



April 1, 2009

PLEASANTON.

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 Revised Municipal Regional Stormwater NPDES Permit Tentative Order by the City of Pleasanton

Dear Mr. Wolfe:

This letter is submitted by the City of Pleasanton to provide comments on the Tentative Order for the subject Municipal Regional Stormwater NPDES Permit (MRP) released for public review by the Regional Water Quality Control Board on February 11, 2009. The City appreciates the opportunity to provide comments on the revised MRP and acknowledges the effort by Regional Board staff in preparing the revised NPDES permit. We request that you include these comments in the record of administrative proceedings for the Tentative Order (TO) review and distribute a copy of these comments to the Regional Board members prior to their deliberation on the TO. We also respectfully request a postponement by the Regional Board of any action on the subject TO for a period of three years for the reasons cited below.

In reviewing the Revised TO, we did find that some of the City's past concerns regarding the 2008 Tentative Order have not fully been addressed, and some of the new requirements added to the Revised Tentative Order are of concern. Overall, we still remain concerned that many remaining and some of the new provisions in the Revised TO will become a substantial and costly burden for the City to implement in these extremely tough economic times. As drafted, this Revised TO has significant additional cost implications and operational impacts to the City and other co-permittees while offering very limited benefits in improving water quality over and above those urban water quality measures, programs and requirements that we are currently imposing on residents and businesses under our existing NPDES stormwater permit (Order No. R2-2003-0021). For these reasons, and the fact that all cities and public agencies are currently struggling to provide basic services at acceptable levels to their constituents in these extremely depressed economic times, we believe extending the current permit for three years rather than adopting the Revised TO at this time is the best course of action to follow by the Board.

The decision to extend the permit will provide the following benefits: 1) allow clean water programs to continue to manage water quality improvements utilizing the current NPDES permit (which Bay Area countywide clean water programs have been operating under successfully); 2) allow time for water board staff and stakeholders to collectively address and solve the technical and implementable challenges that still exist in the Revised MRP; and 3) allow public agencies to weather this economic downturn without the extra financial and workload burden of this unfunded mandate.

The existing permits have been successfully implemented by all programs and this implementation has made great benefits to water quality in the Bay Area. While many of the existing municipal stormwater permits have technically expired, all of the provisions of those permits remain in full force indefinitely, as long as the permittees have applied for a permit reissuance. Alternately, the Regional Board could simply reissue or extend the current stormwater permits for three years to allow economic conditions to stabilize before undertaking a new permit with significant new requirements. The City of Pleasanton urges the Regional Board and staff to consider this option before recommending adoption of the Revised TO.

The following paragraphs more specifically address some of our concerns with the technical and implementation aspects of the Revised Tentative Order. The City recommends, if the staff and Board find it imperative to proceed with adoption of the Revised TO at this economically difficult time, that the following provisions of the Tentative Order be fundamentally revised or eliminated prior to adoption:

Trash Reduction

Under the Permit, the City would be required to identify trash “hot spots” and develop measures to abate trash in these areas, as well as treat 30 percent of its commercial/ retail area with full trash capture devices. The Permit also requires that the City conduct ongoing surveying, photo documentation, and other monitoring of the sites, and report on the findings each year. The monitoring includes counting of individual trash pieces by type, number, and locations.

Survey of trash problem areas can be completed in ways that are far less time intensive than detailed counting of trash pieces, and the reporting requirements can be far less exact without compromising cleanup efforts.

The requirement for development of a Long Term Trash Management Plan by 2013 with the goal of “no” impacts to beneficial uses needs to be realistic in terms of municipalities’ ability to control trash. Based on our past years community coastal clean up day events, the source of trash in waterways was primarily generated from windblown from other locations in particular from freeways or school sites (over which the City has no code enforcement authority), as opposed to direct transport to the waterway by the City’s storm drain system.

It does not seem appropriate that Permit compliance is requiring municipalities to manage or correct a problem over which the City does not have control. It seems much more productive to use other public funds and agencies, other than the municipalities, to inform the travelling public and key trash target areas about the need to eliminate this problem.

Stormwater Pumping Stations

This provision requires the monitoring for Dissolved Oxygen, to avoid 3.0 mg/L or lower limit, twice a year between July and October at all stormwater pump stations and the provision for "first-flush" treatment.

During the dry season, the storm drain system inevitably receives "nuisance" urban runoff water and water may sit in a pump station wet well for an extended period of time before the pumps flush out the accumulated water. It is expected that these conditions will result in low dissolved oxygen. Collecting monitoring data to confirm this situation seems to be a wasted effort. In addition, the solution suggested in the permit of "continuous pumping" is infeasible and would damage pump station equipment. The first-flush treatment requirement that remains in the Revised TO is also impractical and will be very expensive.

The requirement to monitor and treat a situation which, in essence, is uncontrollable, is not good environmental regulation and is impractical. This requirement provides limited water quality benefits while burdening the City with increased monitoring and labor costs and should be deleted.

Additional Monitoring Requirements

The Revised TO continues to require extensive new monitoring, testing, and reporting efforts by local agencies on local watersheds. Alameda Countywide Clean Water Program currently contributes funding to a regional monitoring effort. The existing monitoring efforts already provide tremendous data on watershed-specific sources of pollutants. It is questionable that additional monitoring data will influence pollution reduction efforts that are being required by the Revised TO, regardless of the monitoring results.

Elimination or reduction of the new monitoring requirements would not improve pollution reduction efforts and would allow available resources to be put into other more productive water quality improvement efforts.

More Stringent Requirements for New Development

The revised NPDES permit reduces size of development from the current 10,000 square feet to 5,000 square feet for installation and monitoring of water quality measures in two years. The reduction to the 5,000 s.f. threshold level will not capture new development that contributes significant pollutant loadings. Lowering the development size to 5,000 s.f. will provide negligible benefits and seems inappropriate at a time when development applications are at historic lows.

This reduction will result in nominal improvement to water quality in terms of required staff time for plan checking, reporting and onerous costs of future operations and maintenance monitoring. This will also result in installation of water quality measures that have limited benefit due to the physical size constraints of the parcels being targeted.

The revised NPDES permit contains a provision that new single family homes or small non-residential projects that create over 2,500 s.f. of new impervious surface provide one or more site design measures that reduce runoff.

This will result in additional plan checking cost and efforts by the City and any water benefits by this imposition on these small lots are impractical.

The Permit requires the construction of ten (10) “Green Street” projects within the region by July 1, 2013. The requirements for “Green Streets” include not only water-quality features but also streetscape and urban greenway features, pedestrian and bicycle facilities, parking innovations, and other features that have little direct connection with water quality. While it is possible that these features could be incorporated into private development projects, it is uncertain that these developments will be approved and constructed by July 2013 considering the current economic downturn.

This deadline may or will result in burdening local agencies to fund the cost of this requirement if not part of new development projects. This Permit requirement also infringes on local planning authority and mandates constructing facilities that are beyond the purview of regional water board.

The Permit places severe limitation on the use of underground storm runoff treatment devices (vault based treatment). No sound evidence has been shown that underground storm water treatment devices are not effective. In addition, it is both impractical and inappropriate to require that the use of vault based treatment be submitted to the Executive Officer with justification for approval.

This requirement will hinder the ability of properties in the developed areas to redevelop due to the lack of available space for surface landscape treatment measures. Improving water quality can still be served if this restriction on the use of underground treatment devices is eliminated, that their effectiveness be quantified and proven, and that the choice of treatment be determined based on site constraints and engineering analysis as opposed to a mandate.

The Permit requires installing treatment devices for new road projects.

The requirement for installing treatment devices for additional traffic lanes and sidewalk on a public street should be exempt. Adding new traffic lanes has the benefit of minimizing pollution from congested traffic conditions and new public sidewalk encourages a friendly pedestrian environment in the community. Adding this stringent requirement to these community enhancement features places limits on the already strapped funding for these projects and results in postponement and perhaps eliminating the project.

Pesticide Toxicity Control

This provision requires annually reporting on the quantities and the type of pesticides used and the IPM procedures implemented. Furthermore it is also requiring the permittees submit training records for employees receiving IPM training within the last three years.

There are currently similar established reporting requirements on municipalities regarding pesticide use by the California Department of Pesticide Regulation. This reporting requirement is in essence redundant and unnecessary. Regional Water Quality Control Board could and should coordinate the collection and acquisition of this data from the California Department of Pesticide Regulation.

In light of the need for efficiency and to eliminate the redundancy with other State programs/agencies' requirements, this requirement should be deleted.

Interface with the County Agricultural Commission

This provision requires that permittees maintain regular communication with the County Agricultural Commission to (1) obtain input/assistance on urban pest management practices and use of pesticides, (2) inform the Commission of water quality issues related to pesticide use, and (3) report violations of pesticide regulations associated with stormwater management. It further requires that permittees annually submit a summary of improper pesticide usage reported to the County Agricultural Commission.

This provision is beyond the technical and legal scope of local government. The Board may, as necessary, obtain this type of data through collaborative efforts with other State agencies. This provision should be removed from the Tentative Order.

Summary

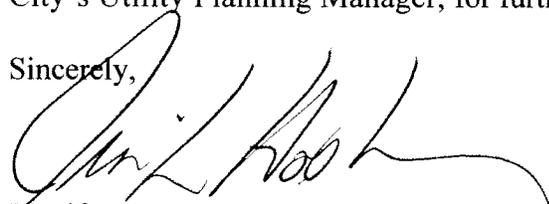
We hope that this letter provides an appreciation of the impacts of the current permit requirements within the revised MRP on the City of Pleasanton. We understand the arguments by some that improving water quality should not be driven by cost. However, we believe the Regional Board must recognize that local agencies are trying to manage programs and services while experiencing a continued reduction in revenues and added costs. Many co-permittees are finding the need to cut programs and staff to meet the challenges of the present economic state. Adopting the Revised Tentative Order that includes new permit requirements for reporting, monitoring, or "nice to have" items that have limited benefits to water quality improvements at this time, without the modifications noted above, does not serve the public and should be postponed until these items can be mutually addressed between Regional Board Staff and the co-permittees and the current depressed economic condition improves.

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*Comments on Revised Municipal Regional
Stormwater NPDES Permit Tentative Order*

We appreciate your attention to these comments. Please contact Mr. Stephen Cusenza, the City's Utility Planning Manager, for further discussion of these comments.

Sincerely,



Jennifer Hosterman
Mayor

- c: Mr. John Muller, Chair, San Francisco Bay Regional Water Quality Control Board
- Dr. Terry Young, Vice-Chair, San Francisco Bay Regional Water Quality Control Board
- Shalom Eliahu, San Francisco Bay Regional Water Quality Control Board
- William Peacock, San Francisco Bay Regional Water Quality Control Board
- Terry Moore, San Francisco Bay Regional Water Quality Control Board
- Jim McGrath, San Francisco Bay Regional Water Quality Control Board
- Raneshwar Singh, San Francisco Bay Regional Water Quality Control Board
- Thomas Mumley, Assistant Executive Director, Regional Board
- Jim Scanlin, Alameda County Clean Water Program
- Nelson Fialho, City Manager
- Michael Roush, City Attorney
- Brain Dolan, Community Development Director
- Daniel Smith, Operation Services Director
- Steve Cusenza, Utility Planning Manager
- James Kelcourse, City Engineer
- Abbas Masjedi, Utility Engineer