

July 13, 2007

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

**Subject: Municipal Regional Permit for Stormwater - May 2007 Administrative Draft**

Dear Mr. Wolfe:

On behalf of the City of San José (City) Urban Runoff Program, the City appreciates the opportunity to submit comments regarding the Regional Water Quality Control Board's (RWQCB) May 2007 administrative draft (Draft) of the Municipal Regional Permit (MRP) for Stormwater.

San José is the tenth largest city in the United States with a land area is 175 square miles and an estimated population of 945,000. The City has approximately 28,500 storm drain inlets, 1,000 miles of storm drain lines, and more than 1,250 outfalls throughout its urban service area. The core purpose of the City's Urban Runoff Program is to prevent pollution from entering the storm sewer system and waterways to protect the health of the South San Francisco Bay watershed.

The City has actively supported the development of the MRP as it seeks to apply implementation requirements fairly among regulated local Bay Area stormwater agencies and promises greater opportunity for collaboration across communities region-wide. We appreciate the efforts to develop this Administrative Draft and find the organization and formatting of the Draft to be a substantial improvement over previous products. We also find however that many of the concerns previously expressed by permittees throughout the Bay Area remain. While the City has many comments related to specific requirements throughout the Draft, our principal concerns can be summarized in the following areas.

**Hydromodification Management Plan (C.3.f)**

The Draft proposes substantial changes to the HMP for the Santa Clara program, which was previously approved by the Water Board on July 20, 2005. All other Bay Area HMPs approved by the Water Board appear to remain unchanged. San José shares the concern of the Santa Clara program that the proposed approach provides a disincentive to more sustainable high density development in our communities and does not offer an adequate set of tools for implementing measures to address the potential impacts of runoff flows from development projects. The approach proposed in the Draft can actually have a deleterious effect on water quality in that it may encourage sprawl over infill development as a growth strategy. The City looks forward to participating with the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) in discussing changes to the Santa Clara HMP.

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**Definition for Regulated Projects (C.3.b)**

The Draft proposes several changes to the definition of regulated projects that are of concern to San José. A principal example is the lowering of the threshold for regulated projects to 5,000 square feet. This would significantly increase the number of projects regulated with little increase in the impervious area addressed. Moreover, depending on the expectation for this provision, it may mandate that cities expand their discretionary permitting authority to activities not currently addressed through such a process, thereby requiring a new permitting effort at substantial implementation cost to local jurisdictions.

**Alternative Compliance (C.3.g)**

The Draft proposes significant constraints on compliance alternatives to numeric sizing for regulated projects. In implementing the 2001 stormwater permit, San José is one of several Santa Clara co-permittees that have adopted Alternative Compliance programs following substantial dialogue with Water Board staff and the Executive Officer. The MRP should be consistent with these already adopted programs and/or allow for their ongoing implementation with this MRP. No basis has been provided for invalidating established programs. We do not expect that alternative compliance will be a common technique but it is an important tool for some projects.

**Water Quality Monitoring (C.8) and Pollutants of Concern (C.10-14)**

The Draft includes extensive new monitoring requirements at significantly increased costs to Programs and municipalities. It is unclear how these requirements will lead to more effective management measures or improvements in water quality. Moreover, data and reporting requirements add significant expense over current levels without explicit description of how such additional information will be used to qualify data or ultimately to improve water quality. Also, requirements for specific pollutants of concern (e.g. trash, mercury, and PCBs) should be emphasized, with less focus on lower-priority pollutants and management actions, which can be arbitrary and burdensome. Phased scheduling of requirements including pilot studies is necessary to help ensure implementation success.

**Trash Reduction (C.10)**

The Draft proposes Trash Action Levels (numeric goals) which would require an extensive increase in resources for implementation, monitoring, and assessment. It is unclear how these requirements will lead to more effective management measures or improvements in water quality. The level of effort and trash action goals proposed in the Draft would arbitrarily burden permittees, with no assurance that full implementation of enhanced management measures would attain the proposed action levels. It may be more prudent to focus efforts on pilot studies to assess effectiveness of various management measures for this permit cycle. Having the tools and methods to effectively manage trash in our creeks prior to establishing numeric goals will help ensure implementation success.

**Planned Discharge Monitoring Requirements (C.15.b.vi)**

The Draft proposes planned discharge benchmarks that could create public health and safety-related challenges by restricting operations required to maintain high water quality in the distribution system. The City of San Jose's Municipal Water System provides potable water service to approximately 12% of San José. Hydrant maintenance and main flushing are primary components of

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operations and are required to ensure reliable fire fighting facilities and high drinking water quality standards. New requirements in the Draft would limit, and in some circumstances prohibit, the ability of staff to conduct these necessary activities. BMPs and regulations to protect the environment are important and should be implemented to the maximum extent practicable, but it must be done in concert with the goals of public health and safety. The Draft also proposes that permittees shall monitor planned discharges *and* the receiving waters. Operators can not reasonably monitor receiving waters of all discharges, and an effort to do so would demand significant additional resources and funding, with questionable water quality benefit.

**Storm Drain Marking (C.7.a)**

The Administrative Draft proposes to mandate that all municipally-maintained storm drain inlets be clearly marked with a “no dumping” message, and that the City certifies that at least 90% of all inlets are marked and legible. With well over 28,000 inlets in the City’s jurisdiction, this requirement imposes a substantial financial burden on the City in both operational costs and data tracking. The City has had a successful, creek-specific storm drain marking program for many years and is currently conducting a pilot study to help develop a cost-effective, long-term method for storm drain marking. The City would recommend a phased-in approach (i.e. less than 90% during this permit cycle) while concurrently developing the tools and methods to ensure implementation success.

**Data Collection and Reporting**

A common theme in the Administrative Draft is the dramatic increase in data collection and reporting required for implementing stormwater programs. There is little if any benefit proposed to be derived from these activities, and co-permittees would incur the cost of these activities with no outcome. Particularly in the context of the cost of implementing substantive provisions of the permit, data and reporting should be refined to eliminate wasted effort.

The MRP is an ambitious undertaking that will advance stormwater pollution prevention efforts throughout the Bay Area. The City feels that it is important to develop an MRP with reasonable and achievable requirements. We also support comments submitted by the Bay Area Stormwater Management Agencies Association (BASMAA) and SCVURPPP. We appreciate your consideration of these comments on the Draft MRP and look forward to continuing to work with you and your staff on this important endeavor. If you have any questions, please contact Melody Tovar, Deputy Director, at (408) 277-3892.

Sincerely,

*Original signed by*

John Stufflebean  
Director

cc: Shin-Roei Lee, Division Chief, RWQCB  
Adam Olivieri, Program Manager, SCVURPPP