Municipal Regional Permit, Unresolved Issues
September 6, 2006

General Comments:

On behalf of Baykeeper, Friends of Five Creeks, and other environmental NGOs, please find our comments on your list of unresolved MRP issues below. At this time we cannot guarantee that our comments include of all of the issues of concern to the environmental community. It was difficult for us to craft a meaningful response to your list for several reasons. First, many of the issues on your list were described too briefly to enable us to determine whether they include our concerns. Second, we were unclear on whether the some of the issues we previously raised were inadvertently omitted or whether staff believes that these issues are not in contention. And third, it is impossible to know what issues are in contention for the environmental community until we see a draft of the actual permit to provide context and a big picture of all the requirements. To avoid confusion, we have tried to reiterate in our comments below many of the points raised by the NGO community at various stages of the MRP process. If we did not mention a specific concern on your list, it is not because we do not agree that it is a contentious issue, we simply left it off as this is not and cannot be an exhaustive list of all of the issues we have with an MRP for which there is not yet a draft. We respectfully reserve the right to raise these and additional concerns when a draft of the actual permit is released.

1. **Monitoring**
    a. *Current level of monitoring.* We need to see information on the current level of monitoring being conducted by each of the permittees under the current permits.
    b. *Availability and accessibility of data*. The permit should ensure that monitoring data will be made available to the public and will be used to determine regional trends and accountability.
    c. *Adequacy of monitoring to accomplish goals*. The level of monitoring should be sufficient to (1) estimate pollutant loading from stormwater, (2) track long-term trends, (3) determine effectiveness of management programs and individual management practices, and (4) assess impacts to receiving waters.
    d. *Special monitoring projects.* The permit should detail under what circumstances special monitoring projects will be required. The triggers, such as hot spot and TMDL source identification, should be clearly delineated and next steps as well as enforceability of these actions should be made clear in the permit.
    e. *Level of effort determination.* The minimum level of monitoring effort required by each permittee should identify different factors, including the extent of any pollution problems, number of monitoring sites, and number of samples collected.

2. **TMDLS**
    a. *Implementation.* The permit should adequately and aggressively implement TMDLs and ensure that stormwater activities are implemented to best achieve loads to meet water quality standards.
    b. *Source identification.* Permittees must be required to identify sources of impairing pollutants and take specific clean up and enforcement measures.
    c. *Monitoring.* Permitees' monitoring programs should tie into TMDL loading and load reduction estimates.

d. *Compliance*. The permit should specify how compliance with TMDLs will be determined. It should state how accountability and enforcement of TMDL load reductions will occur and how the Regional Board plans to enforce compliance with TMDL requirements.
e. *Risk reduction.* If risk reduction programs are required, the permit should specify the timeframe for development and how funding will be secured.

3. New & Redevelopment

a. *Threshold.* The threshold for projects should be 5,000 square feet. All projects, regardless of size, should be required to report the net change in impervious surface.
b. *Peak stormwater runoff discharge rates.* The thresholds should be the same as those for treatment. The permit should address lowering peak discharges when parcels are being redeveloped.
c. *Alternative compliance.* The permit should contain a preference for on-site treatment and should specify in detail what dischargers will be required to submit in order to justify off-site alternatives. For instance, when onsite compliance is determined by the Regional Board to be too costly, developers might be offered the option of paying into a Regional Board-administered watershed treatment project fund.
d. *Exemptions.* Exemptions for hardened channels and low-income and transit-village projects should be eliminated and exemptions for brownfields should be limited.
e. *Enforcement.* The permits should explicitly state which entities are responsible for enforcement.
f. *Maintenance.* Permit language should require long-term maintenance of new and redevelopment BMPs.
g. *MEP.* Permit language should specify how MEP will be determined and enforced.
h. *Monitoring & feedback*. The permit should set in place a procedure for identification of successful BMPs and a mechanism to share that information with other permittees and require it of other permittees where feasible.
i. *Incentivize low-impact development.* The permits should create true incentives for low-impact development.

4. Construction Inspections

a. *Retention of specifics regarding authorities and responsibilities.* The permit must retain specific details regarding the Water Board's authority to conduct spot checks, ensure that the permittees have written ERP, etc.
b. *Minimum required management practices.* The permit must specify the minimum required management practices to be implemented at construction sites and how they will be enforced.
c. *Inspections.* Permit language should state in what way and how frequently construction sites will be inspected and notified of required management practices. Small sites should be inspected as well as large sites.
d. *Numeric effluent limits*. Numeric limits are feasible for construction projects and, therefore, the permit should include them.

5. **Industrial/Commercial Inspections**

a. *Inspections.* Please provide information on the Water Board's current inspection program. The permit should state who will be responsible for inspections and how the Water Board will ensure that all facilities are inspected on a regular basis. It should also state how information about the inspection program and requirements will be distributed to facilities.

b. *Minimum Limits.* Minimum limits should be imposed on industrial facilities to ensure that water quality standards are not being violated. Since numeric limits are feasible for industrial operations, permitees should be required to comply with minimum numeric limits.
c. *Enforcement.* Permit language should indicate the minimum enforcement action that inspectors will undergo and how permits will be enforced.

6. Illicit Discharge Control Program

a. *Mapping.* Municipalities should be required to map outfalls and stormwater lines in order to facilitate identification and control of illicit discharges.
b. *Monitoring and Enforcement.* The permit should indicate who will be responsible for enforcement of the illicit discharge control program and how the Water Board oversee it. The permit should identify the minimum level of effort that enforcement staff must make in order to have a viable illicit discharge control program.

7. Municipal Maintenance

a. *Street sweeping.* The permit should clarify under what circumstances street sweeping is "not technically feasible." It should list the measurable performance standards that will ensure effectiveness and state how new municipal staff shall be trained on how to comply with performance standards. The permit should also include all other pollution prevention practices that are or could be similar in effectiveness to or more effective than street sweeping.
b. *Conveyance system maintenance (including pump stations).* Minimum requirements for operations and maintenance should be specified. Corrective measures and enforcement actions taken should be reported in the Annual Report.
c. *Litter and trash collection and leaf removal.* The permit should define what constitutes "appropriate" trash and leaf removal. Permittees should report the tonnage of trash and leaf litter removed provided that tonnage is the most effective performance standard measurement. If other performance standard measurements are more appropriate, they should be specified.
d. *Lagoon management.* Permit language should clarify MEP for lagoon management, especially with respect to pesticides, herbicides and fertilizers. It should also list BMPs for reducing potential pathways for pathogens.
e. *Pesticide and fertilizer application.* Every municipality should be required to take actions (such as prohibiting pesticide application around planned watering and posting) to control pesticide and fertilizer runoff.
f. *Sanitary sewer system maintenance, overflow & spill prevention.* The permit should explain what constitutes "every practicable effort" to contain overflows. It should incorporate the terms of the State Board's WDR. The permit should contain inspection and maintenance requirements to prevent sewer blockages and specify how these requirements will be enforced. Cities should also be required to adopt point of sale ordinances requiring new homeowners to repair faulty lateral lines.

8. Conditionally Exempt Discharges

a. *Definition of "contaminated" discharges*. The permit should state how discharges will be determined to be uncontaminated.
b. *Thermal pollution*. Thermal impacts of exempt discharges must be addressed.
c. *Flash discharges.* Impacts of flash discharges must be addressed.

d. *Accountability and enforcement*. The permit should state how these provisions will be enforced and how the Regional Board will ensure that only acceptable discharges are exempt.
e. *Dry weather flow diversions.* Permit language should state when consideration should be given to dry weather flow diversions to wastewater treatment plants.