

City of Brisbane

Agenda Report

TO: City Council via the City Manager

FROM: Director of Public Works

SUBJECT: Status Report on Proposed Municipal Regional Stormwater Permit

DATE: Meeting of April 20, 2009

Purpose:

To receive a status report on the proposed Municipal Regional Stormwater Permit and designate a representative to attend and testify at the May 13 Regional Water Quality Control Board permit adoption hearing.

Recommendation:

That the City Council receive an update on the potential impacts of the proposed Municipal Regional Stormwater permit requirements and designate a representative to attend and testify at the May 13 hearing at which the Regional Water Quality Control Board will consider adopting the draft permit.

Background:

The City's stormwater discharges are regulated under the Federal Clean Water Act permitting program administered by the Regional Water Quality Control Board (Regional Board). The Regional Board issued the first stormwater permit that regulated the municipalities in San Mateo County in 1993 and has reissued and amended it several times since then. Stormwater permits are issued for five-year terms. The permit regulates all 20 municipalities and the County of San Mateo (collectively the "co-permittees"). Coordination of the co-permittees' efforts is provided by the City/County Association of Governments (C/CAG), which created the San Mateo Countywide Water Pollution Prevention Program (Countywide Program) to assist municipalities with countywide permit compliance requirements. Associate Civil Engineer Matthew Fabry also functions as the Program Coordinator for the Countywide Program.

Costs to meet stormwater permit requirements fall into two categories: those that the individual co-permittees must pay for their own local compliance efforts, and those that are paid by the Countywide Program to provide compliance assistance on a countywide basis for items such as monitoring and annual reporting. The Countywide Program's

efforts are funded through a countywide property tax assessment. Brisbane's local costs are funded through a separate property tax assessment on local parcels.

In 2004, the Regional Board began working on a Municipal Regional Permit intended to replace the countywide stormwater permits for the San Mateo, Contra Costa, Alameda and Santa Clara countywide programs, and programs in Fairfield, Suisun City and Vallejo. The proposed Municipal Regional Permit adds numerous new requirements and seeks to make the requirements consistent for all those jurisdictions that discharge stormwater into San Francisco Bay.

The previous draft of the Municipal Regional Permit, which was released in December 2007, was extremely prescriptive, had burdensome reporting requirements, and new requirements, such as those related to trash and litter control, presented significant cost concerns to municipalities throughout the Bay Area. The City provided written comments on the 2007 draft Municipal Regional Permit and Council member Richardson, as the City's C/CAG representative, provided oral testimony at the public hearing in March 2008.

The current draft of the Municipal Regional Permit was released in February and the City submitted a comment letter in early April. The public hearing for the Regional Board to consider adopting the draft Municipal Regional Permit is on May 13.

Discussion:

Compared with the December 2007 draft, the February 2009 draft of the Municipal Regional Permit includes many positive changes. For example, the permit requirements are more flexible, the reporting provisions are more streamlined, and trash provisions are less costly. **However, much of the permit language remains unchanged and additional new requirements have been added since the December 2007 version, and the overall cost implications of the permit are still significant.** The permit provisions that are likely to be the most expensive are associated with monitoring and special studies related to "pollutants of concern," such as mercury and polychlorinated biphenyls, or PCBs.

Managers of the Bay Area countywide stormwater programs are meeting with Regional Board staff in the coming weeks in an attempt to reach agreement on ways to reduce and phase the Municipal Regional Permit requirements consistent with the resource limitations facing municipalities. In the event these discussions are unsuccessful, it is important for elected officials to attend the May 13 hearing to provide oral testimony. The message the stormwater programs want to convey to the Regional Board is that municipalities are willing to do more to try to reduce stormwater pollution, but it has to be phased over a greater time period to fit limited and dwindling budgets.

Fiscal Impact:

Cost estimates by various municipalities in the Bay Area for the 2007 draft permit indicated potential increases of two to five times to comply with the proposed

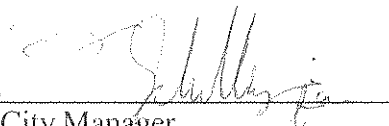
requirements. Estimates for the 2009 draft are better (one and a half to two times more), but still significant. This is still a major concern because of the severe limitations municipalities have on increasing fees for stormwater programs due to the voter approval restrictions created by Proposition 218. The permit provisions that are the most costly (monitoring and special studies) are likely to be implemented through the Countywide Program, rather than at the local municipality level. As such, the Countywide Program's costs are expected to at least double. This may lead to increased costs to the municipalities if C/CAG is unable to secure additional funding for the Countywide Program.

Measures of Success:

Adoption of a Municipal Regional Permit that includes requirements consistent with local and countywide program budgets.

Attachments:

City of Brisbane's April 3, 2009 Comment Letter



City Manager



CITY OF BRISBANE

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April 3, 2009

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

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

Mr. Wolfe:

This letter forwards the City of Brisbane's comments on the February 11, 2009 revised draft municipal regional stormwater permit. Our intent is for these comments to contribute to a constructive dialogue that results in additional permit revisions.

The City's February 2008 letter on the previous version of the Tentative Order highlighted some of the financial constraints facing Brisbane at that time. Since then, the City's financial outlook has continued to deteriorate, with economic forecasts indicating a budget deficit over the next five years that will require significant cuts to City services. We continue to face severe restrictions under Proposition 218 from increasing our local stormwater management fees; yet were subjected to higher stormwater permit fees to cover a portion of the State Water Resources Control Board's budget shortfall. We remain committed to protecting water quality and are willing to devote resources to stormwater management; however, prioritization and pruning of the proposed permit requirements must occur to prevent overwhelming municipal resources.

At the local level, it is essential to have a permit that is practical, predictable, and cost-effective. Additionally, it is important to us that the permit avoids shifting the San Francisco Bay Regional Water Quality Control Board's pollutant control and cleanup responsibility to local public agencies.

Specific Examples of Permit Problems and Requested Changes

The following examples illustrate some of the major problems the current draft of the permit poses for the City of Brisbane, and describes our recommended changes to the permit. For a more comprehensive list of issues and requested permit changes, please refer to the Countywide Program's List of Issues Table that was included with the Countywide Program's comment letter.

Provision C.15 Exempted and Conditionally Exempted Discharges

- ◆ It is unreasonable to require monitoring and treatment of pumped groundwater from foundation drains, crawl space pumps, and footing drains. There are a large number of residential properties that have crawl space pumps, foundation drains, and/or footing drains. Placing the burden on municipalities to ensure that all of these property owners perform rigorous and expensive testing on an ongoing basis is inappropriate and inconsistent with the purpose of conditionally exempting low-threat discharges. **These types of discharges should be considered exempt discharges, unless the municipality has reason to believe the groundwater may contain pollutants.**

- ◆ The City has significant concerns with the notification and reporting requirements for planned potable water discharges as they impact the operation of our water systems. The City, as part of its stormwater management program associated with municipal maintenance activities, ensures any planned discharges of potable water do not impact downstream receiving waters. In many cases, the City will direct potable water discharges to the sanitary sewer system when feasible, but in cases where the discharge must go to the storm drain system, dechlorination systems are deployed and maintenance crews ensure the discharge does not cause any downstream erosion or other concerns. Also, in cases where a water quality emergency arises that requires a planned, timely discharge of a water line or storage reservoir, the City may not be able to provide a week's notice prior to discharge. **These requirements should be deleted.** If the Regional Board has concerns about non-municipal potable water systems, it should consider adopting a general permit for those entities to ensure their operations are protective of water quality.

- ◆ The City is concerned with the notification and monitoring requirements for unplanned discharges. In the case of water main breaks, in order to protect public health of water consumers, maintenance crews must maintain positive pressure in water lines until the area around the break can be completely excavated to a point where there will be no backwash of water from the excavation into the water lines. Although it is standard practice for maintenance crews to deploy dechlorination systems and BMPs to protect downstream storm drain inlets, the ability of these BMPs to significantly improve turbidity is limited while discharge due to line pressure continues. **The highly prescriptive requirements for monitoring and notification should be deleted for these events, and municipalities who operate potable water systems should simply be required to implement dechlorination, inlet protection BMPs, and post-event cleanup during these types of unplanned discharges.**

- ◆ The deletion of individual residential car washing as a conditionally exempted type of discharge is inappropriate. In 2004, the Water Board adopted the Countywide Program's BMPs and Implementation Procedures for Conditionally Exempted Discharges, which includes individual residential car washing. **A better approach is for the permit to recognize that individual residential car washing will occur, and to promote the use of appropriate BMPs rather than to disallow these types of discharges.**

Provision C.3 New Development and Redevelopment

- ◆ The current permit allows projects that are deemed complete per the Permit Streamlining Act to not meet new stormwater treatment and other requirements. The revised draft permit would require projects to meet new stormwater requirements (e.g., C.3.b.ii.(1)d) as soon as they have final, major staff-level discretionary review and approval for adherence to applicable local, state, and federal codes and regulations. The proposed change would be very difficult to enforce due to the ambiguities of the language on determining at what point in time a project is subject to then current requirements. **This new requirement should be changed back to allow applications that are deemed complete per the Permit Streamlining Act to comply only with the stormwater requirements in effect at the time the project was found to be complete.**
- ◆ Any widening of an existing road with 10,000 square feet or more of impervious surface will require treatment of all of the stormwater runoff from the road. **The permit should be modified to require treatment of stormwater runoff from an area equivalent only to the widened section, not to the entire road when the widened area is less than 50 percent of the entire road's impervious surface.**
- ◆ The City is concerned with proposed provisions requiring small projects to implement one or more of a list of site design measures. Brisbane has many relatively small lots with very little opportunity for vegetated areas or rainwater storage. Furthermore, many Brisbane lots are located on steep topography subject to the threat of landslide if the slope were oversaturated. There may be instances where it is technically infeasible or unsafe to require small projects to implement one of the site design measures. **The permit should include exemption language for properties where it is technically infeasible or unsafe to implement any of the listed site design measures.**

Provision C.10 Trash Reduction

- ◆ The permit proposes a trash clean up (action) level for what it terms "trash hotspots"; **the permit should be modified so this action is expressed as a goal and not an inflexible mandate** due to uncertainty about what levels of trash reduction are needed to protect beneficial uses, and what levels are reasonably achievable.
- ◆ The City supports the revisions in the Tentative Order exempting small municipalities from the requirement to install full capture trash control devices. **Small municipalities should also be provided an opportunity to be exempted from hot spot assessment and cleanup if they can document that they do not have any hot spots.**
- ◆ Municipalities should only be required to address trash in hot spots originating from the storm drain system. **Any requirement to address trash generated by other sources such as illegal dumping, homeless encampments, or wind should be deleted.**

Provision C.6 Construction Site Control

- ◆ The permit proposes a requirement that each municipality implement a construction site control program at all construction sites. **The permit should focus on construction sites of a sufficient size to pose a reasonable threat to water quality and that are located where stormwater runoff from the site flows into a municipal separate storm sewer system owned or operated by the municipality. This requirement should also be linked to municipal permitting actions, such as issuing a grading permit.**
- ◆ The list of information from each construction site inspection that must be tracked and/or reported is too prescriptive and unnecessary to protect water quality. For example, there is no value to collecting information about the “inches of rainfall since the last inspection.” **The list of items should be minimized as requested in the List of Issues Table submitted by the Countywide Program.**

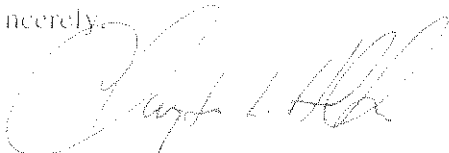
Provisions C.11 and C.12 Mercury and PCBs Controls

- ◆ The permit requires municipalities ensure the clean up of mercury and PCBs contamination located on private properties by exercising direct authority to accomplish a clean up, or by providing information to appropriate authorities. Municipalities should only be held accountable for what they are able to control. **This requirement should be modified to state that municipalities will attempt to identify private properties that may be contaminating their municipal separate storm sewer system with mercury and/or PCBs and forward this information to the Water Board.**

We request you direct your staff to modify the permit based on this and other comment letters submitted by members of the Countywide Program, the List of Issues Table included with the Countywide Program’s comment letter, comments submitted by the Bay Area Stormwater Management Agencies Association, and the Santa Clara Valley Urban Runoff Pollution Prevention Program’s comments. These and prior comment letters are included by reference.

We appreciate your consideration of our comments, and look forward to discussing these issues further at the May 13 public hearing.

Sincerely,



Clayton L. Holstine
City Manager