

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

STAFF SUMMARY REPORT (Christine Boschen)
MEETING DATE: July 21, 2004

- ITEM: 8
- SUBJECT: **Contra Costa Clean Water Program (CCCWP), Contra Costa County – Second Amendment of Order No. 99-058, NPDES Municipal Stormwater Permit**
- CHRONOLOGY: Municipal Stormwater Permit Reissued – July 1999
First Amendment (New and Redevelopment Control Measures) Adopted – February 19, 2003
- DISCUSSION: In July of 1999, the Board adopted Order No. 99-058, a municipal stormwater permit for the sixteen municipalities, unincorporated County, and Flood Control and Water Conservation District, known collectively as the Contra Costa Clean Water Program (the Dischargers). The permit allows the Dischargers to discharge stormwater runoff to storm drains and water courses within the Dischargers’ jurisdictions, by complying with the permit and implementing the permit’s associated Stormwater Management Plan (the Plan).
- In August of 1999, the San Francisco Baykeeper and Just Economics for Environmental Health filed petitions for review of Order No. 99-058 by the State Water Resources Control Board. After careful consideration, the State Board dismissed the petitions on April 4, 2001.
- In 2001, San Francisco Baykeeper filed a lawsuit challenging the Regional Board’s adoption of the permit. On November 14, 2003, the San Francisco Superior Court upheld the permit on most counts; however, it issued a Writ of Mandate and Statement of Decision (see Appendix D) requiring the Regional Board to amend the permit in compliance with the Court’s Writ of Mandate and Statement of Decision, which held:
1. The permit fails to set forth a monitoring program;
 2. Modifications of the Plan are permit modifications and have to go through a public notice and comment period; and
 3. The Regional Board, not the Executive Officer, must approve substantive modifications to the Plan.
- The attached revised Tentative Order (Appendix A) proposed for the Board’s adoption is to correct the deficiencies found by the Court. Specifically, the Tentative Order amends the permit 1) to specify the type, interval and frequency of monitoring; 2) include clearer language that modifications to the Plan will be done as permit modifications in accordance with federal regulations, including public notice and comment procedures; and 3) remove language in the permit allowing for the Executive Officer to modify the permit. Since the Tentative Order is to comply with the Court’s Writ of Mandate, staff recommends that the Regional Board adopt the

Tentative Order. The Regional Board is required to return to the Court with the adopted Order to demonstrate its compliance with the Court's Writ of Mandate.

The Tentative Order was public noticed in February 2004, and Baykeeper commented upon it. Staff's response to Baykeeper's comments is included in the packet, as Appendix C-1. Changes were made to the Tentative Order in May 2004 and it was re-noticed and re-circulated for public comment. Two comment letters were received: the first letter, received from the dischargers, consisted of editorial comments—minor changes have been made to the Tentative Order where applicable. The second was a letter from the Alameda Countywide Clean Water Program, supporting adoption of the Tentative Order. Staff's responses to comments from the second public comment period are included in Appendix C-2.

This Tentative Order is solely to comply with the Writ of Mandate. Separate amendments to the permit are being brought to the Board in Agenda Item 10. The amendments in Item 10 primarily reflect prior administrative approvals of changes to the Plan, which have in effect been invalidated by the Court for lack of a public process and thus need to be "re-adopted" by the Board to approve existing efforts by the Program. Two separate amendments to the permit are being proposed to keep the issues distinct (i.e., compliance with the Court's Writ of Mandate versus housekeeping changes to the permit and Plan to formally approve existing efforts by the Program).

The Tentative Order before you at this time only applies to the current permit cycle, which began in July 1999, and ends this July 2004, but will be administratively extended until the entire permit is reissued. The target date for the reissuance (which was delayed by the need to bring this current set of proposed amendments) is Summer 2005, at which point the requirements for the next five-year permitting phase will be decided. Over the next several months, staff will engage the Dischargers and other stakeholders in a full public process towards establishing requirements for the next cycle of the Program's permit. In this process, special effort will be made to consider Baykeeper's concerns and involve them in the discussions.

Staff recommends adoption of the Tentative Order.

RECCOMEN-
DATION:

Adopt the Revised Tentative Order

File No. 1538.01 (CEB)

Appendices:

- A: Tentative Order
- B: Fact Sheet
- C: Response to Comments
- D: Writ of Mandate and Statement of Decision