

Alameda Countywide
Clean Water Program

Contra Costa
Clean Water Program

Fairfield-Suisun
Urban Runoff
Management Program

Marin County
Stormwater Pollution
Prevention Program

San Mateo Countywide
Stormwater Pollution
Prevention Program

Santa Clara Valley
Urban Runoff Pollution
Prevention Program

Vallejo
Sanitation and Flood
Control District

May 4, 2007

Ms. Song Her, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: Comments on the Hydromodification Requirements in the Pre-Draft
General Construction Permit

Dear Ms. Her and Members of the Board:

These comments are submitted from the Bay Area Stormwater Management Agencies Association (BASMAA) in response to the preliminary draft General NPDES Permit for Construction Activities ("General Permit") released for public review on March 2, 2007. BASMAA supports the comments submitted by the California Stormwater Quality Association. In addition, we would also like to submit comments on one area of the General Permit which is of great concern to us – the hydromodification requirements.

Most of the San Francisco Bay county-wide municipal stormwater permits now contain hydromodification control requirements, including performance criteria and applicability criteria developed in collaboration with San Francisco Bay Regional Water Board staff, and stormwater programs have spent significant resources developing Hydromodification Management Plans (HMPs) specific to their local jurisdictions.¹ These requirements apply to new development and redevelopment projects that create or replace one acre or more of impervious surface, where the increased flow and volume can cause increased erosion in receiving streams. The hydromodification requirements in the draft General Permit are inconsistent with the Bay Area requirements, and, as explained more fully below, will be counter-productive with respect to the carefully crafted hydromodification control initiatives already undertaken (and now being implemented) by nearly 90 Bay Area municipalities. They will also create confusion within the development community subject to these municipalities' local planning approval processes.

¹ Although these HMP requirements were previously put into the Bay Area Phase I Municipalities' NPDES stormwater permits (which are also issued as Waste Discharge Requirements), it is not apparent that the requirements in question derive from the Clean Water Act's NPDES program as opposed to State law or discretionary policy, and neither BASMAA nor the Bay Area municipalities have conceded or by this letter concede the potential set of issues that may be associated with this distinction.

Nevertheless, pursuant to the requirements in question, the Santa Clara Valley Urban Runoff Pollution Prevention Program's HMP was adopted in July 2005, the Contra Costa Clean Water Program's HMP was adopted in July 2006, and HMPs for the San Mateo Countywide Water Pollution Prevention Program, the Alameda Countywide Clean Water Program and the Fairfield-Suisun Urban Runoff Management Program's HMPs were adopted in March 2007.

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Our comments fall into two categories:

1. **Requirements for hydromodification control (especially requirements that are not fully consistent with those adopted by the municipality in which a project is sited) do not belong in the General Permit, for the following reasons:**
 - a) Post-construction BMPs need to be considered early in the planning phase of a project, well before a Notice of Intent (NOI) is submitted for coverage under the General Permit, and it is essential that this consideration be based on a municipality's local HMP and planning approval requirements;
 - b) Because of the termination features of this General Permit (whose coverage logically must end once construction is completed), there is no mechanism to assure proper ongoing operation and maintenance of hydromodification control measures. This will leave the implied burden (or at least the oversight burden) on the local municipality without any funding mechanism.
2. **Hydromodification requirements in the General Permit are inconsistent with HMPs recently approved and now being implemented in the San Francisco Bay Area. If the hydromodification requirements in the General Permit are retained, they should defer to the Regional Water Board approved HMPs in the Bay Area for projects within the jurisdictions of those municipalities.**

As stated above, the San Francisco Bay area stormwater programs have invested significant resources to develop HMPs that use state-of-the-art approaches for controlling hydromodification. These HMPs have been reviewed in detail and approved by the San Francisco Bay Regional Water Quality Control Board and recently adopted as amendments to NPDES municipal permits, because they are considered to be protective of local streams.

Some of the key differences between the San Francisco Bay Area HMP requirements and those in the draft General Permit are as follows:

- Project size – Bay Area permits require hydromodification controls for projects that create or replace one acre or more of impervious surface. The General Permit applies to projects with one acre or more of disturbed area (which may have less than one acre of impervious surface). Technical work performed by the Bay Area municipalities indicates that impervious surface is the critical variable affecting hydromodification and no evidence for requiring hydromodification controls strictly based on disturbed area is provided to support the proposed General Permit requirements. Subjecting projects that create or replace less than one acre of impervious surface to the proposed requirements will have little water quality benefit relative to the significant municipal resources that will be required to approve designs and oversee construction of these measures.
- Technical approach to design of flow controls – Bay Area HMPs require matching the post-project and pre-project flow durations, for the range of flows that contribute most of the erosive work done in receiving streams, based on analysis of runoff from a long term rainfall record. The General Permit approach involves matching pre- and post-project volumes and times of concentration for a single storm event.

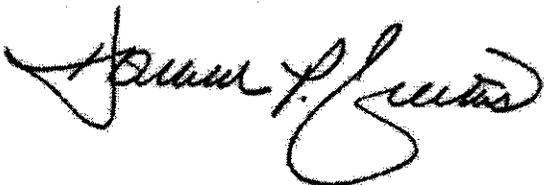
The draft General Permit fact sheet states: "For those dischargers that are held to specific hydromodification standards in a municipal permit, preserving drainage areas and maximizing time of concentration will help the discharger achieve compliance with these standards." However, as required by San Francisco Bay Region staff, the Bay Area HMPs use continuous simulation modeling – not volumes produced by a hypothetical single rainfall event – to determine the required sizing and configuration of both landscape features and structural features. At the very least, Bay Area projects subject to General Permit requirements would have to be designed to comply with both sets of requirements, using two separate, parallel analyses, sets of technical assumptions and analytical methods. At worst, it may be impossible to resolve conflicts between the two methods when designing a particular site.

- Project location – Bay Area HMPs recognize that hydromodification controls are important in some locations but not in others. For example, hydromodification controls are not required for projects that discharge to continuously-hardened or tidally-influenced channels and other stream reaches where there is no erosion potential from the discharge point to the Bay or Ocean. The General Permit requires hydromodification controls regardless of project location. It does not make sense to subject projects to these requirements in locations where the project's increased discharges will have no impact on receiving channels. Implementation of hydromodification controls should only be a priority for development projects that could adversely affect streams; e.g., those in sensitive, developing, and/or headwater watersheds discharging to natural channels.

At the April 20 workshop, State Water Board staff suggested that they intended the draft General Permit requirements for hydromodification control to apply to projects in areas covered by Phase I municipal stormwater permits that are below the "thresholds" for local HMP requirements. As demonstrated above, such an approach does not make sense. It will not only create confusion among the development community, it will require additional public and private resources be allocated to projects that will not contribute to hydromodification impacts in receiving streams.

We appreciate the opportunity to offer our comments on the draft Construction General Permit, and we understand that there will be additional opportunities to submit comments on subsequent versions of the draft permit.

Sincerely yours,



Donald P. Freitas, Chair

cc: Dorothy Rice, State Water Board Executive Director
Bruce Wolfe, San Francisco Bay Regional Water Board Executive Officer