

APPENDIX B
Regulatory Background

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The Urban Runoff Management Plan (URMP) has been crafted to comply with the regulatory requirements for developing and implementing an urban runoff program. The following sections summarize the federal and state regulatory mandates and guidance for urban runoff pollution prevention and control.

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FEDERAL LAW AND REGULATIONS

Clean Water Act. The federal Clean Water Act was amended in 1987 to require that urban runoff discharges from municipal separate storm sewer systems, such as those operated by the Santa Clara Valley municipalities and the Santa Clara Valley Water District, obtain coverage under a nationwide surface water permit program called the National Pollutant Discharge Elimination System (NPDES).¹ The U.S. Environmental Protection Agency (EPA) delegated to the State of California, and specifically to the local San Francisco Bay Regional Water Quality Control Board (Regional Board), the authority to adopt and enforce these permits in the Bay Area.

In 1990, the USEPA promulgated regulations specifying how municipalities apply for municipal urban runoff (also called storm water) NPDES permits. According to federal regulations, a municipal separate storm sewer system “means a conveyance or system of conveyances (including roads with

¹ Federal Water Pollution Control Act, as amended by the Clean Water Act. Section 402(p).

drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains...)"². The discharges of urban runoff from these municipal separate storm sewer systems are regulated by the NPDES permit and addressed by the Program's URMP.

The federal Clean Water Act's 1987 amendments require municipalities to effectively prohibit non-stormwater discharges to municipal separate storm sewer systems and to implement controls to reduce pollutants in stormwater to the maximum extent practicable. The URMP focuses on complying with these two essential requirements.

In addition, in issuing NPDES stormwater permits, the State of California has exercised its discretion to require that urban runoff discharges address the attainment of water quality standards through implementation of Urban Runoff (Storm Water) Management Plans. In August 1996 EPA released its "Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits."³ The policy states that "due to the nature of storm water discharges, and the typical lack of information on which to base numeric water quality-based effluent limitations (expressed as concentration and mass), EPA ... uses best management practices (BMPs) in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards." The policy only applies to permitting actions, but USEPA expressly encourages states to adopt similar policies in issuing storm water permits. The Regional Board's Basin Plan endorses a similar approach, as is further described below.

Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)⁴. These amendments added Section 6217, "Protecting Coastal Waters," to the Coastal Zone Act. The new section requires California and other coastal states with coastal zone management programs to develop and implement Coastal Nonpoint Pollution Control Programs. The purpose of these programs is to strengthen the links between Federal and state coastal zone management and water quality programs in order to improve state and local

² 40 CFR 122.26(b)(8)

³ Environmental Protection Agency (September 1996). Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits EPA 833-D-96-0001

⁴ Coastal Zone Act Reauthorization Amendments of 1990, Section 6217(a). [16 USC 1455b]

efforts to manage land use activities that degrade coastal waters and coastal habitats. The Coastal Nonpoint Pollution Control Program covers all of Santa Clara County.

The California Coastal Commission and State Board developed their “Coastal Nonpoint Pollution Control Submittal” (Submittal) in September 1995 for approval by USEPA and the National Oceanic and Atmospheric Administration (NOAA).⁵ Because the statewide nonpoint source management program is presumed to have adequate mechanisms for addressing nonpoint source problems, “California has chosen not to develop a separate program for the coastal watersheds but rather will implement a statewide nonpoint source program that addresses the requirements of Section 6217, CZARA.”⁶

A key feature of the Submittal is its emphasis on preventing pollution of runoff by forming partnerships among agencies at all levels of government and with the public. It is primarily through these partnerships that land-based strategies for controlling nonpoint pollutant sources are being developed and implemented. This approach is particularly suitable since the State Water Board and Regional Boards do not have direct land use authority.

The Submittal describes the management of the following nonpoint sources of pollution: 1) agricultural erosion control; 2) confined animal facilities; 3) nutrient management; 4) pesticide management; 5) grazed lands; 6) irrigated agriculture; 7) silviculture; 8) urban development; 9) onsite disposal systems; 10) recreational boating and marinas; 11) hydromodification; and 12) abandoned mines.

The urban development section of the Submittal is the most applicable to this URMP. For urban development the Submittal lists the following categories of management measures from USEPA’s and NOAA’s “Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters” and the activities being implemented to satisfy each of the measures:

⁵ State Water Resources Control Board and the California Coastal Commission (September 1995). *Coastal Nonpoint Pollution Control Submittal*.

⁶ Environmental Protection Agency and The National Oceanic Atmospheric Administration (October 16, 1996). *Letter to the California Coastal Commission*.

- New Development
- Existing Development
- Transportation Development Management

Significant new requirements for urban runoff control are not listed.

The USEPA and NOAA have informally and conditionally approved California's Submittal. Formal approval is expected in 1997 following opportunities for public comment.

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STATE LAW AND REGULATIONS

California Water Code. The California Water Code (also called the Porter-Cologne Act) establishes the SWRCB and RWQCBs in each of the state's nine hydrologic basins. The California Water Code provides these agencies with the authority to coordinate and control water quality in waters of the State. There are no urban-runoff-specific requirements contained in this statute. The following describes several of the most pertinent provisions of the California Water Code that affect urban runoff regulation.

Ordinarily, waste discharge requirements and other orders issued under the California Water Code may not "specify the design, location, type of construction or particular manner in which compliance may be had."⁷ The URMP describes what will be accomplished, but provides participating municipalities and the SCVWD with essential flexibility, and is consistent with this provision of state law.

The California Water Code also provides local Regional Boards the authority to require technical reports and investigations by any wastewater discharger or local agency, including urban runoff dischargers, "provided that the burden, including costs of such reports, bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom."⁸ This

⁷ California Water Code Section 13360

⁸ California Water Code Sections 13225 and 13267(b)

authority means that regardless of what the Santa Clara Valley Urban Runoff Pollution Prevention Program's NPDES permit or URMP require, the Regional Board's Executive Officer retains the ability, under certain circumstances, to require additional work and studies without amending the NPDES permit or holding public hearings.

The California Water Code also requires the adoption of Water Quality Control Plans that contain policies for water quality management in California. The State Water Board has adopted a number of statewide water quality control plans; and the Regional Boards have adopted regional water quality control plans, which are commonly referred to as Basin Plans. Basin Plans identify the existing and potential beneficial uses of waters of the State and establish water quality objectives to protect these uses. Water quality objectives and beneficial use designations that are approved by the USEPA become water quality standards under the Clean Water Act. Basin Plans also contain an implementation, surveillance and monitoring plan and include enforceable prohibitions against certain types of discharges. The Water Quality Control Plan for the San Francisco Bay Basin is described in more detail below.

State Water Board General Permits. The State Water Board has adopted General Permits for storm water discharges associated with construction activity, industrial activity, and utilities other than water suppliers. The State Water Board's Industrial Storm Water NPDES General Permit was adopted to cover 10 categories of industrial facilities identified as needing permit coverage in USEPA's Storm Water Regulations.⁹ The Construction Activity Storm Water NPDES General Permit covers an 11th category, land disturbance associated with construction that is five acres or greater.¹⁰ The Construction General Permit is currently being modified for re-issuance in the latter half of 1997. The State Water Board adopted the Industrial General Permit in 1991 and is expecting to adopt a re-issued permit during the first half of 1997. The newest General Permit adopted by the State Water Board is for discharges from utility companies' vaults and other underground

⁹ State Water Resources Control Board (September 1992). *Amended General Industrial Activities Storm Water Permit.*

¹⁰ State Water Resources Control Board (August 1992). *General Construction Activity Storm Water Permit.*

structures that are a result of subterranean seepage and or storm water inflow. In order to obtain coverage under one of these permits, a facility must submit to the State Water Board a Notice of Intent (NOI) to comply with the applicable General Permit.

Applicability of General Permits. A fact sheet accompanying the new General Permit for utility companies states that “utility companies that are permittees and/or co-permittees under Urban Area wide Storm Water Permits which cover the intended discharges do not need to seek coverage under this general permit.” In addition, the Program’s NPDES permit provides that “discharges of storm water from construction sites owned or operated by the Dischargers are authorized and permitted by this Order, if they are in accordance with the conditions” specified in the permit (Provision 8). Similarly the discharges of “non-storm water from sources owned or operated by the Dischargers” are allowed if they meet the Permit’s conditions.

On this basis, the municipalities and Santa Clara Valley Water District do not need to obtain coverage under either the Construction Activity Storm Water NPDES General Permit (for municipal construction projects that disturb five or more acres) or the General Permit for utility companies’ vault and other underground structures’ discharges (for municipalities that operate utilities other than water supply utilities) provided the relevant sections of the Program’s NPDES permit are met. In contrast, any of the Co-permittees who operate an applicable industrial facility would need to obtain coverage under the Industrial Storm Water NPDES General Permit since stormwater discharges from these type of facilities are not covered in the Program’s NPDES permit.

Fish and Game Code. The Fish and Game Code primarily addresses fish and wildlife protection and conservation. There are no specific references to urban runoff in this code.

One section of the code states that “it is unlawful to deposit in, permit to pass into, or place where it can pass into the waters of this State ...petroleum ... asphalt... carbonaceous material... refuse...from any factory...[and] any substance or material deleterious to fish, plant life, or bird life.”¹¹

¹¹ Fish and Game Code Section 5650, Division 6

As part of public construction projects that impact rivers, streams, or lakes or the substantial diversion or obstruction of natural flow, the Department of Fish and Game must be notified and measures taken, as agreed to by the Department, for the protection and continuance of fish or wildlife resources. These requirements would apply regardless of whether an agency had a municipal urban runoff NPDES permit or not. The Fish and Game Code requirements are incorporated into local municipalities' and the Santa Clara Valley Water District's procedures and operations.

Water Quality Control Plan for the San Francisco Bay Basin. The San Francisco Bay Regional Board's Basin Plan describes a phased approach to attain water quality objectives in waters that receive storm water discharges: "NPDES permits for storm water discharges will require completion of technically and economically feasible control measures as soon as possible... If this first phase does not result in attainment of water quality objectives, the Regional Board will consider permit conditions which may require implementation of additional control measures."¹² This approach is consistent with EPA's "Interim Policy Approach for Water Quality-Based Effluent Limitations in Storm Water Permits" (described above).

The San Francisco Bay Regional Board's Basin Plan does not currently contain numerical water quality objectives for toxic pollutants for the South Bay below the Dumbarton Bridge. The USEPA developed new water quality objectives, as described in the California Toxics Rule, to replace those invalidated as a result of a 1994 State court decision¹³ on the Enclosed Bays and Estuaries Plan¹⁴ and the Inland Surface Waters Plan.

¹² California Regional Water Quality Control Board. *Water Quality Control Plan for the San Francisco Bay Basin, June 21, 1995. Chapter 4 - Implementation Plan: Surface Water Protection and Management, Point Source Control Stormwater Discharges.*

¹³ As a result of the unpublished decision in Water Quality Control Cases, Cal. Super. Ct., Sacramento County, Judicial Council Coordination Proceeding No. JC2610, Mar 23, 1994, the California Inland Surface Waters Plan, the California Enclosed Bays and Estuaries Plan, and all associated amendments have been rescinded by the State Water Resources Control Board, effective September 22, 1994.

¹⁴ California Water Resources Control Board (April 1991). *California Enclosed Bays and Estuaries Plan. 91-13-WQ*

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OTHER PLANS AND REGULATORY GUIDANCE

Comprehensive Conservation and Management Plan (CCMP)¹⁵. Although not legally binding, the CCMP presents a blueprint to restore and maintain the chemical, physical, and biological integrity of San Francisco Bay and its Delta. The CCMP was completed in 1993 and approved by the USEPA and Governor Pete Wilson with conditions. The estimated costs for implementing the CCMP over twenty years is approximately \$1.6 billion.

The CCMP recommends a number of actions potentially applicable to municipal urban runoff programs. Since the San Francisco Bay Regional Board is the lead state agency for the CCMP, the Board has been able to integrate applicable CCMP actions into the Program's NPDES permit.

Municipal Storm Water Management Plan Components. In addition to the requirements for developing the 1997 URMP, as specified in the 1995 NPDES permit, Dr. Tom Mumley from the San Francisco Bay Regional Board staff prepared a memorandum in 1994 to provide a consistent, statewide, framework for municipal Urban Runoff Management Plans. Dr. Mumley used his experience with the Bay Area municipal urban runoff programs in developing his statewide model. The following categorical areas were listed as integral to the establishment of a urban runoff management plan:

- Program Management
- Illicit Discharges
- Industrial/Commercial Sources
- New Development and Re-development
- Public Agency Activities
- Residential Public Information and Participation
- Program Evaluation

¹⁵ San Francisco Estuary Project (1993). *Comprehensive Conservation and Management Plan*.

- Monitoring

The URMP describes the Co-permittees' efforts in each of these areas.

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PERMIT COMPLIANCE

Compliance with NPDES Permit Provisions. All of the NPDES permit requirements for improving the URMP have been met. All of the required updated and/or newly developed performance standards are included in this updated 2004 Urban Management Plan (URMP). Each individual Co-permittee URMP is included in Chapters 5 through 16. It is expected that Annual Work Plans and Reports prepared subsequent to the approval of this URMP by the MC will contain additional refinements and improvements.