



CITY OF MILPITAS

455 East Calaveras Boulevard, Milpitas, California 95035-5479 • www.ci.milpitas.ca.gov

February 19, 2008

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

Subject: Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit

Dear Mr. Wolfe:

The City of Milpitas appreciates this opportunity to comment on the Draft Tentative Order for the Municipal Regional Stormwater permit. We recognize the tremendous undertaking it has been for your agency to assemble and consolidate the six Bay Area municipal stormwater permits into a single regional permit. We support your efforts to develop a consistent and equitable permit for all of the 77 regulated municipal agencies. As a relatively small suburban city, we look to your agency to provide the guidance and expertise needed to protect water quality and so ensure a high quality of life for our residents and contribute to the long-term economic viability of our community.

Milpitas is located in the northeastern side of Santa Clara County, 35 miles south of Oakland. It is situated between the southern tip of San Francisco Bay and an extension of the Mount Diablo range and so has both hillsides and valley floor. It consists of 14.5 square miles of balanced residential, commercial, industrial, and recreational land uses. We have worked hard to attain a sustainable, livable community and we value both our diverse developments and the natural environment. We have broad environmental awareness and have instituted programs to eliminate sanitary sewer overflows, conserve water, promote use of recycled water, procure recycled materials, and encourage solid waste recycling. We recently completed energy audits on

all municipal buildings to identify opportunities to reduce energy consumption and the attendant carbon emissions.

We are proud of our City and of all we have accomplished since our incorporation in 1954. Milpitas has grown rapidly in the past 35 years, jumping from 26,561 residents in 1970 to an estimated 63,081 today, and have adopted policies to promote “smart growth.” We recently reconstructed our City Hall, are building a new Main Library, and are planning for a Transit Oriented Development at the hub of the Santa Clara Valley Transit Authority Light Rail and the future BART extension. Our Council, Commissioners, and residents have a vision for the future city we want to create, but we constantly face the financial challenge of maintaining high-quality and reliable City services with only limited means for raising revenue.

Milpitas is a full-service general law City with an Elected Council-City Manager form of government. Local control is the reason our people chose to incorporate into a city. Local control yields the most efficient and well-directed services, since we are in the best position to know of and respond to the needs of our community. We employ a professional City Manager to efficiently administer and balance City services, including police, fire, planning, building, parks and recreation, finance, and public works, so as to maximize the aggregate service we provide our residents and businesses. These City departments all have a role in implementing the Municipal Regional Permit and the additional new permit-specified tasks will have a direct impact on their constrained budgets. For this reason, we strongly urge you to consider making revisions to the draft Municipal Regional Permit, which can improve the financial efficiency of the draft permit without sacrificing your long-term objectives and desired outcomes. In these times of scarce public resources, all levels of government have a duty to work together to ensure that we make the most efficient use possible of taxpayer and ratepayer funds.

The Bay Area Stormwater Management Agencies Association (BASMAA) and the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) have submitted detailed comments and recommendations to improve this permit. We support these recommendations and ask you to carefully consider incorporating them into the next revision. We provide our

specific comments on the permit as an attachment to this letter, but would reinforce a couple of general concerns as follows:

1. The permit is excessively prescriptive and cumbersome.

It is understandable that your technically trained staff desired to provide enough detail to craft permit language that would be fair and applicable to all 77 wildly varying municipalities and yet would retain enough measures to be enforceable. It is clear that they carefully researched, analyzed and then developed step-by-step procedures for conducting the desired work. Unfortunately, the resulting tightly formatted 100-page fact sheet and 190-page permit provisions read like military specifications for contractors, and we believe they will yield similar cost inefficiencies. The sheer number and density of permit provisions, subprovisions, and implementation tasks sets up a new cumbersome and new labor intensive documentation requirements and procedures, requiring the City to increase our staff size. Adding substantial staff resources is unfortunately not financially feasible for the City of Milpitas. Subsequently, this new permit will place Milpitas in constant risk of failure and constant risk of violations. This is not conducive to good communication, nor does it demonstrate trust between our agencies. Our staff and program consultants are qualified professionals, trained to manage and achieve required program outcomes. They have the advantage of knowing the City-specific conditions, resources, constraints and needs. They can develop more efficient procedures to accomplish the same objectives.

We also ask that you consider the impact to your own staff resources and reassure us that you can reasonably monitor and process all of the requested information without increasing permit fees. Permit Attachment L, the mandatory annual report form template, is 124 pages of dense small font. When completed by our staff, it will be twice that size or larger. Compliance reports from 77 agencies will reasonably produce 20,000 pages of documentation every year. How will you effectively assimilate and evaluate all this information?

2. The implementation schedule is overly aggressive and not financially supportable.

Given that State law severely constrains the ability of cities to impose taxes or fees for stormwater quality protection, we ask that you scale back and prioritize the implementation schedule. We are not recalcitrant industrial polluters unwilling to pay for our damages. We are simply representatives of a diverse community of people with many competing interests. In California, it is the people's right to agree or disagree to subject themselves to taxes or fees for stormwater protection. The City cannot impose taxes or fees upon them. The aggressive implementation schedule sets the City up for failure due to our constrained resources. This cannot be in the best interests of either of our agencies.

Please go back and take another look at the thoughtful BASMAA and SCVURPPP recommendations to see if they offer revisions you might successfully incorporate into the Municipal Regional Permit. We do believe that we hold the same hopes and desires for environmental protection and quality of life for our residents. We hope that you can understand the many competing demands we have for scarce resources and will work with us to streamline this permit for maximum cost effectiveness.

Sincerely,
CITY OF MILPITAS



Jose S. Esteves
Mayor

cc. Dale Bowyer, RWQCB
Adam Olivieri, SCVURPPP
Geoff Brousseau, BASMAA

Attachment

CITY OF MILPITAS
SPECIFIC COMMENTS ON THE MUNICIPAL REGIONAL STORMWATER PERMIT

Fact Sheet:

Page 6 – The cited household cost information of \$9.08 to \$12.50 is out-of-date and inappropriately used for comparison purposes in the high-cost Bay Area. When applied to the 18,000 dwellings in Milpitas, it yields an annual cost estimate of \$163,440 to \$225,000, or roughly the fully loaded cost of one full time city employee. Our program staff allocation and expenses are already substantially higher for the existing permit and we expect the MRP to increase these costs by 30 percent. In addition to our direct costs, we pay permit fees to RWQCB of \$16,000 and program assessments to SCVURPPP of \$100,000 every year.

Page 6 – The Huntington Beach beach closure impact to tourism example is not applicable to Milpitas or to many other Bay Area municipalities. Milpitas is not a beach town and does not derive tourism dollars from the recreational use of beaches or surface streams.

Page 10 – The cited case law in the fourth paragraph is largely out of date. The 2001 *Apartment Association of Los Angeles County v. City of Los Angeles* has been largely reversed by the June 2006 ruling in the *Bighorn-Desert View Water Agency v. Verj* decision. Our City Attorney's opinion is that the City's imposition of a stormwater fee on property owners would be subject to Proposition 218 challenge and would need to follow the public notification and protest period process. Under Prop 218, cities can establish fees for certain stormwater-related services such as inspection, but to the extent such fees exceed the cost of the specific service, the excess is subject to Proposition 218 challenge. Therefore, inspection fees cannot be used to subsidize costs of the permit provisions not consisting of inspection.

Page 12 – The statement that under the Clean Water Act, RWQCB cannot delegate its own authority to enforce General Permits demonstrates that enforcement of General Permits is the responsibility of the State and not the municipalities. The State has a duty to protect the municipalities' storm drain systems from discharges from sites that the RWQCB is regulating, or should be regulating, by General Permits.

Page 12 – What is the definition of "regional entity?"

Page 18 – How does observation of black-colored water discharges from the Alvarado pump station confirm that low dissolved oxygen in the slough was caused by urban runoff?

Page 32 – The conclusion that USEPA supports municipalities regulating industrial sites and sources that are already covered by an NPDES permit is not demonstrated by the cited paragraphs from the Federal Register. The first paragraph only requires that the municipalities obtain a stormwater permit and that such permit contain controls for discharges from industrial activity. Although passively voiced, the statement that general and individual permits will comply with the municipal permit controls makes it implicitly clear that only the State, as the

general or individual permit issuer, has the ability and therefore the responsibility to make the industrial permittees comply with the municipal permit conditions. The second paragraph states only that municipalities have “an important role in source identification” for industrial dischargers with separate permits. “Important role” is clearly less than “responsible.” The State is responsible for industrial sites that are, or should be, regulated by a general or individual permit. This is reasonable and fair because the State collects the permit fees for these sites and does not remit any of these fees to the municipalities.

Page 36 – How will requiring public distribution of maps of the City’s entire MS4 system attain the stated objective of investigating illicit discharges? Does the State expect the public to conduct these investigations? The requirement appears to be well in excess of the federal regulation which only requires identification, rather than mapping, of the locations of major outfalls and major structural controls. Will the State provide reimbursement of costs in excess of the federal mandate? Further, has the State adequately evaluated security concerns arising from the action of widely disseminating utility maps to the public?

Page 45 – Has the State determined that K-12 schools have the capacity to accept the prepared watershed awareness programs into their curricula? If not, this will be a wasted expense for the municipalities. Our experience is that in the last few years, school curricula have become much more tightly programmed as schools prepare children for annual standardized testing. We have discontinued providing our solid waste recycling awareness programs to schools because teachers told us they no longer have time in their schedules to make use of our materials.

Page 72 – Use of the acronym “SSO” for site-specific objectives is confusing for municipal staff who have been taught by RWQCB that the acronym stands for sanitary sewer overflow. We request that you spell out the phrase in this permit or develop another acronym.

NPDES Permit

C.2.g.ii.3. Pump station inspection – We request replacing “within 24 hours of significant storm event” with “within the next business day after a significant storm event.” We do not believe this inspection warrants payment of double or triple overtime for our on-call field crews.

C.5.a.ii Legal authority – We request replacing “by November 30, 2008” with “within 6 months of the permit adoption” Ordinances are not effective until after 30 days after adoption and it takes several months to prepare, publish notice, introduce an ordinance with a public hearing, and then finally adopt an ordinance at a subsequent regularly schedule public meeting.

C.5.d.ii – Public maps. What is the purpose of making maps of the MS4 readily and conveniently available to the public? Why must they be available through a single point of contact?

C.8.e.iii – Pump station monitoring. Why are such a large number of the pump stations selected for monitoring located in Milpitas? Four out of 38 is more than 10 percent and yet Milpitas is only one of 77 municipalities covered by this permit. What is the purpose of collecting 5 daily

samples for a one week in the summer and second week in early fall? Is it reasonable to expect that there will be trends in water quality parameters that relate to the day of the week, or is this driven by the desire to have replicate sample results? Sampling is expensive since it requires bottle, packaging, and ice assembly; travel time; paperwork; and sample packaging and shipment. It would be far less expensive to have the sampler collect appropriate duplicate grab samples during a single visit. If the concern is that the stations may be intermittently operating during the week, we propose providing pump run charts to document our operation of the Milpitas pump stations during the summer and early fall.

C.11.c.i Mercury controls. Requiring municipalities to investigate and abate mercury sources on private property exceeds our responsibility and ability. The State is responsible for regulating discharges to land that may impact water.

C.12.c. PCB controls. Requiring municipalities to investigate and abate PCB hot spots on private property also exceeds our responsibility and ability. The State is responsible for regulating discharges to land that may impact water.

C.15.b.iii(2) Exempt discharges. We recommend a de minimis threshold of 5,000 gallons for reporting unplanned discharges of potable water to storm drains, such as from water line breaks.

