

Bay Area Clean Water Agencies

Leading the Way to Protect Our Bay

A Joint Powers Public Agency

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April 3, 2009

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Subject: BACWA Comments on Municipal Regional Stormwater NPDES Permit–Revised Tentative Order (February 11, 2009)

Although clean water agencies that are represented by the Bay Area Clean Water Agencies (BACWA) are not named in the Municipal Regional Permit (MRP), many of the provisions identified in the Tentative Order have bearing on the operations of these POTWs and sewer collection systems. The MRP is a unique permit and represents a monumental effort that may have far reaching consequences which we do not yet fully understand. BACWA sees this as a watershed permit, potentially impacting all dischargers in a watershed. The MRP will change many of the practices of the stormwater management agencies; but also the coordination and cooperation between BACWA members and stormwater management agencies to ensure that the provisions can be implemented.

BACWA members own and operate publicly-owned treatment works (POTWs) that discharge to San Francisco Bay and its tributaries. Collectively, BACWA members serve over 6.5 million people in the nine-county Bay Area, treating domestic, commercial and industrial wastewater. BACWA was formed to develop a region-wide understanding of the watershed protection and enhancement needs through reliance on sound technical, scientific, environmental and economic information and to ensure that this understanding leads to long-term stewardship of the San Francisco Bay Estuary. BACWA member agencies are public agencies, governed by elected officials and managed by professionals who are dedicated to protecting our water environment and the public health. In the context of these comments, BACWA members and other POTWs and sewer collection systems will be referred to as clean water agencies.

General Comment on Revisions Regarding Diversion of Flows to Sanitary Sewer Systems

The current revised Tentative Order (TO) dated February 11, 2009 was significantly modified from the initial draft TO dated December 14, 2007 in the sections that direct municipal stormwater management agencies to divert flows from the stormwater collection system to the sanitary sewer system. In some cases, proposed diversions have been consolidated together in the MRP. In all cases, the MRP defers to the sanitary sewer agency's authority to accept, condition the acceptance (e.g. issue permit, require pretreatment, regulate flow), or reject the proposed diversion. The MRP

requires municipal stormwater management agencies to coordinate and/or communicate with clean water agencies to meet appropriate standards and/or to determine the feasibility of the proposed diversions within their respective jurisdictions. These modifications will require and promote positive communications between stormwater agencies and clean water agencies and enable them to coordinate actions that affect their common business and residential customers

As you are fully aware, BACWA member agencies have strict liability permits with specific numerical water quality based effluent limits. The implementation of many of the stormwater diversion aspects of the MRP, we have identified about 19, could adversely affect BACWA members compliance status under the NPDES permits. BACWA fully understands that it is not the intention of this TO to put **municipal clean water** agencies in compliance jeopardy. Nevertheless, BACWA believes that to ensure that this MRP is implemented as intended, clean water agencies will have to dedicate resources to develop new pretreatment or permitting programs and protocols for stormwater agencies to ensure that diversion will not, in fact, result in non compliance with NPDES permits including sanitary sewer overflows.

At no time should either clean water treatment or collection system agencies be compelled to accept a diverted flow from the stormwater system that would jeopardize their ability to comply with the standards to prevent/control sanitary sewer overflows (SSOs) or the standards in its NPDES Permit. If accepted, the sanitary sewer agencies' costs for accepting and treating diverted flows need to be reimbursed by the business or MRP agencies responsible for diverting the approved flow.

Dry Weather, First Flush and Stormwater Diversion from Pump Stations

The MRP directs permittees to work with clean water agencies to evaluate the feasibility of diverting certain stormwater flows to the sanitary sewer system and to conduct limited pilot projects to divert dry season flows from "...industrially-dominated catchments where elevated PCB concentrations are documented. BACWA members agencies are concern about these provisions of the TO. They have expressed concern specifically about:

- Structural limitations related to capacity of infrastructure;
- Risk of maintaining compliance with the NPDES Permit; and
- Risk of maintaining compliance with the Waste Discharge Requirements regarding controlling Sanitary Sewer Overflows (SSOs).

In anticipation of the adoption of this permit with the section C.11.f. and C.12.f; BACWA has initiated a White Paper to review all the technical, institutional, water quality, operational and financial issues related to this specific type of diversion. Our consultant has begun work and we expect to have a product by the fall of 2009. The scope of this White Paper includes three workshops to engage both the Water Board and the stormwater management agencies.

We believe that both a pilot project approach and the White Paper should support the long term understanding of the benefits and costs of diversion of stormwater from pump stations to attain water quality.

Specific Comments on Sections of the Permit

C.5.a.ii. – Legal Authority (Illicit Discharge Detection and Elimination)

Issue: MRP agencies are required to have adequate legal authority to address stormwater and non-stormwater pollution; several examples are identified, with the first being sewage. This implies that stormwater agencies are being given legal authority over public sanitary sewers. This reference to sewage does not distinguish between sources originating from a private system versus a sanitary sewer system operated by a public agency. SSOs from public agencies' sanitary sewer systems are adequately regulated by federal and state agencies, and potentially third party lawsuits, under the Clean Water Act and California laws. The MRP should not create another layer of regulatory oversight at the local level for the public sanitary sewer agencies.

Recommendation: Modify the text to clarify that the legal authority for Permittees to regulate sewage as a pollutant under the MRP is limited to releases from private owned and operated laterals and collection systems.

C.11.d.ii. and C.12.d.ii. – Pilot Projects to Evaluate and Enhance Municipal Sediment Removal and Management Practices (for Mercury and PCBs)

Issue: Several management practices are identified to control potential mercury and PCB sources of pollutants including "...consideration of street flushing and capture, collection or routing to the sanitary sewer as a potential enhanced management practice in coordination and consultation with local sanitary sewer agency." Other pollutants (e.g. copper from brake pads, dioxin compounds from air deposition) would be controlled by this alternative management practice and potentially diverted to sanitary sewer systems. The discharges from street flushing activities are controllable if special attention is paid to timing the discharges to occur when capacity exists in the sewer collection system. BACWA member agencies may ask that pretreatment be specified to remove pollutants (e.g. solids separation). If this alternative management practice becomes widespread, BACWA will want to ensure that NPDES permits are modified to incorporate allowances for the additional removal of pollutants overall.

Recommendation: No modifications required to current MRP text. Consider issues identified above in order to facilitate acceptance by BACWA member agencies.

C.13.a.i. Manage Waste Generated from Cleaning and Treating of Copper Architectural Features, Including Copper Roofs, during Construction and Post-Construction

Issue: In the last year the site specific standard for copper was adopted. This requires a copper action plan to be developed and implemented across the region to reduce the discharge of copper to the sanitary sewers. BACWA and BAPPG are actively working with plumbers and through public information to eliminate sources of copper. BACWA is concerned that this provision will add not reduce copper to our sanitary systems. The MRP text has been modified to instruct Permittees to develop BMPs on how to manage the wastes generated from post-construction activities. This specific provision will add to the work load of BACWA member agencies to ensure that MRP

agencies in their service area coordinate messages about proper waste management from construction and post construction activities. Proper waste management might include collection of the solutions and disposing of them at a household hazardous waste collection facility under a small business program.

Recommendation: Consider adding text to instruct MRP agencies to work with sanitary sewer agencies when developing the disposal BMPs for these wastes.

C.13.b. Manage Discharges from Pools, Spas, and Fountains that Contain Copper-Based Chemicals

Issue: In our survey of BACWA members, we found that there are concerns that the MRP requires stormwater management agencies to direct pool, spa, and fountain water containing copper-based chemicals to the sanitary sewer as a first implementation strategy to prevent discharges to the stormwater system. Our members find that they can accept this discharge if there are specific pretreatment or product controls implemented. BACWA acknowledges that the MRP does reference the need for dischargers to obtain a permit from the POTW (see recommendation below on how to clarify this reference) but a significant risk exists that dischargers of pool water containing copper-based chemicals will not seek a permit before conducting the discharge. Alternatives to copper-based chemicals exist and are commercially available. The MRP implementation strategies should identify these alternatives as a primary strategy and discharge to sanitary sewer systems with a permit as being the last choice.

Recommendation: Add use of non copper-based chemicals as a primary implementation strategy to avoid having to employ more restrictive, and potentially more costly, strategies. Reorder the implementation strategies so that discharge of water with copper-based chemicals to sanitary sewer with a permit is the last option. Modify text to remove reference to connection to sanitary sewer and change it to discharge to sanitary sewer with a permit from the POTW. If the reference to connecting to the sanitary sewer is retained at this location, use the same text C.15.b.iv.(1)(c) to clarify that the connection is to facilitate draining events. These changes will ensure a regional approach rather than relying on each individual clean water agency to develop pretreatment or production restrictions requirements which is time consuming and inefficient.

C.15.b.i.(1)(h) Pumped Groundwater, Foundation Drains, Water from Crawl Spaces Pumps and Footing Drains (Conditionally Exempted Non-Stormwater Discharges)

Issue: This sections text has been modified to reference that Permittees are to encourage discharge from these sources to "...landscape area, bioretention unit, or sanitary sewer if allowed by local sanitary sewer agency." These modifications address many of concerns BACWA previously identified and provide that the MRP agencies defer to clean water collection systems acceptance standards. A significant issue for these sources of water is that the MRP assumes the water is contaminated until proven otherwise when in practice the vast majority of subsurface drains do not intercept contaminated water. If the reference to directing the flows to the sanitary sewer was limited to known or suspected contamination, then it would make better sense to direct the water to BACWA member agencies on a temporary basis **while the source of contamination is abated**. BACWA notes that across the country clean water agencies are asking the public to DISCONNECT

sump pumps and drains because this practice can cause sanitary sewer overflows and basement backups, especially if private sewer laterals are not in good repair.

Recommendation: Retain the text encouraging discharge to landscape areas or bioretention unit. Modify text referencing encouraging discharge to sanitary sewer to limit to cases where contamination is known or suspected **while the contamination is abated**.

C.15.b.ii. Air Conditioning Condensate

Issue: BACWA acknowledges the modified text to reference diversion to the sanitary sewer if allowed by the clean water agency is a positive change. Air conditioning (AC) condensate is unpolluted and does not need to be discharged to the sanitary sewer. It actually serves as a valuable resource that can supplement using potable water for landscape in the dry season. One BACWA member agency, CCCSD has already reviewed construction plans that identified proposed discharges of AC condensate to sanitary sewer drains that needed to be redirected to landscape areas. These revisions to plans would be minimized if the primary standard were to discharge AC condensate to landscape and that discharge to sanitary sewer (if allowed by sanitary sewer agency) was secondary only if discharge to landscape was not an option.

Recommendation: Modify the text in subsection (1)(c) to require discharge from larger AC units to landscape areas and only discharge to sanitary sewer if landscape not feasible and these discharges are allowed by the sanitary sewer agency.

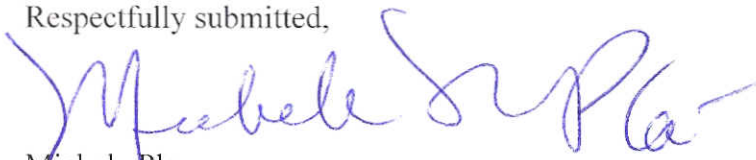
C.15.b.i.(1)(d) Conditionally Exempted Non-Stormwater Discharges, Required BMPs/Control Measures

Issue: This condition requires water samples to be analyzed by methods that are not approved Water/Wastewater methods listed in 40CFR Part 136 (e.g. USEPA Method 8260 is a solid waste analytical method). In the wastewater field, use of methods that are not approved Water/Wastewater methods can result in non-compliance for the agency either using them, or allowing them to be used in a self-monitoring program.

Recommendation: Specify that water samples used to demonstrate compliance be analyzed using approved Water/Wastewater methods.

BACWA appreciates the opportunity to provide comments on the MRP. Please feel free to contact me if you have any questions or would like additional information.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michele Pla". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michele Pla
BACWA Executive Director

cc: BACWA Executive Board
Robert Cole, BACWA Permits Committee Chair
Lila Tang, Regional Water Board