

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Dale Bowyer)
MEETING DATE: May 13, 2009

ITEM: 6

SUBJECT: **Municipal Regional Stormwater NPDES Permit – Municipalities and Flood Management Agencies within Alameda County, Contra Costa County, Santa Clara County, San Mateo County, and the Cities of Fairfield, Suisun City and Vallejo in Solano County** - Hearing to Receive Testimony on Revised Tentative Order

CHRONOLOGY: March 2008 - the Board received testimony on the initial tentative order for the Municipal Regional Stormwater Permit (MRP).

DISCUSSION: This is a testimony hearing on the Revised Tentative Order for the MRP, which would address the discharge of stormwater from 76 municipalities and local agencies in Alameda, Contra Costa, Santa Clara and San Mateo Counties, and the Cities of Fairfield, Suisun City and Vallejo in Solano County. The Revised Tentative Order and supporting Fact Sheet (Appendices A1 and A2) were available for public comment from February 11 until April 3, 2009. This hearing provides an opportunity for the Permittees, environmental groups, the public, industry groups and all stakeholders to further communicate their concerns and interests directly to the Board, and for Board members to ask questions of staff and stakeholders and give further direction on the MRP.

Nearly all of these 76 permittees have been subject to municipal stormwater NPDES permits since the early to mid-1990s. The Revised Tentative Order for the MRP, which would be the fourth five-year permit for many of the Permittees, incorporates several key regulatory improvements. It is the first regionwide permit that covers all 76 permittees with the same consistent requirements, adjusted for permittee size and type, for the same five-year term. It is the first permit that directly contains all specific requirements rather than referring to a separate stormwater management plan, one of the reasons it appears so lengthy.

We have significantly revised the original tentative order as an outgrowth of the large number of comments we received on the initial December 2007 tentative order. We received 122 comment letters on all issues, in addition to hundreds of e-mails expressing concern about trash in creeks. Also, hundreds of comments made at the Board's March 2008 hearing on the initial tentative order were considered, whether or not they were repetitions of the written comments. In response to those comments and additional discussions with key stakeholders, we made significant revisions to the initial tentative order, and released a Revised Tentative Order in February for a new round of public review and comment. A summary of major revisions is contained in

Attachment B, and a summary of our responses to comments on the December 2007 tentative order is contained in Attachment C. Full response to all of these comments, in addition to responses to the hundreds of newly received comments on the Revised Tentative Order, will accompany the Board package for consideration of MRP adoption at a subsequent hearing, which is anticipated to be the July 8 Board meeting.

Major Revisions – Reporting was reduced to be more efficient, while providing sufficient information to determine compliance status. The Trash Reduction Provision was re-written to emphasize cleanup of Trash Hot Spots to a Trash Action Level, and costly trash capture requirements were reduced for this permitting cycle. The New and Redevelopment Provision was revised to remove treatment requirements for road reconstruction, and the prescriptive street sweeping and inlet cleaning requirements were removed from the Municipal Operations Provision. We also resolved many issues by making clarifying changes that more clearly reflect the intent of requirements and to avoid unintended consequences.

The Revised Tentative Order continues to reflect the following priorities:

- **Consistent and Accountable Actions** – Requirements specify, with accountability, the level of effort constituting “implementation of controls to reduce pollutants to the maximum extent practicable”, the federal regulatory standard, for the basic elements of a municipal stormwater management program, which are maintained with minor changes from previous permits. These elements include: municipal operation activities, industrial and construction site controls, illicit discharge abatement, new and redevelopment treatment measures, public outreach and participation, and control of non-stormwater discharges.
- **Prioritization and Phasing of New Requirements** – Priority areas include new requirements to reduce discharges of trash, PCBs, and mercury. These new requirements will demand new resources. For that reason, the requirements are phased over several years.
- **Monitoring** – Requirements establish a consistent approach among all Permittees to answer stormwater management questions such as waterbody health, presence of pollutants and toxic impacts, sources and loads of pollutants, and effectiveness of controls. This results in an increase in monitoring requirements for some Permittees who are currently monitoring less than the level of the higher performing Permittees. However, the requirements encourage regional collaboration among Permittees to provide consistencies and economies of scale.
- **Abate Trash in Waters** – The Board recently identified 29 trash impaired waterbodies for inclusion on the State’s 303(d) list of impaired waters. Outcry from the public to get the trash out of local creeks and the Bay has escalated in recent years, along with new information on the impacts of marine debris on aquatic life in the oceans on a global scale. While it will

not be an easy task, trash is a pollutant whose adverse impact is obvious, and for which practical solutions exist.

- **Implementation of TMDLs** – The MRP is the implementation vehicle for the wasteload allocations for urban runoff associated with the Board-adopted Mercury, PCBs, and Pesticides TMDLs, and the MRP’s requirements are consistent with the implementation plans adopted with these TMDLs. The requirements reflect the current state of knowledge and implementation of controls to reduce these pollutants and include full or focused implementation of controls that are already happening and a range of pilot actions to evaluate additional controls.
- **New and Redevelopment Treatment Measures** – The threshold for a limited set of land uses, primarily commercial, is lowered from sites with an area of 10,000 ft² to 5000 ft² after two years. These requirements are consistent with implementation actions in other parts of the State. Exemptions for Brownfields projects, transit-oriented developments, and low-income and senior housing are more strictly defined. New language for defining those projects that can be “grandfathered” for the few new requirements is included.

The monitoring, trash, TMDLs, and new development requirements reflect new emphasis or represent additional tasks since the Permittees current permits were adopted in the 1999 to 2003 timeframe. Any requirements that are a step-up from current implementation are phased-in to allow time both for the Permittees to establish additional capacity and resources and to identify, with our assistance, the most efficient and effective means of implementation.

We received many comment letters on the Revised Tentative Order from Permittees and other key stakeholders. We have prepared a Staff Report (Appendix D) that gives a summary of major issues raised and our working responses and some contemplated additional modifications to the Revised Tentative Order. Copies of all written comments are included in Appendix E.

Major issues with the Revised Tentative Order raised by the Permittees include:

- **Lack of resources to achieve compliance with new requirements** – While the costs for stormwater controls on a per capita basis are small compared with wastewater treatment, with the restrictions of Proposition 218 and the current difficult economic climate, generating additional resources for achieving the federal Clean Water Act standard of maximum extent practicable is difficult.
- **Monitoring requirements are more extensive than previous efforts by the stormwater countywide programs** – There are concerns with the cost and extent of monitoring and requirements under the Revised Tentative Order. However, our cost estimates are considerably lower than those many Permittees present.

- **Trash capture device installation and maintenance, and trash control will be costly and difficult** – The requirement for initial installation of trash capture devices in storm drain systems by the fourth year of the permit is challenging, but is inadequate to many stakeholders. In addition, clean-up of Trash Hot Spots will require additional resources.
- **Conditions on Exempt Non-Stormwater Discharges** - Permittees contend some reporting and monitoring requirements, and requirements related to potable water agencies, can be reduced while retaining accountability for aspects they are more able to control.
- **TMDL implementation will be costly** – Mercury and PCBs controls will require new resources for most Permittees, though the work may be accomplished through a regional collaboration.

Environmental groups are concerned in general that the Revised Tentative Order does not go far enough with Low Impact Development requirements for new development, with trash control implementation, and that the monitoring is not extensive enough to determine urban runoff’s true impacts to waters and the effectiveness of the Permittees’ management efforts, among other concerns. Environmental groups also correctly note that most revisions have been removal, reduction and streamlining of requirements, rather than additional requirements.

The Revised Tentative Order is attached in two formats. In Appendix A1, there is a “clean” version with the Fact Sheet, and in Appendix A2 there is a redline/strikeout version of the Revised Tentative Order that provides a comparison of the February 2009 version with the December 2007 version.

After this testimony hearing, we will continue to review and prepare responses to written comments received on the Revised Tentative Order, and, as appropriate, prepare some further revisions. We will also continue to pursue constructive dialogue with key stakeholders to attempt to resolve issues.

RECOMMENDATION: No action is necessary at this time.

APPENDICES:

- A1 Revised Tentative Order, Fact Sheet and Attachments
- A2 Comparison of the December 2007 Tentative Order with the February 2009 Revised Tentative Order
- B. Summary of Major Revisions
- C. Summary Response to Comments on the December 2007 Tentative Order
- D. Staff Report
- E. Comments on the Revised Tentative Order – February 2009