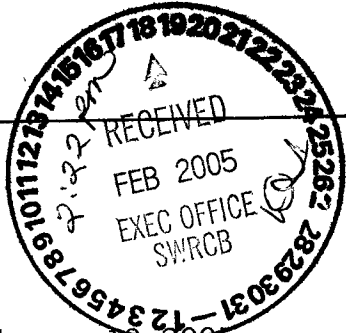


SPECIAL HEARING  
2/3/05  
cc: BD, DI, DWQ  
e-cys: BD, CC, HMS, TH, CMW



115. City of Sunnyvale

February 18, 2005

ORIGINAL SENT VIA EMAIL ON 2/18/05

Ms. Debbie Irvin  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor (95814)  
P.O. Box 100  
Sacramento CA 95812-0100

Subject: Solid Waste Management Facilities and the Re-issuance of the National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities Draft dated December 15, 2004 (Draft Permit)

Dear Ms. Irvin:

The purpose of this letter is to provide the City of Sunnyvale's comments with respect to the Re-issuance of the National Pollutant Discharge Elimination System General Permit for Discharges of Storm Water Associated with Industrial Activities Draft dated December 15, 2004 (Draft Permit).

The City of Sunnyvale has reviewed the subject Draft Permit. We have also reviewed comments provided to the State Water Resources Control Board (SWRCB) by the Los Angeles County Sanitation District, including associated attachments, such as the legal comment letter by Ms. Katharine Wagner of Downey Brand LLP. The City is in general agreement with their very well-articulated comments.

The City's most serious technical concern is the proposed use of the United States Environmental Protection Agency (USEPA) storm water quality "benchmarks". An exceedance of the USEPA benchmarks is proposed to trigger a requirement for corrective action. This application of the USEPA benchmarks in effect treats them as effluent limitations. This is of great concern to the City, as we support the existing non-numerical, best management practices approach to storm water monitoring. The "Notice of Public Hearing" dated 5/9/03 that appears to be the transmittal document for the Draft Permit states that "The SWRCB is specifically interested in receiving comments on whether practical improvements can be made to the monitoring program to better demonstrate whether a facility's storm water discharge is in compliance with

G:\DPWUSERS\wtheykens\Stormwater\Correspondence\Proposed NPDES Revision Comments Rev1.doc

ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707  
TDD (408) 730-7501

♻️ Printed on Recycled Paper

effluent limitations and receiving water limitations". Also, a stated objective contained in the Monitoring Program and Reporting Requirements section of the Draft Permit is "To indicate whether storm water discharges and authorized non-storm water discharges satisfy the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of this General Permit". Although the General Permit does not explicitly state the USEPA benchmarks will now be State effluent limitations, the manner of their proposed use leaves no doubt that this is in fact the case.

Effluent limitations are appropriate for water samples that are truly representative of the bodies of water from which they are sampled (surface water or groundwater) due to the usual homogeneity of the "body" (medium) being sampled. The expectation of homogeneity does not, and cannot, exist for storm water samples for several reasons.

There are significant differences between areas that flow to various storm water discharge points. Besides the variations in the area and topography of drainage areas, their surfaces may be paved, unpaved ground, landscaped, etc. Samples collected from a one-acre drainage area that is relatively flat and paved, and those collected from a five-acre, non-vegetated, unpaved site that is on a 20% slope, will be very different in nature. To apply the same effluent limitations to samples collected from these areas is not reasonable, or technically defensible.

Another variable is the amount of rainfall that falls immediately prior to and during sampling, as well as how close to the beginning of the storm event samples are collected. Periods of more intense rainfall, and resulting higher rates of flow within a watershed, will invariably result in the transport of more material (solid and dissolved) to the discharge (sampling) point.

Analyses required for storm water have a heavy emphasis on the amount of Total Suspended Solids (TSS) and Total Dissolved Solids (TDS) contained within a storm water sample. The amount of heavy metals, and other constituents that readily adsorb to soil particles, varies directly with the amount of sediment entrained within a sample. The rate of rainfall, and the directly associated velocity of runoff, therefore has a significant impact on the amount (concentration) of materials contained in a sample. The higher energy that results from greater flow volume and velocity results in greater sediment transport.

With this amount of variability, there can be little to no expectation of reproducibility or consistency between analytical results for samples collected at different times from the same sample location, and even less between different sampling points. This variability is the likely reason that the USEPA cites and uses "benchmarks" instead of effluent limitations. The use of USEPA's benchmarks as effluent limitations, as is in essence proposed by the SWRCB in this Draft Permit, is not scientifically defensible. The City recommends that this approach to the USEPA's benchmarks be totally reconsidered by the SWRCB, and another method of evaluating samples be proposed, and the revised Draft Permit be circulated for public comment. As stated previously, the City does not support the use of numerical standards for storm water at this time.

The City recognizes that the regulation of storm water presents some unique challenges, and appreciates the SWRCB's solicitation of input in an effort to finalize the General Permit. Based on our limited review of the Draft Permit and the comments submitted by the Los Angeles County Sanitation District, it would appear that the State may be on the verge of instituting revisions to the Draft Permit that would require significant additional expenditures for Dischargers to remain in compliance with the General Permit, without a commensurate positive effect on water quality.

It is the City's judgment that there are some serious issues in the current draft of the General Permit, and we ask that the SWRCB take the time required to address these concerns, as we will all be living with the new permit for a good many years. The City anticipates that the current Draft Permit will undergo significant revision, and recirculation for public comment. We would appreciate being notified of the status of this effort, and look forward to an opportunity to review and comment on the next draft

Ms. Debbie Irvin  
February 18, 2005  
Page 4

Please feel free to contact Mark Bowers at (408) 730-7421 if you have any questions.

Very Truly Yours,

A handwritten signature in black ink that reads "Marvin A. Rose". The signature is written in a cursive style with a large, prominent initial "M".

Marvin A. Rose  
Director of Public Works

cc: Mark Bowers, Solid Waste Division  
Lorrie Gervin, WPCP  
Rich Gurney, SMaRT Station  
Rick Navarro, Raisch Products