the District provides the requisite authority for implementation of permit conditions and there is no intent by the District to seek additional authority.

2) Total Maximum Daily Load (TMDL)

Associated costs for the removal of contaminants at known locations should be considered and weighed against the cost and need for various monitoring activities that are not directly linked to and do not lead to the immediate removal of contaminants entering the Bay.

- The TMDL for PCBs is currently in the process of being adopted, and on Page 45 of the Public Review document it states “implementation of the TMDL should focus primarily on reducing sediment PCBs concentrations by controlling sources in urban stormwater runoff.” The TMDL loading estimate and load allocation was derived primarily from sediment sampling in storm drain systems, therefore it follows that for at least the first five-year permit period efforts should be focused on the removal and proper disposal of sediment from the storm drain systems. The quantification of the removal of mobilized contaminants would provide the means to measure and track the change in PCB concentrations through time within a given storm drain location. Once a decrease in PCB concentrations is demonstrated and progress is shown in the storm drain system, and if the load allocation is still not yet being achieved, then more aggressive source identification and elimination actions would be needed. In the meantime, the District would much prefer to focus our limited resources on pollutant removal rather than on monitoring until the known contaminated sites are cleaned up.
- The TMDL for Mercury in San Francisco Bay includes substantial requirements for monitoring storm water discharges. However, unlike PCBs, mercury is a diffuse contaminant in stormwater. The Guadalupe River Watershed is contaminated with mercury, but storm water discharge is a relatively small contribution to mercury in the streams. The source of that mercury is primarily due to other historical sources which are being addressed separately. The District requests that the Regional Board staff work collaboratively with us to develop an alternative that allows the storm water program to direct its resources toward activities that address the larger sources of mercury in the Guadalupe River rather than on activities that result in very small reductions or none at all, as is the case with additional monitoring requirements.

3) Water Utility Discharge

The Water Utility Discharge Program has proven effective at tracking non-storm water discharge related to water utility operations as well as leading to implementation of BMP's for various discharges. The permit would be improved by prescribing a more step-wise, gradual approach to regional implementation, including consideration of the following actions;

- Introduce a Bay-wide program similar or identical to the existing Santa Clara County Water Utility Discharge Program and utilize the Santa Clara Valley Water District's (District) Water Utility Discharge Pollution Prevention Guidance Manual.
- Provide or offer training similar to the annual Water Utility Discharge Training provided by the District to its personnel.
- Implement the notification procedures utilized by the District and utilize the District modeled discharge tracking tables. All of these procedures and documents have been previously developed and vetted over the last 5 years as effective and implementable.

4) Groundwater Protection

Similar to the RWQCB's charge, the District is responsible for protecting both surface and groundwater. Storm-water management actions that include recharge to groundwater, should ensure adequate protection of groundwater. The following issues should be addressed in the MRP to provide adequate groundwater resource protection.

- Because of the concern for protection of groundwater quality in the Santa Clara Basin, we recommend that the MRP more clearly define "infiltration devices" in order to distinguish infiltration devices from other infiltration measures that are desirable site design and treatment features, and recognize that specific infiltration devices such as dry wells may have greater potential impacts to groundwater quality than others. The Santa Clara Program's *C.3. Stormwater Handbook* provides definitions and guidelines for use of infiltration devices, developed by a work group in which Water Board staff participated. The District supports the infiltration of uncontaminated stormwater runoff when it is protective of groundwater quality.
- The MRP sets a uniform 100 foot setback from water supply wells for infiltration devices. Since the potential risks that different land uses and site conditions pose are not uniform, there may be conditions that require even further setbacks to be implemented. The District suggests that there be further discussion of *setback conditions to ensure* adequate protection of groundwater.
- The MRP should consider setbacks from Underground Storage Tanks (USTs) and septic tanks, to avoid the leaching contaminants into groundwater from those potential sources.
- The MRP should establish restrictions on stormwater runoff from sites with known groundwater contamination. The following restrictions should be placed on infiltration projects on or near sites with known contamination of groundwater or soils:
 - Infiltration of stormwater should not be allowed in the vicinity of known contamination sites unless it is demonstrated that increased infiltration will not result in increased leaching of contaminants from soil, alter groundwater flow conditions that will affect contaminant migration in groundwater, or adversely affect remedial activities.

5) Regional Solutions

The District appreciates the MRP provisions that allow for regional solutions and we encourage the RWQCB to develop grant funding programs and to work collaboratively with the District and other co-permittees on developing regional solutions to stormwater peak flow attenuation. These regional solutions may include in-stream restoration projects or offstream treatment and detention basins that could be funded, at least in part, through developer contributions. They represent an improvement over the proliferation of thousands of very small; individual on-site control systems that we believe will ultimately lead to problems in the long term.

Again we wish to thank the Regional Water Quality Control Board for the opportunity to comment on this Municipal Regional Permit and the District looks forward to working with the Board to improve water quality in the region and to protect all of our valuable water resources. If you have any questions, please contact me at (408) 265-2607 ext. 2328 or dchesterman@valleywater.org,, Brett Calhoun at ext. 2653; jcalhoun@valleywater.org, or George Cook at ext. 2964 or gcook@valleywater.org.

Sincerely,

David J. Chesterman
Deputy Operating Officer
Santa Clara Valley Water District