

## Department of Public Works



# COUNTY OF SAN MATEO

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February 29, 2008

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

Dear Mr. Wolfe:

**Re: Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit**

The County of San Mateo (County) appreciates this opportunity to comment on the Tentative Order for the Municipal Regional Permit National Pollutant Discharge Elimination System Permit (draft permit), which was released for comment on December 4, 2007. The County has had a proactive municipal stormwater pollution prevention and control program since the first countywide municipal stormwater permit was adopted in 1993. This letter provides our comments on the draft permit. The draft permit provides an unnecessarily prescriptive and inflexible approach to stormwater regulation. Where new water quality control initiatives are appropriate, such as to address pollutants listed on the state's impaired water body list through the total maximum daily load process, the Water Board should recognize the need for a phase-in period given municipal budget constraints and uncertainties. The County is committed to implementing enhanced stormwater pollution prevention measures for these pollutants and agrees this area of increased stormwater regulation is appropriate for this permit cycle. The County does not, however, support other areas of enhanced stormwater regulation in the draft permit unless there are substantial changes, as described in the following comments.

### **Need to Streamline and Add Flexibility to Permit to Solve Water Quality Problems**

It is essential that new initiatives in the draft permit be practical, understandable, and allow municipalities flexibility to solve water quality problems. There are a number of critical areas in the draft permit where modifications are needed to achieve these objectives. The following issues raised by the draft permit are of greatest concern to the County, and we have provided a detailed discussion of each along with recommended solutions.

#### **1. Expanded Maintenance Requirements for ALL Rural Roads**

**What the Draft Permit Proposes:** Provision C.2.h of the draft permit would require existing BMP's be expanded to cover ALL rural roads during construction AND post-construction, regardless of who maintains

Mr. Bruce Wolfe, Executive Officer  
San Francisco Bay Regional Water Quality Control Board

**Re: Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit**

February 29, 2008

Page 2

these roads; require rehabilitation of existing problematic rural roads; and increase maintenance requirements for rural roads near creeks.

As an agency whose jurisdiction includes many miles of rural roads, including numerous roads for which the County has no legal authority to maintain, the requirements of this provision would create both a resource and financial hardship. The County has in recent years upgraded many of its rural roads and corresponding roadside drainage systems, but would have to defer a considerable portion of its planned capital improvements over the next few years in order to fund additional rural road upgrade mandates, depending on the extent of the required upgrades.

The County has actively pursued financial opportunities for sediment reduction type projects and will continue to do so in the future. However, a mandate to upgrade all of its roads within a short period of time is simply not reasonable.

In addition, a mandate that ensures private roads meet Best Management Practices (BMPs) requirements at all times, is also not easily achievable without considerable resource allocations and overcoming legal hurdles.

**Recommended Solution:** The draft permit should clarify the criteria which establish roads as problematic and requiring upgrades, allow local agencies to phase-in improvements by requiring that some improvements be made annually on problematic roads, and allow flexibility in the type of improvements constructed, so that individual site considerations and associated costs can be factored into the road improvement effort.

The draft permit should be modified to eliminate the requirement that an agency continually police privately owned and maintained roads.

## **2. Allow a More Flexible Approach to Trash and Litter Reduction**

**What the Draft Permit Proposes:** The draft permit's Provision C.10 proposes that each Permittee identify high trash and litter catchments totaling at least 10 percent of the urbanized area within its jurisdiction and implement actions to reduce the impact of trash on beneficial uses. The permit would require two types of control actions: one, the installation of "full trash capture devices" on at least 5 percent of the catchment area and, two, the use of "enhanced trash management control measures." The permit would also require that the "enhanced trash management control measures" be implemented as interim controls in the areas where "full capture devices" would eventually be installed.

The proposed approach to solving trash and litter problems is overly prescriptive, and does not recognize the variety of possible trash and litter problems and the need to implement cost-effective solutions that are tailored to solve a particular type of problem. For example, problems range from yard waste dumping along backyard creek banks to homeless encampments to litter from a particular school, shopping mall, or freeway.

Mr. Bruce Wolfe, Executive Officer

San Francisco Bay Regional Water Quality Control Board

**Re: Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit**

February 29, 2008

Page 3

Trash and litter would be more effectively handled by allowing the local municipality to identify the optimum solution rather than to require an arbitrary amount of municipal land area to have “full trash capture devices” or “enhanced trash management control measures.” The proposed draft permit’s inflexible approach would be detrimental to identifying cost-effective ways of making measurable improvements in high priority trash and litter catchments.

Implementation of the Trash Reduction Provision C.10 requirements is estimated to cost the County close to \$1,000,000 for the first 5 years of the draft permit term. A large majority of this estimated cost is for the installation of “full trash capture devices” and the associated maintenance. It is unreasonable to expect that the County could allocate this amount of resources and complete installation by 2012, given our current financial constraints.

**Recommended Solution:** The draft permit should be modified to allow flexibility in addressing trash and litter controls problems so that cost-effective solutions may be implemented that are tailored to solving particular problems. It is recommended that the draft permit be rewritten to require that each municipality select one high trash impact catchment tributary to the municipal separate storm sewer system that it owns or operates, implement an appropriate solution or require the responsible parties to implement a solution, and then demonstrate measurable reductions in trash and litter. On this basis it is recommended that the permit be revised to eliminate the draft permit’s requirements for at least 10 percent of the high trash and litter urban land area within a municipality’s jurisdiction to have trash controls along with the proposed requirement that half or more of this 10 percent catchment area be controlled with “full trash capture devices”.

The Water Board should also follow-up on the Board members’ suggestion to form a multi-agency team to help improve the control of trash and litter based on public comments received on March 11, 2007 at the public hearing. The solutions or recommendations from this multi-agency team could serve as permit requirements for the future.

In addition, since a high priority of the City/County Association of Governments of San Mateo County is to implement sustainable green streets and parking lot projects using the vehicle registration fees collected under AB 1546 (Simitian – 2004), the permit should also state that any municipality that is implementing this type of project would be meeting the permit’s trash and litter requirements during this permit period through the design, construction, and maintenance of its sustainable green street or parking lot project. We believe these multi-objective projects will have a beneficial impact on trash and litter. In addition, trash and litter controls that can be accomplished as part of multi-objective projects are more sustainable and financially viable than single-purpose approaches.

### **3. Modify Proposed Changes to New and Redevelopment Requirements**

**What the Draft Permit Proposes:** The draft permit contains a section (Provision C.3.b) that describes “Regulated Projects” that must meet permit-specified source control, site design, and stormwater treatment requirements. The draft permit proposes the size threshold for Regulated Projects be reduced from 10,000 to

Mr. Bruce Wolfe, Executive Officer

San Francisco Bay Regional Water Quality Control Board

**Re: Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit**

February 29, 2008

Page 4

5,000 square feet of impervious surface starting July 1, 2010 for "Special Land Use Categories" including: auto service facilities; retail gasoline outlets; restaurants; and "parking lots that are stand-alone or part of any other development project" (Provision C.3.b.i.1). In addition, the draft permit also describes specific site design and source control requirements (Provision C.3.a.i.(6 and 7)) for all projects that are "not regulated by Provision C.3."

These requirements pose an unnecessary burden on municipalities for the following reasons:

- Municipalities have only recently adopted ordinances and policies and begun regulating projects down to the 10,000 square foot threshold and there is no justification to change the threshold within such a short time frame. Since very few projects this size have completed construction and have BMPs in place, there is still a lack of knowledge about the effectiveness of these BMPs, maintenance issues, and how to deal with constraints on small sites.
- Many more project applications would have to be reviewed if the threshold is lowered. No nexus has been established between a lower square footage threshold for Regulated Projects and significant water quality improvement in an already highly urbanized environment so as to justify such increased staffing and resource burden. If the size threshold is lowered below what the current permit requires, there would be very little increase in the amount of impervious surface that requires stormwater treatment. Based on studies that the Water Board staff conducted and reported on previously (November 15, 2006 workshop), the current permit requirements are capturing about 97% of all of the impervious surface area created and/or replaced in the cities studied.
- Given that these "Special Land Use Categories" have to meet site design and source control requirements regardless of the size of the project, it is unclear that there is any technical basis for also requiring stormwater treatment control for projects that fall under these categories. The Fact Sheet states that these land uses have the potential to contribute more polluted runoff and the 5,000 square foot threshold is considered maximum extent practicable because it is included in the Los Angeles (L.A.) Regional Board Stormwater Permit for these land uses. However, the L.A. permit does not have these additional site design and source control requirements for small sites, and does not demonstrate a nexus between the size threshold and significant water quality improvement.
- Provision C.3.b.i.1. seems to require that all parking lots greater than 5,000 square feet, whether they are surface lots or covered, provide stormwater treatment. If a 5,000 square foot parking lot is designed so that it is not exposed to stormwater (i.e., under a building or a lower level parking structure), there is no reason to have stormwater treatment.

The proposed permit also seeks to further evaluate stormwater treatment at smaller and smaller projects by requiring studies to collect impervious surface data from small projects in the range of 1,000 to 10,000 square feet (Provision C.3.j). These small projects would include single-family homes. Significant effort by municipal staff would be required to collect these data from projects that are not already being reviewed by the Planning Division and to verify the accuracy of the data, as previous data collection efforts have shown. It is not worthwhile investing municipal staff resources in collecting this type of data because: 1) the regulation of these small projects can be handled appropriately under the proposed permit's site design and source control

Mr. Bruce Wolfe, Executive Officer  
San Francisco Bay Regional Water Quality Control Board

**Re: Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit**

February 29, 2008

Page 5

requirements; and 2) it appears that decisions about regulatory thresholds are being made arbitrarily in lieu of proper analysis of impervious surface data and water quality impacts.

In addition, the draft permit proposes to make the stormwater requirements for rehabilitating and reconstructing roads more stringent than required by the current permit. The draft permit (Provision C.3.b.i.(1)(b)) would only allow "pavement resurfacing within the existing footprint" to be excluded from the stormwater treatment requirements imposed on "Regulated Projects" (which include arterial streets and roads). The current permit allows the following types of road maintenance and repair projects to be excluded from stormwater treatment: "...pavement resurfacing, repaving and road pavement structural section rehabilitation, within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed" (Provision C.3.c.i.3). Since there is no description of the basis for this proposed change in the Fact Sheet, the Water Board staff may have considered this proposed change in wording as inconsequential, but it is not.

**Recommended Solution:** It is recommended that the draft permit keep the size threshold for all "Regulated Projects" at 10,000 square feet because the stormwater pollutants from smaller "Special Land Use Categories" types of projects can be adequately handled using good site design and source controls by applying low impact development principles. In addition, it is recommended that the proposed requirements to collect additional impervious surface information for projects smaller than 10,000 square feet be deleted from the draft permit. The requirement for collection of this information is unnecessary because it was collected previously and there is no justification to collect additional information now. The Water Board staff previously collected information from the following cities about the amounts of impervious surface being created and/or replaced during the following time periods: Dublin (January – December 2005), Fairfield (July 2004 – June 2005), Livermore (January – December 2005), Menlo Park (April 2000 – March 2005), Palo Alto (October 2001 – December 2005), Pleasanton (January 2003 – November 2005), and Suisun County (July 2004 – June 2005).

Lastly, it is recommended that the language in the existing permit describing the exclusion of "...pavement resurfacing, repaving and road pavement structural section rehabilitation, within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed" (current permit Provision C.3.c.i.3) continue to be used in the draft permit. This language is more inclusive than the draft permit's language, and continuing the flexibility allowed by the existing permit is essential to being able to maintain existing roads without the additional expense of retrofitting stormwater treatment controls.

#### **4. Characterize Possible Stormwater Pump Station Problems Before Proposing Solutions**

**What the Draft Permit Proposes:** The draft permit would require studies about storm drain pump stations under Provisions C.8.e.iii (Monitoring Projects); Dry Weather & First Flush Investigation, C.11.f. (Mercury Controls) Diversion of Dry Weather and First Flush Flows to Publicly Owned Treatment Works (POTWs); and C.12.f. (PCB Controls) Diversion of Dry Weather and First Flush Flows to POTWs. In addition, the latter two provisions would require that diversions be implemented from five pilot projects to sanitary sewers.

Mr. Bruce Wolfe, Executive Officer  
San Francisco Bay Regional Water Quality Control Board

**Re: Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit**

February 29, 2008

Page 6

The draft permit is overly focused on diverting stormwater pump station dry weather and first flush flows to the sanitary sewer without an adequate understanding of the problems, if any, posed by pump station discharges. It will be more practical and cost-effective to first characterize the possible water quality problems associated with storm drain pump station discharges before evaluating a range of possible solutions for any problems found. The range of solutions might include diversions to the sanitary sewer, but the solutions should not be limited exclusively to this possible alternative.

The draft permit states that the various pump station studies are supposed to be integrated, but in fact they are not. For example the Monitoring Project version of the study contains Table 8-4 that lists specific pump stations that must be screened for pH, dissolved oxygen, coliform bacteria, and conductivity in order to select ten pump stations for more detailed chemical analysis. The more detailed chemical analysis would not include PCBs or mercury. Based on this more detailed chemical analysis five pump stations would be tested during the third and fourth years of the permit for PCBs and mercury along with a list of other potential pollutants.

The pump station studies under the proposed mercury and PCB controls permit provisions take a different approach. These permit provisions would require Permittees to “select 20% of the existing stormwater pump stations distributed throughout the Permittees’ county areas and evaluate drainage characteristics and feasibility of diverting flows to the sanitary sewers to be treated by local POTWs.” Based on this work and the studies being conducted as a Monitoring Project, “5 pilot pump stations for pilot studies, and time schedules for conducting pilot studies” would be reported in October 2010. This schedule would be prior to having any mercury and PCB data collected under the Monitoring Project, and the five pump stations selected for the Monitoring Project may not be the same ones that would be selected with incomplete data for the mercury and PCBs control studies. In addition, these studies are proposed in a vacuum without consideration of any existing pump station diversion studies and how the results of these studies could be used to address the issues raised by the permit.

Provision C.11.f of the draft permit further requires the permittees to work with the local POTW on the feasibility and cost sharing agreements for treating dry weather diversion and first flush flows. Diversion of stormwater to local POTWs may require the use of sanitary sewer pipelines operated and owned by multiple jurisdictions. Joint use of the sanitary sewer pipelines could increase the problems associated with sewer pipelines in terms of blockages or capacity deficiencies, which could cause or increase sewer system overflows. Treatment of the diverted flows will certainly increase the operating costs of local POTWs. These costs will be passed on to the individual collection systems and their customers. The ability of the collection systems to increase sewer service charges to pay for these costs is often constrained by Proposition 218 requirements. POTWs are designed to treat sanitary sewage and may not be effective in removing pollutants that could be delivered to the POTW by storm water pump stations. Additionally, the POTW’s sewage treatment process utilizes biological and chemical activities that may be adversely affected by the addition of pollutants from the pump stations, which could affect the quality of treatment attained for the sanitary sewage delivered to the POTW and released to the Bay, Ocean, or receiving waters.

Mr. Bruce Wolfe, Executive Officer

San Francisco Bay Regional Water Quality Control Board

**Re: Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit**

February 29, 2008

Page 7

**Recommended Solution:** It is proposed that this disjointed tangle of permit requirements be replaced with a requirement for the Permittees to work with the sanitary sewer agencies to develop a work plan to better characterize the potential problems with stormwater pump station discharges and identify a range of possible solutions depending on the types of problems, if any, that are identified.

#### **5. Minimize the Amount of Reporting and Recordkeeping**

**What the Draft Permit Proposes:** The draft permit contains Attachment L, "Annual Report Form" for San Francisco Bay Region Municipal Regional Stormwater NPDES Permit (Report Form). This Report Form is 110 pages in length, and, in addition to this Report Form, there are supplemental reporting tables to summarize business, construction site, and pump station inspections. The Report Form is highly prescriptive, and the amount of reporting and record keeping would require a significant amount of staff resources that provides little benefit to protecting water quality. In addition, the Report Form is in many instances inconsistent with the draft permit reporting provisions and often requires more information than what is required to be reported for a specific provision.

**Recommended Solution:** The reporting form should be developed following the adoption of the draft permit so that it reflects what has been included in the draft permit as adopted. The inclusion of the form with the draft permit also sends the wrong message to municipalities and stakeholders that the contents of the draft permit have already been decided, regardless of the comments submitted on the draft permit. If the Water Board is resolved to include a reporting form as part of the adopted permit, the reporting form needs to be pared down to about 10 to 20 pages of essential information. The completion of the proposed, lengthy Report Form would require a wasteful use of limited municipal staff resources on reporting and record keeping. One recommendation for making the reporting more manageable would be to have a different reporting form for each year of the permit with each annual report reporting form focused on one area of the permit so that the entire permit is reported on once over a five-year period. Another recommendation would be to decrease the enormous amount of overly detailed information that is required in the reporting.

#### **Need to Phase in Enhanced Pollution Controls That Would Increase Municipal Costs**

We have estimated that implementation of the requirements set forth by the draft permit would cost the County close to \$3,000,000. The Water Board should recognize that municipalities need sufficient time to develop a plan and secure funding for implementation of the draft permit requirements. This is particularly important given the current difficult financial times and lack of available funds that could be diverted from existing stormwater tasks to new stormwater tasks or from other existing municipal budget priorities to stormwater. The Water Board should provide municipalities with an opportunity to successfully achieve permit compliance by allowing an adequate phase in period for municipalities to attempt to secure additional sources of revenue.

The potential funding sources that do not require voter approval are limited and unlikely to provide a substantial fraction of the funds needed to implement the permit. It is likely that the proposed Permit provisions requiring

Mr. Bruce Wolfe, Executive Officer

San Francisco Bay Regional Water Quality Control Board

**Re: Comments on the Tentative Order for the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit**

February 29, 2008

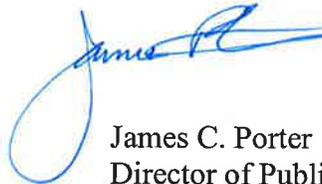
Page 8

significant additional expenditure would need voter approval, such as a bond fund to pay for capital projects and/or a tax or assessment to pay for long-term maintenance.

Municipalities need time to develop financial plans, educate property owners and/or voters on the need for additional funding, attempt to secure voter approval of bonds and/or additional taxes and assessments, and, if successful, start to collect sufficient funds to undertake the projects needed to comply with the permit. The permit's compliance dates should be adjusted to provide at least a five-year period to attempt to secure and accrue the necessary revenue to meet significant new permit requirements.

We appreciate your consideration of our comments, and look forward to discussing these issues further at the March 11, 2008 public hearing.

Very truly yours,



James C. Porter  
Director of Public Works

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cc: Members, Board of Supervisors

John L. Maltbie, County Manager

Mr. Matt Fabry, Program Coordinator, San Mateo Countywide Water Pollution Prevention Program

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