



Memorandum

TO: TRANSPORTATION AND ENVIRONMENT COMMITTEE

FROM: John Stufflebean

SUBJECT: SEE BELOW

DATE: 01-25-08

Approved

Date

1/28/08

SUBJECT: REPORT ON PROCESS FOR THE DEVELOPMENT AND ADOPTION OF THE MUNICIPAL STORMWATER NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT

RECOMMENDATION

It is recommended that the Transportation and Environment Committee:

1. Authorize the submission of written technical and legal comments by February 29, 2008 to the San Francisco Bay Regional Water Quality Control Board (Water Board) concerning the Water Board's Tentative Order for a municipal regional stormwater NPDES permit (Regional Permit), dated December 4, 2007; and
2. Authorize City participation in Water Board public hearings related to the adoption of the Regional Permit, including the March 11, 2008 hearing, including presentation of testimony and comments; and
3. Direct staff to work with the Mayor's Office to identify representation from the City Council to address the Water Board concerning the Regional Permit.

OUTCOME

Approval of this recommendation will provide direction to staff and the Attorney's Office for the submission of written technical and legal comments from the City to the Water Board on the Regional Permit for stormwater discharge, and will ensure that the Water Board is aware of City concerns with the Tentative Order. This recommendation directs that City comments on the Regional Permit focus on the City's goal for a permit that is beneficial to water quality and our community; feasible to successfully implement; and reasonable as a regulatory tool. It will also provide opportunity for Council to directly communicate City concerns and goals to the Water Board. Ultimately this recommendation will help guide program enhancements to improve the condition of local creeks and the Bay.

EXECUTIVE SUMMARY

Stormwater flows are conveyed without treatment to local streams and ultimately to the Bay through the storm sewer system. The Federal Clean Water Act requires the City to operate under an NPDES stormwater municipal permit for the discharge of stormwater to surface waters via the City's storm sewer collection system.

The next generation of the stormwater permit is being developed as a Regional Permit for municipal stormwater. The Tentative Order for the permit was released by the Water Board on December 4, 2007, and is anticipated to be adopted in spring 2008. The Tentative Order, Fact Sheet, and all related documents are available at the Water Board's website for the Regional Permit: <http://www.waterboards.ca.gov/sanfranciscobay/mrp.htm>. Comments are due to the Water Board on February 29, 2008, and a hearing has been scheduled for March 11.

This Tentative Order is more prescriptive than previous permits and includes stringent requirements to implement programs designed to minimize pollutants to creeks. The Order proposes continuing key elements, with expanded scopes and extensive data management and reporting requirements. The Tentative Order also proposes expanded and prescriptive water quality monitoring and control programs to address a host of pollutants of concern. While several of the proposed provisions are well aimed to improve water quality, the aggregate would place a considerable strain on City resources, particularly given the storm sewer infrastructure improvements that the City will also need to address during the five-year time frame that will be covered by the Permit.

Key Elements of the draft Permit that target improvements in water quality include:

- Promotion of regional collaboration for program implementation
- Continued education and partnership with the community on watershed issues
- Phased expansion of treatment and flow control measures on additional projects
- Robust inspection program to ensure sufficient operation and maintenance of treatment measures on new development
- Prioritized approach on the oversight of construction sites
- Continued implementation and promotion of integrated pest management

Several requirements in the draft Permit would be unreasonably costly and offer questionable returns in water quality benefit. These include:

- Treatment controls on trails and during road rehabilitation
- Shifting of storm drain inlet cleaning to dry season only
- Inspection of mobile businesses in the field
- Inspection of industrial facilities directly regulated by the Water Board
- Duplicative control measures for trash
- Monitoring and benchmarks for potable water discharges from hydrants and leaks

- Excessive data management and reporting

While it is evident that there is value in and strong regulatory drive for communities to augment stormwater management efforts, the aggregate of proposed requirements do not reflect Water Board priorities and are too extensive to accomplish within a five-year permit term. The permit language is too prescriptive and does not provide municipalities with flexibility to implement their stormwater programs pragmatically and efficiently.

The cost to implement the Tentative Order as proposed well exceeds currently available and projected funds. The estimated five-year cost to comply with the Tentative Order exceeds \$35M and includes significant impact to the Storm Sewer Fund and the Water Utility Fund, as well as a moderate impact to the General Fund. This estimate does not include the costs associated with the provisions for treatment controls on trails and during road rehabilitation; the capital costs of rehabilitation of bridge crossings and culverts in rural areas; and the unpredictable cost of additional studies or activities that may be triggered by monitoring results.

Staff is seeking direction to submit formal comments to the Water Board and to have Council representation participate in the public hearing process for the Tentative Order.

BACKGROUND

Water enters our City storm sewer system through approximately 29,000 storm drain inlets and flows untreated to the nearest creek or river and ultimately to the San Francisco Bay. Also called urban runoff, this water is comprised of rainfall, irrigation water, and other water used outdoors. It collects pollutants as it flows across rooftops, sidewalks, driveways, streets, and landscaping.

The Federal Clean Water Act requires the City to operate under an NPDES stormwater municipal permit for the discharge of stormwater to surface waters via the City's storm sewer system. San José is currently subject to a stormwater permit issued to the Santa Clara Valley Urban Runoff Pollution Prevention Program (Program), a collection of 15 agencies in Santa Clara County whose land area drains to South San Francisco Bay. The current permit expired on February 21, 2006 and was administratively extended by the Water Board. Water Board staff propose to replace current countywide municipal stormwater permits with a Regional Permit for all 77 Bay Area municipal agencies, in an effort to standardize stormwater requirements in the region.

The effort to develop the Regional Permit has been a journey of more than two years with City staff actively participating as a stakeholder. The Water Board released two Administrative Drafts of the proposed Regional Permit - the first in October 2006 and the second in May 2007. Staff provided overviews of the first draft to Council on February 27, 2007, to the Transportation and Environment Committee on April 2, 2007, and at the April 20, 2007 Joint Council-District Study Session. Staff also provided an overview of the second draft via an Informational Memorandum in June 2007.

The Tentative Order was released by the Water Board for review on December 4, 2007. This is the first “formal” version of the proposed Permit, meaning that its release prompts a public hearing and Water Board staff is for the first time required to respond specifically to the comments received on the Tentative Order. Written comments are due to the Water Board on February 29, 2008, and a public hearing is scheduled for March 11, 2008.

ANALYSIS

The City operates a robust multi-departmental stormwater runoff program comprised of a variety of elements that minimizes pollutants in stormwater runoff and in the City’s creeks and rivers. The City’s current program is based primarily on the existing NPDES permit and regional efforts such as the Watershed Management Initiative. Additionally, the stormwater program supports the City’s Green Vision and the United Nations Urban Accords by improving water quality in the City’s storm drains, creeks, rivers, and ultimately the Bay.

The current stormwater permits held by various Bay Area counties differ somewhat in their content and have been on different cycles for adoption and renewal. The Water Board is seeking to now cover 77 municipal dischargers in the Bay Area under a single permit, prompted by an interest to streamline and strengthen permit oversight and supported by concerns from municipal permittees (including San José) that the various permitting requirements and timeframes have resulted in an uneven playing field across Bay Area counties.

The Tentative Order proposes a permit that is far more prescriptive than past permits. Existing stormwater permits give broad requirements about what elements must be included in stormwater programs and require that performance standards for those programs be developed locally and submitted to the Water Board. The proposed Regional Permit includes specific performance standards for program elements as explicit provisions in the permit. The intended result is greater clarity and consistency on program implementation across the region and increased accountability of local cities for compliance with stormwater requirements. Although this approach will provide greater consistency, it also reduces the flexibility of individual agencies to fashion programs that take into account local conditions.

The Tentative Order proposes continuing key elements, with expanded scopes and extensive data management and reporting requirements. The Tentative Order also proposes expanded and prescriptive water quality monitoring and control programs to address a host of pollutants of concern. In evaluating the various provisions, staff considered the impact to City operations and resources, alignment with regulatory requirements, and the prospect that the proposed provision would support improving water quality conditions in local creeks and the Bay. While staff considers that several of the proposed provisions are well aimed to improve water quality, the aggregate would place a considerable strain on City resources, particularly given the storm sewer infrastructure needs that the City also needs to address.

The following is an overview of the Tentative Order provisions, including a brief analysis of the implications of implementing these provisions (including estimated budget impacts) and recommendations concerning the City's position for comments to the Water Board. Detailed written comments will be developed based on the Council's direction, to be submitted to the Water Board by February 29, 2008.

MUNICIPAL MAINTENANCE [Provision C.2]

This provision addresses a wide variety of municipal activities including street sweeping, storm drain system operation and maintenance, corporation yard activities, road maintenance, and concrete installation. The City's municipal separate storm sewer system offers little if any treatment, so maintenance provides a critical opportunity to protect water quality in local creeks.

The Tentative Order proposes significant changes to key operations including storm drain inlet cleaning. The estimated annual impact of the new inlet cleaning requirement alone is \$650,000 in addition to investments in equipment. Requirements related to rehabilitating some infrastructure in rural areas would result in unknown additional capital costs. Additional resources would also be needed to address proposed requirements related to pump station cleaning, expanded street sweeping, graffiti removal, and implementation of best practices at corporation yards. For those operations funded by the General Fund, the estimated first year cost is nearly \$600,000.

Recommended Position

City staff is very concerned about the cost implications of meeting the proposed requirements. Of particular concern is the requirement to conduct annual storm drain inspection and cleaning on all inlets prior to the rainy season. The City currently inspects and cleans as needed each inlet once annually typically between September and February. The City's current strategy has the benefit of capturing the inevitable leaf debris of autumn. Requiring the City to conduct this work only during the dry season will result in significant additional cost for storm preparation and response in the wet season. The total additional cost to meet this requirement as proposed is \$650,000 per year. Staff recommends that the City request that the language be revised to allow flexibility for the timing and prioritization of cleaning operations.

City staff is also concerned with language in the draft Permit related to rural public roads and the requirement to rehabilitate existing culverts and bridge crossings. If this requirement is interpreted to require a new capital program for rehabilitation of culverts and bridge crossing in rural public roads, it will have significant capital costs, which most likely will need to be born by the General Fund. The City urges deletion of the phrase "rehabilitate existing" or clarification that the provision does not require the City to undertake rehabilitation, but only to incorporate the specified design criteria when doing a rehabilitation project.

City staff also recommends that the Water Board be requested to conform the requirements related to sidewalk maintenance and pavement washing with the Bay Area Stormwater Management Agencies Association Mobile Surface Cleaner program that is referenced in the draft Permit, and that consistent language be used to describe the goal of implementing best practices during maintenance as the “prevention of pollutant discharges” versus the prohibition of all wash waters to storm drains, which is sometimes impractical.

NEW DEVELOPMENT AND REDEVELOPMENT [Provision C.3]

This provision requires that stormwater treatment and detention be integrated into site design of new and redevelopment projects. These principles link well to the City’s Green Vision goal for sustainable development into the General Plan and provide an important opportunity to address water quality protection as we build and rebuild in our community. These requirements became much more robust in the 2001 stormwater permit and have been a significant challenge to implement.

The Tentative Order proposes requiring treatment controls on smaller projects and for additional project types, and requires flow controls on projects in a larger geographic area than the current program. It also specifies source control and site design measures to minimize polluted stormwater runoff from entering the storm drain system. The provision specifies the scale of inspections to be conducted on these treatment measures and requires significant data collection and reporting of inspection results. Staff estimates that modest additional resources will be needed to address these requirements and to continue to update guidance documents and other tools for the development community.

Recommended Position

Many municipalities, including San José, hold the position that the Regional Permit should retain the current level of implementation for new and redevelopment requirements, because experience with these measures remains in its infancy for local jurisdictions. The City continues to support this as the preferred approach. However, staff acknowledges and appreciates that the Tentative Order represents a sincere effort by Water Board staff to reflect the concerns and interests of a broad array of stakeholders based on the past two years of discussion.

Staff’s greatest concern lies with the application of treatment measures to trails and road rehabilitation projects and it is recommended that the City request that these categories be exempted from the provision. The Tentative Order would significantly impact San José’s trail plan. As part of its Green Vision goals, San José is currently developing a plan to add an additional 60 miles of trails over the next 15 years. The vast majority of these trails are planned to be impervious, 12 feet wide (to meet design guideline specifications required by funding sources as well as ADA compliance), and within 50 feet of top of bank. Requiring treatment, e.g., in the form of swales or plantings, is not possible because the trail land is typically not owned by the City and most of the trails require all

available space to meet the guidelines for 12-foot width. Switching to pervious materials will substantially increase the cost to build the trails by an estimated \$60M (increasing costs from \$265M to \$325M). City staff recommend that the Water Board be asked to recognize that trails offer an overall benefit to water quality by providing potential alternative transportation options and encourage interface between the community and the watershed, and that trails be exempted from this provision.

Additionally, the Tentative Order uses definitions that place limitations on the alternative compliance options which may affect redevelopment. City staff recommends the City request deletion of the reference to one parking space per unit from the definition of Transit Oriented Development or that an appropriate definition from regional, state, or federal authorities be substituted.

INDUSTRIAL AND COMMERCIAL SITE CONTROLS [Provision C.4]

The Industrial and Commercial program is an established inspection program for industrial and commercial businesses to ensure that proper practices are employed to prevent stormwater pollution. This program was reviewed as part of a program audit by consultants to the USEPA in December 2003 and received a favorable evaluation.

The Tentative Order proposes expansion of the program by increasing the number and types of businesses subject to inspection. This requirement would dramatically increase the number of businesses subject to inspection and substantially increase the City's inspection workload. Additional resources would be needed to address staffing needs and the data system changes needed to manage the program.

Recommended Position

Staff is very concerned that the level of expansion proposed for this program is not consistent with any Water Board priority, such as a TMDL, and does not provide substantial water quality benefit. Of greatest concern is the requirement to inspect mobile businesses - such as portable sanitary services, mobile cleaners, landscapers, and pool cleaners - during their field activities. The practicality of inspecting field activities of mobile businesses and other new categories would present challenges in daily work schedules and would be resource intensive. The City's current program includes inspection of several of these categories at their business address and at a minimum, outreach materials are provided to educate on appropriate field practices. Failures to employ best practices are addressed when reported through the City's complaint response program. The City holds that this is a more effective use of resources than a field-based inspection program for mobile services and estimates that field-based inspections would cost an additional \$500,000 annually. This cost would either have to be born by the General Fund, or a regulatory (permit) program enacted to recover the costs of these inspections from these businesses.

This City is also concerned that the Tentative Order potentially expands the number of industrial facilities that would need to be inspected and regulated to include facilities that are already regulated by the Water Board. This constitutes a shift of state responsibility to local agencies and raises resource concerns.

Staff also recommends that the City request deletion of the requirement to report inspection results at the transaction level. For San José, this would result in the reporting of inspections for more than 4,000 facilities, in detail, each year, for just this program element. This excessive reporting requirement is woven through many other programs as well, such as provisions C.5 and C.6.

ILLICIT DISCHARGE DETECTION AND ELIMINATION [Provision C.5]

This is an established inspection program to eliminate and prohibit unauthorized discharges into the City's storm sewer system. Staff comments to the Water Board will seek to clarify some of the language but staff expects no significant operational impacts.

Recommended Position

In addition to clarifying some language, staff recommends that the City request that the excessive reporting requirements be removed. Complete records are available for review upon request and summary data in annual reports is sufficient to demonstrate program performance.

CONSTRUCTION SITE CONTROL [Provision C.6]

This is an established inspection program aimed at construction sites with the goal of preventing sediment and other pollutants from entering the storm sewer system and our local creeks. In general, the provision supports the City administering an effective program. Because sediment can often carry other pollutants of concern, construction inspections have a strong link to protecting water quality. This permit will have moderate operational impacts to this program, with an addition of one FTE for additional inspection, enforcement, and reporting.

Recommended Position

Staff generally supports the provision. Staff is working with the City Attorney's office to ensure that the enforcement mechanisms specified in the Tentative Order can be legally implemented and may request that references to stop work orders and withholding inspections be removed. Additionally, the reporting template is inconsistent with the Permit language in a number of areas. In particular, the reporting template should not include any inference that all "screening level" inspections are to be tracked. The Tentative Order clarifies that this is the case only when a violation is discovered during such an inspection and the City believes that degree of tracking is sufficient. Staff also reiterates its concern about excessive reporting and recommends that the City request deletion of the requirement to report inspection results at the transaction level.

PUBLIC INFORMATION AND OUTREACH [Provision C.7]

City staff acknowledges the value of outreach and education in engaging the community on environmental protection and achieving successful behavior change. The City has a robust and multi-faceted public information and public participation program, utilizing many different outreach methods to best deliver stormwater pollution prevention and watershed protection messages. The Tentative Order prescribes continuing the variety of outreach approaches and much of the work will continue to be achieved through inter-agency collaboration. The Tentative Order also requires a specific performance standard for marking storm drain inlets, such as those currently used by the City which include “No dumping – flows to nearest creek” and a phone number to report dumping incidents. Eighty percent of the City’s storm drain inlets will be required to be marked and maintained for legibility. Staff estimates that the requirement for inlet marking will cost \$150,000 annually.

Recommended Position

Staff recommends that the City support this provision and looks forward to continuing the strong collaborative efforts built from previous permits.

WATER QUALITY MONITORING [Provision C.8]

For Santa Clara County, the monitoring program is an ongoing program investigating pollutants, sources of pollutants, and trends in water quality in our local creeks and waterways. It is implemented through the countywide stormwater program. The monitoring requirements in the Tentative Order are dramatically more prescriptive than the 2001 permit, and include a variety of monitoring strategies. The immediate costs are relatively moderate, but of great concern is the use of triggers, which could require additional activities based on monitoring results. For example, water toxicity results could require costly follow up Toxicity Identification Evaluations which aim to attribute toxicity to a specific contaminant.

Recommended Position

The inclusion of costly, unpredictable triggered actions will make managing program resources untenable. Staff recommends that the City request that the use of triggers be deleted or be clearly preceded by additional efforts to confirm water quality results and to determine the most appropriate next steps. Also of note is the inclusion of storm-event sampling, which is logistically difficult, expensive, and will provide limited water quality information.

PESTICIDES TOXICITY CONTROL [Provision C.9]

This provision directs the City to continue efforts to reduce the environmental effects of pesticides used by the municipality and community at large. Tactics include use of Integrated Pest Management (IPM) in City operations, outreach and training to pesticide applicators and residents, and regional efforts to foster coordination amongst various regulatory bodies that govern pesticide use. The resource impacts are expected to be moderate.

Recommended Position

Staff concurs that this provision is generally consistent with the Basin Plan Amendment related to pesticide toxicity. Requests to clarify some language will be included in the detailed comments.

TRASH REDUCTION [Provision C.10]

Reducing the impact of trash in waterways is a new provision in this Tentative Order and was not explicitly included in previous permits. The City has already begun addressing trash impacts to creeks through a wide array of activities including site assessments, sponsorship of creek clean-up events, partnership with the Santa Clara Valley Water District, community outreach, and piloting the use of trash capture devices in storm inlets. Nevertheless, the new Trash Reduction provision represents a dramatic impact to City resources.

The Tentative Order would require the City to identify areas totaling 10% of the City highly impacted by trash, and to implement additional maintenance practices such as increased street sweeping and increased inlet cleaning in those areas. The Tentative Order would also require that in half of that area the City install permanent trash capture devices such as storm drain screens. The preliminary estimate to meet this requirement over the five-year permit term is approximately \$11M, which is nearly one-third of the estimated additional costs associated with the new Permit. The proposed approach is exceptionally costly.

Staff also finds that some of the prescribed solutions are duplicative of one another and are thus not cost-efficient. An example is the requirement to concurrently implement enhanced street sweeping and increased inlet cleaning. This layers on multiple practices without evidence to support the need. The Tentative Order also requires that these practices be done for a limited time until the required permanent “full capture” solutions are put into place. It is wasteful to make short term changes to large scale operations.

Reducing the impact of trash on local creeks is an important endeavor for the environment and our community. Addressing trash and litter impacts is compatible with the City’s Zero Waste goal for solid waste and the Green Vision goal to effectively divert wastes. The same principles of thoughtful handling of waste streams, accessible disposal alternatives, and extended producer responsibility all support the reduction of trash impacts to our local creeks. The impact of litter in creeks is also a visible problem. In fall of 2007, Save the Bay, a local and well established advocacy group, named the *Top Ten Trash Hot Spots* in the Bay Area. Both the Guadalupe River and Coyote Creek were included in the ten. The Tentative Order gives high priority to trash control and includes a requirement to prepare a long-term trash abatement plan; this is an indication that numeric targets for trash may be pursued by the Water Board in the future.

Yet, the prescribed effort included in the Tentative Order is not a cost-effective solution that can be managed solely by local municipal resources. It is unlikely that the scale of effort prescribed will be achievable by most if not all the permittees given the costs.

Recommended Position

Staff urges that City comments focus on Trash as an important priority for new programs and that any large scale efforts to control trash move forward methodically, cost-effectively, and only when accompanied by adequate resources to ensure their success. Staff recommends that the City prepare to undertake an expanded trash control program to reduce the impacts of trash in creeks as part of the City's stormwater program, taking into consideration the proposed solutions included in the Tentative Order. Staff also recommends that the City collaborate with agencies and organizations regionally to develop a strategy for building the funding necessary to implement the kind of large scale, high impact effort contemplated in the Tentative Order.

MERCURY and PCB CONTROLS [Provision C.11 and Provision C.12]

These two provisions include a diverse set of projects, several of which are intended to address both mercury and PCBs concurrently, since both pollutants tend to bind to sediment. Some of the projects are studies directed at evaluating control measures while others are piloted implementation of control measures in a subset of sites within the region. While some efforts would be conducted via regional collaboration, others are likely to fall upon the jurisdiction for a given site. If the sites are located in San José, these provisions are likely to have multi-million dollar impacts for the City. The provision for PCBs also requires that existing industrial inspection programs include the identification of PCB-containing equipment as part of routine inspection. This is expected to require a moderate increase in staffing.

Recommended Position

Staff is very concerned about the high cost of the collection of requirements included in these provisions and inconsistencies with the PCB TMDL and Basin Plan Amendment (BPA). For example, jurisdictions should not be responsible for abatement on private property but should reasonably limit their responsibility to advocating clean up and prohibiting exposure of the storm sewer system to pollutants from the site. Another example is the requirement to divert storm flows to the sanitary sewer, which is not prescribed in the Basin Plan or TMDLs.

The proposed requirement to divert selected storm flows to sanitary sewers is significant, problematic, and premature. In addition to being beyond the TMDLs/Basin Plan, the provision requires the evaluation of feasibility, but then requires subsequent implementation without regard to feasibility. It is clear that such diversion is likely to be fraught with engineering, financial, regulatory, legal, and institutional challenges which if done improperly could have deleterious effects on water quality. Any such evaluation should be advanced methodically and no implementation of flow diversion should be included in this Permit.

COPPER CONTROLS [Provision C.13]

Although this is an established provision with ongoing control measures, the Tentative Order requires the development of an additional program to prohibit the discharge of washwater from copper architectural features, including copper roofs, to storm drains. This new program may require changes to local ordinances, development of new Best Management Practices (BMPs), and would require enforcement. This provision will make moderate additional demands on existing resources, including a temporary increase in staffing for program development and monetary contributions to regional studies.

Recommended Position

City staff does not believe that the effort to establish and execute a program to prohibit washwater from copper architectural features is commensurate with any water quality benefit achieved by it. Discouraging the use of architectural copper and promoting best practices to manage this source is sufficient. The City also recommends that this provision (and *all* provisions) incorporate adaptive management. For example, if it is demonstrated that a waste stream is not a significant source of copper to the receiving waters for a given jurisdiction, then there should be a provision to adapt efforts to make them commensurate with the potential water quality threat.

PBDE, LEGACY PESTICIDES, AND SELENIUM [Provision C.14]

This provision focuses on developing and implementing a region-wide plan to determine if stormwater runoff is a conveyance mechanism associated with the possible impairment of San Francisco Bay for polybrominated diphenyl ethers (PBDEs), legacy pesticides (such as DDT, dieldrin, and chlordane), and selenium. The ultimate goal is to identify control measures and/or management practices to eliminate or reduce discharges of these pollutants conveyed through storm sewer systems. City staff does not anticipate any operational impacts during this permit cycle.

EXEMPTED AND CONDITIONALLY EXEMPTED DISCHARGES [Provision C.15]

This provision applies to five different discharge types and specifies the condition under which the discharges are allowed to go to the storm sewer system. Requirements to impose conditions on two of the discharge types pose significant potential impacts to City operations and budget.

Recommended Position

Non-stormwater discharges such as pumped groundwater, foundation drains, water from crawl spaces, and footing drains would be required to be permitted by the City and tracked. The cost of monitoring and meeting turbidity, pH, and other discharge criteria would be borne by the discharger. With respect to pumped groundwater, this provision transfers permitting responsibilities from the Water Board to the City. Additionally, this provision includes overly prescriptive monitoring requirements that in many cases would

be cost-prohibitive and could create a situation where more unauthorized non-stormwater discharges occur. Staff recommends that the City request the establishment of a flow threshold and minimum required BMPs in lieu of a new regulatory program.

Proposed requirements imposed on planned, unplanned, and emergency discharges of the potable water systems also will have significant operational impacts on the City. New monitoring requirements would have a significant impact on the routine operations (such as hydrant flushing) of the City of San José Municipal Water System (SJMWS) and would require the City to monitor discharges *and* the receiving waters. Discharge benchmarks for pH, chlorine residual and turbidity are overly prescriptive and in some instances are unrealistic. Meeting these provisions would not only require investment in equipment and personnel, but could affect the utility's ability to conduct essential operations such as hydrant maintenance and main flushing. It is estimated that for SJMWS, the annual impact of implementing the proposed requirements would be \$379,000 with an additional equipment investment of \$364,000. Please note that these operational and financial impacts on SJMWS only represent approximately 12% of citywide impact and do not account for private water providers.

The Tentative Order provides insufficient information to conclude that current practices present a significant threat to water quality. The proposed requirements are expensive, have questionable water quality benefit, and come with serious health and safety concerns. Staff recommends that the Water Board be asked to replace the overly prescriptive and infeasible monitoring benchmarks (for pH, chlorine residual, and turbidity) for both discharges and the receiving waters with BMPs for pollution prevention, consistent with current practice.

GENERAL COMMENTS ON TENTATIVE ORDER

Increased Data Collection & Reporting

Throughout the draft Permit, increased data collection, tracking, and summaries are required for every program element. The increased data collection requires significant modifications to a variety of City databases at considerable cost. The increased data collection also requires additional staff time to enter the data and perform quality control checks. It is not clear that the increased data collection for everything from construction inspections, to the amount of impervious surface, to inlet cleaning, to facility inspections will result in improved water quality or what management objective is being addressed with this effort. Estimates to comply with all data tracking and reporting requirements in the Tentative Order include upfront investments for modification and development of data systems and mapping totaling nearly \$1M in addition to the ongoing costs. Staff recommends that the Water Board be urged to reduce the tracking and reporting requirements so that those resources can be directed to operational and programmatic activities that directly benefit water quality.

Adaptive Management

The draft Permit is overly prescriptive which will not afford permittees the flexibility during implementation. The City recommends that the Permit incorporate the principles of adaptive management in all provisions. Permittees should have the flexibility to redirect resources based on new information about pollutant impacts, sources, and pathways or the effectiveness of prescribed best practices.

Annual Report Form

While City staff appreciates that the original comment period for the Tentative Order was extended, the period was still insufficient to provide a thorough review of the over 100-page Annual Report Form (Attachment L of the Tentative Order) in addition to the Fact Sheet and Permit. Several inconsistencies have been identified between the Permit and the Report Form and there is no direction in the draft Permit on how to interpret requirements in those instances. Staff recommends that the City request that 1) more time be provided for careful review of the template prior to adoption and 2) that the Permit include specific language that states where inconsistencies exist between the permit language and the report form, the Permit language prevails.

Compliance Timelines

The Tentative Order includes many new requirements and in most cases acknowledges that each of those requirements will take some time to put in place. The Tentative Order does not account for the aggregate demands to implement so many initiatives concurrently and to also expand, redirect, or refine established programs. Staff recommends that the City urge the Water Board to phased requirements in to allow time to establish the funding, personnel, and contractual services necessary to implement the requirements.

PUBLIC OUTREACH

City staff will continue to conduct outreach efforts to the stakeholder community, including the development industry to keep consulting engineers, planners and developers aware of stormwater requirements for development projects. Staff has also notified private water companies in San José of the potential impacts of the proposed requirements on their operations. Staff will continue to coordinate with other Bay Area municipalities to refine review of the Tentative Order and evaluation of impacts.

COORDINATION

The Environmental Services Department is coordinating review of the Regional Permit with the departments of Public Works; Transportation; Parks, Recreation and Neighborhood Services; General Services; Planning, Building and Code Enforcement; the Redevelopment Agency; and the City Attorney's Office.

COST AND BUDGET IMPLICATIONS

Staff has reviewed the Tentative Order with the departments affected to evaluate the operational impacts and associated cost implications. The estimated five-year cost to comply with the Tentative Order exceeds \$35M excluding the costs associated with the provisions for treatment controls on trails and during road rehabilitation; the capital costs of rehabilitation of bridge crossings and culverts in rural areas; and the unpredictable cost of additional studies or activities that may be triggered by monitoring results.

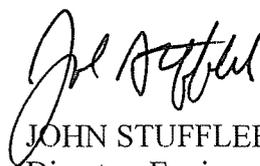
Most programs related to the Stormwater Permit, along with the costs of operating and maintaining the City's storm sewer system, are funded by the Storm Sewer Operating Fund (Fund 446). Certain provisions in the Tentative Order would also affect the General Fund and the Water Utility Fund (Fund 515). An estimate of first year costs is as follows:

Storm Sewer Operating Fund (446)	\$ 2,979,000
General Fund (001)	\$ 591,000
Water Utility Fund (515)	\$ 733,000
<i>Trash Reduction Provision</i> Funding sources not identified	\$ 2,400,000
<i>Mobile business inspections</i> General Fund or new permit program	\$ 625,000
Total First-Year Estimate	\$ 7,328,000

The cost to implement all proposed Regional Permit requirements well exceeds currently available and projected funds. As negotiations for the Regional Permit progress, staff will continue to refine cost estimates and bring forward budget and rate proposals.

CEQA

Not a project.



JOHN STUFFLEBEAN
Director, Environmental Services

For questions, please contact Melody Tovar, Deputy Director, Environmental Services Department Watershed Protection Division, at (408) 277-3892.