



May 27, 2010

Mr. Keith Lichten
State Regional Water Quality Control Board
San Francisco Bay Region
11515 Clay Street, Suite 1400
Oakland, CA 94612

RE: Administrative Civil Liability Complaint No. R2-2009-0017 Settlement
Agreement and Stipulation for Order; Order

Dear Mr. Lichten,

The City of Orinda submits the following comments on the tentative Settlement Agreement and Stipulation for Order ("Settlement") of Administrative Civil Liability Complaint No. R2-2009-0017 ("Complaint") issued to OG Property Owner, LLC on May 19, 2009 for alleged violations occurring on the site of its Wilder Project located in the City of Orinda ("City"). The Settlement between the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board") and OG Property Owner, LLC ("OGLLC") provides that OGLLC shall pay \$530,000 to the State Water Resources Control Board Cleanup and Abatement Account. The Settlement does not include any supplemental environmental projects ("SEP") despite extensive discussions between the City, OGLLC and the Regional Water Board during the past year for the sole purpose of defining, and securing support from both OGLLC and Regional Water Board staff for, SEPs within the City that will directly benefit the watershed where the alleged violations occurred. The City requests that the Regional Water Board and OGLLC agree to revise the terms of the Settlement released on April 28, 2010 to include SEPs as explained in more detail below.

On April 6, 2010, the City sent a letter to you setting forth a joint proposal by the City and The Friends of Orinda Creeks ("FOC") to include three SEPs as components of the Settlement ("April 6 Submittal"). The City and FOC submitted a joint proposal so as not to be in competition and to support each other's projects.

The three potential SEPs included two creek restoration projects and partial funding for the purchase of a regenerative-air street sweeper. FOC designed the projects involving restoration of Moraga Creek and restoration of San Pablo Creek and, as the detailed project descriptions attached to the April 6, 2010 Submittal state, FOC and The Restoration Trust would be responsible for implementing the two creek restoration projects. The City proposed a third SEP component of the Settlement -- partial funding for the City's purchase and use of a regenerative air street sweeper.

Creek Restoration Projects

The SEPs that the City and FOC proposed in the April 6, 2010 Submittal were the culmination of extensive discussions conducted over a several month period between the City, OGLLC, and the Regional Water Board staff to identify projects that would satisfy the recently developed SEP criteria and that staff could support. On April 1, 2010, City staff met with Regional Water Board staff and representatives of OGLLC to review a final draft of the April 6 Submittal. Staff requested that the SEP proposal provide specific additional information regarding the creek restoration projects, which the City included in its April 6 Submittal. Otherwise, all indications were that staff supported the creek projects.

Unfortunately, Regional Water Board staff never indicated during these conversations that they had concerns regarding the qualifications of FOC and The Restoration Trust to implement the creek projects nor did staff at any time indicate that they assumed the City would be responsible for implementing the creek projects. Moreover, staff did not identify concerns regarding the substance of the creek restoration projects. The City learned of these alleged deficiencies in the SEP proposals after OGLLC and the Regional Water Board had concluded that the Settlement would not include any SEP.

The City understands and supports the Regional Water Board's and OGLLC's efforts to undertake a careful review of the potential recipients of the SEP funds to ensure that their experience and reputation provide the necessary assurances that they will successfully complete these very worthwhile restoration projects. Therefore, the City urges the Regional Water Board to work with FOC and OGLLC to resolve all remaining concerns regarding the qualifications and status of the parties who will be responsible for implementing the Moraga Creek and San Pablo Creek restoration projects.

One solution might be to have FOC partner with an organization such as Urban Creeks Council that has both the requisite 501(c)(3) status and extensive experience on similar restoration projects. Given the substantial commitment of resources that went into developing and securing Regional Water Board staff's support for these creek restoration proposals, the Regional Water Board should defer approval of the Settlement for a defined, limited period to allow FOC to address any remaining concerns so that these SEPs may be realized.

Regenerative Air Street Sweeper

The City also requests the Regional Water Board's reconsideration of the City's SEP proposal to obtain partial funding for the replacement of the City's street sweeper. This proposed SEP unquestionably will provide substantial benefits to both the San Pablo Creek watershed that is the subject of the Complaint and the adjacent Upper San Leandro Creek watershed, both of which drain to drinking water reservoirs prior to reaching San Francisco Bay.

The City's current street sweeper is a mechanical broom sweeper. Mechanical broom sweepers are the most widely used equipment for street cleaning in the United States. However, mechanical broom sweepers have been shown to be relatively ineffective compared to either regenerative-air or vacuum-assisted sweepers in removing particulates from streets, particularly in removing finer sediments (1, 2). Many studies conducted as part of the Nationwide Urban Runoff Program concluded that mechanical-broom street sweeping was not a viable storm water-quality-management practice. As sweeper technology has improved, so has the ability to pick up finer sediments that are readily available to run off into nearby storm drains (2). Finer sediments often bind a higher proportion of heavy metals than coarser sediments and as such collection of finer sediments is critical to removing storm water pollutants from street surfaces. These findings are consistent with Regional Water Board staff's statement that "street sweeping is an activity that all Permittees carry out currently, but with very few exceptions, it is not optimized for storm water pollutant removal" (3). The City's current sweeping program is not optimized for pollutant removal.

The EPA has found that "street sweeping can be an effective measure in reducing pollutants in storm water runoff. Decreasing the amount of pollutants in roads before they are picked up by storm water runoff reduces pollutants in surface waters" (4). Another study found significantly greater street dirt removal efficiencies for regenerative air or vacuum-assisted sweepers over mechanical-broom sweepers (efficiencies of 25 and 30 percent as compared to only 5 percent, respectively). It also found that street sweeping is particularly effective in pollutant removal when conducted on roadways with higher traffic volumes as these streets have the highest levels of pollutants from exhaust micro particles, tire wear, oil and fuel leakage, and pavement degradation (5).

The City is striving to optimize its street sweeping program for pollutant removal by replacing the current mechanical-broom sweeper with a regenerative-air sweeper. The majority of street sweeping in the City limits is conducted in its downtown commercial area and main thoroughfare (Camino Pablo and Moraga Way) where there is high traffic volume and parking. Runoff from this downtown area drains to San Pablo Creek, the water body affected by OGLLC's alleged violation, as well as to Moraga Creek. Street sweeping the downtown commercial area with a regenerative air sweeper would result in demonstrable water quality benefits by more efficiently removing fine particulates where many pollutants reside.

The City appreciates the opportunity to provide these comments on the Settlement and hopes that the Regional Water Board recognizes the importance to our community of the three SEP proposals set forth in the April 6 Submittal.

Best Regards,


FOR Janet Keeter
City Manager

cc: Jim Luini, Friends of Orinda Creeks
Mike O'Hara, Brooks Street
Tamsen Plume, Holland & Knight LLP
Nicholas Targ, Holland & Knight LLP

References

- 1) U.S. Department of Transportation, Federal Highway Administration, "Stormwater Best Management Practices in an Ultra-Urban Setting: Selection and Monitoring; <http://www.fhwa.dot.gov/environment/ultraurb/3fs16.htm>
- 2) U.S. Department of the Interior and U.S. Geological Survey, "Evaluation of Street Sweeping as Stormwater-Quality-Management Tool in Three Residential Basins in Madison, Wisconsin," Scientific Investigations Report 2007-5156.
- 3) SFRWQCB, Comments and Responses Summary – Municipal Regional Stormwater Permit (MRP) – November 2007 Tentative Order Comments
- 4) U.S. EPA, NPDES, National Menu of Stormwater Best Management Practices, Pollution Prevention/Good Housekeeping for Municipal Operations, Parking Lot and Street Cleaning; <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=browse&Rbutton=detail&bmp=99&minmeasure=6>
- 5) Walsh et al., Evaluation of Highway Street Sweeping as a BMP in Delaware, Presented at StormCon 2005.

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