



# CITY OF SAN PABLO

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## *Office of the Mayor*

February 29, 2008

ATTN: Municipal Regional Permit Staff  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

**Subject: Comments on MRP Tentative Order dated December 14, 2007**

Dear Water Board Staff:

This letter serves as the City of San Pablo's (City) comments on the San Francisco Bay Regional Water Quality Control Board's (Water Board's) Municipal Regional Permit (MRP) Tentative Order dated December 14, 2007.

The City understands that combining six National Pollutant Discharge Elimination System (NDPES) permits is a large undertaking but necessary to provide consistent stormwater standards throughout the Bay Area. We also share the Water Board's goal to make the permit more protective of water quality and have always been committed to doing more, as evidenced by our strong NPDES program. However, after reviewing the Tentative Order we are concerned that the significant increase in effort and resources being required may not necessarily result in improved water quality. We also believe that the prescriptive nature of the permit will not allow for innovation which is critical for balancing multiple requirements with limited budgets. Finally, the MRP does not consider differences between municipalities or allow flexibility to meet the stormwater standards.

For the last three years, the City has actively participated in the MRP process with the hope of having a comprehensive, integrated, and prioritized permit. Although a few of the City's and Bay Area Stormwater Management Agencies Association's (BASMAA's) comments were addressed, the majority of the comments were largely ignored and even more requirements were added to the Tentative Order as compared to previous drafts.

In addition to the comments below, the City strongly supports comments submitted by BASMAA and the Contra Costa Clean Water Program (County Program). San Pablo's key concerns on the Water Board's Tentative Order are as follows:

## General

- The increased reporting requirements will divert valuable resources away from activities that protect water quality. Moreover, since the Water Board currently does not have the staff to review submitted reports in a timely manner, we question whether the City's efforts in providing even more information will be wasted. The City would prefer to continue providing a summary and then to provide detailed records to the Water Board if there is a specific concern. Finally, though we agree the current Annual Report format is not very user-friendly, the proposed forms are no more useful and will require more effort to complete.
- The permit language is inconsistent regarding activities being conducted collaboratively. For example, in some sections the word "county" or "permittee" is used but Water Board staff has commented that they mean "permittees jointly" in the entire Bay Area. Also, please consider that though regional collaboration has its benefits, coordinating projects with the entire Bay Area is time consuming so some of the deadlines should be extended.

## Municipal Maintenance Operations

- In case of heavy rain, street sweeping activities must be called off resulting in the City not meeting the increased sweeping frequencies. Make-up days are not effective since posted signage can not account for this and there would be too many parked cars on the usual non-sweeping days. We request that safe harbor language be included in the permit to allow for these circumstances.

## New Development and Redevelopment

- Since only a few projects subject to C.3 have been constructed to date, we recommend keeping the threshold at 10,000 square feet for this permit cycle in order to verify that the systems being installed work and are effective at treating stormwater. The County Program is continuously refining the treatment area specifications and cities are still changing their procedures as more is learned in the field.
- The threshold reduction date has been changed to be triggered at the discretionary approval date for private projects, and for public projects when construction is scheduled. We recommend keeping the trigger date to when the application is deemed complete for private projects and when the funding is allocated for the public projects because by the time the project is presented to the Planning Commission and City Council, and by the time construction is scheduled for public projects, months or even years of staff time have already been dedicated to the project.
- The 50% rule discourages redevelopment projects, which are more desirable to new development since they encourage infill. This conflicts with other regional policies that are aimed at reducing driving by encouraging redevelopment of brownfields or vacant lots. A reduction in driving indirectly protects water quality since it reduces the amount of airborne pollutants entering waterways. In addition, for some sites it may be difficult to meet the requirement.

**Example:** C.3 was triggered for a private project that was reconstructing a portion of a shopping center but now had to retrofit existing buildings and re-grade the entire parking lot to meet the C.3 requirements. Since both sides of the parking lot were surrounded by existing buildings, it was difficult to get

enough of a slope to drain the water into the swales. Once constructed, we are concerned there will be ponding in the parking lot.

- **Road repaving and rehabilitation** should be **EXEMPT**, especially for streets with development on either side. Most of our road repaving projects go down to the gravel base but they are maintenance projects and do not increase impervious area. Most of the existing roads can not accommodate six foot wide swales. For those few roads where there is room for swales, adding C.3 requirements would take away money from much needed road repairs. This will undoubtedly delay road projects causing further deterioration of existing roads which are already in poor condition. Finally, re-grading the roads to divert the water toward the medians instead of the stormdrain, could result in interference with other utilities.
- **Trails, bicycle lanes, and sidewalks** should also be **EXEMPT** to be consistent with other regional policies which encourage less driving. With fewer pedestrian and bicycle facilities, more people will drive and more airborne pollutants will be released indirectly impacting water quality. The increased C.3 costs will discourage trail, sidewalk, and bicycle lane construction. In addition, treatment for trails may also be infeasible.  
**Example:** In San Pablo, we are actively working to extend the Wildcat Creek Trail but since most creekside properties are privately owned, purchasing land and finding enough room at the top of the bank is already a challenge. Having to add an extra 6 feet for treatment would deem the project infeasible.
- Justification is needed for why Low Impact Development (LID) Integrated Management Practices (IMPs) can not be used to meet flow control requirements for projects over 10 acres.

#### Industrial and Commercial Site Controls

- Escalating repeat violators over a three year rolling window is not consistent with California Government Code Section 369000 which limits the time to one year.
- How does the Water Board propose that we inspect mobile businesses since there is not a facility to inspect? Also, the mobile businesses that have addresses in San Pablo may not even perform work in our City.

#### Public Information and Outreach

- It typically takes a year and a half to develop a good outreach piece so we recommend changing the requirement from annually conducting outreach to commercial/industrial sources to twice in the permit cycle.
- Stormdrain inlet markings on private property will be difficult to inspect since some communities are gated and also if there is no Homeowner's Association (which is common in San Pablo), it will be difficult to require the home owners to maintain them since the City has no legal authority for older developments.

#### Water Quality Monitoring

- The Water Board's Surface Ambient Monitoring Program is currently testing for pathogens so why are the permittees duplicating the work?

- Some of the requirements in the status monitoring sections require probes to be left in the field. We request that safe harbor language be added for circumstances where the probes are stolen or vandalized.
- How will the additional tests for the status monitoring section provide more information than the data we are currently collecting? Our current bioassessment monitoring data provides the information we need to determine creek health. How will the additional information help protect water quality? With our current monitoring program, we have several years of data. By adding more parameters to sample, resources will be taken away from the current program. All the years of data for those water bodies will be meaningless since we will not be able to continue the level of sampling at those locations and evaluate trends. If in every permit cycle new requirements are added, we will never have enough data to determine if water quality is improving.
- There are too many monitoring projects required in the MRP, which will substantially increase the City's share of the monitoring costs. We recommend prioritizing among the 9 projects.

#### Pesticide Toxicity Control

- How does the Water Board propose that cities track the percentage of residents hiring certified operators?
- We believe our resources would be better served by working with the Water Board to make pesticide regulators block pesticides from being sold unless they have been shown to be non-toxic.

#### Trash Maintenance

- In San Pablo, we have installed surveillance cameras and provided many services for residents to dispose of their waste properly (school educational programs, two dumpster days a year, providing more trash cans on the streets, and dump vouchers). Still, our maintenance crews pick up trash on a daily basis from city streets and the creek. Although the trash problem in some areas does improve, it is usually displaced to another location. For this reason, we request that the trash assessment not be used to determine the effectiveness of the City's enhanced trash management control.
- Installing full capture devices assumes that trash only enters the water bodies via the stormdrain system. In San Pablo, a lot of trash is dumped directly into the creeks by residents and by homeless camps. The high costs of installation and maintenance (~\$12,000 for installation and ~\$40,000 annually for maintenance in San Pablo) could be better used for other trash management measures. We request that more flexibility be given to permittees to reduce trash.

**Example:** In fiscal year 2006/2007, only 7 cubic yards of debris were removed from the City's 326 catchbasins, of which only 2 cubic yards was trash. Conversely, 70 cubic yards of trash were removed from the creeks during the annual creek cleanup. All the trash were either too large to enter the creek through the stormdrain system or were as a result of homeless camps. This figure does not include all the trash that is removed from the creeks in the remainder of the year.

- Weekly maintenance of the full capture devices will be required in our City since we have a lot of flooding and these systems clog quickly in the fall with the leaf litter. This is a huge burden on our maintenance department that is already understaffed.

#### Mercury Load Reduction

- The County Program has already studied the levels of mercury in street sweeping and catchbasins. Why should this be further studied?
- Once again, there are too many pilot projects (7). The Water Board already established the mercury TMDL so the permittees should be allowed some flexibility to decide what studies and abatement actions to take to meet the TMDL.

#### PCBs

- The same comments as for the mercury section apply.

#### Copper, PBDE, Legacy Pesticides, and Selenium

- Why are cities being required to study these pollutants? Isn't it the **Water Board's** responsibility to determine if a pollutant is a concern and to conduct the appropriate studies?

#### Exempted and Conditionally Exempted Discharge

- The City does not have the legal authority to regulate discharges from water districts. This provision should be included in the water districts' NPDES permit.

Though we agree more should be done about trash, mercury, and PCBs, we question the Water Board's proposal to change and add to the existing NPDES permit requirements which we have been implementing effectively for fifteen years. As it is currently written, the MRP will increase the City's NPDES budget by approximately 63% (from ~\$400,000 annually to ~\$650,000). The stormwater assessments do not generate enough revenue to cover the increase and the City will be out of compliance. The City hopes these issues can be resolved prior to the MRP adoption.

Should you have any questions, please feel free to contact the City's Environmental Program Analyst, Karineh Samkian at (510) 215-3037.

Sincerely,



Sharon J. Brown  
Mayor

cc: Don Freitas, Contra Costa Clean Water Program Manager  
City Council  
Brock Arner, City Manager