ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551-9486 PHONE (925) 454-5000

February 29, 2008

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

Subject: Tentative Order for the Municipal Regional Stormwater NPDES Permit

Dear Mr. Wolfe:

The Zone 7 Water Agency (Zone 7) appreciates the opportunity to comment on the SF Bay Regional Water Quality Control Board's (Regional Board) Tentative Order for the Municipal Regional Stormwater NPDES Permit (MRP). As a member of the Alameda Countywide Clean Water Program (ACCWP), which is, in turn, a member of the Bay Area Stormwater Management Agencies Association (BASMAA), Zone 7 has a vested interest in seeing that the MRP is a workable document that furthers the goal that the "quality of all the waters in the State shall be protected for use and enjoyment by the people of the State." In addition to the comments provided by the ACCWP and BASMAA, Zone 7 has reviewed the tentative order for the new MRP permit and offers the following comments

1) Provision C.3.b states that at the beginning of the fourth year after the permit adoption, regulated projects that create or replace 5,000 square feet of impervious surface area must design and install stormwater treatment systems. The current requirement of designing and installing stormwater treatment systems for regulated projects that create or replace 10,000 square feet (less than a quarter of an acre) of impervious surface area was imposed on August 15, 2006.

   Not enough time has elapsed to assess the effectiveness of these stormwater treatment systems to necessitate imposing this requirement on projects with a smaller footprint. In addition, implementing stormwater treatment on smaller footprints will likely be cost-prohibitive. The Regional Board should assess the effectiveness of the existing requirement before imposing it on smaller footprints.

2) Provision C.3.e provides regulated redevelopment project proponents who are unable to reasonably incorporate stormwater treatment measures due to limited space on their project site the ability to contribute equivalent funds toward a regional project or stream restoration project in the same watershed. Furthermore, the regional project or stream restoration project must be completed within three years after the end of construction of the regulated redevelopment project. This three year requirement may not be feasible because obtaining the appropriate environmental permits for regional projects and/or stream restoration projects can take years to obtain due to the heightened environmental impacts these restoration projects have.

Zone 7 recommends that the Regional Board provide flexibility by requiring that by the end of the third year after the end of construction of the regulated development project, the project proponent should have funds encumbered and already applied for the appropriate regulatory permits necessary for the regional project or stream restoration project. This will demonstrate a project proponent's good faith effort toward implementing the regional project or stream restoration.

3) Zone 7 recommends that Provision C.3.d.iv – Limitations on Use of Infiltration Devices in Stormwater Treatment Systems be consistent with any standards established by the Water Board's Groundwater – Surface Water Interaction Committee. Secondly, infiltration devices for purposes of groundwater management should be exempt from this requirement. Further, the provision does not require monitoring or reporting of these infiltration devices. To ensure that these infiltration devices are not causing or contributing to the degradation of groundwater quality, monitoring requirements should be required. Moreover, a higher level of analysis should be considered before approval is given for the use of infiltration devices where background contamination exists and the percolation runoff could mobilize the contamination to a sensitive receptor or interfere with the natural attenuation processes of the contamination.

4) Provision C.8.c – Water Quality Monitoring – Status & Trends Monitoring requires status and trends monitoring on specific water bodies. Table 8.1 provides 11 monitoring parameters, level of implementation and minimum number of sample sites/year and triggers for a monitoring project. This provision is extremely onerous to implement and has little to no nexus with improving water quality. Some monitoring parameters require 25 sample sites while some require 15 minute interval sampling over a one to two week duration. The minimum sample sites/year jumps around per monitoring parameter, which is very confusing and would likely lead to missed monitoring.

   The increased monitoring and reporting requirements alone will be very costly. This increase in cost would be exacerbated in the event a monitoring project is required. Absent the ability for stormwater programs to readily increase fees to compensate for this increase in cost due to Proposition 218, stormwater programs will have a difficult time meeting the requirements in this provision. The Regional Board should consider utilizing existing monitoring data to develop strategies and/or plans that actively improve water quality.

5) Provisions C.10 through C.14 require surveys, studies, pilot projects, and development of risk reduction programs for trash, mercury, PCBs, copper, and polybrominated diphenyl ethers, legacy pesticides and selenium. These requirements will increase costs to stormwater programs, who are working with limited financial resources and limited staff to perform these requirements. In addition, the Regional Board is requiring these surveys, studies, pilot projects, and subsequent effectiveness reports within the next four years.

The requirements in these provisions along with the extensive water quality monitoring in provision C.8 will financially burden all stormwater programs. The Regional Board needs to consider the cost-effectiveness of these requirements, the increased burden placed on stormwater programs and the limited Regional Board staff to review and assess results from these requirements.

6) Provision C.10.b.i requires Permittees to implement a two-step process of enhanced trash management control and installation of full trash capture devices. This appears to be an undue burden on the already limited resources of each Permittee agency. Permittees have to invest in equipment, staff and other resources to implement enhanced trash measures. This may be unnecessary if existing trash management controls are effective in addressing the trash issue in certain jurisdictions. Zone 7 recommends that the Regional Board provide Permittees flexibility in deciding which alternative would be appropriate and cost-effective for their jurisdiction.

   Further, the provision requires that "[n]on-population based Permittees, such as county flood control districts, shall address 1 percent of the Urban and Suburban Land area of their service area." Zone 7, a county flood protection agency in East Alameda County, has flood control facilities that receive stormwater discharge generated within both city limits and unincorporated areas. This provision already requires that municipalities address 10 percent of the Urban and Suburban Land area of their service area. Requiring flood control districts to address one percent of the same area is redundant and cost-prohibitive. Zone 7 recommends that flood control districts coordinate with their respective local municipalities to evaluate alternative methods appropriate to address the municipalities' 10 percent requirement.

7) In Provisions C.15.b.iii.(2)(c)(iv) and C.15.b.iii.(2)(d)(ii), there are typographical errors in the referenced provision. The following references should be revised accordingly: C.15.b.iv.(1)(b)(iii) to C.15.b.**iii**(1)(b)(iii) and C.15.b.iv.(1)(c) to C.15.b.**iii**(1)(c).

8) Provisions C.15.b.iii.(1)(c) and C.15.b.iii.(2)(d) set forth monitoring requirements for planned and unplanned discharges of a potable water system, respectively. These provisions require monitoring of both the discharge and the receiving water body. Often times, discharges from potable water systems go into the municipal storm drain system and the receiving water body may be located a significant distance away from the storm drain. Discharges will likely be exposed to other pollutants as it makes its way to the receiving water body. As a consequence, sampling results at the receiving water body will not be representative of how the discharge impacts the receiving water, if at all.

   The monitoring requirements delineated in the MRP would be appropriate for planned discharges only since these discharges are controlled. In addition, the receiving water body would be identified ahead of time. Therefore, Zone 7 recommends maintaining monitoring requirements only for planned discharges to evaluate effectiveness of BMPs employed.

9) Attachment L provides a sample Annual Report Form for permittees to complete for their annual report. This form is meant to provide the Regional Board with consistent reporting formats for all permittees under this new permit. The sample provided is well over 109 pages and there are additional pages for the corresponding tables. This sample is indicative of the amount of reporting required under this new permit and how prescriptive the MRP is. Although this form is meant to streamline the reporting process for the permittees, it will still take Permittees a significant amount of time to complete. The current format that ACCWP utilizes takes a significant amount of staff time to complete. Moreover, Regional Board staff does not have adequate time to review and comment on what is currently submitted due to lack of resources.

   Zone 7 recommends that the Regional Board continue to work with BASMAA on the cost effectiveness of the increased monitoring and streamlining reporting requirements with the goal of protecting beneficial uses.

Again, we appreciate the opportunity to comment on this document and hope to continue to work with Regional Board staff to develop a MRP that is beneficial to all. In closing, the need for additional data and significant increase in monitoring should be considered in terms of a cost-benefit analysis by Regional Board staff. To require costly collection of data and an expensive monitoring program that may never be reviewed for parameters not currently regulated seems to be a poor use of limited public resources. If you have any questions or comments, please feel free to contact Mary Lim at (925) 454-5036 at your earliest convenience.

Sincerely,

G.F. Duerig
General Manager

cc: Shin-Roei Lee, SF Bay Regional Water Quality Control Board
Jim Scanlin, Alameda Countywide Clean Water Program
Steve Dennis, Alameda County Water District
John Schroeter, East Bay Municipal Utility District
Dave Omoto, Contra Costa Water District
Vince Wong, Karla Nemeth, Jim Horen, Mary Lim, Joe Seto, Matt Katen, Conrad Tona