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December 16, 2015

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State Water Resources Control Board
Office of Chief Counsel
Attn. Adrianna M. Crowl
1001 "I" Street, 22nd Floor
Sacramento, CA 95814

Re: **Water Quality Petition requesting State Water Resources Control Board's Review of Region 2's Re-Issuance of Municipal Regional (Stormwater) Permit (NPDES No. CAS612008)**

To Whom It May Concern:

Please accept this Petition for Review of the California Regional Water Quality Control Board, San Francisco Bay Region's (Region 2's) November 19, 2015 action in adopting NPDES Permit No. CAS612008, better known as Region 2's reissuance of the San Francisco Bay Municipal Regional Permit for stormwater discharges (MRP 2.0).

MRP 2.0 includes as co-permittees 76 San Francisco Bay area municipalities that collectively serve over 5.5 million Californians. To better coordinate their efforts, 15 of those co-permittees located in the Santa Clara Valley previously entered into an agreement to form the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP).¹ Likewise, to provide coordination and assistance with respect to compliance with their NPDES stormwater permit, another 21 co-permittees previously formed the San Mateo Countywide Water Pollution Prevention Program (SMCWPPP), which is administered under the City/County Association of Governments of San Mateo County (C/CAG), a joint powers agency.²

¹ The 15 municipal co-permittee agencies comprising SCVURPPP are: the cities of Campbell, Cupertino, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, and Sunnyvale; the County of Santa Clara; and the Santa Clara Valley Water District.

² The 21 municipal co-permittee agencies comprising SMCWPPP are: the towns of Atherton, Colma, Hillsborough, Portola Valley, and Woodside; the cities of Belmont, Brisbane, Burlingame, Daly City, East Palo Alto, Foster City, Half Moon Bay, Menlo Park, Millbrae, Pacifica, Redwood City, San Bruno, San Carlos, San Mateo, and South San Francisco; and the County of San Mateo.

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This Petition is submitted by SCVURPPP and SMCWPPP on both of their behalves for the benefit of their respective members.³

All information the State Water Resources Control Board (State Board) requires for a water quality petition of this nature is presented below.

1. Name, address, telephone number and e-mail address (if available) of the petitioner:

Names of Petitioners: the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) and the San Mateo Countywide Water Pollution Prevention Program (SMCWPPP).

Mailing Addresses:

For SCVURPPP:⁴ c/o Robert Falk, SCVURPPP Legal Counsel, Morrison & Foerster LLP, 425 Market Street, 32nd Floor, San Francisco, CA 94105

For SMCWPPP: c/o Matthew Fabry, PE, Manager, San Mateo Countywide Water Pollution Prevention Program, City/County Association of Governments of San Mateo County, 555 County Center, 5th Floor, Redwood City, CA 94063

Telephones:

For SCVURPPP: 415-268-6294

For SMCWPPP: 650-599-1419

Email Addresses:

For SCVURPPP: RFalk@mofa.com

For SMCWPPP: MFabry@smcgov.org

³ SCVURPPP and SMCWPPP are collectively referred to herein as the "Petitioners." Co-permittees that are members of SCVURPPP or SMCWPPP reserve their rights to file petitions concerning MRP 2.0 on their own behalves. The City of San Jose, California will be filing such a petition, incorporating aspects of this Petition to the extent it determines it efficient to do so.

⁴ Although SCVURPPP requests all communications concerning this Petition be directed to its legal counsel, whose contact information is shown above, its direct mailing address is: Santa Clara Valley Urban Runoff Pollution Prevention Program, 1021 S. Wolfe Rd., Suite 185, Sunnyvale, CA 94086. Its direct telephone number is 408-720-8811.

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- 2. The action or inaction of the Regional Water Board being petitioned, including a copy of the action being challenged or any refusal to act, if available.** If a copy of the regional board action is not available, the petitioner must explain why it is not included.

Action Being Challenged: Adoption of MRP 2.0, NPDES Permit No. CAS612008, by Region 2 on November 19, 2015.

The version of MRP 2.0, including its Fact Sheet and other attachments, that was last publicly noticed for adoption by Region 2 and an associated Errata sheet that was released to the public several days in advance of the November 18-19, 2015 adoption hearing, are available for download at:

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/mrpwrittencomments/November/Revised_Tentative_Order_11-10-15_Attachments_A_G.pdf and

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/mrpwrittencomments/November/Errata_and_Clarifications.pdf).⁵

The following additional documents, which modified the above and were adopted as part of MRP 2.0, present issues raised for review herein include: **(1)** a “Staff Supplemental” first made available to the public at the hearing location just prior to the beginning of Region 2’s meeting on November 18, 2015 (provided as Attachment 1 hereto), and **(2)** a “Chair’s Supplemental” which the Chair of Region 2’s Board first revealed and made available to those present at the adoption hearing only after the agenda item in question commenced on November 18, 2015 (provided as Attachment 2 hereto).⁶

Because its effect was, for the first time on the record, to officially characterize the nature of the “numeric performance criteria” for mercury and PCBs load reductions set forth in MRP 2.0 and its Fact Sheet as “numeric effluent limitations (NELs) rather than numeric action levels (NALs), we also include the Region 2 staff’s Response to Comments document concerning these permit provisions (available for download at

⁵ Hard or electronic copy of these documents are not being provided at this time due to the lengthy number of pages/size of the data files involved, but they can be provided under separate cover and/or .pdf upon further request.

⁶ To avoid overwhelming a firewall due to the large number of pages/amount of data involved, all Attachments referenced herein are being provided only with the hard copy of this Petition being sent via UPS delivery. Electronic (.pdf) copies of any of them can also be provided under separate cover upon further request.

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http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/mrpresponsetocomments/C11-12_Response_to_Comments.pdf).⁷

Collectively, all of the above documents are further referred to herein as “Final MRP 2.0 Order.”⁸

3. The date the Regional Water Board acted, refused to act, or was requested to act:

Hearing conducted on November 18-19, 2015; vote taken on November 19th.

4. A statement of the reasons the action or inaction was inappropriate or improper:

- A. Adoption of Final MRP 2.0 Order emerged from a serially flawed and biased public participation and hearing process that did not comply with the requirements of law.
- B. Region 2’s inclusion of NELs as opposed to NALs for mercury and PCBs load reductions in Final MRP 2.0 Order was the result of the flawed public participation process and inaccurate statements by Region 2 staff and counsel concerning the State Board’s position on the issue. Beyond this, the NELs in question were otherwise not adequately justified on the record and their adoption therefore reflects an abuse of discretion.

5. How the petitioner is aggrieved:

Petitioners and their member agencies (and other MRP 2.0 co-permittees and interested persons) were deprived of the full public participation (e.g., notice, comment, and open meeting observation) rights to which they are entitled by applicable federal and state law. Requirements and, in other cases, official interpretations of requirements, are included in Final MRP 2.0 Order that would not be included if the public participation process resulting in its adoption was not so flawed. Petitioners and other co-permittees were also deprived of a vote on MRP 2.0’s most controversial provisions by a full, fairly

⁷ This document can also be provided in hard copy or .pdf under separate cover upon further request.

⁸ On December 10, 2015, Region 2 posted an announcement making the adopted version of MRP 2.0, as incorporating the errata and language reflecting the Staff Supplemental and Chair’s Supplemental, available at the following link:

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/R2-2015-0049.pdf . This lengthy document will also be provided in hard copy and/or .pdf upon further request. (Other archived documents associated with the development and adoption of MRP 2.0 are also available at http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/mrp_sw_reissuance.shtml . If necessary, hard or .pdf copies of any of these can be provided on request.)

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constituted, and representative Regional Board. Had flawed public participation and inaccurate Region 2 staff and counsel representations made at the adoption hearing not occurred, the numeric performance criteria for mercury and PCBs load reductions would not have been characterized or be legally enforceable as NELs. Petitioners' member agencies would then have been able to ensure compliance with MRP 2.0 through implementing required initial and follow-up actions on a timely basis, and not be subject to third party lawsuits if mercury and PCBs loading reductions fall short of their non-transparently calculated and speculative marks.

6. The action the petitioner requests the State Water Board to take:

The State Board should conduct further public hearings on MRP 2.0 to provide the proper and fair process and absence of bias to which the Petitioners, other co-permittees, and all members of the public are entitled. As part of this process, and as it did in the construction and industrial general stormwater permits it has adopted, the State Board should convert the numeric performance criteria for mercury and PCBs set forth in Provisions C.11 and C.12 of MRP 2.0 from NELs into NALs with an accompanying set of appropriate exceedance response action requirements (ERAs) if these benchmarks are not met in the first instance.⁹

7. A statement of points and authorities for any legal issues raised in the petition, including citations to documents or the hearing transcript of the regional board hearing if it is available.

A. Adoption of Final MRP 2.0 Order emerged from a serially flawed and biased public participation and hearing process that did not comply with the requirements of law.

Federal and state law entitles regulated entities and other members of the public to certain fundamental public participation rights in regulatory permitting proceedings, including in the NPDES context: adequate notice, a meaningful opportunity to comment based on what has been properly noticed, and a full, fair, and transparent hearing. 33 U.S.C. §§ 1342(a)(1) and 1251(e); 40 C.F.R. § 124.10; Cal. Gov. Code §§ 11120 *et seq.*, 11400 *et seq.*, 11500 *et seq.* and 23 Cal. Code Regs. § 647 *et seq.* Those rights were materially abridged in these Region 2 proceedings, including as follows:

- i. Two members of the Region 2 Board that were not required to recuse themselves from the MRP 2.0 proceedings due to their prior or current employment by two of the

⁹ Indeed, there is even more reason for the State Board to utilize NALs here. Unlike in this Clean Water Act section 402(p)(3) MS4 permit, NPDES stormwater permits for construction and industrial activities *must* address the less flexible requirements of Clean Water Act section 301(b)(1)(C).

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76 municipal co-permittees, nevertheless recused themselves due, at least in part, to erroneous direction one of the individuals received from the Board's legal counsel.¹⁰ Given their municipal experience, these two additional Board members could have brought important diverse perspectives and practical insights into the Region 2 Board's deliberations on MRP 2.0's requirements and influenced the final vote. Their exclusion from the process, when not required by law and as tainted by Board counsel's prior erroneous advice that recusal was legally required, flies in the very face of the rationale for their appointments by the Governor. It in and of itself gives rise to the specter of biased decisions being made thereafter by a less diverse and less representative Regional Board. Indeed, the outcome of several key contested issues relative to MRP 2.0 might have been materially different had these two duly appointed and unconflicted Region 2 Board members participated in the proceedings.

- ii. Due to one of the recusals, the Region 2 Board lost a quorum for the June 10, 2015 public hearing on all aspects of the draft permit other than its trash management requirements.¹¹ Instead, the proceeding continued immediately and was conducted by a subcommittee of the Board that was constituted at the spur of the moment. As such, there was no advance notice to the public that this less representative procedural device might be invoked, and there was no meaningful opportunity to object to it or the potential bias it might create with respect to the remainder of the permitting process.¹²
- iii. Following the June 10, 2015 hearing, two members of this subcommittee apparently exchanged emails with each other concerning the testimony they heard and the report and recommendations they intended to provide to the Region 2 Board and staff with regard to it.¹³ The content of these emails and any related communications between these two subcommittee members and other members of the Region 2 Board have never been disclosed to the public. The third member of the subcommittee, who may have brought a different perspective on the same testimony to the table, did not participate in these communications or otherwise have input into the subcommittee's report and recommendations; nor was she present when the subcommittee's report and recommendations were more officially presented to the Region 2 Board at a

¹⁰ Reporter's Transcript of Proceedings June 10, 2015, Item 8 (RT-June, Attachment 3 hereto) at 6:3-8, 7:9-11; Reporter's Transcript of Proceedings July 8, 2015, Item 6 (RT-July, Attachment 4 hereto) at 6:2-7:14; Email exchange between Region 2 counsel Yuri Won and Robert Falk and Gary Grimm July 6-7, 2015 (See Attachment 5 hereto), discussing Cal. Gov. Code § 82030(b)(2) and <http://ag.ca.gov/publications.coi.pdf> at p.14.

¹¹ RT-June at 7:7-8:1.

¹² *Id.*

¹³ RT-July at 18:8-19:3.

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hearing on July 7, 2015.¹⁴ Despite Board counsel's post-hoc attempt to sanitize the record on what clearly were articulated as the subcommittee's recommendations to the remainder of the Region 2 Board and to Region 2 staff present at the July 7th hearing, the combined effect of this subcommittee effort, the recusals, and the absence of transparency and additional Board member participation at this critical stage of the public participation and hearing process deprived Petitioners and the public of their full rights and cast a dark shadow over the propriety and legitimacy of the permit adoption process's ultimate outcome.

- iv. At the November 18, 2015 permit hearing, members of the public were, *for the very first time*, given notice of and access to copies of the Staff Supplemental and the Chair's Supplemental, both of which modify or effectively modify the terms of the Final MRP 2.0 Order and its compliance requirements.¹⁵ Although the Region 2 staff and counsel took pains at the hearing to try and characterize these Supplementals as mere "clarifications" and "outgrowths," the transcript of the proceedings makes clear that the members of the Region 2 Board understood that the Supplementals represented more, and even the staff appeared to concede at one point that one aspect of the Chair's Supplemental contained new requirements.¹⁶ Moreover, even if these Supplementals really only contained clarifications, at the very minimum, the public should have received notice of them at least 10 days prior to the hearing in order to have a real and meaningful opportunity to review and prepare testimony on their implications.¹⁷
- v. Even more significantly, Region 2 staff did not provide requisite notice to the public that "numeric performance criteria" for mercury and PCBs loading reductions contained in MRP 2.0 were intended as NELs rather than as NALs until they released their Response to Comments document on October 19, 2015 in conjunction with the announcement of permit adoption hearing.¹⁸ Indeed, the ambiguous nature of the

¹⁴ *Id.*

¹⁵ See Attachments 1 and 2 and Reporter's Transcript of Proceedings, November 18, 2015, Item 7 (RT-Nov18, Attachment 6 hereto) at 17:18-21, 51:9-54:20.

¹⁶ Reporter's Transcript of Proceedings, November 19, 2015, Item 7 (RT-Nov19, Attachment 7 hereto) at 115:18-126:14.

¹⁷ See Cal. Gov. Code § 11125.

¹⁸ Response to Comments, available at http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/mrpresponsetocomments/C11-12_Response_to_Comments.pdf, p. 4-10. As it appeared nowhere in the May 2016 Tentative Order, Fact Sheet, or associated public comment/hearing announcement, Region 2 staff's attempted explanation about having provided prior notice in various meetings and other informal communications of their *intent* to

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term “numeric performance criteria” in the permit and its fact sheet resulted in extensive testimony at the June 10, 2015 hearing on the non-trash-related aspects of the draft permit and generated an associated formal request for clarification in terms of the NEL vs. NAL distinction in written comments which followed on July 9, 2015.¹⁹ Hence, as a practical matter, the Response to Comments document’s first time insistence that the numeric performance criteria were NELs and not something else effected a material change in the nature of the permit’s requirements and the associated potential third party liability consequences to the co-permittees in the event they are unable to fully comply with them. As such, it should have commanded a revision of the draft permit/Fact Sheet and a re-opening of the written public comment period.

- vi. The final deliberations of the Regional Board members at the adoption hearing on November 19, 2015 concerning their resolution of key contested issues (including concerning the imposition of NELs rather than NALs for mercury and PCBs) occurred in a lengthy, 1 hour and 45 minute closed session that was also insufficiently noticed and which was otherwise unauthorized even in the context of an adjudicative proceeding of this nature.²⁰ This precluded direct observation by, and

have performance criteria serve as “enforceable limits” or a “metrics approach” is irrelevant and did not exclude the possibility of them being NALs in this regard in any event. RT-Nov19 at 128:6-129:22.

¹⁹ See e.g.,

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/agencies/SCVU/RPPP_Legal.pdf)

²⁰ Region 2’s October 19, 2015 Public Notice of Adoption Hearing, available at

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/mrppublicnotice/MRP_Public_Notice.pdf provided no mention of a potential closed session whatsoever. The Agenda for the November 18-19, 2015 Region 2 Board Meeting, available at

http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2015/November/11_18_15_agenda.pdf, does not provide notice of a closed session in conjunction with its specified item on MRP 2.0 (Item 7). Instead, Agenda Item 11 just contains a boilerplate omnibus reference to a closed session for “Deliberation,” the authority referenced for which is Government Code section 11126(c)(3). There is also a further explanatory note contained in a boilerplate attachment to the Agenda that explains that the Board may adjourn to a closed session at any time during the regular session to, among other things, deliberate, based on the authority provided by “Government Code section 11126(a), (d) and (q).” Putting aside for a moment the question of whether any of these statutory references provide authorization for a closed session in these circumstances, what they clearly do not do is override Government Code section 11125(b)’s independent requirement to provide clear advanced notice to the public of “an item” to be discussed in closed session.

Moreover, in terms of providing authorization for a closed session on the MRP 2.0 adoption item, these references are either inapposite or non-existent. Even Government Code 11126(c)(3) extends only to deliberations on proceedings conducted pursuant to Government Code section 11500 or similar provisions of law. But Section 11500 *et seq.* concerns only proceedings conducted by administrative law judges and, to the extent Government Code section 11400 *et seq.* is considered similar, its general rule is that even an adjudicative hearing “shall be open to public observation” and may only be closed for certain limited purposes, none of

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full accountability to, members of the public, as both the spirit and the letter of the Bagley-Keene Act demand.²¹

- B. Region 2's inclusion of NELs as opposed to NALs for mercury and PCBs load reductions in Final MRP 2.0 Order was the result of the flawed public participation process and inaccurate statements by Region 2 staff and counsel concerning the State Board's position on the issue. Beyond this, the NELs in question were otherwise not adequately justified on the record and their adoption therefore reflects an abuse of discretion.
- i. The above-described flaws in the public participation process leading up to the adoption of Final MRP 2.0 Order assume even greater importance in light of confusing, inaccurate, and sometimes misleading statements Region 2 staff and counsel made to the members of the Region 2 Board following the conclusion of public testimony at the permit adoption hearing.²²

After having confirmed that the requirements in MRP 2.0 were best management practices (BMP) and other required actions-based measures, consistent with their TMDL implementation plans, and that good faith compliance with them would create

which presented themselves here. *See* Cal. Gov. Code §§ 11425.10(a)(3) and 11425.20(a)(1)-(3). Government Code section 11126(e), which was *not* referenced on the Agenda, also does not apply here since there is no significant exposure to litigation against Region 2 and, in any event, Region 2's counsel did not timely prepare and submit the requisite memorandum detailing the specific reasons and legal authority for closing the session on this basis. *See* Cal. Gov. Code 11126(e)(1), (e)(2), and (e)(2)(B) and (C)(ii).

Finally, even if the above were not the case, the transcript of the open hearing reveals that the closed session's purpose was not deliberating evidence but rather, ultimately without apparent success, for the Board members to try and craft new permit language to resolve the NEL v. NAL issue in a manner addressing the co-permittees concerns. RT-Nov19 at 158:18-159:13. (Indeed, as has been observed relative to general permits issued in California, the line between adjudicative and quasi-legislative action and associated procedural rules governing the board members blurs in a proceeding to develop a single set of requirements governing a large number of co-permittees, like the 76 present here such that erring on the side of transparency concerning the Region 2 Board members' decision-making is in order relative to this closed session issue.)

²¹ *See* Cal. Gov. Code § 11120 ("It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed The people insist on remaining informed so that they may retain control over the instruments they have created.")

²² Indeed, as described in more specific detail below, Regional Board counsel contributed to the flawed process and its biased outcome in a manner contrary to law by concurrently serving as an advocate for the staff's favored position on NELs and as a supposedly neutral advisor to the Board members at the permit adoption hearing. *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81; *Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810. *Cf. Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal. 4th 731. (While it is not precedent, *see also* Los Angeles Superior Court's decision in *County of Los Angeles, et al. v. State Water Resources Control Bd.*, No. BC122724 (2010).)

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a safe harbor for the co-permittees, staff and counsel then left the Board members in a state of confusion by respectively saying that the mercury and PCBs requirements in the permit were not-fully action-based and ultimately acknowledging that failing to meet the numeric criteria would render the co-permittees subject to enforcement and third party lawsuits even if they implemented all required actions.²³

Then, contrary to the State Board's own conclusions and use of them, just before the improper closed session at the adoption hearing, Region 2 staff and counsel also told the Region 2 Board members that NALs would not be effective regulatory mechanisms and suggested that the State Board would see anything other than NELs as insufficiently rigorous.²⁴

Rather than engaging in this distorted advocacy, the Region 2 staff (and counsel to the Region 2 Board in particular), should have presented the Board members with a more objective delineation of the State Board's position on the issue of NALs v. NELs; informed them that the State Board has not precluded the use of NALs as an "ambitious, rigorous, and transparent" alternative to NELs to date; and left the decision on whether to use NELs or NALs in the Region 2 Board members' hands in a far less tainted manner. Indeed, the staff's characterization of NALs as toothless "kick the can" regulatory tools that are meaningless and cannot be enforced conflicts with: (1) the State Board's own use of them,²⁵ (2) the State Board's Expert Panel's express recommendations concerning the use of NALs in *municipal* stormwater permits,²⁶ and (3) the guidance the State Board recently provided on this issue in WQO-2015-0075.

²³ Cf. RT-Nov19 at 12:18-17:12 and 155:9-18 with 145:12-147:5, 151:5-11, and 157:11-158:16.

²⁴ RT-Nov19 at 165:16-166:21, 168:19-169:12, and 172:19-173:11.

²⁵ Storm Water General Permit Order No. 2009-0009-DWQ and Storm Water General Permit Order No. 2014-0057-DWQ.

²⁶ State Water Board Storm Water Panel of Experts, *The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Discharges from Municipal, Industrial and Construction Activities* (June 19, 2006) at p. 8 ("It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges. . . . For catchments not treated by a structural or treatment BMP, setting a numeric effluent limit basically is not possible.) After the conclusion of the public testimony portion of the adoption hearing, Region 2 staff asserted that SCVURPPP's characterization of the Expert Panel's conclusions were amounted to gross misrepresentation. RT-Nov19 at 131:12-20. Although there is no evidence to support it in the record and it is sheer speculation at best, they then went on to assert that the Expert Panel's report was outdated and that these experts "were not *thinking* in the context of Effluent Limits . . . which are an enforceable numeric . . . performance measure that will be enforced." RT-Nov19 at 133:1-9 (emphasis supplied.)

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Indeed, in the latter, although the State Board acknowledged that the Los Angeles Regional Board's use of NELs to implement 33 TMDLs in its area was not error given the number and nature of TMDLs involved, it then went on to specifically state: "We emphasize, however, that we are not taking the position that [NELs] are appropriate in all MS4 permits or even with respect to certain TMDLs within an MS4 permit We also decline to urge the regional water boards to use [NELs] in all MS4 permits."²⁷

And with regard to the Region 2 staff's repeated assurances to its Board that the co-permittees concerns with NELs could be sidelined and dealt with later through the exercise of their enforcement discretion, they and counsel should have informed their Board members that the State Board had expressed a different policy preference earlier this year when it stated in WQO-2015-0075: "from a policy perspective, we find that MS4 Permittees that are developing and implementing [alternative compliance measures] should be allowed to come into compliance with . . . interim and final TMDLs through provisions built directly into their permit rather than through enforcement orders" – i.e., enforcement orders that could arise from non-compliance with NELs per se.²⁸

- ii. Beyond these significant process issues, the substantive justification offered by Region 2 staff for treating the numeric performance criteria for PCBs and mercury load reductions as NELs also falls short. First, while they are undoubtedly designed to further implement Region 2's mercury and PCBs TMDLs and represent an increment towards getting to the waste load allocations assigned to stormwater therein, there is nothing concrete in the record revealing how the numeric values of the NELs were actually calculated.²⁹ Instead, Region 2's staff state why they think the load reduction numbers they have identified as NELs for PCBs are feasible to achieve based on the Bay Area's recent performance in terms of new and redevelopment and building demolition and construction.³⁰ But the Region 2 staff's economic forecast (which often proves wrong even when done by actual economists) has no basis in the record and requires no deference given their lack of expertise in the discipline in question. Moreover, a plethora of testimony at the adoption hearing demonstrated that even if the staff's prediction concerning the pace of development

²⁷ WQO-2015-0075 at p. 58-59.

²⁸ *Id.* at 31.

²⁹ Region 2 counsel's last minute effort to try and create a record for their being an adequate substantive basis for the NELs through eliciting a wholly conclusory statement by a staff member is meaningless and improper advocacy, particularly without the "adequate information" to which she summarily refers actually having been delineated in the record and subject to prior public review and comment. *See* RT-Nov19 at 174:21-175:5.

³⁰ RT-Nov18 at 26:6-9.

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and construction ends up being on target, there is still likely to be a significant shortfall in all, or at least many, co-permittees meeting the NELs.³¹

At one point, staff testified at the adoption hearing that the PCB numbers were “based on an updated assessment of controls to reduce PCBs to the maximum extent practicable” and then indicate that their calculation “started with a numerical formula.”³² But, importantly, this formula and these calculations are nowhere to be found in the record, and later in their testimony, the same staff member even indicates that they abandoned the formula-based calculation effort.³³ Their testimony then goes on to explain that they turned to “a number of sources of information” to come up with the 3 kilogram PCBs load reduction requirement, but once again, these sources were not delineated in the permit’s Fact Sheet or elsewhere in the record.³⁴

Indeed, the Region 2 staff member’s further testimony on the issue indicates that the PCBs load reduction numbers in controversy are no more than speculative “guesstimate estimates” that represent the idea of “[h]ere is the number, we think it’s attainable.”³⁵ Ultimately, the staff even expressly conceded that “we know that there’s uncertainty with the basis of our numbers,” while trying to reassure the Region 2 Board members that they could deal with the uncertainty through their future exercise of enforcement discretion.³⁶ (Region 2’s counsel then further conceded to one of the Board members that the numbers were uncertain and that the co-permittees would be in non-compliance if they did not meet them despite their good faith efforts to implement all required actions.³⁷)

- iii. Finally, in the course of the adoption hearing, Region 2 staff revealed that, when all was said and done, their position on NELs was really based on their preference to avoid having to specify additional required actions and then expending the additional effort necessary to oversee and enforce on them if bad actors emerge among the co-

³¹ See e.g., RT-Nov18 at 138:8-142:18 and 158:7-159:22. See also RT-Nov18 at 67:19-68:11; 95:12-16; 104:13-105:8; 112:19-113:11; 117:1-11; 128:24-130:3; 136:1-11; 201:19-205:8; 231:232:22; 241:1-23; 244:17-245: 15; 248:25-249:4; and 259:9-24.

³² RT-Nov19 at 133:12-22.

³³ *Id.* at 135:22-24.

³⁴ *Id.* at 136:14-16.

³⁵ *Id.* at 137:18-19 and 145:5-6. Relative to some communities that are not likely sources of PCBs, the Region 2 staff’s testimony even went further to characterize the requirements as they might default down to them as “unrealistic.” RT-Nov19 at 152:2-6. See also *id.* at 167:4-18.

³⁶ *Id.* at 148:3-20.

³⁷ *Id.* at 150:18-151:11.

State Water Resources Control Board
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 Page Thirteen

permittees and refused to meet their implementation obligations.³⁸ Instead, they ultimately admitted that their insistence on NELs reflects their preference to employ a psychology of “coercion.”³⁹ Not only is this an inappropriate basis for calculating the numbers used for the NELs, while they voted to include them based on the mistaken understanding that the State Board would disapprove the permit if it contained NALs instead, the need for undertaking a coercive, rather than cooperative state-local partnership approach vis-à-vis the co-permittees, was not a view that was shared by the members of the Region 2 Board.⁴⁰

8. A statement that copies of the petition have been sent to the Regional Water Board and to the discharger, if different from the petitioner.

Copies of this Petition have been provided to Region 2, the member agencies of SCVURPPP and SMCWPPP, and, through their respective municipal stormwater programs, all other co-permittees to MRP 2.0.

9. A statement that the issues raised in the petition were presented to the regional board before the regional board acted, or an explanation of why the petitioner could not raise those objections before the regional board.

Both SCVURPPP and SMCWPPP actively participated in the public comment and hearing process on MRP 2.0.⁴¹ As demonstrated through the above citations to the record and in Attachments 3-7, all issues raised in this Petition were previously presented to Region 2 prior to its final action in adopting MRP 2.0 on November 19, 2015.⁴²

In closing, Petitioners wish to note that the vast majority of MRP 2.0 was not the subject of significant dispute and is a tribute to an otherwise high level of cooperation between it and its fellow municipal stormwater programs in the San Francisco Bay Area and the Region 2 staff. SCVURPPP and SMCWPPP raise the issues in this Petition to ensure an improved, more

³⁸ See RT-Nov19 at 135:12-17 and 144:24-145:6.

³⁹ RT-Nov 19 at 170:3-172:14.

⁴⁰ RT-Nov19 at 158:18-160:1, 165:6-15, 166:22-168:5, 179:24-182:2, 185:18-187:6, 190:25-192:13, and 194:14-195:6.

⁴¹ See e.g.,

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/agencies/SMCWPPP.pdf,

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/agencies/SCVURPPP.pdf, and

http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/Municipal/agencies/SCVURPPP_Legal.pdf.

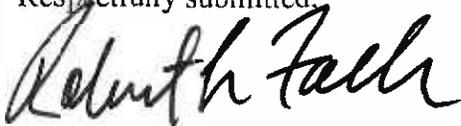
⁴² As to the process issues, see also RT-Nov18 at 252:13-254:14.

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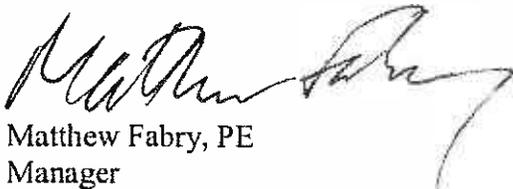
transparent, and publicly legitimate permit will be put in place that avoids the prospect of resource consuming litigation and allows for a high level of cooperation and creative approaches to continue to make meaningful and substantial progress on the highest priority water quality issues in the Bay Area.

Thank you for your consideration.

Respectfully submitted,



Robert L. Falk
Program Legal Counsel
Santa Clara Valley Urban Runoff
Pollution Prevention Program



Matthew Fabry, PE
Manager
San Mateo Countywide Water
Pollution Prevention Program

Attachments

cc: Bruce Wolfe, Executive Officer, Region 2
SCVURPPP Co-Permittees
SMCWPPP Co-Permittees
Alameda, Contra Costa, Vallejo and Fairfield Municipal Stormwater Program Managers

PROOF OF SERVICE

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482. I am not a party to the within cause, and I am over the age of eighteen years.

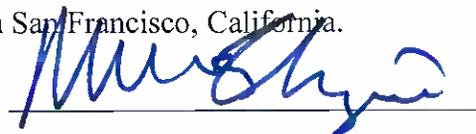
I further declare that on December 16, 2015, I served a copy of the following on the addressees listed below via UPS Two Day delivery by placing a true copies thereof enclosed in sealed envelopes with charges thereon fully prepaid for collection and provision to UPS at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in accordance with Morrison & Foerster LLP's ordinary business practices. I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence and packages for delivery by UPS, and know that in the ordinary course of Morrison & Foerster LLP's business practice the document(s) described below will be provided to UPS on the same date that it (they) is (are) placed at Morrison & Foerster LLP for collection and delivery to UPS:

**Water Quality Petition Requesting State Water Resources Control Board's
Review of Region 2's Re-Issuance of Municipal Regional (Stormwater)
Permit, NPDES No. CAS612008 (including Attachments 1-7)**

State Water Resources Control Board
Office of Chief Counsel
Attn. Adrianna M. Crowl
1001 "I" Street, 22nd Floor
Sacramento, CA 95814

Bruce Wolfe, P.E.
Executive Officer
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Executed this 16th day of December 2015, in San Francisco, California.



Margaret McIlhargie

MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Telephone: 415-268-7079
mmcilhargie@mof.com

ATTACHMENT 1

CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

MEETING DATE: November 18, 2015

ITEM: 7 – SUPPLEMENTAL

**SUBJECT: REVISED TENTATIVE ORDER FOR REISSUANCE – MUNICIPAL
REGIONAL STORMWATER NPDES PERMIT**

The following are proposed revisions to the November 10, 2015, version of the Revised Tentative Order that provide clarification as described.

1. Provision C.10.b - Demonstration of Trash Reduction Outcomes

Provide clarification on frequency of visual assessments required by Provision C.10.b.ii.b.(iii) – Visual Assessment of Outcomes of Other Trash Management Actions on page C.10-4 (Tentative Order Page 107)

Fact Sheet for Provision C.10.b.ii.b.(i)-(iv) - Visual Assessment of Outcomes of Other Trash Management Actions on page A-99

Add the following after the second sentence, ending with “implemented in the area.”:

The frequency of required visual assessments depends on the rate of trash generation, the sources and types of trash, trash management actions deployed, and time of year. During the wet season, October through April, visual assessments in a trash management area must be conducted at a frequency that determines whether there may be trash discharges to the storm drain system from sources or areas of trash accumulations before a trash management action or combination of actions is implemented or between recurring trash management actions. The degree of trash reduction that a Permittee claims also affects the frequency of visual assessment necessary to make the claim. Higher reduction claims typically require higher frequency of assessments.

During the wet season, for claims that a trash generation area has been reduced to a low trash generation area, this should be at least once per month in what was a very high trash generation area, at least twice per quarter in what was a high trash generation area, and once per quarter in what was a moderate trash generation area. Permittees, with justification, may conduct less frequent visual assessments for claims that a trash generation area has been reduced from what was a very high trash generation area to a high or moderate trash generation area or from what was a high trash generation area to a moderate trash generation area. Frequency of visual assessments during the dry season, May through September, should be at least once per quarter, including, and preferably, within the month (September) before the wet season begins. Higher frequencies of visual

assessments than those illustrated above may be required to demonstrate effectiveness of trash control actions and claimed trash reduction. Lower frequencies than those illustrated above may also be acceptable with justification.

2. Provision C.10.b.v - Receiving Water Monitoring

Break up one long sentence and clarify dates in another.

Fact Sheet for Provision C.10.b.v - Receiving Water Monitoring on page A-102

Break up sentence after question number 4 into two sentences as follows:

The monitoring tools and protocols may include direct measurements and/or observation of trash in receiving waters, ~~or in~~ In scenarios where direct measurements or observations are not feasible, surrogates for trash in receiving waters, such as measurement or observation of trash on shorelines or creek banks may provide a practicable means of monitoring trash.

Fact Sheet for Provision C.10.b.v - Receiving Water Monitoring on page A-102

Provide date clarifications in second sentence of last paragraph as follows:

, Permittees must submit a preliminary report on the proposed monitoring program by July 1, 2019, a year in advance of the final proposed monitoring program due July 1, 2020, six months before the Permit expires.

3. Provision C.10.f - Reporting (Trash Load Reduction)

Provide clarification on what must be included in a report of non-compliance with a mandatory trash reduction deadline.

Provision C.10.f.v. on page C.10-9 (Tentative Order Page 112)

Replace last sentence of reporting requirement C.10.f.v.b, with the following:

The report shall include a plan and schedule for implementation of full trash capture systems sufficient to attain the required reduction. A Permittee may submit a plan and schedule for implementation of other trash management actions to attain the required reduction in an area where implementation of a full trash capture system is not feasible. In such cases, the report shall include identification of the area and documentation of the basis of the Permittee's determination that implementation of a full trash capture system is not feasible.

ATTACHMENT 2

C. 10. Trash Load Reduction

C.10.b. Demonstration of Trash Reduction Outcomes

v. Receiving Water Observations-Monitoring - Permittees shall conduct receiving water monitoring receiving water observations downstream from trash generation areas that have been converted from Very High, High, or Moderate to Low trash generation rates, or at other locations for which receiving water monitoring over time will produce useful trash management information, and develop receiving water monitoring tools and protocols and a monitoring program designed, to the extent possible, to answer the following questions:

- Have a Permittee's trash control actions effectively prevented trash within a Permittee's jurisdiction from discharging into receiving water(s)?
- Is trash present in receiving water(s), including transport from one receiving water to another, e.g., from a creek to a San Francisco Bay segment, at levels that may cause adverse water quality impacts?
- Are trash discharges from a Permittee's jurisdiction causing or contributing to adverse trash impacts in receiving water(s)?
- Are there sources outside of a Permittee's jurisdiction that are causing or contributing to adverse trash impacts in receiving water(s)?

The monitoring tools and protocols shall include direct measurements and/or observations of trash in receiving water(s), or in scenarios where direct measurements or observations are not feasible, surrogates for trash in receiving waters, such as measurement or observations of trash on stream banks or shorelines.

a. Development and Testing Plan - The observations shall be sufficient to determine whether a Permittee's trash control actions have effectively prevented trash from discharging into receiving waters, whether additional actions may be necessary associated with sources within a Permittee's jurisdiction, or whether there are ongoing sources outside of the Permittee's jurisdiction that are causing or contributing to adverse trash impacts in the receiving water(s). Permittees shall submit a plan acceptable to the Executive Officer by July 1, 2017, to develop and test a proposed receiving water monitoring program tools and protocols that includes the following:

- (i) Description of the tools and protocols to be developed and tested;
- (ii) Description of discharge and receiving water scenarios, which will be considered, that accounts for the various receiving waters and watershed, community, and drainage characteristics within Permittees' jurisdictions that affect the discharge of trash and its fate and effect in receiving water(s);
- (iii) Description of factors, in addition to those in C.10.b.v.a.(ii), that will be considered and evaluated to determine scenarios and spatial and temporal representativeness of the tools and protocols;

- (iv) Identification of sites, representative of all the Permittees and discharge and receiving water scenarios, that will be monitored during this permit term;
- (v) Development of a system to manage and access monitoring results;
- (vi) Opportunity for input and participation by interested parties;
- (vii) Scientific peer review of the tools and protocols and testing results; and
- (viii) Schedule for development and testing of the tools and protocols, with monitoring at representative sites starting no later than October 2017; and
- (ix) Development of a proposed receiving monitoring program.

If the Permittees conduct this work through an independent third party, approved by the Executive Officer, the Plan may be submitted by July 2018, with monitoring to begin no later than October 2018.

- b. **Report and Proposed Monitoring Program** - The observations shall be conducted a minimum of twice per year until the no trash in receiving water determination has been observed and then confirmed with a subsequent observation, after which the frequency may be reduced to once per year. Permittees shall report progress in the 2018 Annual Report, and submit a preliminary report by July 1, 2019 and a final report by July 1, 2020 on the development and testing of receiving water monitoring tools and protocols and a proposed trash receiving water monitoring program. The progress preliminary report is not required if the Permittees conduct this work through an independent third party, approved by the Executive Officer, that provides input and participation by interested parties and scientific peer review of the tools and protocols and testing results and proposed receiving monitoring program.
- e. Trash Hot Spot cleanup site downstream of a trash management area may serve as a receiving water observation site.

C.10.f. Reporting

- vi. In the 2018 Annual Report, status of progress on development and testing of the receiving water monitoring tools and protocols and monitoring program development, C.10.b.v. receiving water observations, including the locations and times of observations and associated determinations. Pending EO acceptance of a monitoring proposal, reference can be made to the existing Trash Hot Spot Cleanup data.

ATTACHMENT 3

California Regional Water Quality Control Board

San Francisco Bay Region

June 10, 2015, 9:00 a.m.

Elihu M. Harris Building

First Floor Auditorium

1515 Clay Street

Oakland, CA 94612

Reported by:
Julie Link

- Item 8. Municipal Regional Stormwater NPDES Permit - Municipalities and Flood Management Agencies in Alameda County, Contra Costa County, San Mateo County, Santa Clara County, and the Cities of Fairfield, Suisun City, and Vallejo in Solano County - Hearing to receive testimony on Tentative Order, all sections except Provision C.10, Trash Load Reduction

APPEARANCES

Board Members

Dr. Terry F. Young, Chair
Dr. Newsha Ajami, Board Member
Steve Lefkovits, Board Member
Margaret Abe-Koga, Board Member

Staff

Bruce H. Wolfe, Executive Officer
Thomas Mumley, Assistant Executive Officer
Dyan Whyte, Assistant Executive Officer
Yuri Won, Legal Counsel to the Board
Anna Kathryn Benedict, Legal Counsel to the Board
Angela Tsao, Executive Assistant
Naomi Feger, Chief Planning Division
Jim Ponton, Senior Engineering Geologist,
Planning Division, NPS & TMDL Section
Stephen Hill, Chief, Toxics Cleanup Division
Laurent Meillier, Senior Engineering Geologist,
Toxics Cleanup Division North Bay Section
Ralph Lambert, Engineering Geologist, Toxics
Cleanup Division
Lila Tang, Chief, NPDES Permits Division
Claudia Villacorta, Senior WRC Engineer, NPDES Permits
Division, Enforcement, General Permits, Pretreatment
Section
Keith Lichten, Chief, Watershed Management Division
Dale Bowyer, Senior WRC Engineer, Watershed Management
Division, South/East Bay Section

Speakers

Keith Lichten, Chief, Watershed Management Division
James Scanlin, Vice-Chair of BASMAA
Joe Calabrigo, Town Manager of the Town of Danville and
representative of Contra Costa Public Managers
Sandy Wong, Executive Director of C/CAG of San Mateo County
Tom Dalziel, Program Manager of Contra Costa Clean
Water Program
Jon Konnan, Managing Engineer of San Mateo Countywide
Stormwater Program
Arleen Feng, Monitoring Coordinator of Alameda
Countywide Clean Water Program

APPEARANCES (Contin.)

Speakers

Phil Bobel, Public Works Assistant Director of the
City of Palo Alto

Jay Walter, Public Works Director of the City of San Carlos

Napp Fukuda, Deputy Director of the City of San Jose

Melody Tovar, Regulatory Programs Division Manager of
the City of Sunnyvale

Rebecca Tuden, Watershed Specialist of the City of Oakland

Cece Sellgren, Stormwater Manager of Contra Costa County

Laura Hoffmeister, Vice-Mayor of the City of Concord

Eric Anderson, Environmental Safety Coordinator of the
City of Mountain View

Robert Ovadia, City Engineer of the City of Concord

Kirsten Pringle, Sustainability Coordinator of
San Mateo County

Nancy Humphrey, Environmental Program Analyst of the
City of Emeryville

Lisa Austin, Associate of Geosyntec Consultants and
representative for Contra Costa Clean Water Program

Chris Sommers, Managing Scientist of Santa Clara Valley
Urban Runoff Program

Laura Hoffmeister, Stormwater Program Manager of the
City of Clayton

Ian Wren, Staff Scientist, San Francisco Baykeeper

Maurice Kaufman, Public Works Director of the
City of Emeryville

Jason Rogers, Division Manager of the City of San Jose

Shannon Young for Kathy Cote, Environmental Services
Manager of the City of Fremont

Roger Lee, Public Works Assistant Director of the
City of Cupertino

Elaine Marshall, Environmental Programs Manager of the
City of Sunnyvale

Michael Rhoades, Program Manager of the County of
Santa Clara

Sharon Newton, Stormwater Program Manager of the
City of San Jose

Vaikko Allen, Regulatory Director of Contech
Engineering Solutions

Andrew Russell, Public Works Assistant Director of the
City of Dublin

Dan Cloak, Principal of Dan Cloak Environmental Consulting

Mallika Ramachandran, Public Works Assistant Director of
the City of Brentwood

Michelle Quinney, City Engineer of the City of Campbell

Jolan Longway, Civil Engineer of the City of Pittsburg

APPEARANCES (Contin.)

Speakers

Amanda Booth, Environmental Program Analyst of the
City of San Pablo
Rinta Perkins, Clean Water Program Manager of the
City of Walnut Creek
Tracy Clay, Supervising Civil Engineer of the
City of Berkeley
Chris McCann, Clean Water Program Coordinator of the
Town of Danville
Tim Potter, of Central Sanitation
Beth Baldwin, Watershed Management Planning Specialist
of Contra Costa Clean Water Program
Deanna Constable, Administrative Analyst of Contra
Costa Clean Water Program
Erica Maharg, Staff Attorney of San Francisco Baykeeper
Lucile Paquette, Watershed Management Planning Specialist
of Contra Costa Clean Water Program
Julie Haas-Wajdowicz, Environmental Services of the
City of Antioch
Joanne Le, Source Control Inspector of the City of Richmond

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JUNE 10 2015 9:10 A.M.

CHAIRPERSON YOUNG: Now we will be moving to Item 8. Before we begin, Board Member Abe-Koga needs to make a statement.

MS. ABE-KOGA: Thank you, Madam Chair. Due to my recent service on the Mountain View City Council, I will be recusing myself from Item 8.

CHAIRPERSON YOUNG: Thank you. And I need to confer with my colleagues for just a moment.

All right, you see before you three pathetically starving Board Members and staff. We would ask that you give us 10 minutes to eat quickly and you don't need to go away, then we will start Item 8. So we will adjourn for 10 minutes and then be back. Thank you.

(Recess at 12:38 p.m.)

(Reconvene at 12:55 p.m.)

Other Business

Item 8. Municipal Regional Stormwater NPDES Permit - Municipalities and Flood Management Agencies in Alameda County, Contra Costa County, San Mateo County, Santa Clara County, and the Cities of Fairfield, Suisun City, and Vallejo in Solano County - Hearing to receive testimony on

1 Tentative Order, all sections except Provision C.10,
2 Trash Load Reduction.

3 CHAIRPERSON YOUNG: I thank you folks for
4 your patience. This is an important workshop to us
5 and we're glad to have you all hear today. I have a
6 couple of formalities to get through.

7 We are now going to consider Item 8, the
8 Tentative Municipal Regional Stormwater Permit, or
9 MRP. Board Member Abe-Koga has recused herself
10 because the City of Mountain View for which she was
11 a City Council Member is a Co-Permittee. Therefore
12 we will be losing a quorum, but I am authorized
13 under Board Resolution R2-2004-0094 to appoint a
14 subcommittee of three or more members of the Board
15 to conduct workshops on Board business, but not take
16 action. Accordingly, I hereby appoint Board Members
17 Ajami and Lefkovits and myself as the subcommittee
18 to conduct today's workshop hearing to accept
19 testimony on all provisions of the MRP, except for
20 trash.

21 We will not be taking any action, but will
22 report any findings and recommendations to the Board
23 at the next meeting. A transcript of today's
24 proceeding will be provided to the full Board so
25 that it can consider all of the testimonies and act

1 on the MRP.

2 I suspect that many of you were not here
3 when we did the swearing in earlier this morning, so
4 I'm going to repeat the process for you all.

5 [Swearing in repeated]

6 All relevant evidence that any person
7 desires to be considered by this Board must be
8 introduced at this hearing first by the Board staff,
9 second by the Discharger, third by public agencies,
10 and fourth by any other interested persons.

11 The Board and Board counsel may ask
12 questions to clarify the testimony of a witness at
13 any time. Cross examination of any witness by
14 others will be allowed following completion of
15 direct testimony by all persons.

16 Each person testifying will commence by
17 stating his or her name, whom he or she represents,
18 and whether he or she took the oath to tell the
19 truth. The

20 hearings will not be conducted according to
21 Technical Rules of Evidence. The Board will accept
22 any evidence or testimony that is reasonably
23 relevant to the issues. All Board files, exhibits,
24 and agenda materials pertaining to this matter will
25 be made part of the record of this proceeding.

1 Additional written material will be made part of the
2 record at the discretion of the Board.

3 Those wishing to testify in the hearing
4 will now rise or raise their hand.

5 Do you promise to tell the truth?

6 MR. WOLFE: So do.

7 CHAIRPERSON YOUNG: Thank you.

8 MR. WOLFE: So Item 8 is a workshop to hear
9 testimony on the recently released Tentative Order
10 that would reissue the Regional Municipal Stormwater
11 Permit and we've designed this to have a workshop
12 this month predominantly on non-trash-related
13 provisions and a workshop at the July meeting that
14 will focus predominantly on trash-related
15 provisions. The public comment period, then, will
16 close on July 10th shortly afterwards, and our
17 intention is to hear comments, verbal comments, but
18 also encourage all parties to submit their written
19 comments by July 10th, then Keith and his Minions
20 will pull out the Cray Computer and run all the
21 comments through and see where we get with the
22 anticipating that we can return to the Board in the
23 fall with recommending a reissued permit for your
24 adoption.

25 So with that, I'd like Keith Lichten to

1 kick it off and give a staff presentation on what it
2 is you have before you.

3 MR. LICHTEN: All right, well, let's get
4 the party started. Good afternoon, Chair Young and
5 Board Members. I'm Keith Lichten, Chief of the
6 Watershed Management Division and, as Bruce
7 mentioned, I'll be giving the staff presentation for
8 Item 8.

9 Before I begin, I'd like to note the large
10 number of staff working on the permit, including Tom
11 Mumley, the AEO, Dale Bowyer, the Section Leader,
12 Richard Looker on PCBs and Mercury, Jan O'Hara on
13 Monitoring and Pesticides, and among others, Sue Ma
14 and Selina Lui on everything else. And Yuri Won and
15 Tamarin Austin provided legal review. In
16 coordination with many Permittee staff, a number of
17 whom are here today, and other stakeholders, work on
18 the permit is a team effort. And I would just note
19 in passing, for those commenting, if you haven't yet
20 completed a comment card, but I think most of you
21 have, please do so and hand it to Tom Mumley down
22 here at the front table.

23 Okay, so today I'll cover our planned
24 schedule for the Permit Reissuance, describe what
25 the MRP is and its regulatory role, and describe

1 significant proposed changes to the permit, focusing
2 on sections on PCBs and Mercury, and new and
3 redevelopment, and a few relatively more minor
4 changes. For each change I'll describe the purpose,
5 what the previous Permit, MRP 1.0 says, and what the
6 new permit would do. And as Bruce mentioned, what's
7 not here is Provision C10, Trash, for which a public
8 hearing has been noticed for July.

9 Here's our planned schedule for MRP 2.0. I
10 want to take a moment to discuss how we got here
11 because that small bullet on the left represents
12 more than 50 meetings over two years with the
13 Permittees, US EPA, and other interests. These were
14 both broad meetings about the entirety of the
15 permit, as well as subject specific work group
16 meetings such as on Pollutants of Concern and Green
17 Infrastructure.

18 Also, we are now in the public comment
19 period for the MRP 2.0.0 Draft Permit. We've
20 scheduled that as a 60-day comment period, twice the
21 minimum required 30 days. And as Bruce mentioned,
22 we have publicly noticed two testimony hearings on
23 the MRP, today's hearing which covers everything
24 except discharges of trash, and the July 8th
25 hearing, intended to cover trash, and whatever we

1 don't get to today. Finally, we are planning to
2 bring this before you for adoption at the Board's
3 October meeting.

4 So the MRP implements requirements for
5 operation of municipal storm sewer systems is to
6 achieve the Clean Water Act's goals of getting to
7 fishable, swimmable waters. The MRP is the
8 Municipal Stormwater Permit for most of the
9 urbanized Bay Area, a total of 76 Cities, Counties,
10 and Flood Control Districts, as shown on this slide.
11 I should note the boundaries are not exact. You can
12 see that the permitted area does not include San
13 Francisco, which of course largely drains to a
14 combined sewer system with its own permit, and it
15 excludes some North Bay towns.

16 Not counting San Francisco, those
17 municipalities not covered by the MRP are covered by
18 a separate Statewide NPDES Stormwater Permit for
19 small municipalities.

20 Stormwater Permit coverage for most of the
21 76 Co-Permittees began in the early 1990's, early to
22 mid-1990's, during which time most were permitted on
23 a county-wide basis. In 2009, you consolidated six
24 separate stormwater permits into a single regional
25 permit with consistent requirements for all

1 Permittes.

2 MRP 2.0 includes requirements intended to
3 ensure that discharges of pollutants via the storm
4 drain system are appropriately minimized. It's
5 built around the program areas shown here which are
6 broadly required by the Clean Water Act. For
7 example, Municipal Operations, which includes
8 ensuring that municipal corporation yards are
9 operated in a clean way, and Industrial and
10 Commercial Controls, which includes a robust
11 Municipal Business Inspection and Enforcement
12 Program.

13 MRP 2.0 follows the structure of MRP 1.0 in
14 which we've dedicated sections to each of the
15 required components. As I said, I'll focus on areas
16 where there are significant changes between MRP 1.0
17 and 2. These are requirements to reduce PCBs in
18 Mercury and for new and redevelopment projects plus
19 a few relatively more minor changes. Otherwise, in
20 most respects MRP 2.0 is similar to the previous
21 permit.

22 So let's start the discussion of what has
23 changed by looking at how we implement the San
24 Francisco Bay PCBs TMDL and its requirements to
25 reduce PCBs in stormwater runoff.

1 As a reminder, there's a PCB TMDL for the
2 Bay because PCBs present a significant threat to
3 public and environmental health. At present,
4 there's a fish consumption advisory not to eat surf
5 perch at all because of high PCB concentrations, and
6 to limit our consumption of other fish. PCBs are a
7 probable human carcinogen and can cause or
8 contribute to developmental disabilities among other
9 impacts.

10 So in the TMDL which the Board adopted in
11 2010, you assigned urban stormwater runoff a waste
12 load allocation of 2 kilograms per year of PCBs, and
13 you allowed 20 years for that allocation to be met.
14 The current load is estimated to be 20 kilograms per
15 year, so that means by 2030, the TMDL calls for
16 reduction of 18 kilograms per year of PCBs in urban
17 runoff.

18 MRP 2.0 would require a reduction of three
19 kilograms per year, or one-sixth of the goal. That
20 reduction would be achieved by Year 10 of the TMDL,
21 so halfway through the 20-year period, allowed to
22 meet the load reduction goal, the Permittees would
23 accomplish about one-sixth of the reduction.

24 The reductions involve significant on-the-
25 ground work and a degree of uncertainty. Because of

1 this, the TMDL has an option after 10 years to
2 modify the schedule as long as stormwater
3 dischargers work vigorously to achieve the
4 reductions.

5 In order for the Board to consider changing
6 the TMDL schedule, dischargers must broadly
7 implement actions that make sense, investigate those
8 actions effectiveness and, if more are needed,
9 identify additional actions to meet the overall
10 reduction.

11 For staff to be in a position to talk with
12 you about changing the TMDL schedule, we have to be
13 comfortable there has been vigorous effort and
14 that's what is presented in the MRP.

15 The TMDL is why we have numeric
16 requirements in the permit. There is some concern
17 from the Permittees on this issue, particularly
18 regarding the near term implementation requirements,
19 which I'll discuss in a moment. Those requirements
20 are needed to drive that implementation of PCB
21 cleanup work consistent with the TMDL schedule.

22 The specifics of that cleanup work are an
23 outcome of work the Permittees conducted under MRP
24 1.0, Investigation, Planning and Pilot Project work,
25 which I'll discuss in the next slide.

1 So as I said, MRP 2.0 would build on work
2 done in MRP 1.0. MRP 1.0 provided an opportunity to
3 plan and pilot PCB controls in order to implement
4 them broadly under MRP 2.0. MRP 2.0 holds the
5 Permittees as a group responsible for load
6 reductions averaging half a kilogram per year for
7 the first two years, and averaging three kilograms
8 per year for the final three years of the permit.
9 Those reductions are for all Permittees combined.
10 And there are two check-ins, the first is at the end
11 of Year 2 when the Permittees must meet that half
12 kilogram average annual reduction and the second is
13 at the end of Year 4 when Permittees must meet the
14 three kilogram average annual reduction. And as you
15 see from that figure off on the right, there are
16 some areas in the Bay of relatively high PCB
17 concentrations, typically old industrial areas and
18 contaminated sites, and areas of moderate PCB
19 concentrations, often old urban areas.

20 The Permittees are likely to achieve the
21 load reductions by completing near term actions in
22 the high areas and by implementing longer term
23 actions over time in both the high and the moderate
24 areas, more on those in a minute. And MRP 2.0
25 requires a system to keep track of the reductions

1 obtained. The fact sheet illustrates our current
2 state of knowledge on Accounting. In addition,
3 staff has completed an analysis using Permittee data
4 to demonstrate they can meet the load reduction
5 requirements with a combination of near term and
6 longer term actions.

7 So let's take a look at those near term
8 actions, actions that can be completed relatively
9 quickly, that is, in the Permit's first two years to
10 get to that average annual reduction of half a
11 kilogram. These include targeted cleanouts of
12 sediment from storm drains and pump stations and
13 increasing street cleaning in areas with higher
14 concentrations of PCBs, referring sites to the Water
15 Board and U.S. EPA for cleanup, diverting first
16 flush runoff and dry weather flows to the Sanitary
17 Sewer and, finally, Permittees have an ongoing
18 requirement to include appropriate low impact
19 development green infrastructure controls in
20 projects they are reviewing and approving now. And
21 when I say "green infrastructure," I'm talking about
22 using natural systems like plants to help filter
23 stormwater as a part of the storm drain.

24 So as I said, they're doing that now. So
25 this provides a benefit beginning with the near

1 term. And ongoing implementation of this
2 requirement will help achieve the reduction. Oh,
3 and so just a couple of pictures, here we have an
4 existing Bioretention cell project on San Pablo
5 Avenue and, not knowing it was going to rain today,
6 I thought we'd show a picture from Portland where
7 there is rain, but then there goes your drought
8 joke, when it rains outside... And you can see that
9 water ponds up and slowly soaks into the soil as a
10 filter, which then would capture PCBs, that's an
11 example of a Bioretention or a green infrastructure,
12 a low impact development control.

13 So let's talk about a longer term PCB
14 reduction. These actions include both the near term
15 measures I just mentioned, and also things that are
16 going to take time to develop during this permit
17 term, which will set the stage for implementation of
18 future permits. And a significant longer term
19 action being developed is green infrastructure
20 retrofit of public projects, but also private
21 projects, to capture PCB-laden sediment and prevent
22 it from discharging to the Bay.

23 The Green Infrastructure Planning
24 requirement which appears in the new and
25 redevelopment provision, in which I'll discuss in a

1 moment, is intended in part to help the Permittees
2 plan how they get to that long term load reduction
3 of 18 kilograms per year. And finally on PCBs, a
4 significant potential source is discharges
5 associated with building demolition. Many buildings
6 constructed from 1950 to 1980 used caulk with PCBs,
7 and there are estimated to be more than 10,000
8 kilograms of PCBs in exterior caulk in Bay Area
9 commercial and industrial buildings alone. That's a
10 large number compared to the long term load
11 allocation of two kilograms per year. So these PCBs
12 can be mobilized both during demolition and when
13 construction of materials are sent to construction
14 debris landfills for potential reuse. As a result,
15 it's an important source of PCBs to control.

16 The Permittees are concerned about taking
17 action to control PCBs as a part of the demolition
18 process. We agree that this is a significant new
19 approach and we will stay involved. At the same
20 time, an effective program that controls PCBs while
21 also facilitating timely construction of
22 redevelopment projects is likely best managed at the
23 local level. Potentially, it could be a new
24 component of the Permittees' existing construction
25 management programs. We are continuing to discuss

1 with the Permittees how they'll go about complying
2 with these permit requirements.

3 Let's shift to Mercury and take a moment to
4 talk about how the MRP would implement the Bay
5 Mercury TMDL's urban runoff requirements. That TMDL
6 which you adopted in 2006 gave stormwater a waste
7 load allocation of 82 kilograms per year and the
8 current load is believed to be about 120 kilograms
9 per year.

10 Similar to PCBs under MRP 1.0, the
11 Permittees conducted an investigation and pilot
12 projects to reduce Mercury. MRP 2.0, as shown on
13 this slide, would require load reductions of an
14 average of 48 grams per year of Mercury during the
15 Permit's final three years. Now, there is some
16 correlation between areas high in Mercury and areas
17 high in PCBs, although overall Mercury is more
18 broadly distributed.

19 The Mercury load reductions are likely to
20 be accomplished during MRP 2.0 via implementation of
21 the measures I just described for PCBs. Over the
22 longer term, Mercury reductions are likely to be
23 accomplished via the Green Infrastructure Plans and
24 retrofit projects implemented through them. MRP 2.0
25 also includes requirements for further investigation

1 of Mercury, including better quantifying the benefit
2 of certain control measures. Because for the coming
3 Permit term, PCB actions are likely to result in
4 Permittees meeting the Mercury reduction
5 requirements, I won't spend more time now on this
6 provision.

7 So let's shift to MRP requirements for
8 impacts associated with new and significant
9 redevelopment projects. MRP 2.0 would largely
10 continue MRP 1.0's requirements, so let me go over
11 the high points of MRP 1.0, and then I'll talk about
12 what's new.

13 MRP 1.0 required projects with more than a
14 certain amount of impervious surface, 10,000 square
15 feet for most, or 5,000 square feet for some
16 transportation-related uses. So those projects had
17 to treat their stormwater runoff using Low Impact
18 Development, or LID measures like the ones I showed
19 before.

20 In addition, MRP 1.0 included requirements
21 to ensure those LID measures would be appropriately
22 operated and maintained, and it required some
23 projects adding a lot of impervious surface, an acre
24 or more, to address their hydro-modification
25 impacts; that is, to control changes in runoff that

1 could increase creek erosion.

2 MRP 2.0 is largely status quo. It would
3 continue MRP 1.0's requirements such as maintaining
4 the impervious surface thresholds that trigger LID
5 treatment and hydro-modification requirements.
6 However, the most significant difference in MRP 2.0
7 is the requirement for long term Green
8 Infrastructure Planning. In addition, at the
9 Permittee's request -- and I'll go over that in more
10 detail in the next slide -- it includes an option to
11 model hydro-modification control measures in a new
12 way, which could result in more efficient and
13 perhaps smaller control sizing. And there are some
14 other minor changes including regarding inspections.

15 So let's talk about the Green
16 Infrastructure Plan. This started as a conversation
17 during MRP 1.0 about requirements for street and
18 road rehabilitation. In lieu of being required to
19 complete treatment on all of their street and road
20 projects, Permittees were required to complete 10
21 Green Street Pilot Projects. So MRP 2.0 would
22 expand on this to require Permittees to complete
23 Green Infrastructure Plans. The plans are intended
24 to shift construction of infrastructure such as
25 parking lots, streets and storm drains from gray to

1 green over time. And, as I just discussed,
2 achieving those long term TMDL load reductions is
3 likely to require green infrastructure retrofit.

4 So over the longer term, these plans would
5 identify places to retrofit green infrastructure
6 measures like Bioretention cells. The plans would
7 also include procedures for mapping and tracking
8 implemented controls and for use with the TMDL load
9 reduction accounting approach. And as I noted
10 before, the plans, although we think the low hanging
11 fruit is public infrastructure, they could consider
12 both public and private parcels. And for the
13 purposes of getting TMDL load reduction credit,
14 reductions from both public and private parcels
15 count.

16 So under the plans, the Permittees would
17 develop a prioritized list of areas with potential
18 for LID retrofit, Low Impact Development retrofit,
19 based on factors such as site constraints and
20 potentials to reduce TMDL pollutant loads. Under
21 the plans, the Permittees would revise their
22 internal planning and design processes, including
23 working to coordinate the Green Infrastructure Plans
24 with other plans, like their complete streets and
25 urban forestry plans. Over the long term, our

1 intent is that these will make green infrastructure
2 the regular way of doing business, to help cities
3 develop, for example, standard green street
4 specifications and implement them in road projects
5 whose green street designs are funded as a part of
6 regular transportation grants.

7 Also, the plan requirements are flexible.
8 While some larger Permittees may choose to do
9 individual plans, we anticipate that many smaller
10 Permittees will work together to develop a general
11 Green Infrastructure Plan, of which only elements
12 such as the prioritization of areas to retrofit,
13 will be specific to one Permittee.

14 Finally, there are some other changes to
15 new and redevelopment, these include the option I
16 mentioned, that the Permittees request to develop a
17 new method to model the erosive impacts of new and
18 redevelopment projects in creeks, and that option
19 may result in more efficient control measure sizing.

20 MRP 2.0 would also make the hydro-
21 modification requirements for Contra Costa County
22 consistent with those of Permittees in other
23 counties. We are discussing with Contra Costa
24 whether that may result in a need for them to revise
25 their control measure sizing and there's a

1 placeholder for that in the Permit.

2 MRP 2.0 would require implementation of LID
3 stormwater treatment controls on old projects,
4 projects approved by Cities a long time ago, but not
5 yet built, that don't have any clean water controls
6 in their design. Under MRP, those were exempted
7 from treatment.

8 Also, MRP 2.0 includes a requirement to
9 ensure that pervious pavements, which are an
10 important part of LID designs, are inspected and
11 appropriately maintained, so they operate as they
12 are designed.

13 Okay, well, we're here in the home stretch
14 for the staff presentation. There are a variety of
15 changes to other permit sections, and as I go
16 through this slide, I want to draw your attention to
17 the end of your item package where there's a summary
18 of proposed major changes, and so that has many of
19 the things that I'm not going to talk about here.

20 On Monitoring, for Pollutants of Concern
21 MRP 2.0 specifies an overall level of effort needed
22 to address five Management questions. This is an
23 increase in flexibility as compared to the more
24 specific requirements in MRP 1.0. Also, there is a
25 new permit section in MRP 2.0; during MRP 1.0, you

1 adopted the Pacifica State Beach and San Pedro Creek
2 Fecal Indicator Bacteria TMDL, that TMDL affects two
3 Permittees, the City of Pacifica and a small part of
4 San Mateo County. MRP 2.0 includes requirements
5 implementing the stormwater portions of that TMDL,
6 such as monitoring, and actions to clean up pet
7 waste, which was found to be a source of pathogens
8 to the creek and beach.

9 And my last note on changes is about the
10 section on allowed non-stormwater discharges and
11 specifically discharges of potable water. This
12 section has been deleted from MRP 2.0. The intent
13 is that potable water dischargers will obtain
14 coverage under the new statewide NPDES Permit for
15 Drinking Water System Discharges, and that statewide
16 permit was adopted just last November.
17 Previously, there was no other permit coverage for
18 such discharges, so we included language in MRP 1.0
19 as a placeholder until such a permit was developed.

20 So let me briefly summarize. First, I want
21 to emphasize that the tentative order represents two
22 years of work with stakeholders and, on behalf of
23 Water Board staff, I want to thank the many
24 Permittees and stakeholders who have dedicated
25 significant time to this process, and who are

1 continuing to do so.

2 Second, the Permit is a key tool to achieve
3 TMDLs, including the Bay PCBs and Mercury TMDLs.
4 The Permit's enforceable numeric requirements for
5 both near and long term load reductions are
6 important; that's because they will push Permittees
7 to implement controls on the ground. They are
8 achievable. They are based on numbers provided by
9 the Permittees during MRP 1.0. And the on-the-
10 ground work is necessary, both to make progress on
11 the TMDL, but also to trigger the TMDL's adaptive
12 management implementation option if more time is
13 needed.

14 Finally, the Permit's Green Infrastructure
15 Planning Requirements would lay the groundwork for
16 the gradual modernization of urban stormwater
17 infrastructure needed to achieve the TMDLs, and
18 would also achieve a host of other benefits from
19 cleaner water overall, to safer streets, to a storm
20 drain and flood control system that can be more
21 resilient in the face of factors like climate
22 change. So thank you for your attention and we
23 would be happy to take any questions.

24 CHAIRPERSON YOUNG: All right, do we have
25 questions for Keith? I have a couple. What a

1 surprise.

2 Near the beginning of your presentation you
3 mentioned that there were two check-in points, one
4 in year two and one in year four, to determine
5 whether the Permittees had accomplished the required
6 load reductions. On what basis will we analyze
7 whether or not they have complied with that?

8 DR. MUMLEY: This is Tom Mumley, for the
9 record.

10 CHAIRPERSON YOUNG: Do we have monitoring
11 requirements? Are we just looking at what they've
12 done and modeling? Or walk me through this.

13 DR. MUMLEY: So the Permit requires that an
14 accounting system which is mostly but not completely
15 recognized in the Draft Permit, the permit requires
16 a submittal within the first year to complete that
17 accounting system as to how actions will be counted
18 and load reductions counted, and so we expect it
19 will be a combination of documentation of actions,
20 monitoring, and model benefit, and annual submittals
21 of associated actions and reductions.

22 CHAIRPERSON YOUNG: And this is subject to
23 EO approval, I presume, the submittal?

24 DR. MUMLEY: The accounting system, yes.

25 CHAIRPERSON YOUNG: All right. I'm getting

1 a déjà vu here for a similar provision in the last
2 MRP that did not work out so well, so I hope it
3 works better this time and I would presume -- I
4 would direct staff to be prepared if we do not find
5 that it's adequate, that we be prepared to put out
6 our own. But this is just speaking from experience.

7 DR. MUMLEY: Yes, well, understood, but you
8 may note that in the Fact Sheet, we do begin the
9 prescription of how that accounting should be
10 implemented and with direction in terms of what is
11 expected, with a degree of recognition of what we
12 already know, so we're in that territory that you're
13 --

14 CHAIRPERSON YOUNG: I appreciate that, I'm
15 just laying down a marker, as you know.

16 Secondly, you mentioned that this would be -- we
17 expect this to be achieved as a group and I can
18 understand how one could use an accounting system to
19 look across the region and see if the regional
20 requirements had been met, but it always concerns me
21 a little bit when we ask people to achieve something
22 as a group with no default system that assigns
23 individual accountability or responsibility because
24 we want to make sure this is implemented fairly and
25 that there aren't some of these folks who were

1 picking up all of the burden and others who are
2 skating along. So walk me through how we assure
3 equity in this system.

4 DR. MUMLEY: So first we do propose in the
5 draft permit a distribution of that aggregate load
6 reduction on a County basis, that's part one. And
7 then part two is that the provost (ph) permit
8 requires the Permittees that further propose, let
9 them tell us how they would like to see those County
10 levels distributed amongst themselves, and that
11 becomes, if you will, the backstop. And our
12 recommendation is that this be implemented in a
13 manner that, if the total is met everything is good,
14 if the total is not met, that it be looked at, which
15 parts of the total weren't met, and then which part
16 of the part of the total wasn't met when you get
17 down to the Permittee level. So we don't have that
18 last part done, but rather than us dictate --

19 CHAIRPERSON YOUNG: We have a project for
20 them to create the allocation.

21 DR. MUMLEY: Yeah.

22 CHAIRPERSON YOUNG: Okay. Yes.

23 DR. AJAMI: Maybe I missed it and you
24 mentioned it, but is it required for them to let us
25 know when they do -- bring infrastructure? I was

1 wondering if we can create some sort of like a
2 database or something that would help us to -- just
3 thinking ahead if we want to model these things and
4 see how that can impact water supply. I know we are
5 tracking them, I am not sure if we are collecting
6 the data in a database.

7 MR. LICHTEN: I'll speak a little bit to it
8 and then Tom is free to jump in. We think that
9 there's a variety of ways the Green Infrastructure
10 Plans could be implemented, including via some work
11 that SFEI is doing as far as computer-based modeling
12 and prioritization schemes, which would also allow
13 some level of tracking. Separately, the Permittees
14 track for their own purposes O&M Green
15 Infrastructure Controls, so there's something to
16 begin with, at the moment there's not an overarching
17 system. Tom, do you want to speak a little about
18 that?

19 DR. MUMLEY: Yeah. I think we all
20 recognize the value and need to have a tracking
21 system because already from past actions,
22 particularly driven by the last permit which
23 emphasized low impact development-type measures, the
24 numbers are growing. And municipalities need to
25 know where they are to ensure that they function

1 properly, to inspect them, etc. So it's just a
2 matter of time that we're going to come to agreement
3 or terms on what is the optimum way of tracking and
4 having accessibility to this information. Clearly,
5 the development of the proposed Green Infrastructure
6 Plans provides the need and opportunity to do that;
7 the question is, can we get something going sooner
8 than later? So it's not a new issue, by all means,
9 we're well aware what you're suggesting.

10 DR. AJAMI: Yeah, and I mean if they are
11 electronically tracked, it's much better than paper
12 trail, that might be harder to sort of go back and
13 find, and I'm assuming everybody at this day and age
14 tracks everything electronically, but you never
15 know.

16 DR. MUMLEY: Correct. By the way, this
17 issue has gotten and will continue to get statewide
18 attention, as well, and so there will be -- if we
19 don't do something that meets our needs, it's likely
20 something may happen out of Sacramento that may or
21 may not meet our needs, so at a minimum we will want
22 to be proactive in terms of development of any kind
23 of tracking system.

24 DR. AJAMI: Right. Again, I can't
25 emphasize enough the fact that how this relates back

1 to water supply availability and how that helps the
2 whole regional sort of sustainability in many ways,
3 not just water quality, but also water availability,
4 so...

5 CHAIRPERSON YOUNG: Okay, well we have a
6 few people here to comment. If everyone took three
7 minutes, I think we would be here until tomorrow, so
8 I'm going to encourage folks to jump on others'
9 bandwagons, you know, feel free to come up and say
10 "I agree with whomever," and we will appreciate your
11 efforts to be brief. But we do want to hear from
12 you, so we will get started.

13 What I will do is to call who is coming up
14 and then who is on deck, and if you can be prepared
15 and right here, that would be great. We have also,
16 or Dr. Mumley has grouped the cards basically to
17 topics, so we will be hearing about -- this was the
18 PCBs and Mercury, basically first with some Green
19 Infrastructure rolled in. And Mr. Scanlin, we would
20 invite you to come up first, and then we would have
21 Mr. Calabrigo from Danville.

22 DR. MUMLEY: The first comments will be big
23 picture, general, the first three or four commenters
24 before the comments drill down into the PCB and
25 Mercury arena.

1 CHAIRPERSON YOUNG: Thank you for that
2 clarification.

3 MR. SCANLIN: Good afternoon, Chair Young
4 and Board Members. My name is Jim Scanlin, I'm the
5 Vice Chair of BASMAA, Bay Area Stormwater Management
6 Agencies Association. I'm also the Program Manager
7 for the Alameda County-wide Clean Water program.
8 And today I'll be speaking on behalf of BASMAA.

9 BASMAA is a 501(c)(3) organization
10 representing 98 agencies, including 84 Cities, seven
11 Counties, and several Special Districts. And the
12 Permit covers 76 of BASMAA's 98 member agencies.
13 I'd first like to start off by thanking Keith for
14 that excellent presentation, very nice job, Keith.
15 When Keith presents, everything sounds lovely and
16 fabulous, so thank you for that.

17 MR. WOLFE [presumed]: Let me write that
18 down, maybe we can stop right here.

19 MR. LICHTEN: Can you call my mom?

20 MR. SCANLIN: Your mom would be very proud.
21 And thank you for your insightful question, I think
22 the questions you raised were some of the same
23 issues we have.

24 Thanks for this opportunity to comment.
25 Again, we'll be providing additional comments at the

1 July 8th meeting and providing written comments, as
2 well. We would like to again thank Water Board
3 staff, it's been two years, we've been meeting
4 almost monthly with Water Board staff, in addition
5 with the Steering Committee, in addition to numerous
6 work groups, so thanks to the staff.

7 And we appreciate the focus on the big
8 issues, PCBs, trash, and Green Infrastructure. We
9 knew going in two years ago these were going to be
10 the issues, and we have for the most part really
11 focused on those, and we appreciate that. And we'd
12 also like to thank EPA staff for their
13 participation, it's been very helpful to have them
14 at many of these meetings, as well.

15 So I'm just going to provide a brief
16 overview and some context for the comments that will
17 follow. Again, we focused on the high priority
18 issues, we've made a tremendous amount of progress.
19 To date, we still feel there are additional issues
20 that we need to resolve prior to the adoption of a
21 permit. Again, the high priority issues, C.3.J, the
22 Green Infrastructure, C.10, Trash Controls, and
23 C.12, PCB Controls.

24 So first about C.3.J, Green Infrastructure
25 Planning. This provision continues to be the most

1 challenging and uncertain portion of Provision C.3.
2 Second, the prioritization and mapping of potential
3 unplanned projects is a major resource intensive
4 effort and additional flexibility and additional
5 time will be needed for that.

6 Third, the timeframes for establishing
7 targets for the amount of impervious surface
8 retrofitted do not line up well with the C.11 and
9 C.12 provisions.

10 And finally, the requirement to meet the
11 C.3.D sizing criteria may not be feasible. Many of
12 these roadway projects are where space is very
13 constrained and that's C.3.I.i.g. Can I get a
14 couple extra?

15 Moving on to C.12, over the past --

16 CHAIRPERSON YOUNG: I'm sorry, we're
17 allowing Mr. Scanlin some extra time because he's
18 speaking on behalf of so many people. And I think
19 that was that thing over there (clock) in the
20 corner, which somebody else is going to keep track
21 of for the rest of you. Please go ahead.

22 MR. SCANLIN: Okay, thank you. As Keith
23 alluded to this, as well, over the past 10 plus
24 years, BASMAA member agencies have made a clear
25 commitment to assist Water Board staff. We've been

1 collecting monitoring data to assist in the TMDL
2 development from 2000 to 2008. We've implemented
3 significant pilot implementation projects to better
4 understand the cost effectiveness and feasibility of
5 managing PCBs. We've spent over \$10 million largely
6 with assistance from an EPA grant that we received
7 for our Clean Watersheds for Clean Bay Program.

8 We've been collaborating with Water Board
9 staff and SFEI to better understand the distribution
10 of PCBs and Mercury in watersheds. And we've also
11 been collaborating with BACWA, the Water Board, and
12 the California Department of Health to implement
13 strategies to communicate risks associated with
14 eating Bay fish. This commitment continues moving
15 forward into MRP 2.0, however, the Tentative Order
16 lacks a clear and feasible pathway for Permittees to
17 attain compliance with the load reduction
18 requirements. Most factors that would be key

19 to meeting the criteria are uncertain and many are
20 not within the Permittee's control, making
21 achievement of the compliance uncertain. These
22 factors include PCBs are a legacy pollutant that are
23 long-lived and ubiquitous, but generally at a low
24 level in the environment; there are no clear best
25 management practices and the BMPs we know of are

1 uncertain as far as their performance; and as you
2 brought up, there's no agreed-to accounting method
3 in the Tentative Order.

4 Despite these uncertainties, the Tentative
5 Order includes a commitment to regulatory
6 performance of the three kilograms per year, which
7 we're very concerned about. It also includes a
8 requirement to develop a major new environmental
9 program for building demolition projects. We feel
10 this would be akin to the lead abatement or asbestos
11 abatement programs that have been developed in the
12 past, and we feel that those should be led by state
13 and federal efforts, rather than done at the local
14 level or led by local agencies.

15 The local agency speakers to follow will
16 flesh out the details of these concerns and others
17 and recommend permit revisions to address these
18 concerns. Thank you.

19 CHAIRPERSON YOUNG: Questions for Mr.
20 Scanlin? Not at this time. Thank you so much. All
21 right, we will have Mr. Calabrigo followed by Sandy
22 Wong, please.

23 MR. CALABRIGO: Well, thank you, Chair and
24 Members of the Board. I'm Joe Calabrigo, I'm the
25 Town Manager in Danville and I'm here on behalf of

1 the Contra Costa County Public Managers. And I
2 would hasten to add that I believe that I am
3 actually the only local government administrator
4 that has had the opportunity to sit through the
5 meetings that Mr. Lichten referred to, and so while
6 I've enjoyed the experience very much, I have to
7 tell you that there's a great deal of technical
8 detail that's been talked about at those meetings
9 that is still way over my head, but there are a lot
10 of people here today that are prepared to address
11 those with you.

12 In Contra Costa, we're going to be giving
13 our elected officials an update of the new MRP at
14 our Mayor's conference that will be coming up in
15 July. So since July of 2013, we've been able to
16 carry on an ongoing dialogue with your staff
17 regarding some of the experiences and lessons that
18 we have gained from the current MRP, how to apply
19 that experience toward the new MRP that we're in the
20 process of developing now, and then, very
21 importantly, ensuring that these new requirements
22 are going to provide for a clear path to compliance
23 on behalf of all the Permittees.

24 Now, as someone who was schooled as an
25 Urban Planner, I think that the new MRP includes a

1 very significant step for all of us, which is the
2 development of Green Infrastructure Plans that, from
3 a local government perspective, are going to
4 radically change the way that public drainage and
5 transportation projects and infrastructure will be
6 built and maintained over the next several years,
7 decades. It's also going to require us as
8 Permittees to plan and implement programs to reduce
9 PCB loads, increase trash load reductions from 40 to
10 70 percent, and a number of the various things that
11 Mr. Lichten referred to. These are really
12 significant changes.

13 Through the process, the Permittees have
14 also advocated for relief on selected, what we would
15 consider to be lower priority tasks, that we believe
16 will yield little in the way of demonstrable results
17 in order to allow efforts and resources to be
18 focused on some of the higher priority areas that
19 we've talked about, the Green Infrastructure
20 Planning, trash load reduction, and PCB controls.
21 And we've presented, I think, comprehensive
22 information and rationale to support these requests.

23 This approach really acknowledges that the
24 newer additional funding sources that are going to
25 be required in order to implement these new

1 requirements have yet to be identified. Again, I'm
2 wearing my Administrator hat, but you know that in
3 Contra Costa County we tried this in 2012, and 60
4 percent of the respondents gave us a thumb's down.

5 So we're being asked to make commitments
6 without any assurances that we'll be able to secure
7 adequate funding to pay for capital operating and
8 maintenance costs. So again, we need to allocate
9 the limited resources that are available in ways
10 that will focus on and maximize the effectiveness of
11 the major new mandates that are contained in the new
12 MRP.

13 I also want to emphasize that as local
14 government, we view ourselves very much as partners
15 with the Water Board in carrying out this mandate,
16 but we also need you to recognize the enormity of
17 the effort and the revenue uncertainty that comes
18 along with it.

19 As local governments, we think that we've
20 worked diligently to meet the current MRP
21 requirements and that we've presented thoughtful and
22 extensive input and feedback to your staff regarding
23 the new MRP. And while we've appreciated that
24 opportunity and your staff's willingness to engage
25 with us and hear this feedback, we believe that too

1 few of these ideas have been incorporated into the
2 Draft Tentative Order. So you're going to be
3 hearing from various speakers today asking you for
4 consideration regarding relief with respect to
5 certain issues, and also providing Permittees with a
6 clear path to compliance. And so I'd urge you to
7 consider their testimony and then direct your staff
8 to continue to work with these stakeholders to
9 address these issues. Thank you.

10 CHAIRPERSON YOUNG: All right, thank you.
11 Any questions? Who at the front table is watching
12 the clock and resetting the clock? Okay. It might
13 be nice if someone of you guys would just like hold
14 up something when there's only one minute to go, so
15 people don't have to concentrate on looking at the
16 clock. Is it visible enough? Okay. I can't see
17 it. I just want to make sure that something is in
18 their field of vision. But now you've been
19 forewarned, you have to look at the clock. All
20 right, Sandy Wong and followed by Tom Dalziel,
21 please.

22 MS. WONG: Thank you, Madam Chair and Board
23 Members. Sandy Wong, Executive Director for
24 City/County Association of Governments for San Mateo
25 County, C/CAG. C/CAG represents 21 jurisdictions in

1 San Mateo County and I pretty much ditto the first
2 two speakers before me.

3 We as part of our job is to help our 21
4 member agencies to comply with the stormwater
5 requirements and I just wanted to mention one thing
6 here regarding PCB and Mercury. Because it's
7 largely a legacy issue, and there's a lot of
8 uncertainty regarding the effectiveness of the
9 control measures, we would like to urge you to input
10 more time in the new permit to allow our staff to
11 work with your staff in developing these control
12 measures that are effective and also achievable.

13 And I really want to thank your staff for
14 the last two years in working with us, we do have a
15 full time stormwater program manager dedicated to
16 this program, and he has worked with all of your
17 staff in the last two years, and we really
18 appreciate that. And it has a huge improvement over
19 the first permit.

20 Funding is a major issue from local
21 agencies because they have a very limited amount of
22 funding. C/CAG, in the last year we looked into
23 exploring ways to seek new funding initiatives for
24 this, and we've done analysis and it shows that even
25 if we are successful in getting a new funding

1 initiative, we still have a large shortfall gap. So
2 my short message is to ask you to be aware of our
3 limited funding situation and give us more time to
4 craft more effective control measures. Thank you.

5 CHAIRPERSON YOUNG: All right, thank you
6 very much. So now we have Tom Dalziel followed by
7 Jon Konnan.

8 MR. DALZIEL: Thank you. My name is Tom
9 Dalziel. I'm the Program Manager for the Contra
10 Costa Clean Water Program. Shortly after the defeat
11 of our countywide funding initiative in 2012, our
12 municipalities began a review of our stormwater
13 programs looking to identify ways to improve
14 efficiency and maximize our program's effectiveness
15 in the next permit term.

16 Through this effort, we developed the
17 following three principles, guiding principles for
18 the next permit, the first being to establish
19 priorities focused on actions that will improve
20 water quality, 2) identify and prioritize the
21 actions that integrate multiple benefits, and 3)
22 assure a clear path to compliance. Working
23 collaboratively with your staff over the last two
24 years, we've developed a Plan of Action that is
25 nearly consistent with these guiding principles, and

1 that's the Green Infrastructure Plan.

2 This plan recognizes that our pollutants of
3 concern, Mercury, PCB, and all the others, are
4 disbursed throughout the built environment, and that
5 achieving our water quality goals to reduce or
6 eliminate these pollutants from receiving waters
7 will require significant change in the way we
8 design, build, and maintain our drainage and
9 transportation infrastructure. We're committed to
10 setting this into motion and it's a long range plan
11 to retrofit the built environment by permanently
12 disconnecting drainage from impervious surfaces to
13 local waterways. Green Infrastructure will be
14 implemented over the coming decades as
15 transportation and drainage infrastructure is
16 rebuilt, and privately owned urban land is
17 redeveloped.

18 The good news is we've been doing green
19 infrastructure for 10 years now on new and
20 redevelopment of private parcels. During the last
21 five years, we've also implemented a number of pilot
22 green street projects. Much was learned from these
23 projects, such as accommodating all the various
24 below ground and above ground utilities, dealing
25 with the multiple modes of transportation, wheels,

1 chairs, bicycles, pedestrians, cars, buses, and then
2 also incorporating these LID drainage design
3 features all within a highly constrained public
4 right of way is extremely challenging and expensive.

5 Over the next permit term, our public
6 works, planning, transportation, capital
7 improvement, maintenance and finance departments
8 will be working to develop prioritized plans and
9 maps for planned and potential retrofits, new
10 streetscape guidelines, new street design standards,
11 and funding methods for capital construction and
12 ongoing O&M.

13 There is currently insufficient public
14 investment needed to adequately maintain our
15 existing drainage and transportation infrastructure,
16 so we need to acknowledge that new revenue sources
17 and mechanisms will be needed. We are working on
18 this now. We've already begun discussions regarding
19 the need to focus and coordinate funding streams and
20 on changing transportation agencies' project design
21 and approval processes. BASMAA also received a
22 grant to assemble a roundtable of regional, state
23 and federal transportation agencies and other
24 relevant stakeholders to identify a chart to see
25 that that happens. With this grant, there will also

1 be a design contest for development of effective and
2 efficient typical street designs that incorporate
3 green infrastructure. This will not be enough. We
4 will need new, yet to be identified funding streams.

5 We are working on a coalition on a
6 statewide funding initiative that, if ultimately
7 successful, will allow us to fund our stormwater
8 programs similar to the way we fund water, sewer and
9 refuse services. The work and effort is worthy and
10 the benefits to water quality will be significant
11 and measurable. However, local government and state
12 government must be partners in this monumental
13 effort and recognize and accommodate the inherent
14 uncertainties that prevail such as the availability
15 of funding and the rate and pace of private
16 redevelopment. We need your help in allowing us to
17 refocus our effort and prioritize our actions on
18 this important multi-benefit solution. I'd like to
19 leave you with just two thoughts, if I may.

20 Through our efforts to identify how to make
21 our programs more effective, we have identified a
22 number of less beneficial tasks. These are required
23 actions that provide little or no water quality
24 benefit and are administratively burdensome. These
25 less than beneficial tasks have been submitted and

1 reviewed with your staff over the past two years.
2 They're in our report of waste discharge submitted
3 in June 2014, and in our program and BASMAA's
4 comments in the Administrative Draft Tentative
5 Order. We'd like you to work with us to reduce or
6 eliminate those less beneficial tasks.

7 Last thought. The second thought involves
8 what other speakers will follow-up behind me in that
9 we need protection, we need a clear path to
10 compliance with the PCB and Mercury TMDL. A lot of
11 work has been done on this, I think we're close to
12 finding an answer, but as it is written right now,
13 there's no guarantee. Thank you.

14 CHAIRPERSON YOUNG: All right. In fairness
15 to everyone else at the bottom of this stack, I
16 would ask that people really take seriously the fact
17 that we're trying to do this in three minutes. You
18 can write as long of comments as you want when you
19 submit your package, and they will all be responded
20 to and we will read them all, as well. Okay, this
21 is Jon Konnan and we'll have Arleen Feng next,
22 please.

23 MR. KONNAN: Hi, I'm Jon Konnan with the
24 EOA. I'm here for the San Mateo County Stormwater
25 Program. I'm going to talk about PCBs, C.12, and

1 I'd like to start off with some perspective about
2 time. I think we should all sit back, relax, take a
3 deep breath, and consider the timescales that we are
4 considering.

5 With PCBs there's really one timescale that
6 matters and that is decades -- not years, but
7 decades. PCBs have been in the Bay for decades and
8 no matter what we do right now, short of dredging
9 the whole Bay, PCBs are going to remain in the Bay
10 for decades to come. This is a legacy pollutant
11 that over many many years has been disbursed widely
12 in soils and sediments in the urban landscape that
13 drains to the Bay, and they're also widely disbursed
14 in the sediments in the Bay, itself. They breakdown
15 very slowly. So they're not going anywhere any time
16 real soon and there's no magic bullet. Does that
17 mean that we should slack off on our efforts? Of
18 course not. You've heard about some of our
19 accomplishments earlier from Jim Scanlin and we need
20 to continue doing everything that we can to reduce
21 discharges of PCBs in stormwater so that the Bay can
22 clean itself out over time. But the important point
23 is that we need to be smart about it.

24 The thing to guard against at this point is
25 to start to do things in a rushed or hurried way, or

1 in an inefficient way just to try to show some
2 arbitrary short term progress. And building
3 materials is a good example. You'll hear some more
4 details from Arleen next. But if local agencies are
5 forced to develop in just three years a program to
6 manage building materials during demolition, it's
7 going to result in using scarce public funds in
8 inefficient ways, and probably with a less than
9 desirable outcome. Local agencies should be given
10 at least the entire permit term to work with U.S.
11 EPA and the other stakeholders to develop a program
12 that is statewide.

13 So the bottom line with all these PCBs
14 controls is that the local agencies really want to
15 do the job in the right way, and they will do the
16 job in the right way, but you have to give them
17 enough time to do the job in the right way. Thank
18 you.

19 CHAIRPERSON YOUNG: All right, thank you
20 very much. This is Arleen Feng and then we'll have
21 Phil Bobel, please.

22 MS. FENG: I thank you. Good afternoon,
23 Chair Young and members. I'm Arleen Feng. I'm the
24 Monitoring and Technical Project staff for the
25 Alameda County-wide Clean Water Program and I thank

1 you for the opportunity to comment and also thank
2 the Water Board staff for their collaboration in the
3 PCB pilots and ongoing efforts that we've already
4 done, as Keith described.

5 I'm going to focus on C.12.F, Managing PCB
6 Containing Materials and Waste During Building
7 Demolition Activities. There's been a lot of
8 discussion in the past and we applaud the
9 recognition that a comprehensive framework is needed
10 to address this legacy pollution problem, as C.12.F
11 does. However, this same provision undercuts this
12 understanding with an unrealistic timeframe for
13 implementation, as Jon mentioned.

14 As background, before the 1979 ban, PCBs
15 appeared in two broad categories of uses. In
16 addition to the closed uses of oil filled equipment
17 such as electrical transformers and fluorescent
18 light ballasts, there was a wide range of open uses
19 including plastics, molded rubber parts, paints or
20 sealants, caulking, adhesives, and asbestos wall and
21 roof covering, and that's not a comprehensive list.

22 Stormwater programs collaborated with the
23 San Francisco Estuary Partnership's PCB and Caulk
24 Project from 2007 to 2011, and it focused on Caulk
25 because older caulks contained many high PCB

1 concentrations, not always but some, and it was
2 expected that they have a majority of the PCBs in
3 many older buildings, but by no means all. And it's
4 by no means predictable for a given building.

5 However, the PCBs that are actually emitted
6 or discharged to the environment as a result of
7 demolition is a very small fraction of this total
8 mass of caulk and of the larger mass of PCBs that
9 are in the building, that 10,000 kilograms of
10 inventory. And this is a societal problem that that
11 10,000 kilograms is out there, but it's not
12 primarily even a stormwater problem.

13 So when the project outlined model
14 municipal ordinances, it identified major gaps such
15 as most of the requirements for abatement of these
16 materials would probably occur before a municipal
17 permit was issued.

18 So in 2010, Water Board staff and BASMAA
19 both commented on U.S. EPA rulemaking, urging EPA to
20 address these gaps. Recently, EPA announced that it
21 will propose limited regulatory fixes in March 2016,
22 but we don't really expect these to form a
23 comprehensive program. In comparison, regulations
24 for construction-related asbestos and lead include
25 testing and abatement standards, certification and

1 approved training including requirements that these
2 be for state and federal contracts, and a process
3 for delegating authority to state agencies,
4 including the Departments of Public Health,
5 Industrial Relations, Consumer Affairs, and local
6 Air Quality Districts.

7 So we are asking the implementation
8 timeframes be realistic and contingent upon active
9 participation and information sharing by U.S. EPA,
10 as well as the other state agencies. Thank you.

11 CHAIRPERSON YOUNG: All right, thank you
12 very much. Mr. Bobel and then Jay Walter.

13 MR. BOBEL: Hello Board Members, Phil Bobel,
14 City of Palo Alto. Thank you for having all of us
15 today, we really appreciate it.

16 The first point I'd like to make is with
17 respect to the Green Infrastructure Program. That's
18 extremely positive, we're very excited about that,
19 we think it's great that it's in the permit, not
20 everybody may, but for us we'd have to admit that in
21 the past, with multiple City Departments working on
22 projects, opportunities get missed. So I welcome
23 the opportunity to put together a plan and to bring
24 together all of our City Departments so we're sure
25 that we don't miss any opportunities for Green

1 Infrastructure within the City.

2 With respect to private development, we've
3 had for many years now a program to deal with that,
4 but I have to admit that within the City we need a
5 better system and this is going to give us the teeth
6 to insist on that better system for everybody, so I
7 welcome that.

8 The main problem I see with it, the way the
9 permit is written, is just that first deadline of a
10 year says that we submit it, but we have our council
11 or Board approve it prior to submittal. Most things
12 of this nature we don't have approved by our
13 Council, they don't need to, and if you insist on
14 that, we won't be able to make that timeframe. Just
15 getting it through our process, they'll refer it to
16 some committee or another board and it won't happen.
17 So I think if you just remove that, we can submit
18 something within a year, at least speaking for Palo
19 Alto, and that will be a great first step. I think
20 you called it a structure or a framework, and we can
21 do something like that.

22 The second point I'd like to make is with
23 respect to the PCB and Mercury proposal. As has
24 been discussed, it's widely disbursed in the
25 environment, we can't find any hot spots in Palo

1 Alto for either of those two. We have been looking
2 for years and doing various tasks associated with
3 the Regional Board, some of them and some of them
4 not, and we just don't think there are any, anymore.

5 So it's a pervasive problem and a load
6 allocation to the City won't help. So there's a
7 provision in the permit now that says that there
8 shall be a distribution of the load from a County
9 level, which is specified in the permit, down to the
10 City level. And we suggest you just eliminate that.
11 It's not going to help. This is a thing that's
12 largely under control, we're going to deal with
13 private development through C.3, we're going to deal
14 with our own City development through the Green
15 Infrastructure Plan, we'll maximize those
16 activities, but we have to ask that you omit that
17 distribution to the local level from it.

18 Secondly, we'd strongly suggest that even
19 at the County level these just be goals, not some
20 kind of enforceable target; that won't help, it only
21 creates a lot of friction. Thank you.

22 CHAIRPERSON YOUNG: Thank you, Mr. Bobel.
23 Jay Walter and then Napp Fukuda, please.

24 MR. WALTER: Good afternoon, Board Members.
25 I'm Jay Walter, the Public Works Director for the

1 City of San Carlos in San Mateo County. And I also
2 want to comment that I appreciate the time and
3 effort that's gone into the last couple years with
4 the MRP Steering Committee, the effort of your
5 staff, and all the Permittees that have had a very
6 active and ongoing discussion as we are ready for
7 MRP 2.0.0. I do have a couple of comments to
8 make, in particular for the PCB load reductions.
9 And previous speakers have commented and I would
10 like to second the idea that a load reduction
11 number, which is set as a hard target will be much
12 more difficult to achieve, though added pressure of
13 a load reduction target versus the programs that are
14 designed to reduce PCBs in the runoff, I think, is a
15 much more reasonable way to go, and I would mention
16 that the City of San Carlos was one of the agencies
17 that had a pilot project for PCB reduction, it was
18 actually in the Green Infrastructure area. And we
19 struggle with, as the project was completed and the
20 information was submitted, with really understanding
21 the true results of what we had achieved. And so I
22 think there's still more work to be done before we
23 begin to prescribe the load reduction targets based
24 on these particular activities.

25 As it relates to the PCBs and the building

1 materials and road sealants, I think that it's been
2 mentioned that this is perhaps a larger issue than a
3 local level concern, it's a concern obviously but I
4 believe that along with the lead paint and asbestos
5 abatement programs that have been proffered at much
6 higher levels that this is worthy of that same
7 effort, as well, so that we local agencies don't get
8 into the business of creating programs that don't
9 work as well as they should, but perhaps should be
10 managed at a higher level down through to local
11 agencies, that we can enforce that way.

12 As it relates to Green Infrastructure
13 Planning, I would like to point out that certainly
14 it will be challenging to create the Green
15 Infrastructure Plans and get them adopted by our
16 Council within the one year. The one other thing
17 that perhaps complicates this, to make you aware of,
18 is that typically Councils have capital improvement
19 programs that they plan over a five-year period, or
20 some other such term. Those are projects generally
21 that are prioritized by community input and Council
22 input for the needs within the community. So as we
23 would all go back and look at implementing green
24 infrastructure components of our various capital
25 projects, it would require us to reprioritize those

1 projects and then possibly defer improvements that
2 had been community priorities with this moving kind
3 of to the front of the line. So funding will be a
4 challenge, it's not inconceivable, I believe that we
5 have a lot of good that will come from -- we'll call
6 it the infiltration strategies -- from our streets
7 and on our properties, but I believe the timeframes
8 are too tight for us in the current permit language
9 and I would appreciate the opportunity for those to
10 be relaxed to a degree. Thank you for the
11 opportunity to speak.

12 CHAIRPERSON YOUNG: All right. Thank you
13 very much. Dr. Mumley.

14 DR. MUMLEY: Yes, Chair Young. Since
15 multiple speakers have called attention to the time
16 challenge of going to a Council within the year, I
17 want to make sure you understand the intention
18 behind that requirement and where there actually
19 might be some adaptability here.

20 What we are proposing is that we get high
21 level support for pursuing Green Infrastructure
22 Plans early on, make sure they happen, so that staff
23 know that they're supported, etc. We certainly
24 understand the actual developing the detailed plans
25 and the financing stuff is going to take time, so

1 it's really a matter that we want to hear a clear
2 message from on high from each municipality early
3 on. So we're open to alternatives to having a
4 Council action if that's problematic, that still
5 would represent an adequate high level support for
6 that. So I would welcome comments from Permittees
7 that would express the version of support that they
8 could commit to provide in that short term that
9 would allow us to respond by recognizing that as
10 hopefully an appropriate alternative.

11 CHAIRPERSON YOUNG: So as I understand your
12 suggestion, you're asking for alternatives to the
13 City Council among the group of high level people in
14 the Cities and Counties. Basically, you want some
15 of the movers and shakers to sign on to it and
16 you're pretty open as to who the movers and shakers
17 are. But what I thought I also heard was that maybe
18 that didn't have to be approval of the entire plan,
19 it could be approval of a concept that is going to
20 be embodied in the plan. Is that correct?

21 DR. MUMLEY: Yes.

22 CHAIRPERSON YOUNG: So we have two options
23 for people to comment.

24 DR. MUMLEY: Yes.

25 CHAIRPERSON YOUNG: Thank you. All right,

1 Napp Fukuda and then we will have Melody Tovar,
2 please.

3 MR. FUKUDA: Thank you. Napp Fukuda, Deputy
4 Director Environmental Services Department of the
5 City of San Jose. And I saw you looking at me, Tom,
6 to kind of lead me in addressing that, and actually
7 we have someone from our Planning Department who can
8 probably speak better to that than I can, at least
9 green infrastructure and the timeframes, approvals,
10 etc. etc.

11 So thank you again for the opportunity. I
12 want to echo the efforts that Water Board staff has
13 said, certainly we appreciate it and I think we've
14 come to a meeting of the minds, if you will, on many
15 issues; however, I still believe we are very far
16 apart on some very contentious provisions, as you've
17 heard so far. And I don't want to belabor issues,
18 so I'll try and brush through those as quickly as
19 possible because you've heard those, but I think
20 it's important to say that San Jose is very
21 concerned and does believe that Provision C.12 does
22 not provide a clear and feasible path to compliance
23 and that is a very important point.

24 We've done a lot of work to date. I mean,
25 I think that's something that at least is inferred

1 that the Permittees have not done anything, and we
2 have. San Jose has been a part of that. We've been
3 working through the EPA funded Clean Watersheds for
4 a Clean Bay Project, which is looking at priority
5 watersheds within the Bay Area, San Jose having one
6 of them, the Leo Avenue Project, which we gained a
7 lot of experience on. The intent was to source
8 identify some properties and refer those, what we
9 found, we did refer Union Pacific to the Water Board
10 to look at control actions, to see the efficacy of
11 those, or determine the efficacy. You know, we
12 installed HDS Units to see if that would work, the
13 street sweeping studies, etc., blind planning (ph).
14 So we've done a lot of work and gained a lot of
15 experience through that.

16 Based on that, and knowing that some of the
17 required actions to meet this three kilogram per
18 year goal, the uncertainties are just too great in
19 our opinion. A lot of the load reduction is going
20 to be attributed to demolition to buildings. You
21 know, the uncertainties of that projection of how
22 much PCB loads or sediment is going to get to the MS
23 Board (ph) and the lack of management control versus
24 with the management control is very variable and
25 really uncertain.

1 But beyond that, even if we could agree on
2 that, I think what hasn't been emphasized is a lot
3 of this is out of the control of a local agency. As
4 much as local jurisdictions would love to say "build
5 here, demo that building, do this," we have no
6 control over how many of these vintage buildings
7 will be taken out of service over the permit term,
8 so it's very difficult for us to project now what
9 load reduction credit we would get, if you will, or
10 actually benefit at the end of the day because we
11 simply do not know how many of those buildings are
12 going to get removed. Beyond that timeframe, you
13 know, it's been said before, so really we would ask
14 the Board to consider moving away from a numeric
15 limit in PCBs and move to more of a performance-
16 based or, if you will, more reliant on an approval
17 of establishment of a program to deal with these
18 things with the intent of those programs meeting
19 those load reduction goals.

20 And lastly, again it's been said,
21 timeframe. I think timeframes are really
22 challenging the way they're proposed now, and we
23 should ask the Board to consider that. Thank you.

24 CHAIRPERSON YOUNG: All right. Thank you,
25 very clear. Ms. Tovar and then Rebecca Tuden,

1 please.

2 MS. TOVAR: Good afternoon. Melody Tovar,
3 Regulatory Division Manager with the City of
4 Sunnyvale. And before he tries to leave the room, I
5 just want to wish Napp a happy birthday. So
6 I'll use my time to echo much of what Napp said. We
7 would agree wholly, so give that to him for his
8 birthday, I will just add what people have said,
9 that we appreciate staff's work on the permit so
10 far, I've had the privilege of participating in
11 quite a number of the work group and steering
12 committee meetings over the last two years, and I
13 get just a tiny bit smarter every time; it's a slow
14 process, but we're getting there. I do want to
15 emphasize that the POC Section, I think of
16 everything in the permit that I've looked at so far,
17 and we have looked in detail, that is the section I
18 think where we still have the most to go in order to
19 get to a permit that makes sense for us as
20 implementers. So again, I'll echo the championing
21 mantra of today of we need a clear and feasible path
22 to compliance for POCs. And I'll add that that's
23 not just for us, that's also the same path you take
24 to get to a reasonable assurance of meaningful
25 outcomes for water quality. It's the same path we

1 have to take to get to defending and championing the
2 investments that we will need to our own agencies.
3 So it's all part of the same package, it is not just
4 about the big C word.

5 And then I'll just add that some others
6 have said it, but let's take a moment for the
7 context again, this permit wants big things for
8 water quality from stormwater in the next five
9 years. In addition to POCs, we have the ongoing and
10 very expensive work of trash reduction to continue,
11 we are committed to that. And it has the very
12 exciting and game changing work of Green
13 Infrastructure Planning, game changing. But it's
14 also going to take a lot of work and commitment from
15 the agencies, and so we're looking at the balance of
16 all these things and how we move forward
17 successfully.

18 On POCs for recommendation, I will
19 emphasize the opportunity of looking at the PCB in
20 building materials problem as a statewide, if not
21 national solution opportunity, and that it's
22 essential that those agencies be involved in the
23 solution and that we not look at local government as
24 the end all and be all for how we solve that. Huge
25 uncertainties in how much of that material is really

1 in building to building, huge uncertainty. And what
2 fraction of that actually gets to stormwater. And
3 tremendous uncertainty in what the real gap is
4 between that actually getting to stormwater and the
5 current control methods already in place Vis a Vis
6 the construction state stormwater permit that these
7 same properties already have to implement. So
8 there's a lot to work out. We also haven't seen the
9 opportunity to engage the building industry, which
10 we think is going to be an essential voice in
11 developing a program at the right time.

12 And I was reflecting earlier this week that
13 this is not unprecedented for us as Permittees on
14 the Water Board. I think it's in our current permit
15 that the brake pad initiative for copper control was
16 one of those things where the Board rightfully
17 recognized big change needs to happen, local
18 government can't do it alone. But local government
19 must be and should be compelled to be at the table.
20 We think that there is a mirroring opportunity with
21 PCBs through this next permit, and I ask you to take
22 that into consideration.

23 I'll also add it might be worth it to get a
24 clarification from the staff on the three kilograms
25 versus 18 kilograms, the three is envisioned to

() ()
1 truly belong to us, the 18 does not belong to us
2 exclusively as MRP dischargers. Thank you.

3 CHAIRPERSON YOUNG: All right, we have
4 Rebecca Tuden and then Cece Sellgren.

5 MS. TUDEN: Good afternoon, Madam Chair,
6 members of the Board. Rebecca Tuden, City of
7 Oakland. I also want to echo, I want to thank the
8 Board staff for being very available and discussing
9 the permit with us, and very collaborative in
10 looking over the PCB reduction estimates and the
11 technical documents behind that, it was very
12 helpful.

13 I also want to say that Oakland knows we're
14 on the hook for a lot of PCB reduction. We have
15 legacy land use, industrial, right along the
16 waterfront, we know that there's a lot of
17 opportunity to reduce PCBs there and we're committed
18 to doing that.

19 We participated in the Green
20 Infrastructure, the BASMAA EPA grant funded six tree
21 wells in West Oakland. We've done screening
22 inspections and sampling where appropriate of over
23 60 properties, and where we can with redevelopment,
24 notably the Oakland Army Base and the upcoming
25 Brooklyn Basin, we've made sure that PCB issues and

1 reduction and getting to those necessary levels has
2 been addressed.

3 Looking forward, we have some concerns, not
4 about our commitment, but about our ability to
5 achieve what's been asked of us, and mainly we've
6 already discussed that these best management
7 practices, these institutional controls, are based
8 on estimates of reductions. Your staff has said,
9 and everybody has said it, they're estimates. In
10 fact, the permit calls for us to revisit and
11 document those estimates further along. We all know
12 that estimates are just that, and if the Cities go
13 ahead and implement everything perfectly, and we can
14 say "what if," but if we do that and those estimates
15 are wrong, what can we do? We become liable,
16 vulnerable to third-party lawsuits. And we just
17 urge you to put a provision in to revisit that
18 issue, it's good government to plan ahead and expect
19 the estimates to be revisited and updated, and what
20 to do if under your discretion the cities are
21 meeting their implementation goals, but the
22 estimates are in error.

23 And adding to that, there are a number of
24 the implementation, the best management practices
25 that are out of our control. Already mentioned are

1 demolition, we can't control how many buildings are
2 demolished.

3 And another big one for us is referrals.
4 We'll refer properties that are not City-owned to
5 State agencies, EPA and Federal agencies. EPA's
6 cleanup are orders of magnitude less stringent than
7 the TMDL standards, DTSC even less so. Case in
8 point, we have a property on the waterfront on a
9 creek that has been referred almost two years ago --
10 DTSC and EPA are battling around who is going to
11 clean it up, nothing has happened. So that, you
12 know, we don't know exactly how much is on the site,
13 we know that the levels are very high, and that
14 could be a significant opportunity for meeting these
15 TMDL goals, but nothing has been done because it's
16 out of our hands. Thank you very much.

17 CHAIRPERSON YOUNG: All right, thank you.
18 Ms. Sellgren and then Laura Hoffmeister.

19 MS. SELLGREN: Good afternoon. My name is
20 Cece Sellgren. I'm the Stormwater Manager for
21 Unincorporated Contra Costa County, as well as the
22 Flood Control District. I'm talking on behalf of
23 Unincorporated County today. I also want to echo
24 the thanks to Regional Board staff for all the
25 efforts that they've put in working with us, it's

1 been really wonderful. I also want to recognize
2 Luisa Valiela from U.S. EPA, she's also been at the
3 table and has been I think instrumental in many
4 ways.

5 There's a lot of folks, thinks they want to
6 talk about, but I want to talk about PCBs, of
7 course, and path towards compliance, and
8 particularly I want to talk about what
9 municipalities can do and what we can't do. And
10 you've been hearing a lot about that. So we've got
11 the three pathways, we're going to deal with Caulk
12 in buildings, we're going to do the G.I. Plan, and
13 we're going to go after those parcels that are
14 currently bleeding PCB tainted sediment into our
15 MS4s. And when I think about that one, I wanted to
16 say a few things to that effect. So first of all,
17 we started off with 1,000 parcels in Unincorporated
18 County that were old industrial and could
19 potentially be sources of PCBs, and we went through
20 a process of whittling that down, it got down to
21 less than 50, and then we went out and we've done
22 sediment sampling on adjacent road right of way, and
23 that's going to come down to even less. And then
24 when we get down to that final number, we're going
25 to actively and vigorously use our enforcement

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1 response plan to go after those guys. And, you
2 know, some of them are actually going to say, "Oh,
3 wow, I'm sorry, yeah, we're going to put in sediment
4 controls and we're going to keep it from going
5 there," but a lot of them are going to tell us to
6 buzz off. And so we're going to go further into our
7 enforcement response plan and we're going to put
8 pressure on them, and we're going to fine them, and
9 you know, "Wow, we're going to give them a \$500
10 fine, ooh, that's going to go really far with them."
11 And then, you know, the next stage of that
12 enforcement response plan is coming to you guys, the
13 Regional Board, okay? You know, really, I can throw
14 a rock at them, you guys can throw a boulder at
15 them, \$500.00 versus \$10,000 a day, it's a huge
16 difference. So we're really really really going to
17 need your help. And it's very discouraging here,
18 Oakland telling me the story about how DTSC and the
19 Regional Board really haven't done much for them,
20 and it makes me very very concerned about my ability
21 to meet my obligations as a municipality.

22 The second issue I wanted to point out is
23 that, when we look at where are the greatest sources
24 of PCBs in the environment, they are not in our
25 older abandoned, they are not even in our old

1 industrial, they are in PG&E and other utility right
2 of way and railroad right of way. And I have
3 absolutely no authority at all to do anything about
4 that. Indeed, I mean, I can't do anything about
5 those guys. I can't touch them. I can write a
6 threatening letter, and they can laugh. But I can't
7 do anything about that. And they are overwhelmingly
8 the sources of PCBs that are getting into stormwater
9 and I need your help to deal with that. I can't do
10 it. I need you guys to do that. And so we as
11 municipalities, we can't achieve that reduction of
12 stormwater just based upon our own stuff. We need
13 you guys to help us do that. Thank you very much.

14 CHAIRPERSON YOUNG: All right, thank you.
15 Eric Anderson -- did I say that? No, I'm ahead of
16 myself.

17 MS. HOFFMEISTER: I'm Laura Hoffmeister.

18 CHAIRPERSON YOUNG: Ms. Hoffmeister. And
19 then Eric Anderson.

20 MS. HOFFMEISTER: Good afternoon, Chair,
21 Board Members. Laura Hoffmeister, Vice Mayor of the
22 City of Concord. A couple topics I want to just
23 touch on tonight, or this afternoon -- I'm used to
24 night meetings -- the PCB and the Green
25 Infrastructure.

1 I think it's very important to take some
2 time before now and the adoption of the permit for
3 you to direct staff to continue to work with the Co-
4 Permittees on providing some additional clarity and
5 to work on realistic timeframes. As an elected
6 official, as was mentioned earlier, I can tell you,
7 the one year is not going to work for the Green
8 Infrastructure. I serve on the Infrastructure and
9 Franchise Committee in my City, it takes us
10 typically three months to get through a topic, and
11 then we have to go to the community meetings, and
12 then we come to the Council meetings, and by then
13 we're more than a year down the road. And I think
14 we can come up with some realistic objectives that
15 meets all of our goals. What I'm concerned about is
16 the timeframes and the lack of clarity will set up
17 Co-Permittees for failure, for noncompliance. We
18 don't want that, you don't want that. I think we
19 all want to be in compliance, we want to be
20 achieving the goals, I think we need to make sure
21 the goals are realistic to be achieved in a
22 reasonable timeframe. I'm not saying kick the can
23 down the road to the fifth year of the permit, but
24 we need to back off. I think the one year is a
25 little bit aggressive, it depends on what's going to

1 be asked for in the one year. There's a lot of
2 terminology in there, but it's not real clear as to
3 exactly what we're going to need to make that
4 compliance.

5 And I don't want this to be like we did
6 with, as the Chair mentioned, I think it was a
7 reference to the Trash Management Plans, where we
8 got into it, we submitted something, and then at the
9 end of the day it was not the right thing, or just
10 to meet the timeline. And it wasn't maybe the right
11 thing or there's misunderstandings between staff and
12 the Co-Permittees, and maybe even the Board on what
13 was expected to be included in that, what we were
14 trying to achieve, how were we supposed to prepare,
15 and what information was supposed to be in the plan.
16 And I think it's well-serving for us to take a
17 little bit of time between now and October to get
18 the right timeframes and the right clarity in the
19 permit on those two things.

20 As far as Green Infrastructure, I would
21 hope we could get to the point where the resolutions
22 that many of the Cities have already adopted
23 supporting complete streets that have been submitted
24 to Metropolitan Transportation Commission would be
25 the higher level buy-in that you're speaking of

1 about the Electeds understanding complete streets
2 includes Green Infrastructure. Many many of the
3 jurisdictions have passed those resolutions in order
4 to receive MTC funding for their streets projects,
5 which would allow us to meet that one-year timeframe
6 for Green Infrastructure very quickly by allowing
7 that to be an opportunity for compliance. And I
8 would ask that you maybe have staff see if that can
9 be worked into the permit as an option.

10 And I will touch on PCBs one last time.
11 Lead asbestos pollutants are done by the Air Board.
12 I talked to our Building Official in Concord and
13 that is how it's done. When somebody comes in to
14 get a permit for demolition, if it's a building
15 within a certain timeframe, they go to the Air Board
16 website, they get the documentation, they pay fees,
17 so the Air Board gets their money to cover their
18 staffing, and there's documents that are submitted
19 to the City with their demo permit that shows that
20 they have submitted their paperwork to the Air Board
21 and then when they get a final inspection they
22 submit to the Air Board their compliance, the
23 manifest showing that it was all abated correctly,
24 and that is submitted for a final inspection to the
25 City. So I think working with the Regional agency

1 such as the Water Board in a similar fashion, as
2 what has been done with the Air Board, would be the
3 most success for the lead asbestos, you know,
4 modeling it after the lead asbestos program to
5 include the PCB. So I ask you for those
6 considerations and direction to staff to continue to
7 work with us on those.

8 CHAIRPERSON YOUNG: All right, thank you
9 very much. We'll have Eric Anderson and then Mr.
10 Ovadia.

11 MR. ANDERSON: Thank you. My name is Eric
12 Anderson. I work for the City of Mountain View.
13 I'd like to thank you for the opportunity to provide
14 comments. I'm focusing my comments today on
15 Provision C.12 of the permit, which requires
16 implementation of the PCB Control Program.

17 Specifically, I would like to just talk
18 about Mountain View. A significant portion of the
19 old industrial area of Mountain View has either been
20 redeveloped or is planned for redevelopment in the
21 near future. This reduces the potential opportunity
22 areas for PCB controls. Evaluating the City for PCB
23 control outside of the old industrial areas becomes
24 challenging due to the diffuse nature of the PCB
25 sources not associated with the old industrial land

1 uses.

2 And our concern is that these source areas
3 may not even be able to be identified during the
4 permit term. We're left with the feeling that we
5 don't know what to do to comply with the numeric
6 load reduction criteria and we support a BMP-based
7 approach.

8 Identifying PCB control areas in the City
9 may require extensive and costly monitoring programs
10 and potentially minimal PCB reduction opportunities.
11 We would like to echo the suggestion for long term
12 planning to identify PCB sources and controls and
13 coordinate better with the Green Infrastructure
14 Planning. We want our Green Infrastructure projects
15 to really be targeted to those potential PCB control
16 areas.

17 With regard to the requirement Provision
18 C.12.F, to develop and implement a program to manage
19 PCB containing materials and waste during building
20 demolition, I'd again like to support previous
21 speakers' comments that we don't feel this is a Bay
22 Area problem, and that it really is not the correct
23 avenue to put the burden on the Cities to develop
24 such a complicated control program. And the Cities
25 don't really have the resources or the expertise to

1 develop those types of programs.

2 And really, requiring Cities or County
3 Programs to develop these programs we feel would
4 result in inconsistent implementation throughout the
5 Bay Area. And just to follow-up what other people
6 have said, we suggest initiation of a State or
7 Federal Program with a strong stakeholder process,
8 including the building industry and other
9 stakeholders. Thank you for your time.

10 CHAIRPERSON YOUNG: Thank you. He talked
11 so fast, I'm still writing. All right, I'm sorry if
12 I'm mispronouncing your name, this is Mr. Ovadia,
13 and then we'll have Kristen Pringle.

14 MR. OVADIA: You got it right. So thank
15 you. Thank you, Madam Chair, members of the Board.
16 I do want to echo a lot of the comments that were
17 made by the speakers before me, particularly with
18 regard -- sure, it's Robert Ovadia, I'm the City
19 Engineer for the City of Concord. So I'd like to
20 again echo the concerns raised by the speakers
21 before me, particularly regarding giving us a clear
22 path to compliance.

23 There are a lot of things that are required
24 in this new proposed permit, but there is no clear
25 path to compliance, and a lot of the comments also

1 mentioned that a lot of the issues are beyond the
2 control of the local agencies. And so we do need
3 your help in terms of helping us as a region comply
4 with the desired reductions in pollutants in our
5 stormwater. We all want to get there. But
6 providing us a clear path to compliance with the
7 appropriate level of support will help us get there.

8 Additionally, I wanted to talk about
9 timing. There are a lot of prescriptive timelines
10 here in the permit, some as short as three months
11 after adoption. And it's really unrealistic to
12 expect that the second that the permit gets adopted,
13 we're dropping everything that we're doing to comply
14 with the requirements of reporting.

15 Shortly after adoption, we have an annual
16 report that's going to be due for the year, and we
17 would ask that those first reporting periods, which
18 I believe are listed as February 1st, at least be
19 extended out to the annual report.

20 Secondarily, I'd like to also echo the
21 timing on the development of the Green
22 Infrastructure Plan. It is going to take us a while
23 as staff to develop the framework, as well as push
24 it through the appropriate levels within our
25 organizations to get them approved as frameworks.

1 Additionally, there's a requirement to begin
2 implementation by Year two, which we don't have the
3 money currently programmed in our capital budgets.
4 As was mentioned before, typically there's a longer
5 outlook with high priorities already established
6 within our community. As much as we would like to
7 start implementing these items, we need the time to
8 develop the plan, as well as find the resources to
9 implement. So with that, I'd say thank you.

10 CHAIRPERSON YOUNG: All right, thank you.
11 All right, we have now Kirsten Pringle and we'll
12 have Nancy Humphrey next.

13 MS. PRINGLE: Hi, my name is Kirsten
14 Pringle. I work for San Mateo County's Office of
15 Sustainability. We are a new office. We've been
16 tasked, among many other things, to do the
17 stormwater reporting and general oversight for
18 stormwater tasks in the Unincorporated Area of San
19 Mateo County.

20 I'll let other people talk about Green
21 Infrastructure and PCBs, I'm here to talk about
22 something new, which is Section C.14 of the Permit,
23 which addresses the City of Pacifica and San Mateo
24 County Fecal Indicator Bacteria and Controls.

25 The County in collaboration with the City

1 of Pacifica worked hard to discuss and address
2 comments from the Water Board. We met many times
3 with Water Board staff and we really appreciate the
4 many opportunities for comment and discussion that
5 we got to have. And we had multiple iterations of
6 our TMDL Monitoring and BMP Plan. And because of
7 this, and we're really proud of the final product,
8 we think the MRP should better reflect the plan that
9 we submitted and that was approved, and rather than
10 have specific requirements in the permit itself, we
11 would like the permit to have references to the plan
12 that we created.

13 We also have concerns with Section C.14.A
14 of the plan which has requirements for sewer line
15 maintenance and repair. Although the County is
16 definitely committed to maintaining and repairing
17 our sewer lines, and we work closely with the City
18 of Pacifica in which our sewer lines discharge into,
19 we believe it is not appropriate to have sewer line
20 requirements in a stormwater permit.

21 A large part of our requirements for C.14
22 involves the microbial source tracking to
23 characterize the sources of bacteria in the San
24 Pedro Creek Watershed. Similar or identical studies
25 have been done in the past and during our

1 discussions around the BMP and Monitoring Plan, most
2 of the results of these studies were largely
3 ignored. And so we would like to have assurances
4 that the monitoring or the characterization
5 monitoring that the County and the City of Pacifica
6 will be doing will be taken into account in future
7 evaluations of this watershed.

8 Finally, the County would like to
9 acknowledge that the reference study done to create
10 the TMDL for the San Pedro Creek Watershed was based
11 on a watershed with a much different ecology than
12 the San Pedro Creek Watershed, and this is what the
13 waste load allocations were based on. We would like
14 acknowledgement of just the great differences
15 between the two watersheds in the MRP Fact Sheet.
16 So those are all my comments. Thank you so much for
17 your time, and thanks again to the Water Board staff
18 for working hard with us on both the plan and this
19 draft permit language.

20 CHAIRPERSON YOUNG: All right, thank you
21 Ms. Pringle. We have now Nancy Humphrey and then
22 Lucille Paquette.

23 MS. PRINGLE: Hi. Good afternoon, Madam
24 Chair and the members of the Board and staff, thanks
25 for listening to our comments.

1 I'm Nancy Humphrey from the City of Oakland
2 -- no, I'm not, I'm Nancy Humphrey from the City of
3 Emeryville! There's a reason for that. The City of
4 Emeryville has been a leader in stormwater
5 management, stormwater pollution prevention for a
6 long time, and it's a value of the City and a value
7 of my group, the Planning, and the City Council, and
8 everybody. So again, like others have said, I don't
9 object at all to moving forward on these things, but
10 I just want to do it in a way that we can accomplish
11 it, that it's accomplishable without putting us in a
12 position where we're spending undue resources in the
13 wrong places.

14 I'm here to speak today about PCBs and
15 we'll be required, Permittees and jurisdictions will
16 be required to reduce PCBs to certain levels that
17 are not stated yet, that are only alluded to, and
18 the process even to identify what those levels will
19 be hasn't been determined. And anyone who has done
20 a public process before knows they're time
21 consuming. So I'm worried about that. I'm worried
22 about being held to numerical limits that have not
23 been identified yet. And I don't know whether the
24 process to identify them will be suitable. As
25 others have said, we need a clear path to compliance

1 on this and, as it stands, I don't see one.

2 In addition, as others have said, much of
3 the control of PCBs will be dependent on what
4 happens on private property, when and where. We
5 can't say how much mid-century building stock will
6 be demolished and when, that's not ours to say. So
7 we can put controls in place, but we can't promise
8 how much is going to be done. So the timelines on
9 determining that and on being held accountable for
10 that are too short for us. Plus the data aren't
11 really clear on what savings we can get from various
12 types of controls and actions.

13 And obviously, again, as Becky said,
14 failure to meet these requirements opens us up to
15 potential lawsuits. We want to make progress, but
16 we don't want to be subject to lawsuit for things
17 that were out of our control, or that were
18 unfeasible, or unattainable.

19 And last, I beg you to understand that the
20 reporting requirements as they are, are really
21 burdensome, they're very very time consuming, and I
22 really would ask you not to ask us to report on two
23 different permits in one reporting period, it's
24 already probably six weeks of staff time, four to
25 six weeks to prepare the annual report, it could be

1 double if we were reporting on two, and we don't
2 have that kind of time. Thank you.

3 CHAIRPERSON YOUNG: All right, thank you
4 very much. In just a minute we're going to have
5 Lucille Paquette, and then Lisa Austin, but I want
6 to ask a question of staff first.

7 We've been talking about demolition of
8 buildings and I just want to make sure that my
9 assumptions are correct. The PCBs are released when
10 the buildings are demolished, right? If they are
11 still standing and still being maintained, then
12 we're not seeing a lot of PCBs being released. Is
13 that what's going on? Nodding doesn't get in the
14 record.

15 MS. O'HARA: I'm Jan O'Hara with Planning
16 Division and I did take the oath. We do see some
17 data that existing buildings can have some PCBs in
18 the immediate soil based on the data we have now, I
19 was just looking at that yesterday, but we think
20 that the actual demolition process is more
21 important.

22 CHAIRPERSON YOUNG: Okay, all right, thank
23 you.

24 DR. MUMLEY: This is getting a little bit
25 into the weeds, but there is another pathway in that

1 some demolition now results in recycling of building
2 materials, and they go through a recycling process,
3 where some PCB containing materials could end up
4 being reused and potentially be exposed elsewhere.

5 CHAIRPERSON YOUNG: All right. Thank you,
6 that helps us understand what's going on with
7 everyone's comments. Ms. Paquette and then Ms.
8 Austin.

9 MS. PAQUETTE: Thank you. I'd like to
10 request to push my card to Section C.8 when we talk
11 about C.8. Would that be all right?

12 CHAIRPERSON YOUNG: Sure.

13 MS. PAQUETTE: Okay, thank you.

14 CHAIRPERSON YOUNG: Then we'll have Ms.
15 Austin and then Chris Sommers, please.

16 MS. AUSTIN: Okay, thank you, Madam Chair
17 and members of the Board. I'm going to speak to the
18 clear path to compliance issue and hopefully bring
19 some new ideas to the table.

20 MS. WHYTE: Could you please just restate
21 your name?

22 MS. AUSTIN: Oh, I'm sorry. Lisa Austin
23 with Geosyntech Consultants, and I'm here on behalf
24 of the Contra Costa Clean Water Program.

25 So staff has stated in meetings with

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1 Permittee, with BASMAA and Permittees, that they
2 believe the numeric performance criteria are needed
3 to encourage POC Program implementation by the
4 programs, and we would counter that that's really
5 not needed. As you heard the program staff and the
6 Permittees have been implementing programs over MRP
7 1.0.0 and proactively seeking out sources and
8 implementing stuff for the last couple years. And I
9 think they have demonstrated a good faith effort to
10 kick start the source control programs.

11 So what we've requested is that you don't
12 adopt a permit that has a high likelihood of
13 noncompliance, not only a clear path to compliance,
14 we really don't want to have a permit that has
15 numeric performance criteria that we don't think we
16 could comply with, even if we had full
17 implementation of programs.

18 As an alternative, we've requested that the
19 load reduction performance criteria not be a point
20 of compliance, instead they should be expressed as
21 action levels -- similar to the way the numeric
22 targets are in the Industrial General Permit, it's
23 an action level that the permit should include
24 contingency language, then, that would allow for
25 compliance of a good faith demonstration of solid

1 efforts and actions by the Permittees, consistent
2 when the permit requirements fall short of achieving
3 the load reduction performance criteria, especially
4 after just two years. As you noticed, there's a
5 compliance point at two years, and there's a
6 compliance point at four years, and we question as
7 to whether that compliance check-in at two years is
8 really needed given all the requirements and all the
9 planned development that has to go on in the first
10 year.

11 The second topic is that we would like to
12 request that the requirement to submit a load
13 reduction accounting method early in the permit
14 term, as in April of 2016, be omitted. Instead, we
15 would like to have the interim accounting method,
16 that is, the accounting method that you asked about,
17 that would determine the compliance, be written into
18 the permit. As staff has written the majority of an
19 accounting method in, but there are some key
20 parameters that need to be worked out still with
21 staff, and it would provide a much clearer path to
22 compliance if those parameters were in the Fact
23 Sheet. Thank you.

24 CHAIRPERSON YOUNG: All right, thank you
25 very much. We have Chris Sommers and then we are

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1 going to have a group of people who are talking
2 about Green Infrastructure primarily. Oh, and going
3 back to Green Infrastructure, we're going to hear
4 from Laura Hoffmeister again on that subject.

5 MR. SOMMERS: Okay, I'm Chris Sommers, a
6 Managing Scientist with the Santa Clara Valley Urban
7 Runoff Pollution Prevention Program. So I've been
8 involved -- I'm going to talk a little bit about
9 PCBs, I'm going to try to summarize kind of what you
10 heard today with regard to PCBs and Mercury. I've
11 been involved with this for about 14 years now prior
12 to the TMDL development, through the TMDL
13 development, adoption of those TMDLs and all the way
14 through the first MRP.

15 You know, to echo really everybody, we do
16 appreciate staff's work on this, it's been a long
17 process. It's been shorter than the last process on
18 the new MRP 1.0.0, it's a very low bar to jump over.
19 You know, I think moving forward agencies really
20 need a permit that clearly recognizes the knowledge
21 that we've collectively gained over that timeframe,
22 and also acknowledges the uncertainties that really
23 remain, both with the TMDL itself, as well as how
24 we're going to collectively control these
25 contaminants over time. Secondly, we need a permit

1 that continues to move Permittees in the right
2 positive directions, in feasible directions, and
3 really practical timeframes. You heard a lot about
4 timeframes today. And then lastly, and this will
5 probably be the last time you hear it, they really
6 do need a clear path to achieving compliance with
7 whatever the permit says at the end of the day. We
8 think that we've given an alternative approach, as
9 Lisa mentioned before me, that accomplishes all of
10 these objectives, these goals for this permit and,
11 importantly, has the same water quality benefit at
12 the end of the day. We've given that framework and
13 we really urge you to direct your staff to
14 reconsider that framework when considering the
15 written comments and the oral testimony. And we
16 really are concerned that if they don't do so, we're
17 going to be here, you know, three, four years from
18 now saying we've done everything we can to deal with
19 this issue, but we're not achieving that number.
20 And we're really concerned that not only the
21 enforcement possibilities on behalf of staff and
22 you, but also there are always the third-party
23 lawsuit issues that are out there that we're also
24 concerned about. So best intentions, may not reach
25 it, is some clear path to compliance to make sure

1 that the agencies doing good work aren't held kind
2 of under the compliance issues and enforcement
3 associated with that, even though they're doing the
4 good work that they can do. Thanks.

5 CHAIRPERSON YOUNG: All right. Thank you
6 very much. We are now going to switch gears, as I
7 mentioned --

8 MR. LEFKOVITS: First can I ask a question?

9 CHAIRPERSON YOUNG: Yes.

10 MR. LEFKOVITS: Since I'm still new to PCB,
11 can you just kind of help me understand how PCBs in
12 building materials are collected and removed in the
13 construction process? Is there only one way? Or --

14 MS. O'HARA: No, I think there's a few
15 ways. There are examples within the State of
16 California where, say, larger projects have gone in
17 and tested and then removed all the PCBs before they
18 demo the building, and they weigh out that option
19 thinking that will be the cheaper way, they'll have
20 less to send to a Class 3, 2? 1? I forget the
21 numbers -- at the hazardous waste landfill in
22 Nevada, and the rest of the materials can then go to
23 the demo waste facilities.

24 Another option is to assume that they have
25 PCBs in certain materials and then segregate those

1 materials and send those to Nevada to the hazardous
2 waste landfill. There's a few options.

3 MR. LEFKOVITS: And in a 10-story building,
4 how much PCB can be extracted, or might be in there?

5 MS. O'HARA: Well, the interesting thing
6 about PCBs in caulk is that the caulk can be a
7 certain percentage of PCBs, it's like hundreds of
8 thousands of parts per million. We see 263,000 ppm
9 in caulk. So a little bit can be put into the
10 environment and it could be a large load reduction
11 relative to what they need to achieve.

12 MR. BOWYER: Generally this is material
13 used in seams in the building, the caulk, so the
14 moisture can't move in from the exterior. So it
15 would be a one-inch wide bead of material that you
16 see all over the place in cracks in the sidewalks
17 and in seams in the walls of buildings, and so you'd
18 have to physically scrape that out with a sharp tool
19 and that would be the means of removal.

20 MR. LEFKOVITS: Thank you.

21 DR. MUMLEY: I'd also point out the studies
22 that we've done with the municipalities to date,
23 that indicate an average, a mid-range of PCBs of
24 five kilograms per building, so with an aggregate
25 estimate of maybe 10,000 --

1 DR. AJAMI: Per one-story building?

2 DR. MUMLEY: For a building, midrange of
3 the buildings and we're talking mainly - two to
4 four? Two to four stories, something like that.
5 Yeah, Richard is pointing out, just fyi for your
6 future reading page, A104 is a description of what
7 we know about PCBs in buildings, a couple summary
8 paragraphs.

9 MR. LEFKOVITS: Thank you.

10 DR. MUMLEY: That should give you some of
11 the basic facts.

12 CHAIRPERSON YOUNG: No, actually there's a
13 typo on page -- no, I'm just kidding. All right,
14 we'll hear from Ms. Hoffmeister on this subject, and
15 then have Ian Wren who is our first non-Discharger
16 person come up and talk.

17 MS. HOFFMEISTER: Good afternoon again,
18 Chair and members of the Board. I'm now wearing the
19 hat as the City of Clayton Stormwater Program
20 Manager. I wanted to just touch on one thing on the
21 PCBs while you just mentioned it. One of the
22 difficulties in the assessment of what we have out
23 there in the community, in a lot of our communities,
24 as was mentioned, 1950's to 1980's, if you go into
25 any one of the City Departments, you ask for their

1 Building Permit data, a lot of them don't have data
2 in a computer database that will tell you how old
3 the building is at a particular address. A lot of
4 this is going to take field work and field research
5 and talking to people in the community to find out
6 what age is this particular building, does it fall
7 into that category that we would put on a list, that
8 we would be able to do as part of the plan? So
9 that's another reason for the timeframe.

10 But I did want to talk about a couple
11 things under Green Infrastructure that I don't think
12 are in the permit, or it's not clear in the permit.
13 For the City of Clayton, the smallest community in
14 Contra Costa, and probably one of the smallest ones
15 in the entire Bay Area, we are completely built out.
16 We are not planning for redoing any streets, curbs,
17 gutters, sidewalks. All of the new development,
18 we've got one new one that will be coming in, the
19 first one in about eight years, and it will comply
20 with all the C.3 stuff, it's not a re-do, it's
21 virgin land, and it will be built.

22 But in terms of redo of your community
23 where Green Infrastructure is being talked about,
24 redevelopment, not new development, where is there
25 the opportunity for us to get an exception or to

1 have some sort of carve-out, or to have some sort of
2 option of compliance without having to go through
3 and do a whole generation of plan, or how do I
4 document to you, that we're not going to be doing
5 anything new over the next 20-40 years in town? I
6 don't know, it's not in the permit. And I think
7 there's some additional work that needs to be done
8 to identify that because the way it's structured
9 right now, I'd have to do a plan on stuff that I
10 would be saying basically, we have no plan to do any
11 changes. I'd submit it to the staff and they'd say,
12 "No, that's not a plan, you need to put together a
13 plan." Well, my plan is we're not going to be doing
14 anything. And we'll go back and forth on this. So
15 I think there's more work, again, for clarity to
16 make sure that we meet the expectations of what the
17 Board is trying to achieve, and that we are found in
18 compliance and not by default noncompliance because
19 we didn't get it right to the staff. And there's
20 not this one-size-fits-all for the communities.

21 And then the other item I wanted to talk
22 about briefly was grandfathering under C.3.J, I
23 believe it is, I may have that wrong, but we do have
24 a concern about entitlement processes that have been
25 already completed or in the process. We have a

1 vesting tentative map process that's in place right
2 now. The Draft EIR has been completed, the public
3 comments have been received, and this is the project
4 I was talking about. They used the
5 Hydromodification Plan that's in MPR 1.0. We're in
6 this transition now with some possible changes for
7 Contra Costa in the Hydromodification Plan under MRP
8 2.0.0, and this EIR will not get to the final Public
9 Hearing stages until probably a year from now. Do I
10 need to have the developer go back and completely
11 reengage the consultants, spend another \$10,000 or
12 more to redo all the work, to re-notice this to the
13 community, have them have another opportunity to
14 come back and comment on a new draft EIR? So
15 there's some work that still needs to be done, I
16 think, in this MRP 2.0.0. And I'll put in one last
17 plug. We're in MRP 2.0.0, I think this was great
18 doing this regional collaborative method; 1.0 was
19 our first attempt into this, I would suggest that,
20 as we try to economize and be more efficient on both
21 sides as we go forward in the future, I would ask
22 that you have staff look into creating some sort of
23 online database that we can actually type our annual
24 reports into a computer program that's on the State
25 Database, like I do with the trash management plan

1 for the Waste Board, like I do for the gas tax for
2 the State Controller's Office, like I do for all the
3 other State agencies. This is the only agency where
4 we have to submit it and then it's resubmitted, and
5 then it's posted in PDF. I think there's great
6 computer technology out there that if you hosted the
7 template and we logged in and did ours, the staff
8 could also check to see how each City is doing as
9 they work on them over time, and get them in by the
10 deadline, and that would be a lot more efficient and
11 effective. So hopefully you would take that under
12 consideration and see maybe before too long in the
13 MRP 2.0.0 annual report process we could be more
14 efficient at getting the information into the Water
15 Board. Thank you.

16 CHAIRPERSON YOUNG: All right. Thank you
17 very much. We'll now have Ian Wren followed by
18 Maurice Kaufman, please.

19 MR. WREN: Good afternoon. My name is Ian
20 Wren with San Francisco Baykeeper, and I would like
21 to focus on the C.3.J provision. We applaud the
22 Regional Board for proposing a proactive approach to
23 implementing Green Infrastructure into the existing
24 urban landscape. Retrofitting the existing storm
25 sewer system with Green Infrastructure is like the

1 most powerful tool for reducing loads and dampening
2 peak flows to sensitive creeks in the region. Green
3 Infrastructure also likely represents the most cost-
4 effective implementation of the Clean Water Act's
5 maximum extent practicable standard.

6 We ask though, consistent with a lot of the
7 comments heard today that the Board require more
8 specificity and clarity from this provision. The
9 current language requires Cities to develop a
10 framework for development of Green Infrastructure
11 Plans. Such a big language in the absence of
12 specific requirements is likely to result in
13 extensive process and development of reams of
14 additional annual reporting documentation.

15 More specificity will help achieve the
16 clear compliance pathway Permittees have requested
17 repeatedly here already. For example, with the
18 targeted siting of Green Infrastructure, numeric
19 volumetric standards, and influent-effluent
20 monitoring at Green Infrastructure facilities, such
21 a provision could serve as a partial proxy for
22 numeric PCB load reductions.

23 We request that, at a minimum, a sample
24 framework be developed by staff with metrics for
25 implementation, particularly where receiving waters

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1 are listed as impaired for runoff-related
2 pollutants.

3 Finally, based on initial review of the
4 Draft Permit, I was quite surprised by the general
5 lack of clear requirements and the continuation of a
6 pattern that effectively judges compliance based on
7 the volume of documentation submitted each year. We
8 have seen around the state a trend in MS4 permits
9 whereby an exchange for perceived cooperation by the
10 Permittees, Regional Boards adopt very vague permits
11 and require an abundance of reports for review by
12 staff that simply do not exist. Permittees
13 literally submit tens of thousands of pages of
14 reports each year and staff cannot be expected to
15 intelligently review all of this.

16 In summary, we hope the Board requires
17 clear requirements and streamlined reporting to
18 facilitate adequate review and enforcement where
19 needed. Thank you.

20 CHAIRPERSON YOUNG: All right, Newsha, did
21 you want to make a statement?

22 DR. AJAMI: I actually wanted to sort of
23 follow-up to the previous speaker who mentioned
24 about the City that they are not, yeah, Ms.
25 Hoffmeister. And the fact that some of these Cities

1 have been already developed and they're not growing
2 or developing anymore. And I think Ian also
3 mentioned something right after about the whole
4 clear specification of what it means for them to
5 implement Green Infrastructure. I wonder like, you
6 know, are we just looking at future development, or
7 also we are looking at like maintenance that happens
8 within the existing cities, and maybe that can also
9 include sort of reimagining what already exists.
10 Does that make sense?

11 MR. BOWYER: Nothing lasts forever, so the
12 urban infrastructure will fail eventually.

13 DR. AJAMI: Right.

14 MR. BOWYER: And when it's rebuilt, we want
15 it to be rebuilt -- I'm sorry, Dale Bowyer with the
16 Water Board, I did use the oath -- so this is a
17 retrofit requirement.

18 DR. AJAMI: Right.

19 MR. BOWYER: So obviously we're asking
20 municipalities to look for the low hanging fruit,
21 the opportunities. And of course that is when
22 infrastructure wears out and is replaced, that's the
23 ideal opportunity. So that's what we're asking
24 folks to include in their planning is that when you
25 do rebuild, rebuilt it including stormwater quality

1 as part of the dimension of how you're rebuilding.

2 DR. AJAMI: And that was my sort of
3 impression and I was really surprised to hear that
4 you imagine a city would not need to --

5 MS. HOFFMEISTER: Let me be clear for the
6 record. We will not need - 1970's is the oldest
7 street, oldest curb, gutter, sidewalk in town, most
8 of them were done in the 1990's, so we're talking 40
9 or 50 years down the road from now, and we're going
10 to spend money today to create a Green
11 Infrastructure Plan for, I don't know what it's
12 going to look like 40 or 50 years down the road, and
13 we don't have the money to do it, and the streets
14 are completely built out, we're not doing anything
15 with them.

16 DR. AJAMI: So you think your streets would
17 last 65 years?

18 MS. HOFFMEISTER: Forty to 50 years. We
19 resurfaced the street, but we're not rebuilding the
20 streets, we're not tearing them out, we're not
21 putting in new curb gutter and sidewalk, they're all
22 fairly brand new, they last 40 to 50 years.

23 DR. AJAMI: But even resurfacing the
24 streets can be part of your --

25 MS. HOFFMEISTER: No, no. No.

1 DR. AJAMI: No? Okay, I'm sorry, okay. I
2 thought --

3 MS. HOFFMEISTER: That's different.

4 CHAIRPERSON YOUNG: This is an interesting
5 issue which the staff and Permittees can pursue.
6 And thank you for waking us all up, Newsha, that was
7 very nice. You know, that's why we're here is to
8 clarify things. Mr. Kaufman followed by Jason
9 Rogers, please.

10 MR. KAUFMAN: Hello, my name is Maurice
11 Kaufman. I'm the Public Works Director for the City
12 of Emeryville, also City Engineer, and I thank you
13 for letting me speak today. Emeryville, as you may
14 know, has really changed over the last 30 years.
15 We've redeveloped the entire city. We've been very
16 progressive with implementing stormwater treatment
17 requirements per MRP 1.0, but I'm very concerned
18 about MRP 2.0 and the implications that we'll have
19 to be involved with, and in particular there's a lot
20 of requirements in here that are really not clear.
21 The PCBs for one, and I did a lot of what everybody
22 has been saying here. Reporting. We're a very
23 small city. It takes a lot of staff effort to try
24 to keep up with all the regulations the Regional
25 Board has. We've got the sanitary sewer issues that

1 we've got to comply with, now we've got the MRP 2.0
2 requirements, all the reporting involved with all
3 those, it's very burdensome. We are planning on
4 keeping up with it, but I'd like to say that if you
5 could extend some of these timelines and be more
6 clear in the requirements in the permit, it would be
7 very helpful for all.

8 And with respect to maintenance of streets,
9 we're doing -- we have a street rehab program that
10 we do, a lot of maintenance trying to keep the
11 streets in good shape, but we also have projects
12 where we're redeveloping and building new streets.
13 On those streets, we do plan on doing C.3
14 implementation. We're working with developers to
15 make sure that they're building their private
16 developments the way they're supposed to, as well as
17 the new streets are going to involve stormwater
18 measures. But to design those streets to treat the
19 private property runoff is something that I believe
20 was called for in this new permit, that's going to
21 be very difficult for a built-out city. So if you
22 could keep those in mind. The other thing as far as
23 PCB loading, if you put a loading in there that's
24 not achievable, I believe there's anti-backsliding
25 requirements, so you can't actually take it out once

1 it's in a permit. And so it really subjects the
2 Permittees to NGOs and the lawsuits out there, so if
3 you can keep that in mind as you approve this, I'd
4 really appreciate it. Thank you.

5 CHAIRPERSON YOUNG: All right, thank you
6 very much. We have Jason Rogers and then Kathy Cote
7 or Shannon Young. There's an option here, whichever
8 one you choose.

9 MR. ROGERS: Jason Rogers, Planning Manager
10 and CEQA Manager for the City of San Jose, and I
11 just want to say thank you for allowing me to
12 participate in this very thought out discussion. I
13 think obviously with MRP 2.0 going forward, that's a
14 positive path, but there are definitely some issues
15 that we as a very complex, unique, and large city
16 are seeing with respect to the permit as it is
17 drafted, specifically with the Green Infrastructure
18 Plan. In concept, it's a great idea, but I think
19 when thinking about how to develop a framework, how
20 to be able to implement it, there's a lot of things
21 that still needs to be fleshed out.

22 Just to kind of give scale, the City of San
23 Jose has about approximately 5,100 acres of
24 impervious surface. Over the last five years, the
25 City has been very diligent in trying to retrofit

1 the impervious surface with C3, and we accomplished
2 that with only hitting one percent, and that's about
3 498 acres of our impervious surface. So even with
4 how the permit has it drafted that we have to
5 identify certain thresholds, certain measures,
6 certain amounts by certain years as targets, on the
7 scale and the size of a municipality or Permittee,
8 it becomes difficult to be able to figure out that
9 path of compliance.

10 Also in the concept and the scheme of this,
11 the permit also has it drafted such that plans and
12 documents that are related to planning, specific
13 plans, massive transportation plans, other plans
14 that are associated should be updated. There's no
15 clarity as to what documents need to be updated.
16 The City is very progressive in the sense that over
17 the next 20 years, over the next actually just 10
18 years to put it in a qualitative standpoint, we're
19 looking at updating approximately -- creating 20 new
20 plans associated with our General Plan to get to
21 this vision that we've created for ourselves. So
22 that would mean really looking at all the resources,
23 the extensive reach-out, and thinking about how this
24 Green Infrastructure Plan ties into that.

25 I think one of the other big significant

1 things that we also have taken concern with is
2 C.3.B.I. This is the grandfathering clause. When
3 thinking about it from the Water Board's issues and
4 how trying to get projects or get land that's
5 already been approved up to today's standards,
6 however, we as a city lack the land use authority to
7 be able to acquire development that's already
8 received this discretionary permit, that received
9 its administrative permit, to come back through our
10 process, and then it gets back into whether or not
11 the Water Board actually has the authority to
12 challenge vested rights. So there needs to be some
13 clarity as to when that actually is applicable in
14 standards.

15 I would also think about the C.3.E.2, the
16 gross density definition as how you have it. Right
17 now most jurisdictions probably look at using net
18 density because we don't calculate an actual site's
19 development capacity based on roadways, parkland,
20 and other public amenities, so what we're really
21 trying to do in this area -- thank you.

22 CHAIRPERSON YOUNG: You may finish your
23 sentence.

24 MR. ROGERS: I appreciate that.

25 CHAIRPERSON YOUNG: But we appreciate your

1 attitude.

2 MR. ROGERS: To complete the thought, most
3 in the development community, most who are in
4 planning are using net density because we do factor
5 out roadways, we do factor out open space, we do
6 factor out other public amenities, sidewalks and so
7 forth. So when we're really trying to create this
8 infill, high density environment that's going to
9 meet the needs, that's really been laid out to us,
10 just not through our local jurisdictions, City
11 Council, Mayors, Board of Supervisors, but also
12 though ABAG, what we're really doing is now
13 hampering the actual opportunity to be able to
14 provide for those developments, be able to provide
15 for those quality developments that are willing to
16 meet the necessary demands also laid out in this
17 permit. So we need to think critically about how we
18 look at definitions, how we think about how we bring
19 forward vested rights, and how we think about the
20 Green Infrastructure Plan.

21 CHAIRPERSON YOUNG: All right, thank you
22 very much.

23 DR. MUMLEY: Chair Young? I think this is
24 a good time just to explain one of the issues that's
25 been raised, I mean, others may raise it as well.

1 It was the comment regarding the sun setting of the
2 grandfathering as a kind of -- because we are saying
3 in the proposed permit that older projects are no
4 longer exempted from the new treatment requirements.
5 But we've asked, we've said to Permittees we
6 recognize that this may have some legal
7 implications, so please tell us if they exist, we
8 can be responsive. We've only gotten general
9 statements to date, so again it would be helpful if,
10 not verbally, but in writing that we can get the
11 actual projects so that we do not have a permit that
12 requires them to do something they cannot do, but we
13 think there are projects where there is opportunity
14 to change the designs for one reason or another,
15 that they're not bound by some legal reason. And
16 that's what we're asking. If they're not bound
17 legally, then we would ask them to pursue low impact
18 development treatment. If they are, then they are
19 bound legally, and obviously we can't require them
20 to do what they can't do. So we just want some
21 clarification on their part so that we can clarify
22 in the permit what will or what won't be exempted.

23 CHAIRPERSON YOUNG: All right. So we need
24 help making the language match our intention.

25 DR. MUMLEY: Correct.

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1 CHAIRPERSON YOUNG: By getting additional
2 information on specifics.

3 DR. MUMLEY: We also assume there's not a
4 large number of these, you know, following either
5 bin, so it hopefully would not be a major effort to
6 clarify which projects are subject to this
7 constraint.

8 CHAIRPERSON YOUNG: Okay.

9 MS. YOUNG: I'm actually Shannon Young.

10 CHAIRPERSON YOUNG: We have now Shannon
11 Young, thank you. And then we'll go to Roger Lee,
12 please.

13 MS. YOUNG: I'm from the City of Fremont
14 and I'm here, my manager, Kathy Cote, we weren't
15 sure about the timing, so she had to leave for
16 another meeting. So I'm speaking on her behalf.

17 I first want to start off by saying thank
18 you to the Water Board staff for a couple items that
19 were an improvement from our perspective, from MRP
20 1.0, and in particular we're happy to see the
21 elimination of the screening points from Provision
22 C.5 that we feel was a big use of staff time and for
23 very little water quality benefit.

24 And the other piece that we're also happy
25 to see is the retention of the 10,000 square foot

1 threshold in provision C.3. I know this Green
2 Infrastructure Plan is in lieu of lowering the
3 threshold to 5,000 square feet, but we are happy
4 because we think that the decrease in impervious
5 surface threshold would have greatly increased staff
6 time for, again, very little water quality benefit.

7 The other thing that I would like to say is
8 that, of course, Fremont concurs with much, okay,
9 everything that has been said here today, and so the
10 two pieces that I want to talk to today again are
11 the timelines, and also the annual reporting. And
12 I'll mention that piece first. I concur with the
13 speaker, I think it was from Emeryville, who said
14 that having to report on two different permits and
15 one annual report, it's a nightmare. So I guess
16 depending upon when implementation and when we have
17 to report, it may be, you know, hopefully the second
18 year in that we're reporting on MRP 2.0. so we don't
19 have that problem that we did with MRP 1.0

20 Regarding the timeframe, people have
21 mentioned it multiple times and I'm going to mention
22 it just one more time with the framework. We won't
23 be able to take that to a higher body, City Council,
24 without having details worked out. We won't be able
25 to get the buy-in unless they understand the

resources that are needed and the finances that are needed to implement those plans, so even sort of on a conceptual plan, we can't really go to Council with a conceptual plan, we need to be able to know what these items are going to be and that will be like a two-year process, more likely than one year.

And then, again, another gentleman mentioned the first implementation timeline of two years in, so we had two years, seven years, and then everywhere after that, that two years is going to be really hard to hit, particularly if we consider that a two-year timeline for submitting the framework is actually more realistic, having to start implementing the program in two years is going to be rough. Of course, we will be continuing the ongoing C.3 regulated projects which also include sometimes retrofitting of existing streets and roads, but that Green Infrastructure implementation is going to be rough to meet in two years. So thank you.

CHAIRPERSON YOUNG: All right, thank you very much. We have now Roger Lee followed by Elaine Marshall, please.

MR. LEE: All right, good afternoon, Madam Chair, members of the Board. Thank you. So it's always good to start off these things with

1 positives, everything I've heard here today
2 underlines how much we do care about the
3 environment, I've yet to hear an excuse to
4 shortchange that. Also, confident staff and a lot
5 of very intelligent people have worked on these
6 issues over the time. I've been involved with the
7 stormwater program here --

8 MS. WHYTE: Excuse me, could you please
9 state your name and affiliation?

10 MR. LEE: I apologize, yeah, I'm Roger Lee,
11 I'm the Assistant Director of Public Works for the
12 City of Cupertino. About 15 years I've been
13 involved in the stormwater program, and I've been
14 proud of that. I'm talking specifically about the
15 Green Infrastructure element of the permit and how
16 it's just not practical in terms of the time and
17 that a lot of people have spoken about that.

18 You know, imagine each city, each 76 Co-
19 Permittees, creating some very specific standard
20 drawings and specifications for Green
21 Infrastructure, having general guidelines for that
22 purpose, having project designs, amending their
23 plans, General Plans, transportation plans, for
24 green infrastructure. And we talked before, streets
25 are long life, 40 to 50 to 60 years, and to try to

1 do something like that in one year, 76 times, not
2 having that consistency is not quite efficient.
3 More time should be spent on getting very cohesive
4 plan among all the Co-Permittees. I have no doubt
5 that there's going to be commonalities, that we can
6 get direction and truly know what the intent of the
7 Board is as to what is green infrastructure, that we
8 could all share among our 76 agencies so that, as we
9 put together those very specific things that have
10 long lives, that we do it in the right direction the
11 first time. These are long lived assets that have
12 very finite amount of resources that are availing
13 them. And in the end it talks about our credibility
14 with our Councils because if we are saying that
15 these are things that are required, and we're
16 recommending, saying that the Board is telling us to
17 do this, staff has told us to do this, and we make
18 these financial contributions for which every one of
19 them has an opportunity cost, "If I do this, I don't
20 do something else." And as time goes by and we find
21 out what those commonalities are, and what we really
22 should be doing, and what pollutants of concern are
23 really the most important, that's where we need to
24 spend those resources at. Otherwise, we will have
25 already built it. Those assets are gone, they're

1 already expended.

2 So I'd like you to think about that. And
3 also, some of the constraints that we have in
4 building and the public right of way. We had
5 challenges in C.3 about space and cost, well, that's
6 life, right? In the street, these are dedicated
7 right of ways. We have utilities above, we have
8 utilities below, we have people who are driving,
9 cycling, and walking. These are passionate users of
10 those facilities. There's not a lot of space. But
11 again, let's look at those commonalities so we do
12 things right. Give us the five-year permit term to
13 find those commonalities before we start making
14 these long term commitments to these finite
15 resources. Thank you.

16 CHAIRPERSON YOUNG: All right, thank you
17 very much. We have Elaine Marshall followed by
18 Michael Rhodes.

19 MS. MARSHALL: Good afternoon, Chair Young
20 and members of the Board. My name is Elaine
21 Marshall, I'm an Environmental Programs Manager with
22 the City of Sunnyvale. I wanted to take a couple of
23 moments today to talk about some of our priority
24 concerns with the New and Redevelopment Provision of
25 the Permit, specifically the Green Infrastructure

1 Planning, as well as the grandfathering provision
2 that we just discussed.

3 We recognize that Green Infrastructure
4 Master Planning is a game changer for us and for all
5 the Permittees under the permit, and we appreciate
6 the opportunity that the Tentative Order provides us
7 to take a broader and an integrated view to align
8 Green Infrastructure goals and objectives with other
9 citywide plans and policies. As envisioned under
10 the Tentative Order, the level of effort and the
11 resources that will be required to carry this out
12 effectively and successfully is significant, and the
13 timeframes stipulated in the Tentative Order are
14 aggressive.

15 At the same time, we also recognize that
16 implementation funding is uncertain. Under MRP 1.0,
17 multiple Green Street projects were grant funded,
18 and we recognize that grant funding opportunities in
19 the future are limited and in some cases
20 diminishing. Sunnyvale recently developed and
21 submitted a green street proposal in response to the
22 Bay Area's call for projects for the next round of
23 Prop. 84 funding, we were not selected for inclusion
24 in that grant application package, in fact, there
25 were no Green Infrastructure projects included in

1 that portfolio. So I just wanted to highlight that
2 these challenges will continue going forward.

3 And as to the grandfathering provision, I
4 do recognize what Tom had clarified earlier, and we
5 look forward to working with staff. We have been
6 talking with our Community Development Department
7 and we know that we do have a handful of these
8 pipeline projects that have been approved, have
9 entitlements for development. These include
10 multiphase projects where the entitlements and the
11 approvals have already been in place and
12 construction has already started on parts of the
13 project and future phases have already been
14 entitled. So we also know that we have another
15 project that has been tied in years of legal
16 gridlock.

17 So we do look forward to working with staff
18 on creating a mechanism for ensuring that we remain
19 in compliance and within our legal realm in terms of
20 being able to work with these projects that have
21 already been approved. So thank you for your time.

22 CHAIRPERSON YOUNG: All right, thank you.
23 Just so everybody knows what we're doing, we're
24 going to keep going until about 3:30 and then take a
25 very very short break, and then we will come back

1 and keep going.

2 All right, we have Michael Rhodes and then
3 Sharon Newton, please.

4 MR. RHODES: Thank you, Madam Chair and
5 Board Members. My name is Michael Rhodes. I'm the
6 Program Manager of the County of Santa Clara's Clean
7 Water Program, representing Unincorporated Santa
8 Clara County, and I'd like to provide you a
9 perspective on the Green Infrastructure requirements
10 from a smaller Permittee in that we control a lot of
11 land area, but have a very little amount of urban
12 development within that land area.

13 As such, we lack redevelopment opportunity
14 areas, our private development projects would make a
15 significant contribution towards Green
16 Infrastructure retrofit totals. The infrastructure
17 that the County itself manages such as rural parks,
18 hillside residential areas, and freeway-like
19 expressways, really don't provide us rich
20 opportunities to implement Green Infrastructure
21 retrofit projects. And as such, those that would
22 address Mercury and PCB reductions really don't
23 exist as opportunities for us.

24 And so we're deeply concerned about what
25 our obligation would be towards meeting the assumed

1 Green Infrastructure project proportionality that
2 the Tentative Order suggests in its accounting
3 scheme.

4 We do see opportunities in integrating the
5 Green Infrastructure objectives into our various
6 long range capital plans and sustainability
7 programs, but any retrofit projects undertaken by
8 those programs would be undertaken by the County
9 itself, rather than private development. And as
10 such, the pace at which those projects would be
11 implemented and the range of projects that we could
12 feasibly implement would be far different than that
13 of other Permittees.

14 And so in summary, we would urge the Board
15 staff and the Board itself to recognize that there
16 will be diversity in the rate and range of projects
17 that can be implemented under the Green
18 Infrastructure requirements. Thank you for your
19 consideration.

20 CHAIRPERSON YOUNG: Very good. Thank you.
21 We have Sharon Newton followed by Vaikko Allen.

22 MS. NEWTON: Good afternoon, Madam Chair
23 and members of the Board. My name is Sharon Newton.
24 I am the Stormwater Program Manager for the City of
25 San Jose. And my comments are specifically focused

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1 on the funding and lead timing considerations that
2 are necessary when developing and implementing Green
3 Infrastructure projects.

4 Funding will be a key consideration as we
5 make plans to incorporate Green Infrastructure in
6 the City of San Jose; in fact, funding will be and
7 actually already has been a limiting factor
8 associated with Green Infrastructure projects. The
9 City currently has four green infrastructure
10 projects at various stages of implementation. All
11 four of these projects have been opportunistic. We
12 were only able to pursue their implementation
13 because the City was able to obtain over \$5 million
14 in Proposition 84 grant funds. Without this grant
15 funding, these Green Street projects would not
16 happen. Even with the grant funding, the City has
17 had to commit an additional \$1.5 million in matching
18 funds for just these four projects. Even for a city
19 of our size, this is a significant investment.

20 While grant funding may support the cost of
21 constructing these Green Infrastructure projects,
22 they do not help with the cost of ongoing operations
23 and maintenance. Cities such as ours must identify
24 funding to cover O&M expenses, and these costs are
25 not always highlighted in our discussions when we

1 talk about Green Infrastructure projects, but they
2 can represent a significant additional demand on
3 already limited maintenance resources.

4 The City of San Jose currently faces a \$646
5 million backlog in transportation infrastructure
6 maintenance. The addition of Green Infrastructure
7 in the public right of way and on city-owned
8 properties will create a new maintenance demand that
9 will only increase the existing backlog unless
10 additional funding can be identified.

11 The current Tentative Order references
12 early implementation of Green Infrastructure
13 projects to ensure no missed opportunities.
14 Certainly, adequate funding will be a limiting
15 criteria in assessing these opportunities and an
16 important criteria in developing and implementing a
17 Green Infrastructure Plan.

18 Finally, I want to make a point regarding
19 the lead time for implementing Green Infrastructure
20 projects. The City applied for grant funding for
21 its first set of Green Infrastructure demonstration
22 projects about three years ago, and construction on
23 our first project just began in April, so very
24 recently. I make this point just to emphasize that
25 there is a significant lead time for implementing

1 Green Infrastructure projects. Some of these delays
2 are foreseen and just part of the process, but
3 others occur for reasons that are often impossible
4 to anticipate. So we ask the Water Board to take
5 these factors into consideration as Green
6 Infrastructure requirements for the MRP 2.0 are
7 finalized. In particular, we request that the Water
8 Board consider extending the timeframe for Green
9 Infrastructure Plan development. Thank you for this
10 opportunity to comment.

11 CHAIRPERSON YOUNG: All right, thank you.
12 Mr. Allen and then Andrew Russell, please.

13 MR. ALLEN: Good afternoon. My name is
14 Vaikko Allen, Regulatory Director for Contech. I'll
15 try to make three points in three minutes and
16 without further ado, here we go. The first two are
17 focused on Sections C.3.C, the Low Impact
18 Development section.

19 The current permit requires that
20 infiltration or rainwater harvesting, basically,
21 retention BMPs be considered prior to allowing
22 biofiltration BMPs to be used in recognition of the
23 fact that systems that have no discharge are more
24 effective than systems that do have a discharge when
25 it comes to pollutant load reduction. This is

1 consistent with other permits in the state, large
2 Phase 1 permits, especially throughout all of
3 Southern California.

4 The proposed draft puts biofiltration on
5 par with retention BMPs, and there's a little bit of
6 justification, but I would suggest that you go back
7 and take a close look at that to make sure that
8 really is warranted for the full range of pollutants
9 of concern that we know are present in stormwater,
10 including metals, nutrients, bacteria, and those
11 sorts of pollutants. That's point 1.

12 Number 2, again on the LID section, the
13 section that covers bio-filtration design is very
14 prescriptive, it gives five inches per hour as a
15 soil infiltration rate, and refers to a standard
16 from the previous permit regarding the bio-soil
17 composition. These are decent standards, they're
18 very prescriptive, though, and there is no
19 performance objective that is stated anywhere in the
20 permit that these standards are directed to meet, or
21 intended to meet.

22 What I would love to see instead is a
23 performance standard that we can innovate around to
24 try to create better BMPs that are perhaps more
25 affordable as we've heard today that cost is

1 definitely a consideration. At a bare minimum, what
2 I would like to see in this permit is that where
3 those prescriptive design requirements are included,
4 there also be an allowance for the Regional Board to
5 approve alternative designs that provide the same or
6 better load reduction. That allows innovation to
7 occur and, frankly, it's not happening here and the
8 reason is because we don't have that allowance in
9 the prior permit.

10 Last point is in a different section, that
11 section C.3.E, the Alternative Compliance Section.
12 I just wanted to point out that it is possible if
13 you're pursuing the alternative compliance path to
14 do offsite treatment in the watershed, and you
15 potentially have up to five years for that other
16 project to come online and be treating water from
17 the time that your project is completed. And that
18 other project may also be treating water, probably
19 will be treating water, from a different part of the
20 watershed. What that leaves is the possibility for
21 runoff from your site, from the site in question, to
22 be untreated and be discharged from the site really
23 forever.

24 I think that there needs to be a baseline
25 performance standard implemented for site runoff

1 even when alternative compliance is -- almost made
2 it. Thank you.

3 CHAIRPERSON YOUNG: All right. Thank you
4 very much. We have Andrew Russell and then Dan
5 Cloak, please.

6 MR. RUSSELL: Honorable Chair and Board
7 Members, I'm Andrew Russell, System Public Works
8 Director and City Engineer for the City of Dublin.
9 I was also a member of the MRP 2.0 Steering
10 Committee and I appreciated the opportunity to work
11 with staff since July 2013 on this project. I also
12 appreciated the collaborative effort and approach
13 taken by Water Board staff, BASMAA staff, and the
14 member agencies on several components of the MRP.

15 That said, City of Dublin has some concerns
16 with the Draft MRP, namely Green Infrastructure.
17 I'm also going to hit on PCBs one more time and the
18 annual reporting.

19 Regarding Green Infrastructure, the timing
20 to develop the framework, as you heard from others,
21 is really infeasible for the City of Dublin. The
22 Draft MRP gives Cities only 12 months to develop a
23 framework and then have it approved by their
24 Council. We feel this is not enough time to have a
25 comprehensive plan or comprehensive framework that

1 sets the priorities for a 10-year horizon.

2 Also, there is a lack of direction and
3 information for development of a Green
4 Infrastructure Plan. There are no guidelines or
5 reference plans we can use to develop Dublin's plan.
6 We are concerned that we will expend our limited
7 resources on the development of such a plan, which
8 will then be rejected by Water Board staff as being
9 inadequate, similar to our experience on the short
10 term Trash Reduction Plans in MRP 1.0.

11 Dublin is concerned about the practicality
12 of implementing the Green Infrastructure
13 requirements, the development of the Green
14 Infrastructure Plan, and the construction of
15 projects will be very costly. The City of Dublin
16 does not have the staffing resources or technical
17 expertise to develop the plan, therefore we will
18 need to hire a consultant to help us with this task.

19 Finally, Dublin is not convinced of the
20 water quality benefits that will be achieved from
21 the Green Infrastructure Plan and the tie to the
22 TMDLs. The cost benefit ratio for some GI projects
23 will simply be too high to justify project planning
24 development and construction. Again, the water
25 quality benefits are completely undemonstrated at

1 this point.

2 Regarding PCB load reduction, Dublin is
3 concerned that the permit includes default language
4 that would assigned the specific load fractions
5 based upon the County populations within each City.
6 We feel this approach is flawed. The City of Dublin
7 has a relatively high population, however, we have
8 very little old industrial and old urban areas. The
9 majority of Dublin has been developed over the past
10 10 to 15 years and using the default approach would
11 result in Dublin's requirement of having a high
12 factor to achieve, but we have no PCB sources in
13 order to achieve those goals. Again, how do we
14 comply?

15 And finally, for annual reporting, Dublin
16 requests as others have that, regardless of when MRP
17 2.0 is adopted, additional reporting requirements
18 not be split between two different permits. Annual
19 reporting is extremely time consuming now and it
20 would be even more onerous if we were to report on
21 two separate permits. And I will direct staff to
22 the Subdivision Map Act with respect to development
23 agreements and vesting rights. The fact that
24 through the economic downturn the state has extended
25 vesting rights for subdivision maps, and so I would

1 just ask staff to take a look at those things when
2 they talk about the grandfather clause. Thank you.

3 CHAIRPERSON YOUNG: Thank you. We'll have
4 Dan Cloak and then we will take a break, but
5 immediately after the break we'll have Mallika
6 Ramachandran.

7 MR. CLOAK: My name is Dan Cloak, I'm a
8 consultant and I work for California municipalities.
9 I've been doing stormwater work for about, well,
10 since 1992. And I'm here for the Contra Costa Clean
11 Water Program today.

12 First of all, I just want to say what a
13 moment it is to have Green Infrastructure being
14 discussed and incorporated in this Permit, it's
15 something that I think a lot of us have thought
16 about, dreamed about for a long time. We worked
17 closely with staff I think in a very cooperative way
18 to get that information and those ideas into the
19 permit and from what I'm hearing here, there's a lot
20 of concerns about, "Gee, how are we going to do it?"
21 And, "When are we going to do it?" But generally I
22 think what you're hearing is two things, one is
23 their support for it and the other is, "Man, this is
24 a big shift and it's a really big effort."

25 I don't think that we're going to succeed

1 unless we get some relief from some other permit
2 requirements and, as you can expect in any permit of
3 this length and complexity, and with this kind of
4 history, there's a certain number of things that are
5 just "why do we need to keep doing this or do it the
6 same way over again?"

7 I specifically want to address the issue of
8 some requirements that are specific to Contra Costa
9 with regard to Hydromodification management. Contra
10 Costa, you know, initiated and innovated Low Impact
11 Development as a way of meeting stormwater NPDES
12 requirements, really going back to the 1990's. Over
13 and over we've figured out ways to do it in the face
14 of permit requirements that were actually oriented
15 towards non-LID facilities, so we adapted those
16 criteria in order to do LID because we thought it
17 was better for our communities.

18 In the case of Hydromodification
19 Management, we took a standard that Water Board
20 staff created and that the Board adopted that really
21 pushed us toward doing detention basins once again,
22 rather than doing LID. We managed to adapt those,
23 we went back and forth with staff over a very long
24 period; I think frankly the expenditure for Contra
25 Costa municipalities was about a million dollars to

1 convince Water Board staff that we could do this
2 using LID. That included a study that was mandated
3 in the 2009 Permit, required us to find five
4 locations, and actually monitor the performance
5 during rainstorms of LID facilities to show that
6 they were effective. We followed the requirements
7 of the permit to the letter. We implemented the
8 study, we got the results, and we wrote a report and
9 submitted it in 2013. The results of that report,
10 by the way, have been used throughout the state now
11 in their own policies, including the Statewide
12 Permit in Region 3 and elsewhere.

13 We were surprised and disappointed to see
14 that the permit now requires Contra Costa, and only
15 Contra Costa, to submit yet more reports on the same
16 subject covering the same material. And we would
17 very much like those to be removed. Thank you.

18 CHAIRPERSON YOUNG: You're free to move
19 about the country for five minutes. Thank you.

20 (Break at 3:30 p.m.)

21 (Reconvened at 3:45 p.m.)

22 CHAIRPERSON YOUNG: Now we will have
23 Mallika Ramachandran and then on deck Michelle
24 Quinney, please.

25 MS. RAMACHANDRAN: Good afternoon, Board

1 and colleagues. I am Mallika Ramachandran,
2 Assistant Public Works Director for the City of
3 Brentwood. I've been involved in the Clean Water
4 Program since 1995, so in the last 20 years I've
5 seen it evolve and very positive changes, I'm very
6 happy about that. With that, I want to talk about
7 the Green Infrastructure and the grandfathering.

8 I want to say more time is needed to
9 develop a feasible cost-effective solution that will
10 stand in the face of legal challenges. Shifting
11 from gray storm drain systems to green is great, but
12 there are technical and legal challenges that must
13 be addressed, including looking at tributary areas,
14 drainage patterns, right of way constraint, capacity
15 of the system, hydraulic constraints, design
16 standards, health and safety, right of way issues, I
17 talked about it, and location and maintenance and
18 operation of systems that accumulate toxins.

19 The requirement in this permit does not
20 address environment as a balanced system, nor does
21 it address conflicting requirements and site
22 constraints. Here is a build-out street and this is
23 what we need for Green Infrastructure, and here is
24 your private property or your buildings. So how do
25 we implement this and retrofit existing systems?

1 So I ask for more time. We need to look at
2 this as a whole and not just little pieces that you
3 say you're going to repair the streets, or implement
4 this? It's very difficult to implement this thing
5 without looking at all the other things that we have
6 in place.

7 In terms of the grandfathering clause, the
8 City has no authority to (indiscernible) Subdivision
9 Map Act. Once the development projects are approved
10 with the best intent maps, the City does not have
11 the legal authority to go back and change conditions
12 of approval. These conditions travel with the map
13 and we ask for flexibility on projects that have
14 been approved, like pre-2005 projects have been
15 approved.

16 So again, we need to look at this and look
17 at all the other legal implications and ordinances
18 we have in place, and other requirements that may
19 conflict with this; one thing that comes to mind, we
20 have the drought mandate, and now we are talking
21 about Green Infrastructure that cannot be
22 implemented without water. So how do we do this?
23 And how do we implement this within a timeframe we
24 are asked to implement? So a lot of other things
25 come into play. The timelines in the permit? There

1 is no way we can implement and meet those
2 requirements. You want to retrofit a street project
3 and go through the funding requirements, CEQA,
4 develop the project, and actually go easily three to
5 five years. So to say to start implementing in two
6 years, it's not feasible. So I ask this Board here
7 to take a look at this, get some Engineers involved
8 in this process to look at pilot projects and look
9 at real case studies and how we can come up with
10 feasible projects. Thank you.

11 CHAIRPERSON YOUNG: All right, thank you
12 very much. Michelle Quinney and next up Jolan
13 Longway.

14 MS. QUINNEY: Good afternoon, Chair Young
15 and members of the Board. My name is Michelle
16 Quinney. I am the City Engineer for the City of
17 Campbell. And I'm here today to share some first-
18 hand experiences that the City of Campbell has
19 gained from the Hacienda Avenue Green Street
20 improvement project. As such, my remarks will be
21 focused on the Green Infrastructure requirements of
22 the MRP and we'll support the recommendations that
23 have been made by all the previous speakers.

24 The Hacienda Avenue Green Street
25 Improvement Projects was one of 10 pilot Green

1 Street projects included in MRP 1.0. We were
2 excited to participate in the pilot project and hope
3 our experiences will help provide implementation
4 perspectives for the upcoming permit.

5 Campbell was very fortunate, at least from
6 a Green Infrastructure standpoint to have a unique
7 opportunity on Hacienda Avenue. We had badly failed
8 pavement, 90-feet wide by about a mile long, and our
9 maintenance crews could no longer maintain it; it
10 was falling apart. This extra-wide street
11 highlighted the need for public safety, we had cars
12 that were making all sorts of wild maneuvers, so we
13 needed to narrow the street down. With the extra-
14 wide street, we had the ability to consider
15 repurposing some of the existing public right of way
16 for a better community use, and this is a rare case
17 in all of our capital improvement projects and our
18 maintenance projects, we rarely have this
19 opportunity.

20 The surrounding community, because of the
21 condition of the street was very supportive of
22 anything we were going to do out there. So all
23 these factors made this a unique opportunity for us.
24 Unfortunately, not all capital improvement projects,
25 especially in a smaller city such as Campbell, will

1 have circumstances that will allow the incorporation
2 of Green Infrastructure improvements into a project.

3 Our project would not have been possible
4 without significant grant funding. The availability
5 of grant programs is essential for the
6 implementation of Green Infrastructure improvements.
7 In the end, it took us three grants, three different
8 grants, and five additional City funding sources to
9 move this project forward. Each of these grants and
10 funding sources has specific requirements for the
11 project, which added complexity to both the
12 development and delivery of the project.

13 The Hacienda Project required a significant
14 amount of planning prior to even making this project
15 a reality, the first funds were allocated to the
16 project over eight years ago. Advanced coordination
17 with the community to gain support for the new Green
18 Infrastructure projects also took significant time,
19 but it was a central component of the project. The
20 installation of the bio-infiltration basins along
21 Hacienda Avenue was a concept that took much
22 additional time for the community to understand and
23 finally embrace.

24 The installation of the Green
25 Infrastructure improvements necessitated major

1 utility relocations and prompted several major
2 utility upgrades for the neighborhood, and that
3 process alone took over two and a half years.

4 Our City standards for Public Works design
5 and construction did not apply to the project, so it
6 was necessary for us to create a new toolbox. Long
7 term maintenance and adopting future City standards
8 that addressed Green Infrastructure are things that
9 we need to consider in the future, so those we still
10 have to address.

11 And in closing, I hope that some of these
12 shared experiences help support the recommendations
13 made by the previous speakers and that consideration
14 will be given to these in the new MRP so that it is
15 ultimately written with requirements that have an
16 achievable path to compliance. Thank you.

17 CHAIRPERSON YOUNG: Thank you. We
18 appreciate you sharing that experience. Jolan
19 Longway followed by Amanda Booth, please.

20 MS. LONGWAY: Good afternoon. I am Jolan
21 Longway. I am the NPDES Coordinator for the City of
22 Pittsburgh and I also work in the Land Development
23 Section of our Engineering Department. So I'll be
24 putting on my development hat and be talking about
25 Provision C.3.B.i with respect to projects that have

1 had approvals prior to 2005, that did not include
2 any LID.

3 So with that said, these are projects --
4 for the City of Pittsburgh, there's only about two,
5 I'll speak about one of the projects. The rights to
6 that project were vested in accordance with the laws
7 and the conditions that we imposed on them, our
8 standards of design that were in place at the time
9 their application was complete. So to require
10 changes or additional conditions is outside of our
11 authority.

12 With that said, if you did require the
13 Cities to open up these entitlements, keep in mind
14 that when these maps were entitled, it not only
15 entitled the developers to the number of units that
16 they're entitled to develop, it also secured public
17 improvements that had to be constructed. For one of
18 the projects that's in the hillside, it requires two
19 water tanks. So to reopen or reevaluate design
20 would also require reevaluation of our Water Master
21 Plan, which is going to include consultants that
22 have to redo modeling to determine what number of
23 units the developer will be entitled to construct,
24 at what elevation. These projects are also bound by
25 development agreements, which means, you know,

1 agreements go both ways, the City could lose out on
2 secured improvements that we've already negotiated
3 in the past.

4 So what we're asking for is for more
5 flexibility for the Cities to handle the C.3
6 situation with land development. This Green
7 Infrastructure project, you know, for cities like
8 us, we rely on developers to help assist with
9 infrastructure projects, so if we have a good
10 partnership with them, that's the only way we're
11 going to be able to see these Green Infrastructure
12 projects come to fruition. So if we could keep the
13 language the same, allow the Cities to have more
14 flexibility, I think we would achieve compliance.
15 Thank you.

16 CHAIRPERSON YOUNG: All right, thank you.
17 Amanda Booth followed by Rinta Perkins, please.

18 MS. BOOTH: Good afternoon, Board Members.
19 My name is Amanda Booth and I'm the Environmental
20 Program Analyst for the City of San Pablo. I'd like
21 to thank you for the opportunity to comment today
22 and appreciate all the hard work that's been put
23 into this so far.

24 San Pablo understands that the Water Board
25 has concerns with contaminants and we want to work

1 with you to build Green Infrastructure projects;
2 however, currently it's unclear how compliance with
3 the early implementation section of C.3.J is going
4 to be determined. We would want permit language
5 that creates a defined review process so that we can
6 avoid noncompliance due to lack of clarity.

7 San Pablo is a disadvantaged community that
8 is built out, so we would like to see a review
9 process and review language that allows us to
10 consider requirements such as space constraints and
11 effective capture locations. You know,
12 communications with large old industrial areas and
13 old urban areas like ours burden the responsibility
14 of a lot of these pollutants of concerns, and so we
15 want to make sure that we're effective with the
16 minimal resources that we have. And to do that, we
17 have to be clear on the path to compliance for our
18 early implementation review and the C.12, which you
19 already heard plenty about earlier today. And
20 that's it. Thank you.

21 CHAIRPERSON YOUNG: All right, thank you
22 very much. Rinta Perkins and then John Steen or
23 Steer, one of the two.

24 MS. PERKINS: Good afternoon, Madam Chair
25 and members of the Board. Rinta Perkins, Clean

1 Water Program Manager with the City of Walnut Creek.
2 Thank you for the opportunity to comment and I wish
3 to extend my appreciation to your staff for their
4 collaborative efforts.

5 I'm here today to provide two comments on
6 Provision C.3.E, Special Projects. First of all,
7 we'd like to ask that the definition of floor area
8 ratio and gross density be modified to include
9 parking structure and exclude areas dedicated to the
10 public for pedestrian activities or access.

11 The current language is a disincentive for
12 Smart Growth development in suburban downtown across
13 the region. This is especially true for Walnut
14 Creek where waters approved height restriction limit
15 the ability for redevelopment to achieve the minimum
16 density required to be eligible for special project
17 credit. With 10-foot setback all around, 85 percent
18 lot coverage is not achievable. Because a project
19 must consider other setback as defined in the
20 California Building Code. The remaining 15 percent
21 area compete for fire access, building access, and
22 utility requirement that preclude the installation
23 of LID areas. The depressed nature of this LID
24 design in a tightly constrained site present a
25 barrier or full hazard to achieve the necessary

1 configuration.

2 As an example, we have a project in our
3 downtown last year, where Applicant originally
4 proposed to build a public plaza on their frontage
5 and internal courtyard. The project met the
6 criteria for a Category B Special Project, except
7 the density to achieve 100 percent non-LID credit.
8 The public plaza was a requirement tied to both
9 density and a general plan amendment. Because the
10 project could not be increased in height to achieve
11 the required density, it ended up incorporating
12 flow-through planters in its courtyards without the
13 public plaza.

14 So the solution is simple, by modifying the
15 definition as we suggested, you support local agency
16 effort of Smart Growth development, as well as to
17 provide community enhancement through benefits of
18 parking and public amenities in redeveloped downtown
19 while providing water quality benefits.

20 Our second concern, we'd like to ask that
21 the criteria for transit-oriented development, or
22 Category C of the Special Projects provision, be
23 modified. The limits placed on the Location Credit
24 within the Tentative Order are out of line with any
25 transit-oriented development guidelines around the

1 country, and particularly within our own region. As
2 an example, Bay Area Rapid Transit (BART) has
3 transit-oriented development guidelines that start
4 at a half mile, while the Tentative Order is much
5 more restrictive at a quarter mile. So we ask for
6 your consideration on this issue. I thank you for
7 your time.

8 CHAIRPERSON YOUNG: All right, thank you.
9 Mr. Steen or Steer, I'm sorry, I just can't -- he
10 had to leave, all right, we apologize for that.
11 Tracy Clay will be next from Berkeley, and then
12 Chris Mcmmmmmm (!) from the Town of Danville.

13 MS. CLAY: Okay, good afternoon members of
14 the Board. I'm Tracy Clay, I'm a Senior Civil
15 Engineer for the City of Berkeley, and I'd like to
16 come here today to support my fellow municipalities
17 and Permittees, and also support the testimony
18 provided by BASMAA and Alameda County Clean Water.

19 But on behalf of Berkeley, I'd like to give
20 testimony primarily on the Green Infrastructure
21 provisions. Berkeley has been really really
22 successful in looking forward towards Green
23 Infrastructure, and they really support it, and they
24 have been successful in passing a Bond Measure to
25 fund it. In 2011, we did a Watershed Improvement

1 Plan, a Master Plan that identified Green
2 Infrastructure as a key component to meet our water
3 quality and our stormwater objectives, or flooding
4 objectives. In the past, the City was looking
5 toward hardened infrastructure to meet our
6 stormwater and flooding requirements, the new
7 approach in Berkeley is to do Green Infrastructure,
8 Low Impact Developments, use of cisterns in
9 roadways, you know, they want to do the right thing,
10 that's what I'm saying.

11 So a few years ago, 2012, the City passed a
12 Bond Measure, it was a combined Bond Measure for
13 road improvements and Green Infrastructure for \$30
14 million. And over the last two years with that
15 money we've been able to fund six Green
16 Infrastructure projects and what we've done is we've
17 combined those with the Road Improvement Plan and,
18 you know, I think that's what you're going for, is
19 as you move forward with general road improvements
20 and general infrastructure replacement, you want us
21 to implement Green Infrastructure where possible.
22 And it's been a really good program. And we've done
23 the first two years, we have three years to go, we
24 have six more Green Infrastructure projects that
25 we're working on, and we love the planning approach

1 that you guys have outlined, but just not now.
2 (Laughs) We would like to continue to focus on our
3 Green Infrastructure program and implement it over
4 the next three years. I think we see ourselves
5 moving into another planning phase after this
6 construction, you know, design and construction
7 phase is done. And I imagine other organizations
8 are the same.

9 The other thing is, is Green Infrastructure
10 is difficult to implement in a constrained urban
11 environment. I could speak more to that, but I
12 can't.

13 And we also want you guys to be mindful of
14 how much it's going to cost us with the monitoring
15 and reporting. So thank you.

16 CHAIRPERSON YOUNG: All right, thank you
17 very much. Now we're going to have Mystery Chris,
18 and then Tim Potter afterwards.

19 MS. MCCANN: Thank you, Madam Chair and
20 Board Members. I apologize for my handwriting. My
21 name is Chris McCann, I'm a City Planner for the
22 town of Danville and I've been working there running
23 the Clean Water Program for over 15 years. I'm
24 proud to say the town's community values have always
25 aligned with Clean Water program goals, generally.

1 We've preserved our creeks, clustered development,
2 preserved hillsides and protected them, our
3 maintenance activity is reduced, pesticides before
4 it was ever required, and we've expended extensive
5 resources picking up trash. So, you know, we agree
6 with the Green Infrastructure Plan and we're heading
7 towards that direction with the Board. However, the
8 C.3 regulations, the Clean Water requirements have
9 been pretty onerous over the years, and they're
10 continuously ramping up in the past 10 years, town
11 resources have significantly been impacted and had
12 to be ramped up to implement new programs, new
13 review procedures, new accounting, new tracking
14 efforts, and have completely changed how new
15 development is reviewed, implemented and built.

16 I wanted to specifically speak about now
17 since we've had about 10 years doing C.3 program,
18 the O&M inspections, because we're starting to get a
19 significant number of projects on the ground, we
20 have 13 projects built, we probably will have
21 another two more over the next year or so. We've
22 been implementing O&M programs for the past 10
23 years. Of course, we had to wait a couple years
24 after the first project to have it just be
25 functioning before we can inspect it. We inspected

1 the oldest ones first and we kind of have a
2 procedure how we do that, and we've gotten better
3 over the years. We learn all the time how to do
4 things better.

5 I'd like to address the MRP 2.0's required
6 frequency of inspections in this area, though. Over
7 the past 10 years, we were able to comply with the
8 requirement of one inspection per five years for
9 each project; however, in the future, as you know,
10 as new projects come on line, this is going to be
11 more difficult for Cities to accomplish with the
12 same staff resources that we always have had -- in
13 our case. So what's new in MRP 2.0 in Section
14 C.3.H.I.i.vi.b, this section deals with the O&M
15 inspections requiring at least 20 percent of all
16 previous years' regulated projects to be inspected.
17 I personally feel this is a little overly
18 restrictive and prescriptive, and that also includes
19 a provision of the one inspection per five years;
20 that provision is fine, we're going to try to meet
21 that.

22 We request, though, that the 20 percent per
23 year be omitted simply because not all projects are
24 the same. We have some projects, one 50-unit
25 condominium development, that might have two IMPs in

1 it, one point of contact, one Management company I'm
2 dealing with, not a big deal, but then I have like a
3 smaller subdivision that is still considered one
4 project to you guys, but has 10 lots, 10 homeowners,
5 10 people I have to coordinate with, and 10 problems
6 potentially, or more.

7 So in general I would just like to ask you
8 to delete that provision, I don't see why we need
9 it, and I think we can do our job probably just as
10 good without it. Thanks.

11 CHAIRPERSON YOUNG: All right, thank you.
12 We now have Tim Potter followed by Beth Baldwin.

13 MR. POTTER: Thank you. My name is Tim
14 Potter. I work with Central Contra Costa Sanitary
15 District, but I'm actually here representing the
16 Contra Costa Clean Water Program to speak on the
17 proposed change to Section C.4.D of the draft MRP
18 that requires reporting of all enforcement actions
19 for potential discharges that don't comply with the
20 Municipality Stormwater Ordinance, so kind of
21 shifting gears for you here.

22 First, a quick background. Since Fiscal
23 Year '96-'97, Central San has supported 10 of the
24 Central Contra Costa County Cities and with
25 compliance with their permit requirements to conduct

1 inspections and enforcement at commercial and
2 industrial sites under an Interagency Agreement. We
3 conduct field enforcement that includes using verbal
4 warnings, written warning notices, as well as
5 written Notices of Violations that are identified in
6 the Cities' Enforcement Response Plans in response
7 to observations during the inspection efforts that
8 we conduct.

9 These enforcement tools achieve a very high
10 rate of return to compliance and we're very proud of
11 them. Since the adoption of the first MRP in 2009,
12 Central San has been conducting field work
13 associated with compelling and documenting timely
14 corrective actions according to the MRP standards
15 which are basically before the next rain event, or
16 within 10 business days. The reports that we
17 generate to communicate work conducted under the
18 Inspection Service Agreements also include
19 documentation of this timely return to compliance.

20 Since Water Board's inspection of two
21 Central Contra Costa County Cities in 2010, we've
22 been conducting field work and documentation,
23 documenting the timely return to compliance for all
24 potential discharges in addition to discharges of
25 non-stormwater pollutants when a written enforcement

1 document has been issued for that noncompliant
2 condition.

3 This effort for this level of follow-up
4 for, again, the potential discharges recorded under
5 a written enforcement document does require
6 additional resources, basically more cost to the
7 Cities, and in many cases with minimal benefit to
8 the water quality environment.

9 So the recommendation that we have for you,
10 the concern with the proposed MRP Tentative Order is
11 that there's an unqualified reference to reporting
12 all enforcement actions listed in a City's ERP in
13 Section C.IV.D.iii.2 and 3. As drafted, this text
14 could be interpreted to include situations when
15 verbal warnings are used as the initial level of
16 enforcement for relatively minor conditions observed
17 during an inspection.

18 As noted previously, requiring this level
19 of reporting for conditions addressed with a verbal
20 warning will increase the resources needed to comply
21 with this standard, without really any benefit to
22 protecting water quality. This text should be
23 modified to clarify that verbal warnings are not
24 subject to the same level of reporting as written
25 warning notices and NOV's, and we ask that you make

1 sure that changes required in reporting are value
2 added. Thank you very much.

3 CHAIRPERSON YOUNG: All right, thank you
4 Mr. Potter. We have Beth Baldwin and then Deanna
5 Constable.

6 MS. BALDWIN: Good afternoon, Madam Chair
7 and Members of the Board. My name is Beth Baldwin.
8 I'm with the Contra Costa Clean Water Program and I
9 want to thank you for the opportunity to speak to
10 you today.

11 I would like to address Provision C.5.e
12 regarding the control of mobile sources. First, we
13 believe there's just simply not enough time to
14 address all of the 2016 Annual Report requirements.
15 This includes enforcement strategies, outreach and
16 education to mobile businesses, inspections and
17 enforcement, etc. Many of these activities, we
18 believe, would best be served at a regional level
19 and that type of coordination takes time.

20 Second, in addition for a Permittee to
21 develop an inventory of mobile businesses operating
22 in his or her jurisdiction will take significant
23 resources and, at best, yield an incomplete list.
24 Mobile businesses operate across City and County
25 lines and many of these businesses do not obtain

1 business licenses and, furthermore, some
2 municipalities do not even require business
3 licenses. So you can see the challenges with
4 developing a complete inventory. We recommend
5 instead that the inventory be developed regionally
6 and that it is required only once during the permit
7 term. Furthermore, we request that language should
8 be added to the permit that clarifies that the
9 inventory is not absolute; that is, it is simply not
10 possible whether conducted at a regional level or by
11 an individual Permittee to identify each and every
12 single mobile business operating in his or her
13 jurisdiction.

14 Finally, we believe that the language
15 should be added to the permit that explicitly states
16 that Permittees may refer to their countywide annual
17 reports for activities that are conducted at the
18 County or Regional level. Thank you for your time
19 and consideration on these comments.

20 CHAIRPERSON YOUNG: All right, thank you
21 Ms. Baldwin. We have Deanna Constable and then
22 Erica Maharg.

23 MS. CONSTABLE: Good afternoon, Chair and
24 Board. Thank you for the opportunity of speaking to
25 you. My name is Deanna Constable. I work as an

1 Administrative Analyst for Contra Costa Clean Water
2 Program and I work supporting the Public Information
3 and Participation Program, so I'm speaking today on
4 C.7.

5 I'd like to draw your attention to several
6 points that we'd like to support amongst our
7 program; one is that in C.7, in general, we would
8 like to ask for a consolidation of all of the
9 references to C.7 to be brought into C.7 and not
10 having to chase them exactly through C.9 and other
11 places, to be able to be responsible for all of
12 those provisions.

13 Also, in regards to C.7.a, which Permittees
14 mark and maintain storm drain inlets with
15 appropriate pollution prevention messages, we would
16 like to have this provision actually be moved to
17 where we think it should be, which is in C.2 and
18 C.3. It really shouldn't be in C.7, we believe.

19 Also, very important to Permittees is the
20 changing of the language from an "advertising
21 campaign" to an "outreach campaign." We believe
22 that that term is constrictive because there's so
23 many ways of doing outreach, for example with social
24 media, and that we'd like to be able to have that
25 flexibility. And I think flexibility is a big term

1 for us in public information. One of the things
2 that I've been tasked with is the idea that we would
3 like to have more flexibility in how we do our
4 campaigns. The people that I work with, these
5 Permittees, they really care about making a campaign
6 that is effective, and they're very frustrated that
7 they start with a campaign, they're told that they
8 have to do one that's trash and one that's
9 pesticides in this current MRP, and then they have
10 to stop and they have to start again. They believe
11 that the effective use of their resources is to have
12 a campaign that maybe is one, and that can be then
13 grown out to whatever is needed, for example trash
14 or pesticides, depending on what's happening at the
15 time, but to have one campaign that can grow with
16 them and thus effective resources. For example, if
17 you think of Spare the Air, there's a lot of money
18 that's put to that message and it continues, that
19 message continues and people know of it. We would
20 like to be able to have a branding that people know
21 about stormwater, instead of having to do these
22 little campaigns that then end and the resources are
23 dead.

24 So we ask for more flexibility with that
25 and I just have to say thank you so much to everyone

1 here, C.7 is an important component of the MRP.

2 Thank you.

3 CHAIRPERSON YOUNG: Okay, thank you very
4 much. Erica Maharg and then Lucille Paquette.

5 MS. MAHARG: Good afternoon. My name is
6 Erica Maharg and I am a Staff Attorney with San
7 Francisco Baykeeper and I did take the oath. Thank
8 you for the opportunity to comment today. Baykeeper
9 will be submitting detailed comments, written
10 comments, at a later date. But today I wanted to
11 focus on the Water Quality Monitoring Provisions
12 that are included in Section C.8.

13 As you know, the NPDES Permit System, as
14 required by the Clean Water Act and Federal
15 Regulations, requires that monitoring in a permit
16 assure compliance with the permit terms including
17 protection of beneficial uses. To be effective and
18 sufficient, therefore, the monitoring provisions
19 must focus on monitoring a Permittee's compliance
20 with the permit itself and specifically determining
21 whether stormwater discharges are causing or
22 contributing to violations of water quality
23 standards.

24 Unfortunately in many ways it appears that
25 the water quality provisions as written fail to do

1 this. For instance, the draft permit spells out the
2 intended purposes of the creek status monitoring,
3 and basically the purpose is to determine whether
4 water quality standards are being met in receiving
5 waters, generally. Similarly, the priority
6 information needs which guide the whole pollutants
7 of concern monitoring refer to stormwater runoff,
8 but they never specifically state that assuring
9 compliance with a permit is the intended purpose of
10 the monitoring provisions. So, while understanding
11 the overall health of receiving waters is important
12 and Baykeeper completely support this type of
13 monitoring, the permit's monitoring must evaluate
14 and should focus on whether the discharges actually
15 regulated by the permit, which are stormwater
16 discharges, are complying with the permit, or
17 contributing to violations of water quality
18 standards. And also, this purpose should be more
19 clearly stated in the permit.

20 As noted previously, the monitoring
21 requirements in the permit right now increase the
22 flexibility to Permittees. And Baykeeper is
23 concerned with the increased discretion given to
24 Permittees in developing a monitoring scheme for
25 pollutants of concern. And specifically, we're

1 concerned that the monitoring provisions do not
2 require actually monitoring, except for toxicity
3 during the wet season, and it seems illogical that
4 the permit would not specifically require sampling
5 when the discharges are actually occurring, which is
6 of course during storms and during the wet season.
7 So we ask that the Permit be modified -- may I just
8 continue for one more thought --?

9 CHAIRPERSON YOUNG: Yes, you can, there --

10 MS. MAHARG: -- to especially require
11 sampling that occurs during storm events, or when
12 appropriate during the wet season. And we also
13 notice that the Draft Permit doesn't specify
14 locations or give guidance about where locations
15 would be appropriate, so that would be, you know, at
16 the outfall or directly downstream of the outfall,
17 to determine what the impacts actually are of the
18 discharges that are occurring.

19 So in sum, we would ask that the monitoring
20 provisions be changed to require representative
21 sampling at outfalls during storm events. Thank
22 you.

23 CHAIRPERSON YOUNG: All right, thank you
24 very much. What I was trying to say was we've only
25 had two comment cards from people other than

1 dischargers, so it seemed appropriate to give her -
2 - not equal time, that would be ours, but some extra
3 time. So we have now Lucille Paquette who is coming
4 back on this section, and then we'll have April
5 Squires.

6 MS. PAQUETTE: Good afternoon. Thank you,
7 Chair and Board for hearing my comments and thank
8 you to your staff for all the work we've done. I
9 kind of want to start on something slightly
10 different than -

11 MS. WHYTE: I'm sorry, please state your
12 name and --

13 MS. PAQUETTE: My name is Lucille Paquette,
14 thank you.

15 MS. WHYTE: -- and your affiliation?

16 MS. PAQUETTE: Contra Costa Clean Water
17 Program. And I'm responsible for the C.8 and C.11
18 and 12 monitoring reporting. So one thing I'm
19 noticing and that I want to mention and acknowledge
20 is this idea of generational planning, right? So
21 what I see is all of us try to clean up and improve
22 what our parents gave us, whether it's engineering,
23 chemistry, what have you. And we're trying to hand
24 this to our children and we know we have some big
25 problems and big challenges, but what I see is I see

1 a bunch of really talented minds here who are also
2 very willing to make smart choices and informed
3 choices. And my request, personally, is that all of
4 us here have flexibility with understanding other
5 people's points of view and struggles because I
6 think that's happening, and I think we have this
7 kind of a new generation of thinking, if you will,
8 collaboration that maybe our parents didn't have.
9 So I'm really excited about that, to participate in
10 that, and I want to encourage all of us and request
11 that we could really work together, Baykeeper,
12 everybody here is trying to get this nice -- protect
13 our home.

14 In terms of the issues I'd like to bring
15 up, our creek status and POC monitoring, C.8, I'm
16 hoping some of these will be simple fixes, so a
17 couple things would be for the temperature
18 exceedance idea there, that all the streams, all the
19 triggers aren't a one-size-fits-all, and we'd just
20 like to acknowledge other specific temperature
21 thresholds developed through other regulatory
22 processes, as well, that's one. I'd love to see a
23 cap of projects to 10 regionally. In terms of the
24 POC monitoring, C.8, I'd like to ask if you could
25 align the POC report with the Urban Creeks

1 Monitoring Report so that all of our monitoring can
2 be reported at the same time. I think that's a
3 really easy fix. And also I'd like to see if we
4 could provide flexibility in Table 8.4 for the PCB
5 methods that are required there because I think that
6 we could use some flexibility for the screening that
7 we are doing under C.12, use different methods for
8 the PCBs, I think that would be an easy fix, as
9 well. Thank you for hearing me.

10 CHAIRPERSON YOUNG: All right, thank you
11 very much. April Squires and then Monty Heying, or
12 something like that, a citizen of Alameda. Is April
13 Squires still here? I guess not. Then I don't know
14 whether I've got this last name right, H-e- -- maybe
15 y -- i-n-g, Citizen of Alameda? Is he still here?
16 Well, he's not jumping up, whoever it is. We think
17 they both had to leave, all right, unfortunately.
18 Now we have Laurie Kozaczek, and then I have one
19 more card and if you haven't been called, you'll
20 know who you are, and that will be Joanne Le. So is
21 Laurie --

22 MS. DABOVICH: Julie Haas Dabovich?

23 CHAIRPERSON YOUNG: I'm not seeing the
24 card, but come on up and you can fill out a card
25 after. Let me just clarify, so Laurie Kozaczek - so

1 you didn't need to speak, and he pocketed you, just
2 testing.

3 MS. DABOVICH: Good evening, we'll call it,
4 my name is Julia Haas Dabovich. I am the
5 Environmental Resources Coordinator for the City of
6 Antioch. For the past 15 years, I have had the
7 pleasure of serving on the PIP Committee, formerly
8 the PIO Committee, for the Contra Costa Clean Water
9 Program. We are hoping, and I know that my
10 colleague Deanna mentioned it, as well, that you
11 seriously consider changing the word "advertising"
12 to "outreach" for starters, that's kind of our old
13 school way of doing things, we used to go out and
14 film commercials, we had some really good ones,
15 including guys ranting in the creek about illegal
16 dumping, but they're not cost-effective, we can't
17 compete with Coke and McDonalds, we couldn't compete
18 with Coke and McDonalds then, we can't compete with
19 them now, so we need to be creative and we need to
20 be flexible in how we're doing our *outreach* to
21 change people's behaviors. I think we've had some
22 pretty innovative ways to do that, including our
23 current pesticide campaign, which is actually a
24 three-pronged campaign, we have three different
25 things going on that right now including a website

1 for gardening, which I'm really excited about in the
2 City of Antioch because our Antioch High School kids
3 -- School Outreach -- are doing a lot of the tip
4 sharing on there, as well as the search engine
5 optimization and stuff like that through two of our
6 academies. We've been doing a lot of still
7 advertising, but advertising in social media so we
8 can really target it to the areas that our focus
9 groups have shown are using either their own
10 pesticides, are using applicators for those, so we
11 can do direct outreach in those kinds of ways and
12 changing the wording on that will really help.
13 Again, I'd also like to reiterate that we would
14 really like to have the option of having one
15 campaign or one holistic plan that we can develop
16 for the duration of the permit, and then be able to
17 implement it and show you that it is effective in
18 our reporting, as well. Let me make sure I got
19 everything. I think that's it. Thank you very
20 much.

21 CHAIRPERSON YOUNG: All right, thank you.
22 And I have no further cards, and nobody else is
23 jumping up. Oh, is she here? Very good.

24 MS. LE: Good evening, Madam Chair and
25 Board Members and Water Board staff. My name is

1 Joanne Le with the City of Richmond, the Source
2 Control Inspector for the Stormwater Program. I'm
3 here to talk about C.12, PCBs and Green
4 Infrastructure. I'm sure we've heard enough of it,
5 but I just want to express my view of it.

6 As you know, Richmond is burdened with
7 historical, as well as current industrial sources of
8 PCBs and staff has done our due diligence to address
9 this issue over the years. We have identified high
10 opportunity areas, we participated and received
11 grant funding from EPA, BASMAA, to construct green
12 infrastructure to address these issues, and I myself
13 diligently perform inspections of sites with PCBs to
14 ensure that PCB sources aren't contributing to our
15 collection system and our waterways. But as
16 speakers have mentioned before, sources of funding
17 are running out, we're not sure of what's going on
18 in the future in terms of grant funding, so I would
19 like to express that the Board and staff members
20 take into account these factors in terms of revising
21 the permits to assure us compliance when we're
22 implementing good faith tasks to address these
23 problems, and not put forth a permit that is subject
24 to failure to start with and be subjected to third-
25 party lawsuits. And that's all I have to say.

1 Thank you.

2 CHAIRPERSON YOUNG: All right, thank you
3 very much.

4 Let me make a couple of comments just about
5 process now. As you heard with the statement that I
6 read when we started this, we will not be taking any
7 action today, but the three of us individually will
8 provide some feedback to the staff and to all of you
9 about what our thoughts are based on all of the
10 testimony today, and we will be doing that next
11 month at the hearing where most of you will have
12 representatives because it's the trash hearing of
13 the MRP, so it's the next chapter of MRP Workshops.

14 But what we can do now if the Board Members
15 wish, is to ask clarifying questions. We can save
16 our conclusions and recommendations and that kind of
17 feedback for the next hearing. Newsha will be
18 absent, but she will be providing that via either
19 the staff or me. But if there are particular
20 questions that you'd like the staff to answer based
21 on what you heard today, then this would be a good
22 time to get those answers out.

23 DR. AJAMI: So no comments or questions.

24 MR. LEFKOVITS: Yeah, I don't think I have
25 any specific staff questions.

1 CHAIRPERSON YOUNG: Are there comments the
2 staff would like to make just based on what you
3 heard to flesh out our thinking on these issues?
4 Not required, I'm just providing the option, the
5 opportunity.

6 MR. LICHTEN: I would just offer as
7 everyone noted we've been meeting together and we're
8 going to continue to meet and talk. In particular,
9 it was refreshing to hear some of the more detailed
10 comments on the Green Infrastructure provision. I
11 think as we've been meeting more recently there's
12 been a focus more on PCBs, so we think there's a
13 real opportunity to clarify understanding, wording,
14 and some of the dates there, and we're going to sit
15 down with the Green Infrastructure Work Group and
16 make sure we do that.

17 CHAIRPERSON YOUNG: All right, good enough.
18 Then we will close this workshop for today. We will
19 be reconvening, as I mentioned, well, we'll be
20 convening another workshop next month on the trash
21 section of the MRP. And thank you all for coming
22 and thank you for your really thoughtful comments,
23 many of them were very helpful and positive and
24 there are things that we can really work with.

25 (Adjourned at 4:33 p.m.)

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of June, 2015.

A handwritten signature in cursive script that reads "Juliana Link". The signature is written in black ink and is positioned above a horizontal line that extends to the left across the page.

Juliana Link
CER-830

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of June, 2015.



Karen Cutler
Certified Transcriber
AAERT No. CET**D-723

ATTACHMENT 4

California Regional Water Quality Control Board

San Francisco Bay Region

July 8, 2015, 9:00 a.m.

Elihu M. Harris Building

First Floor Auditorium

1515 Clay Street

Oakland, CA 94612

Reported by:
Kent Odell

- Item 6. Municipal Regional Stormwater NPDES Permit - Municipalities and Flood Management Agencies in Alameda County, Contra Costa County, San Mateo County, Santa Clara County, and the Cities of Fairfield, Suisun City, and Vallejo in Solano County - Hearing to Receive Testimony on Tentative Order, Provision C10, Trash Load Reduction and Report of Subcommittee on June 10, 2015, Hearing on Tentative Order**

APPEARANCES

Board Members

Dr. Terry F. Young, Chair
James McGrath, Vice Chair
William Kissinger, Board Member
Steve Lefkovits, Board Member
John Muller, Board Member

Staff

Bruce H. Wolfe, Executive Officer
Thomas Mumley, Assistant Executive Officer
Yuri Won, Legal Counsel to the Board
Angela Tsao, Executive Assistant
Christine Boschen, Senior Environmental Scientist,
Watershed Management Division
Dale Bowyer, Senior WRC Engineer, Watershed Management
Division
Brian Thompson, Senior Engineering Geologist, Enforcement
Section, NPDES Division
Robert Schlipf, WRC Engineer, NPDES Division

Also Present

Public

Matthew Fabry, Chair, Bay Area Stormwater Management
Agencies Association (BASMAA); Manager, San Mateo
Countywide Water Pollution Prevention Program
Allison Chan, Save the Bay
Bob Simmons, Mayor, City of Walnut Creek; Chair,
Walnut Creek Watershed Council
Paul Morris, Councilman, City of San Pablo
Laura Hoffmeister, Stormwater Program Manager, City of
Clayton; Elected Official, City of Concord
Loella Haskew, Mayor Pro Tem, City of Walnut Creek
Diane Burgis, Oakley, California, Executive Director,
Friends of Marsh Creek; Board Member, East Bay Regional
Park District; ABAG Regional Committee; served on
Oakley City Council
Timm Borden, Director of Public Works, City of Cupertino
Kerrie Romanow, Director of Environmental Services,
City of San Jose

APPEARANCES (Contin.)

Miriam Gordon, State Director, Clean Water Action
Tom Dalziel, Contra Costa Clean Water Program Manager

Lesley Estes, City of Oakland
James Scanlin, Manager, Alameda Countywide Clean
Water Program
Heidi Geiger, City of San Jose, Department of
Transportation
George Torgun, San Francisco Baykeeper
Karineh Samkian, Environmental Program Analyst,
City of San Pablo
Elisa Wilfong, Manager, Stormwater Program, City of
Hayward
Vaikko Allen, Regulatory Director, Contech Engineered
Solutions
Eric Anderson, Environmental Safety Coordinator, City
of Mountain View
Kirsten Struve, City of Palo Alto, Public Works
Department
Nancy Humphrey, representing Emeryville
Chris Sommers, Trash Committee Coordinator, Santa Clara
and San Mateo Countywide Stormwater Programs; Technical
Review Committee, Regional Monitoring Program; BASMAA,
Project Manager for the Tracking California Trash Project
Gene Waddell, City of Fremont, Environmental Services
Division
Dan Cloak, Consultant, Contra Costa Clean Water Program
Michele Mancuso, Contra Costa County
John Konnan, EOA, on behalf of BASMAA
John Steere, Watershed Planner, Contra Costa County
Watershed Program
Gary De Jesus, City of San Mateo
Cece Sellgren, Stormwater Manager, Unincorporated Contra
Costa County and Flood Control District
Obaid Khan, Transportation Operations Manager, City of Dublin
Brett Calhoun, Senior Water Quality Specialist,
Santa Clara Valley Water District
Michelle Daher, Stormwater Compliance and Environmental
Compliance, and sustainability for the City of
East Palo Alto

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Other Business

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P R O C E E D I N G S

2

JULY 8, 2015

9:01 A.M.

1 Item 6. Municipal Regional Stormwater NPDES
2 Permit - Municipalities and Flood Management
3 Agencies in Alameda County, Contra Costa County,
4 San Mateo County, Santa Clara County, and the
5 Cities of Fairfield, Suisun City, and Vallejo in
6 Solano County - Hearing to Receive Testimony on
7 Tentative Order, Provision C10, Trash Load
8 Reduction and Report of Subcommittee on June 10,
9 2015, Hearing on Tentative Order

10 MR. WOLFE: Item 6, we've stated in the
11 Agenda that we would not start before 10:00 a.m.,
12 so we do have a few minutes.

13 CHAIRPERSON YOUNG: We get to have a 12-
14 minute break.

15 MR. WOLFE: So we'll take a brief --

16 MR. MULLER: May I make my comments
17 before we start this?

18 CHAIRPERSON YOUNG: Yes. Your recusal
19 statements? Does that have to be done at 10:00?

20 MR. WOLFE: It can be done now.

21 MS. WON: Well, actually I don't know if
22 people are here, so I would suggest -

23 MR. MULLER: To wait. Okay. We'll wait
24 until 10:00.

25 (Break at 9:48 a.m.)

(Reconvene at 10:01 a.m.)

1
2 CHAIRPERSON YOUNG: All right, we're
3 going to get started now with the next item on
4 the agenda, the Trash Workshop. And I believe we
5 have a couple of recusals to do and during that
6 time we'll hopefully assemble the other Board
7 Members back again.

8 MR. MULLER: Again, I don't know if I
9 should thank you or apologize, but I'm going to
10 recuse myself from participating in the Municipal
11 Regional Stormwater Permit, or MRP, due to the
12 fact that I've been a long time City Council
13 Member and former Mayor of the City of Half Moon
14 Bay in San Mateo County. The City of Half Moon
15 Bay is a Permittee under the MRP. I'm recusing
16 myself to avoid any appearance of bias due to my
17 relationship with the City of Half Moon Bay. And
18 so at this time, I will be leaving the dais. And
19 good luck, and thank you all for your hard work,
20 it feels like Groundhog Day for all of you, it's
21 been a lot of years working on this, so God bless
22 you.

23 MS. ABE-KOGA: I also will be recusing
24 myself. Last month I did so on the MRP item due
25 to the fact that I served on the Mountain View

1 City Council until January of this year. The
2 City of Mountain View is a Permittee under the
3 MRP and I continue to have contacts with City
4 staff, although not on the MRP. I understand
5 that strictly speaking I have no financial
6 conflict under the Political Reform Act, however,
7 I'm going to continue recusing myself to avoid
8 any appearance of bias due to my relationship
9 with the City of Mountain View. I may decide to
10 participate in future MRP proceedings, but at
11 this point I am not going to participate on the
12 MRP reissuance. So thank you and good luck.

13 CHAIRPERSON YOUNG: Thank you. She said
14 with a big broad smile. Let the record show!

15 MS. ABE-KOGA: I'm sorry!

16 CHAIRPERSON YOUNG: All right, we are now
17 going to go ahead and consider Item 6, the
18 Tentative Municipal Regional Stormwater Permit,
19 or MRP, or "Merp," whatever you want to call it.
20 We do have a quorum today and we will conduct a
21 hearing to accept testimony on the MRP's trash
22 provisions. In addition, we're going to hear
23 reports from the Subcommittee on last month's
24 hearing on the remainder of the MRP. At that
25 hearing, I appointed a subcommittee comprised of

1 Board Members Ajami and Lefkovits and me to
2 conduct the hearing to accept testimony on the
3 MRP's provisions, except for trash. I advised
4 those present at that time that we would not be
5 taking any action at the June meeting, which was
6 the last meeting, but we would report any
7 tentative findings and recommendations to the
8 Board at the next meeting. Accordingly, we will
9 shortly proceed to hear from those who were on
10 that subcommittee last meeting, as well as other
11 members of the Board who were unable to attend,
12 but who have read the transcript. Then we will
13 move on to considering the Trash provisions. And
14 Steve, you don't have to step way down there if
15 you don't want to, you're welcome to move.

16 MR. LEFKOVITS: Yeah, I spread all my
17 stuff out already.

18 CHAIRPERSON YOUNG: All right, so here's
19 what we're going to do. First we're going to
20 hear about all of the provisions except for trash
21 from the subcommittee, and then I believe Jim has
22 some comments based on the transcript. Then
23 we're going to hear the staff report on trash and
24 follow that up with any questions that the Board
25 Members might have.

1 Following that, we Board members, since
2 we have studied the trash provisions and are
3 pretty familiar with them at this point in time,
4 are going to provide to both the staff and you,
5 the members of the audience, what our draft
6 reaction is to the draft that we see. And we're
7 going to be doing that individually in order that
8 you will be able to comment on our comments when
9 you come up, and also in your written testimony.
10 So we want to, rather than save most of our
11 comments to the end, we're going to give them in
12 the beginning and that way they will be on the
13 record, and you will be able to kind of see where
14 we think we're going to be going and be able to
15 comment on that, and I do invite you to do that.

16 All right, with that we will start with
17 the Tentative Findings and Recommendations from
18 the Workshop Subcommittee, which Mr. Lefkovits
19 and I are the representatives today. I'll
20 present a few, he'll present a few that I missed,
21 and then we'll go on from there. And I do want
22 to stress that these Subcommittee Tentative
23 Findings and Recommendations are based on the
24 Draft Permit Package and on the testimony that we
25 received at the workshop last time, but we also

1 will of course carefully consider the written
2 comments that you folks will be submitting since
3 the comment period is not closed yet, and that's
4 why we're calling everything "tentative."

5 Okay, with respect to Green
6 Infrastructure, it appeared to us that the
7 requirement to produce a framework for developing
8 Green Infrastructure, including the tasks and
9 timelines seemed pretty reasonable. Several
10 commenters did want more time, but we felt like
11 the one-year due date seemed reasonable for
12 developing what's essentially a game plan. We
13 support the staff's effort to require approval of
14 the framework for someone high enough in the
15 hierarchy to have the authority over most of the
16 departments who are going to be involved,
17 although whom that might be, we don't have any
18 particular attachment to. We found that there
19 seemed to be considerable specificity regarding
20 the components of the framework that needed to be
21 included, and that guidance seemed to us to be
22 sufficient even though some commenters said that
23 they wanted more detail, and I'm sure as time
24 goes on, the staff will talk to you. So you'll
25 get more detail.

1 Several commenters also suggested that
2 the Regional Board create a template for this
3 framework which sounds like a very good idea if
4 the staff is able to do so. I would like,
5 however, to have that not be a mandatory
6 framework at this point because so many cities
7 have kind of already developed a framework, and
8 we don't want them to have to redo something just
9 to reformat it.

10 Finally, on Green Infrastructure several
11 commenters noted that the funding sources for
12 these kinds of projects are uncertain and that
13 the projects require long lead times, and
14 certainly we agree that those statements are
15 true. On the other hand, we don't think it's a
16 reason to delay developing a framework because
17 without a framework that outlines the potential
18 projects, you can't raise money, formulate your
19 specific plans, and initiate the formal planning
20 process and get it underway. So things have to
21 start somewhere and it seemed to us that the
22 staff did a pretty good job of picking a place to
23 start and a time to start.

24 All right, the second set of comments,
25 most of the comments looked at PCBs. After

1 hearing that testimony, we support the numerical
2 load reduction requirements that are written in
3 the draft permit. The load reductions and the
4 timelines both seem reasonable. In my mind, we
5 can't go any slower than what the staff has laid
6 out and still meet the timelines that are set in
7 our TMDL, so we should plow on ahead and see if
8 we can make a go of this.

9 The Subcommittee is concerned that two
10 major elements of the program rely on the
11 Permittees to develop analyses upon which later
12 compliance is based. These two that I'm thinking
13 of are the within county load allocations and the
14 assessment methodology that is required in
15 C.12.B.i, and in our opinion this is a sub-
16 optimal way to proceed and we think that there
17 needs to be some additional thought put into
18 these parts of the permit. Part of the reason we
19 think this is that this kind of approach of
20 having the Permittees develop the analyses and
21 the methodology upon which compliance was later
22 going to be based didn't really work for us in
23 the Trash in Section 10 last time around. So,
24 you know, we learned a lesson and we need to kind
25 of tighten things up going forward.

1 So we would prefer that the permit and
2 the fact sheet define the default allocation
3 which would apply if the Permittees do not submit
4 an acceptable allocation on time. And if the
5 staff cannot produce an allocation in time to put
6 it in the permit, then we suggest incorporating
7 language in the permit stating that the Board
8 will adopt an allocation that will be binding if
9 the Permittees fail to do so at the deadline when
10 they're supposed to submit.

11 Then, as with the other component for the
12 Assessment Methodology, we also would like to
13 have language making it clear that the Board will
14 adopt a binding assessment methodology by date
15 certain if the Permittees do not develop a method
16 on time and acceptable to the Executive Officer.
17 Substantial information already is included in
18 the Fact Sheet under C.12.A and B that can be
19 incorporated, and where site specific data are
20 required, but not produced by a Permittee, and
21 one example would be the massive PCBs, for
22 example, contained in a building. We would
23 recommend that the Board have the option, and by
24 "Board" I mean Board or Staff, have the option of
25 either assigning a default value, or declining to

1 credit PCB reductions for the project.

2 You can see where I'm going with this, I
3 want to make sure everybody is really clear on
4 what's going to happen if deadlines are missed or
5 if assessment methodologies are not good enough
6 to satisfy the Executive Officer, so that we
7 don't have a lot of spun wheels and wasted time
8 in the middle of the permit cycle.

9 The subcommittee also is still concerned
10 about the proposal that if the group, either the
11 region or the county, respectively, achieves the
12 required reductions, then all individual
13 permittees are also in compliance, and we
14 discussed this a little bit at the workshop last
15 time. This obviously sets up the free rider
16 problem, which is classic and we like to avoid
17 it. We prefer that the individual Permittees who
18 do not have cost-effective or timely PCBs
19 reduction options be held to their individual
20 allocations, but be allowed to share the costs
21 and the reduction credit from projects outside
22 their jurisdictions. So sort of an offset-type
23 arrangement. This seems to me to be a way to
24 respond to several of the commenters from small
25 cities who said that they might not have

1 appropriate projects that they could engage in,
2 they can partner up with other people who do have
3 projects, and that's a way to get the most cost-
4 effective reduction across the region anyway.

5 So we'd like to explore that, we feel
6 that would provide flexibility, but not let
7 anybody off the hook for doing their fair share,
8 large or small.

9 All right. We're getting there. Several
10 commenters asked for "a clear path to compliance"
11 and that's a quote, suggesting that each city
12 would have difficulty knowing whether it could
13 assemble sufficient projects to meet the assigned
14 reductions. And we're still talking about PCBs.
15 The Subcommittee found that the draft really
16 provided considerable detail with regard to the
17 types of acceptable projects and the way in which
18 to estimate load reductions from each project.
19 So that part is pretty clear, you know, being
20 able to assess what you might be able to go out
21 and do seemed to be pretty clear in the draft
22 permit. In addition, the load reductions that
23 are required for PCBs in the first two years are
24 pretty minimal, so the permit does build in quite
25 a nice long ramp-up period for these projects,

1 and that's another reason why we feel comfortable
2 with the requirements.

3 Finally, there were several commenters
4 that made other additional requests of this
5 Board, one was that Cities might require help
6 getting the attention of private property owners
7 and levying fines; we agree with that and we hope
8 you can get our attention and think you will be
9 able to get our attention and help with that.

10 Another commenter mentioned that in her
11 opinion much of the load comes from PG&E and
12 railroad rights of way, and Subcommittee feels
13 that the staff should, yes, follow this up, and
14 that was a very valuable comment. In addition,
15 that we should make a state level push to get the
16 building industry to support removal efforts from
17 PCBs and we agree, we think that was also a
18 valuable suggestion, and would plan to try to
19 follow this up with our contacts in the state,
20 and you folks can follow it up with your contacts
21 in League of Cities and maybe we can get
22 somewhere.

23 That's all I have from the Subcommittee,
24 although I know that Steve has some additional
25 items also from the Subcommittee, we're doing a

1 tag team.

2 MR. LEFKOVITS: Thank you. I just had
3 two more quick ones, one was we noted the number
4 of commenters who talked about the administrative
5 burden of reporting and the difficulty of
6 preparation of documents and submission and
7 sharing, and we know that the State has been
8 working on a statewide information reception
9 portal. But it seems to us like in the meantime
10 as a stopgap measure, if there are Permittees
11 that want to share information electronically
12 using whatever they use, Google Docs or Box or
13 Dropbox, there's some clear efficiency benefits
14 both to them internally and also sharing between
15 them and also with us; it might make sense to
16 clarify that they can apply for electronic
17 delivery of their reporting documents in any
18 reasonable manner that we can accept. It seemed
19 like a pretty easy thing that we can do in the
20 short term or as a stopgap.

21 And the last item is simply the matter of
22 advertising, the advertising requirement. I
23 think everyone felt like clearly the issue was
24 reaching people in the community, and if
25 Permittees have alternate methods of

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1 communication, whether it's social media or
2 email, or whatever they are most effective at, it
3 makes sense for them if they can find a cost-
4 effective way to reach people rather than buying
5 advertising time, it seems like an easy fix that
6 we can make to the permits. So that's all I
7 have.

8 MS. WON: Through the Chair, if I may? I
9 just wanted to clarify for the record that when
10 you gave your recommendation and Mr. Lefkovits
11 gave his recommendation, it's not necessarily
12 that of a subcommittee, it's your individual
13 recommendations, and that the subcommittee hasn't
14 met to come up with these recommendations. So if
15 you can confirm that for the record, that would
16 be great.

17 CHAIRPERSON YOUNG: The Subcommittee
18 exchanged emails.

19 MS. WON: Meaning you and Mr. Lefkovits,
20 but not Ms. Ajami?

21 CHAIRPERSON YOUNG: That's correct
22 because she is unreachable by email, so we -- I
23 guess we're not a full subcommittee, we're pieces
24 of subcommittee.

25 MS. WON: So it's just two Board members

1 communicating which is fine, but no subcommittee
2 has met and the Board has not met on these
3 issues, so everything is above board. Thank you.

4 CHAIRPERSON YOUNG: Thank you. We always
5 appreciate Yuri making sure that we know where
6 we're going. Yes, Mr. McGrath.

7 VICE CHAIR MCGRATH: So over the Fourth
8 of July weekend, I read the transcript and reread
9 the Permit, not every single word, but first of
10 all I have to thank the public comment process
11 because they helped me focus on what was
12 important. So let me go into this, this is going
13 to take a little while.

14 I've given a lot of thought to this, and
15 this is not the first time I've gone through an
16 MS4 Permit, and I've also worked some with both
17 development interests in the City of Berkeley in
18 trying to figure out, "Okay, how does this stuff
19 actually get done?"

20 So let me start at the 30,000-foot level,
21 and I'll dive down a little bit more. There's
22 much to like in this. There's much more emphasis
23 on BMPs in the staff recommendation, and they're
24 generally good. That is necessary because only
25 some of the local governments use the discretion

1 that they ask for in the last round when they
2 said, "Let us figure it out for our community."
3 Some did that; most didn't. And so I think the
4 response of the staff in preparing and
5 recommending BMPs is vital and well thought out.

6 Second, there is much better information
7 at this stage on the science behind our TMDLs on
8 PCB and Mercury. And I am comfortable with that
9 at the big picture level, and focusing both on
10 the priority watersheds that have been
11 identified, and at no regret actions while more
12 specific detailed geographic plans are being
13 prepared, as staff has suggested that we require.
14 So I'm comfortable with that.

15 But I am not convinced that controlling
16 these contaminants is a strong rationale at this
17 time for some of the elements of the LID or Green
18 Infrastructure that are recommended in the Draft
19 Recommendation. I do believe Green
20 Infrastructure and LID is extremely important for
21 protecting our stream resources from erosion and
22 from downstream transport to the Bay in excessive
23 amounts, but the trapping of these contaminants
24 is a different matter. So this is a very
25 important issue and I do have some technical

1 background, so I'm going to go down a little
2 deeper.

3 Having spent many years working on hydro
4 modifications and erosion, particularly in San
5 Diego County, I know that LID is not an automatic
6 fix. With the flashy flows that are generated by
7 development, it's the routing of those flows, not
8 simply the storage that really matters to what
9 the streams actually see.

10 And so LID without some watershed
11 understanding can achieve very little. Second on
12 this same topic, I've also worked with the
13 University of Wisconsin in classes given
14 throughout the country about cleanup of different
15 contaminants. I was the Port guy. But I sat
16 through many many days of cleanup stories,
17 including the Fox River PCBs in Wisconsin and the
18 like. PCBs, despite being very hydrophobic are
19 extremely difficult to control in cleanups. And
20 when you get down to the control methods that
21 were suggested and the distinction between
22 removal of caulk and inspection, which I support,
23 and Green Infrastructure which I'm not convinced
24 on, you have to think about the mass; if that
25 mass is not bedded, most of the contaminants

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1 associated with PCBs are in the very fine
2 particles, it's dust. And controlling dust in a
3 hydrologic system in an urban area is almost
4 impossible. And I'm not at all convinced that
5 it's cost-effective. Certainly, LID and Green
6 Infrastructure can't hurt, but if you've got
7 exemptions and different criteria, don't require
8 actions by up to 5,000 square feet, and don't
9 require actions up to about 10,000 square feet,
10 and you've got developed cities, you're not going
11 to capture very much of that dust. You're not
12 going to have very much land left to do. And I'm
13 not convinced it's the best use of our resources.

14 On the science, on the next point, we do
15 need to focus some of our monitoring effort on
16 getting a better understanding of the weathering
17 process for caulks so we can have a number
18 instead of an unknown in our models. I think
19 it's great that we are now at the point where we
20 can kind of identify tentative loads, but how
21 those actually flow and what happens with
22 intervention and how serious you're mandated to
23 intervene, I mean, this is one of those potential
24 low hanging fruits that I think is much more
25 deserving of control methods.

1 Now, I do think there's time given that
2 the current loads are under it, but I think
3 there's some direction here that we have to --
4 and I am entirely comfortable with requiring
5 inspection of monitoring of PCBs being added to
6 local permit system. That system exists, you
7 know, I've done it for projects that I've done
8 where my grandkids were in the house. You bet I
9 tested the paper for lead. You bet I did. I
10 mean, and it wasn't very expensive and it wasn't
11 very hard, and I knew what I was doing, and I
12 knew whether or not I was exposing my grandkids.
13 And I think that's just simple responsibility.

14 Coming back up to the general level for
15 my third significant comment, and this is behind
16 some of my reservations about LID, I think it is
17 essential that we make common purpose with local
18 governments on hydrologic issues. They have
19 responses that they will need to make and they're
20 in very difficult circumstances for their aging
21 runoff control infrastructure, their existing
22 flood control needs, and their needs to respond
23 to sea level rise. I think we can take those
24 needs and work with them. I think we can work
25 with them and fairly readily add in trash removal

1 and some elements of settling, but I think those
2 are far higher priorities for local government
3 and I think those have a pathway to money. So
4 those are my big three points. Now I'll dig down
5 a little into the weeds.

6 All of these, I think, can be handled in
7 Staff Response to Comments and this is a much
8 shorter list. First, on Vested Rights, that's a
9 legal term and I worked in an organization where
10 that legal term was tested all the way to the
11 Supreme Court. A project doesn't necessarily
12 have vested rights if it's got local approvals,
13 but has not done any construction in reliance on
14 those approvals. I think that may not put the
15 local governments in a position where they're
16 willing to add requirements, but I want to make
17 sure that the legal staff is drawn into the
18 response to that comment.

19 Second, I'm going to differ a little bit
20 with the Subcommittee on the one-year question.
21 I've taken a number of things to and through my
22 City Council in Berkeley and I know the
23 difficulties that they have in managing their own
24 work load, which are not just water quality
25 issues, I know the issues that we have scheduling

1 things. So I urge the staff to look for a
2 compromise that has some conceptual approval
3 within that timeframe, but not necessarily
4 through the local governments' governing body,
5 but through the administration.

6 There was some really excellent testimony
7 that I would like to make sure gets attended to
8 in the response, and I'll go through those one-
9 by-one. First, the comment by Cece Sellgren of
10 Contra Costa County on the triage that has to be
11 done for those things, I think that was a really
12 compelling comment. Next, the windsurfing City
13 Manager, Maurice Kaufman, I know him in other
14 venues as well, I think dealt with some of the
15 difficulties of using streets to treat runoff
16 from private properties. It is kind of the
17 dilemma of a built-out city, there are places
18 where we can tear up some of those streets and
19 put in better controls, but it's extraordinarily
20 difficult and it needs to be cost-effective and
21 it needs to be something that's seen by the
22 community as a huge benefit.

23 Jason Rodgers again from San Jose, again
24 from San Jose, had really excellent comments on
25 the difficulties of retrofitting impervious

1 surface.

2 A very strong suggestion from Vaikko
3 Allen, and I strongly support this, suggested --
4 and this goes back to the question of how much
5 discretion you give local governments and some of
6 them have been very innovative and you don't want
7 to stop that, so what he suggested is a provision
8 for alternative designs that provide some or
9 better load reduction. I think that's an
10 excellent suggestion.

11 I do want more information from the staff
12 on the results of the LID policies where they've
13 been tried out in Contra Costa County. That came
14 up in Dan Cloak's testimony, it also was noted on
15 page A30 of the Staff Report, and the kind of sum
16 of the reason that I'm not yet convinced that
17 this is the best way to go after Mercury and
18 PCBs. And then Michelle Quinies (ph) had really
19 good testimony on the Hacienda Project and how
20 you deal with extra wide streets. That is
21 something that potentially does involve a re-
22 envisioning of our urban form, and as it
23 redevelops I think that's likely. So I think we
24 need to invest a little in understanding that and
25 understanding what's motivating cities to do that

1 because in many cases it is going to be the
2 redevelopment process that gives us an
3 opportunity to do what controls we can. So those
4 are -- obviously I read the transcript.

5 CHAIRPERSON YOUNG: And you said you
6 didn't have comments at this time, okay. Do we
7 need to provide an opportunity for staff to ask
8 any clarifying questions? Or can we just go for
9 it?

10 MR. WOLFE: I think it's fine to move
11 forward. I'd also note that I think many of the
12 people in the audience were not here when we did
13 the oath, so it would probably be worthwhile to
14 do that again.

15 CHAIRPERSON YOUNG: All right, I've just
16 been reminded that we should probably re-do the
17 oath because most of you were not here when we
18 did it before. So let's do that now.

19 [Swearing in repeated]

20 All relevant evidence that any person
21 desires to be considered by this Board must be
22 introduced at this hearing first by the Board
23 staff; second, by the Discharger; third, by
24 public agencies; and fourth, by any other
25 interested persons.

1 The Board and Board counsel may ask
2 questions to clarify the testimony of a witness
3 at any time. Cross examination of any witness by
4 others will be allowed following completion of
5 direct testimony by all persons.

6 Each person testifying will commence by
7 stating his or her name, whom he or she
8 represents, and whether or not he or she took the
9 oath to tell the truth.

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11 The hearings will not be conducted
12 according to Technical Rules of Evidence. The
13 Board will accept any evidence or testimony that
14 is reasonably relevant to the issues. All Board
15 files, exhibits, and agenda materials pertaining
16 to this matter will be made part of the record of
17 this proceeding. Additional written material
18 will be made part of the record at the discretion
19 of the Board.

20 Those wishing to testify in the hearing
21 will now rise or raise their hand.

22 Do you promise to tell the truth?

23 MR. WOLFE: So do.

24 CHAIRPERSON YOUNG: Thank you. All
25 right.

1 MR. WOLFE: So I'd like Dale Bowyer to
2 give staff presentation on the Trash Load
3 Reduction Provision.

4 MR. BOWYER: Good morning, Chair Young,
5 Board Members, I'm Dale Bowyer with the Watershed
6 Division. Today I will discuss the proposed
7 Trash Load Reduction Requirements for the
8 Reissuance of the Municipal Regional Urban Runoff
9 Stormwater Permit, or MRP 2.0.

10 Some of you heard last month that the MRP
11 2.0 includes requirements intended to ensure that
12 the discharges of pollutants by the storm drain
13 system are appropriately controlled. It's built
14 around the program areas shown here, which are
15 required by the Clean Water Act. MRP 2.0 follows
16 the structure of the first MRP, with provisions
17 for each of the required components. Last month,
18 we focused on all of the MRP components, except
19 Provision C10, Trash Load Reduction. We focused
20 primarily on the proposed requirements to reduce
21 PCBs and Mercury, and for the new and
22 redevelopment projects.

23 This month we'll focus on the proposed
24 trash reduction requirements in MRP 2.0, which
25 had the goal to control discharges of trash from

1 storm drain to receiving waters.

2 Here is a picture of the future that
3 might await us if we don't solve this water
4 quality problem. This is not California,
5 thankfully, however the problems are similar
6 globally.

7 CHAIRPERSON YOUNG: Is that you?

8 MR. BOWYER: I wish, no, not -- I don't
9 wish in that particular... Many water bodies
10 throughout our region's urban areas are impaired
11 by trash and are listed on the 303D list of
12 impaired waters. We have currently listed 26
13 water bodies as being trash impaired, and there
14 are likely many more. The MRP is the key
15 regulatory mechanism to address these
16 impairments.

17 Let's briefly review the previous MRP 1.0
18 for the trash requirements and what we have
19 carried forward into MRP 2.0. The trash
20 reduction requirements in the previous MRP
21 included Minimum Full Trash Capture Requirements
22 where we required Permittees to install a minimum
23 area of catchment with full trash capture
24 devices, proportional to their size and
25 population. These are devices that strain

1 stormwater to five millimeters, so nothing larger
2 than five millimeters goes through them except
3 for high flow bypasses in very large storm flows.
4 We carried those requirements forward and all
5 Permittees are currently in compliance with these
6 requirements.

7 There were also annual requirements for
8 each Permittee to clean up trash hot spots in
9 creeks or shorelines, also based on their size
10 and population. These requirements are carried
11 over into MRP 2.0, as well. For the 40 percent
12 trash reduction requirement by 2014 in MRP 1.0,
13 we and the Permittees developed a map-based
14 compliance system after working through various
15 technical challenges. We have brought that
16 compliance counting scheme forward into MRP 2.0.
17 I'll describe this system later in the
18 presentation.

19 Now here is a summary of the trash
20 requirements in MRP 2.0. Trash reduction
21 requirements in the proposed MRP 2.0 include
22 performance standards for three of the five years
23 of the permit. A map-based compliance accounting
24 system has been included. The visual assessment
25 system of documenting trash reduction outcomes of

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1 actions will be carried over from MRP 1.0. I'll
2 describe this in detail in a bit.

3 A compliance value is offered for source
4 control and offsets for additional creek and
5 shoreline cleanups are available, and I'll
6 elaborate on this later also.

7 Now I'll describe the proposed trash
8 reduction requirements in MRP 2.0 in more detail.
9 The trash reduction requirements in the MRP 2.0
10 include 60 percent trash reduction from our 2009
11 starting point by June 2016, 70 percent reduction
12 by 2017, 80 percent by 2019, and no adverse
13 impacts to receiving water by 2022. The 60 and
14 80 percent standards are included as performance
15 guidelines. For Permittee reports that they have
16 not reached these levels, they must also submit a
17 report describing planned actions to meet these
18 numbers and the next compliance limit, as well.
19 The 70 percent reduction by 2017 standard is an
20 enforceable compliance limit.

21 Here I'll describe the map-based counting
22 of trash reduction outcomes that the Permittees
23 and we have developed. This example is from
24 Sunnyvale. The Permittees all have mapped their
25 jurisdictions for trash generation condition, and

1 I have divided their jurisdiction into Trash
2 Management Areas, or TMAs, the numbered boxes.
3 Purple represents very high trash generation,
4 it's maybe a little hard to see on this slide,
5 but that's the freeways intersecting near the top
6 on this map. Caltrans owns that jurisdiction.
7 Caltrans is under a separate permit with us, and
8 is working with the Permittees to address some of
9 these issues. Red areas are high generation,
10 yellow moderate, and green low generation.
11 Progress is demonstrated by conversion of higher
12 trash generation areas to lower trash generation.
13 The goal is to convert all areas to green or low
14 trash generation. The Permittees will
15 continually reassess the status of their City
16 trash maps for progress through assessment
17 efforts, which we will describe shortly.

18 There are two primary ways to reduce
19 trash discharge from storm drain to receiving
20 waters, installation and proper maintenance of
21 full trash capture devices, which renders all the
22 catchment area upstream of such devices green, is
23 the first and most reliable method; the second
24 route is to apply sets of actions to reduce the
25 trash available to be washed off the urban

1 landscape during a storm such as street sweeping
2 and picking up trash on land. These efforts have
3 to be verified with assessment work to document
4 outcomes.

5 Here are the two major types of full
6 trash capture devices. The Swirl Separator on
7 the left would be used on a storm drain pipe
8 which might drain a large area up to hundreds of
9 acres. It has a large capacity, is expensive to
10 install, but relatively inexpensive to maintain;
11 the Storm Drain Inlet Strainer on the right can
12 be installed in many street drains and is
13 inexpensive to install, but treats a small area
14 and must be frequently maintained at a high cost
15 per acre treated. Both of these devices are only
16 effective if regularly and adequately maintained.

17 This map of Hayward shows the blue area
18 mapping the catchment areas for full trash
19 capture devices installed to date overlaid on the
20 trash generation map. This is how we quantified
21 the progress from full trash capture
22 installation. The catchment area treated by full
23 trash capture is rendered green regardless of its
24 trash generation status.

25 Full capture devices need to be carefully

1 maintained to function properly. MRP 2.0
2 requires maintenance of full trash capture
3 devices, including specification of frequency of
4 maintenance, recordkeeping, and the annual
5 requirement that a City official certify that
6 maintenance is adequate to avoid trash bypass by
7 overflow and plugging of these devices.

8 Now I'll describe other trash reduction
9 actions other than full trash capture. Other
10 trash reduction actions can include street
11 sweeping such as new or more frequent sweeping,
12 or sweeping that gets to the curb due to new
13 parking restrictions. Also, on land trash pickup
14 can be effective, say, by a business improvement
15 district hiring crews to regularly clean an area,
16 or the organization of neighborhood volunteers to
17 adopt an area. Other actions may include
18 improved litter barrel placement and maintenance;
19 at least one Permittee taxes fast food locations
20 to pay for improved litter removal in the
21 immediate area of those restaurants.

22 In addition, proposed requirements
23 clarify the Permittees must account for
24 discharges from private lands into their storm
25 drain systems. Some private lots or parking lots

1 are directly plumbed to the storm drain, so
2 bypass street trash capture. These lots need to
3 implement adequate actions or install full trash
4 capture. MRP 2.0 contains the language
5 addressing this issue.

6 The improvement caused by these actions
7 must be documented by visual assessment, or other
8 valid assessment of the trash management areas to
9 demonstrate trash reduction outcomes.

10 Now let's look at some specific examples.
11 Street sweeping is only really effective if it is
12 to the curb. One city found that by shifting
13 sweeping to an earlier morning hour, they could
14 get to the curb to sweep before cars began
15 parking and remove more trash.

16 Many cities are mobilizing citizen
17 volunteers to adopt and regularly clean up their
18 neighborhoods.

19 This is a solar-powered trash compacting
20 receptacle on a public street. The advantage to
21 this is that it has a large capacity, does not
22 need to be emptied as often, and it won't
23 overflow trash. The primary tactic for assessing
24 and documenting effectiveness of trash reduction
25 measures other than full trash capture is through

1 visual assessment. This figure shows the four
2 trash generation categories the visual assessment
3 determines. These roughly correspond to the
4 green, yellow, and purple map to trash generation
5 rates. We do not expect the Permittees to
6 inspect all of their streets to determine the
7 condition of each trash management area. We have
8 proposed that they sample a minimum of 10 percent
9 of the street miles of a trash management area,
10 and assess two to three times a year. It also
11 may be possible to extrapolate the results for
12 TMAs that are similar in trash load and
13 management actions.

14 In addition to the mapped outcome-based
15 accounting, we've written in some provision for
16 jurisdiction-wide trash reduction measures to
17 receive compliance value. Source control
18 ordinances reducing particularly floating and
19 persistent plastic trash, like single-use bags
20 and foam food containers can receive compliance
21 value up to five percent with adequate proof of
22 implementation and assessment.

23 Here's a demonstration of the dramatic
24 difference single-use bag ordinance made in the
25 City of San Jose. The first photo is pre-bag

1 ordinance, the bags collected in two hours by one
2 City worker. The second photo, after
3 implementation of an ordinance restricting
4 single-use bags, shows what was collected by nine
5 workers in three hours.

6 Now let's discuss some other routes to
7 meeting the trash reduction requirements included
8 in the Tentative Order. Additional creek and
9 shoreline cleanup beyond the required hot spot
10 cleanup can also be valued up to five percent.
11 This work not only removes trash that could make
12 its way to the Bay and Ocean, but often involves
13 cleanup work by citizen volunteers which has
14 proven public outreach value. We recognized that
15 much of the trash impacting creeks often comes
16 from direct discharges, as well as the storm
17 drains. If a Permittee endeavors to clean a
18 particular water body that is heavily impacted by
19 non-storm discharges such as direct dumping, say
20 from homeless encampments, with a planned and
21 ongoing effort with outcome-based assessment
22 measures to document success, this can be valued
23 up to an additional 10 percent with a specific
24 proposal acceptable to the Executive Officer. An
25 example would be the recent massive effort by the

1 City of San Jose in the Coyote Creek, Guadalupe
2 River Areas to remove large homeless encampments
3 in an ongoing and sustainable way.

4 This is a historical photo of Coyote
5 Creek and shows the kind of situation that may be
6 tackled by such an effort to curtail sources
7 beyond storm drain discharges such as direct
8 dumping and homeless encampments.

9 Another example, citizen volunteers
10 cleaning up a tidal slough in Oakland on Creek
11 Coastal Cleanup Day.

12 This slide shows significant improvement
13 on Matadero Creek from repeated volunteer cleanup
14 efforts.

15 To better demonstrate trash reduction
16 outcomes and the effectiveness of actions, the
17 Permittees will conduct receiving water
18 monitoring for trash. This can be done in at
19 least two ways, first by measuring trash in the
20 water column with nets; second, the Permittees
21 are already keeping records of volume of trash
22 removed during creek and shoreline cleanups, hot
23 spot cleanups over time in the same locations.

24 Here, the amount of trash in the water
25 column is being directly measured in the L.A.

1 River using a crane to suspend the net. This
2 work can also be done for bridges. The
3 Permittees have a grant to work on this approach
4 in our region.

5 So in summary, we will have mapped
6 outcome-based compliance accounting based on
7 visual assessment. Three of the five permit term
8 years there are performance standards for trash
9 reduction. In addition, MRP 2.0 provides
10 compliance value for some of the Permittees'
11 additional efforts, which we all agree are
12 valuable. And we're moving towards a better
13 outcome for the future.

14 That concludes the staff presentation and
15 I'm available to answer questions.

16 CHAIRPERSON YOUNG: Questions? All
17 right, I have a couple of things that could be
18 couched as questions, or I can just lay them out
19 as comments, and maybe I will do the latter and
20 those questions will be answered over time and
21 hopefully to everyone else's satisfaction, as
22 well.

23 As I said in the beginning, at this point
24 in time, I'd like to elicit the comments of the
25 Board Members based on what they read and what

1 they've heard so far, so that you see what our
2 tentative thinking is. Based on many quizzical
3 expressions, I'm going to go first. Here we go,
4 diving in.

5 One thing that I think is really
6 important here is to -- I should give you some
7 forewarning, six bullets, all right, bullet
8 number 1. Starting with the most important, I
9 feel very very strongly that we have to have an
10 enforceable and mandatory percentage trash
11 reduction requirement in either 2019 or 2020.
12 Performance Standards do not do it for me when
13 the follow-up provision is just "write another
14 report." I just don't see any sense at all in
15 having a five-year permit where we have an
16 enforceable limit two years into the permit, and
17 then no enforceable limits in terms of percentage
18 reductions for the final three years of the
19 permit. And this is a pretty big ticket item in
20 my book.

21 I noted that the enforceable 2019 limit
22 was in the administrative draft, and I assume
23 that all the folks in the audience here sort of
24 stood up and complained and it got taken out, and
25 now I'm going to stand up and complain and ask

1 you to put it back in. So there we are.

2 Number 2, in terms of the enforceable
3 limit in 2019 or 2020, I would recommend 85
4 percent in 2019, or 90 percent in 2020. We've
5 experienced in these kinds of cleanup efforts
6 that it gets harder and harder as you approach
7 the end of your cleanup process, not easier and
8 easier. And a limit of 80 percent in 2019 means
9 that we will have been going at a 10 percent per
10 year rate up through 2017, and then we slow down
11 and then we speed up again, and that doesn't make
12 sense to me. I'd like to have a gradual slowing,
13 just the arithmetic just doesn't make sense to
14 me. I think you're going to want way more time
15 in the back end than you need in the front end.
16 I will also note that the State Board adopted its
17 trash policy which allowed 10 years, period, for
18 this entire process, for which we have allowed
19 more than 12 years and we took a year to adopt it
20 in the first place, so, you know, you guys are so
21 lucky.

22 Number 3, I think we need to do a much
23 better job in this permit of spelling out the
24 consequences for noncompliance. As we know, many
25 cities were out of compliance with the 2014 forty

1 percent reduction requirement, many more had
2 inadequate data to demonstrate compliance, but we
3 sort of allowed it. We had several workshops in
4 which we, well, this Board repeatedly stated, and
5 the staff, in public that we were going to put
6 together a penalty for non-compliance that might
7 be additional prescriptive requirements in this
8 permit for those who were out of compliance in
9 2014. That does not appear in this permit.

10 I don't want to be in the same position
11 again in 2017. So here's my suggestion: that we
12 state upfront in this permit that if compliance
13 with a 70 percent limit in 2017 is not documented
14 to the satisfaction of the Executive Officer,
15 then the Executive Officer may require the
16 Permittee to install full trash capture to serve
17 up to 100 percent of the remaining very high,
18 high and medium trash generation areas. And I
19 would advise a parallel provision for the 2019 or
20 2020 compliance point, which I hope to see.

21 You guys look like you want me to do that
22 again, but you'll hear about it. All right,
23 number 4 -- these get easier -- we're done with
24 the big stuff. We just heard in the staff
25 presentation that there was going to be an option

1 for extrapolating the effectiveness of trash
2 management areas, and that appears in Section
3 C10.B.ii.b.iv. I disagree with that. I would
4 like to retain the requirement in all trash
5 management areas of requiring a visual assessment
6 of at least 10 percent of the street miles. I
7 think that's already pretty generous, it's been
8 my experience through life that a BMP in one
9 place doesn't equal the effectiveness of a BMP in
10 the other place unless you've got exactly the
11 same people doing exactly the same thing with
12 exactly the same equipment, and probably with the
13 exact same number of cups of coffee that morning.
14 So it's just too variable. And I'm uncomfortable
15 with that.

16 I would be comfortable with maintaining
17 this provision if we had effectiveness documented
18 by the receiving water observations, but that's a
19 different construction.

20 And what are we at now? Five, Credits
21 and Offsets. I agree with the proposals for the
22 Credits and Offsets, I'll note that the
23 cumulative sum of 20 percent is pretty darn
24 generous. I do think that we need to be clear
25 about the fact that these are at some point going

1 to have to be phased out and this permit we
2 should discuss in the permit or in the fact sheet
3 how we're going to do that phase out. And my
4 preference would be to have the direct discharge
5 one phase out last because I think that's going
6 to be the biggest bang for our buck, but, you
7 know, that's up to you guys. But I do think
8 people need to be able to plan about when those
9 things are going to sunset.

10 Last, there's a series of requirements in
11 this section that I don't think are stated
12 clearly enough, and it would be helpful to
13 tighten up the language of the permits so that
14 we're all on the same page at the outset. And
15 I'll give you some examples. I think we need
16 some additional detail in the frequency of the
17 visual assessments. I think we need to do a
18 better job of describing what the requirements
19 are going to be for the receiving water
20 observations, the start dates, the locations,
21 methodology. I would personally add that the
22 coverage should ultimately represent areas that
23 are served by full trash capture, I think we need
24 that check on the operation of full trash capture
25 devices, and maybe ultimately also add in areas

1 that were green in 2014. Those have not been
2 included at this point in time.

3 The definition of acceptable full trash
4 capture system I found confusing, maybe nobody
5 else does, but I couldn't tell whether we were
6 requiring only the things that had been certified
7 by the State Board, or whether that was just an
8 example.

9 And finally, it was confusing to me to
10 figure out how the private lands that are not
11 owned by the Municipalities, but plunged directly
12 into the stormwater system meshed into the 2017
13 and 2019 equations, whether those were included,
14 whether those were separate, so I'll leave it at
15 that.

16 That's my draft. So I'll open it up to
17 comments from other Board members, as well.
18 Steve.

19 MR. LEFKOVITS: I just have one general
20 comment and it's probably just a reflection of my
21 age. But when I look at all of the control
22 elements in this plan, I think so much about them
23 being a response to behavior, and I just wonder
24 if there isn't, you know, when we're taking a
25 long term perspective, more of an opportunity to

1 focus on education and borrowing curricula from
2 other places about trash, and bringing them into
3 the schools, try to effect establishing a
4 behavioral or cultural norm about the impact of
5 trash in our communities. I think that, you
6 know, as I read through this, I just keep
7 thinking trash is a perpetual problem and there
8 are places where it is not a perpetual problem
9 because the education, the investment in younger
10 people, and the investment in public awareness
11 about the impact of trash on their community, on
12 their watersheds, on their wild places, is more
13 pronounced. And I just wonder if there isn't
14 some opportunity to encourage innovation and
15 experimentation with ways to leverage existing
16 educational resources to educate people why it's
17 bad in the first place. You know, I was driving
18 behind someone yesterday and they opened their
19 car door on Powell Street and just threw their
20 trash out and drove away, and I was just
21 thinking, you know, somebody who saw the Smokey
22 the Bear Campaign just wouldn't do that.

23 So anyway, that's just my general thought
24 about it, is that I think that everything in this
25 presentation to me seems like it's viable and

1 headed in the right direction, but I just don't
2 see how we ever get ahead of the curve if we take
3 for granted the supply of trash and the behavior
4 that creates it.

5 VICE CHAIR MCGRATH: I guess it's my
6 turn. You know, this is hard, this is hard for
7 local governments and it's hard because it's
8 different, it's a different way of approaching
9 things. There is some progress. July 5th, I
10 took a long bike ride out along Castro Ranch Road
11 through unincorporated Contra Costa County, and I
12 only saw four illegal dumps, which is a huge
13 improvement and I'm pretty sure that neither the
14 two mattresses nor the bedstead that I saw are
15 actually going to float away. But some of the
16 other stuff is, and that's a protected watershed,
17 that's a watershed that's tributary to water
18 supply. So this is hard stuff. Where are we
19 right now? I mean, I have sat down with my local
20 government, which once required the McDonald's on
21 San Pablo to sweep the region, and you know, the
22 City Council Woman that I talked to and have been
23 working with about trying to implement this on
24 the ground still thinks that's a pretty good
25 idea, and so do I. But where are we? We have

1 complied with the minimum full capture devices,
2 yet we still have a completely unacceptable
3 level of trash. Because I'm in the Bay and along
4 the shoreline, I see maybe a lot more of it than
5 other people, we're nowhere near 40 percent,
6 nowhere near.

7 Second, much of the full capture device
8 work that was done was funded by grants and many
9 local governments don't have adequate maintenance
10 funding to maintain those facilities. You know,
11 I've tried to find out some information
12 anecdotally about how well we're doing, I'm not
13 going to vote for another permit after this one
14 unless I know where we are in funding and what
15 local governments are doing it well and what
16 local governments aren't. But we don't have a
17 good story, you don't have a good story to tell
18 us there, and it's not quite as difficult.

19 Third, the generation of trash has been
20 almost completely ignored. The staff
21 presentation said one local government taxes
22 activities, I hope it's not still the McDonald's
23 on San Pablo that was there when I matriculated
24 to Cal in 1967, that means we haven't done much.

25 Work by Clean Water Action, who have been

1 with me on some of these efforts to try to work
2 with business and local government, established
3 looking at actual trash collected, that 60
4 percent of the litter is from takeaway packaging,
5 food packaging. You know, my Peets coffee cup is
6 sitting in my car. There's no economic signal
7 that we are sending. Those economic costs are
8 transferred to the public at large. There's no
9 economic encouragement, there's no penalty, it's
10 a classic problem of the commons. And it's
11 difficult to think about that, and it's
12 challenging, but it's not impossible.

13 Fourth, on Mr. Lefkovits' -- Steve's
14 comment -- we have major institutions, the
15 schools in my city and the University of
16 California do little to educate their students or
17 manage their behavior that involve furniture,
18 bedding and the like; is the University of
19 California completely without any responsibility
20 for those people that it encourages to come on a
21 temporary basis? I don't think so. I think we
22 have to think about enlarging the number of
23 people that get engaged in the behavioral change.

24 Next, redevelopment provides an
25 opportunity to address this in two ways, first,

1 when you redevelop a site you have the
2 opportunity to build some kind of mitigation into
3 the approval process for those commercial
4 activities that are going to generate take
5 takeaway trash -- I'm sorry, takeaway food
6 containers that might become trash -- Maybe it
7 was a Freudian slip.

8 And second, if you look at the pro forma
9 of these, all of them, almost all of them, are
10 going to generate more tax revenue than they cost
11 to serve, and they're going to be close to
12 completely impervious, so they have a real nexus
13 to both a generation of trash, the generation of
14 high rates of runoff, and the need to mitigate
15 those things.

16 Now, I realize that that poses a
17 difficult problem in governance because we have,
18 in fact, a situation of haves and have not. We
19 have areas where the real estate market is just
20 booming, all along the Peninsula, San Francisco,
21 Berkeley, certainly is booming, and even parts of
22 Oakland. But we have other places, and my heart
23 breaks for Richmond and Vallejo, where there's
24 not the kind of new generation of tax revenues
25 that is likely to help with this, and maybe we

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1 need to grapple with that, maybe we need to
2 grapple with trying to make sure that those
3 entities that are generating the new development
4 and the new intensity, and it's behind where a
5 lot of my comments earlier today were, that I
6 think it is more important at this stage to
7 address capturing trash hydraulically than it is
8 very fine particles. First of all, the
9 velocities are way way lower and you can do it.

10 And then finally, something that I
11 expected out of the Chair to just be able to say,
12 "Yeah, what she said," is we need to do a much
13 better job on monitoring. I agree with her
14 emphasis on this. The structure of this has to
15 go back to the total quality management system
16 where you plan, you do what you plan, you check
17 what you plan, and then you make the adjustments.
18 And with that robust monitoring which may happen,
19 folks, we're not doing the right things, we're
20 not spending the money on the right things -- I
21 don't want to spend money on things that aren't
22 effective. I don't want to require any local
23 governments to do it. But I want to see the
24 problem solved. And so we need to have a robust
25 monitoring system that tells us how to make those

1 adjustments. The time between now and 2022 is a
2 time of doing, checking and adjusting, and
3 focusing on those things that are going to work,
4 and without monitoring it's not going to happen.
5 So those are my thoughts. Again, there are more
6 prescriptive measures here, but that's I think
7 the judgment of the Board and the staff, that's
8 what was necessary given the response we got from
9 local governments.

10 MR. KISSINGER: So at the advantage of
11 going last here and a lot of what I would have
12 said has been said already, so I'm going to start
13 with, "Yeah, what they said." You know, I agree
14 with Vice Chair McGrath, this is a really hard
15 problem and it's a really important problem, one
16 that I came to with some uncertainty when I first
17 came to the Board and this first came before the
18 Board, at least while I was on it and we've had
19 various issues come here before, we had an
20 audience member comment with great disaffection
21 and umbrage, you know, "How and why could this
22 Board be involved in Homelessness? And why is
23 that an issue?" And I had a little bit of that
24 reaction, not quite as strong a reaction, when we
25 first started talking about trash, although I'm

1 really a believer in the need to do something
2 here. But how we do it really is tough. And
3 even with the exposure I've had thus far over the
4 last several years, I still feel behind on the
5 learning curve, I still feel slow on what the
6 right solutions are, so I will be listening with
7 real interest to what the testimony is today.
8 And in particular, not just about the burdens
9 that this permit would impose, but what are the
10 right solutions that should be put in place to
11 make sure that this serious and important problem
12 does get dealt with, because it really is
13 something we can all see, it's something we can
14 all appreciate, has to be dealt with, and it's
15 not just a cosmetic problem, it really goes
16 fundamentally to the quality of our water. So I
17 really will be listening closely to what people
18 have to say.

19 In terms of the draft permit that's out
20 there, I do feel like Version 2.0 is a big
21 improvement on Version 1.0 and I thought the
22 staff presentation was excellent in terms of
23 trying to take into account and embrace all the
24 different ways by which beyond just capture
25 mechanisms the issue can be dealt with and I

1 thought it does give due, maybe not enough due,
2 to the notion of education, but the short cleanup
3 programs, for example, and the credit that's
4 given for that I think does serve a dual purpose
5 of not only accomplishing our end goal, but also
6 the education function. And it was heartwarming
7 to see some of those really excellent photographs
8 that there are ways to accomplish our goals here,
9 and I would love to see this do more of that, see
10 this permit encourage more of that if for no
11 other reason than it is a way to accomplish these
12 sort of two-prong goals.

13 I think at the end of the day, and I
14 don't have any specific comments such as what
15 Chairman Young had to offer, I don't have
16 specific things to offer in terms of the permit,
17 at least at this point, I'm going to think very
18 hard about the testimony and a closer review of
19 the permit itself, but I do think it's really
20 critical that what we ultimately vote on and
21 approve as a Board is effective. I know we all
22 hear that view. I also think it needs to be
23 predictable, it needs to have metrics that are
24 clear, that are consistent, that are coherent,
25 and ultimately are enforceable. And I have

1 always struggled on this issue about how we do
2 that. Numerical metrics are great, but they're
3 only as good as your benchmark, they're only as
4 good as your database, and I think we all know
5 this database is highly subjective and it's going
6 to be highly variable from area to area. I don't
7 know what the answers are, but I do know from
8 where I sit, and maybe it's just because I'm a
9 born lawyer, it's important whatever metrics are
10 used that it has those three things, that it has
11 consistency, it has coherency, and it's got
12 enforceability. So that's what I'll be looking
13 for as we all work together on this really hard
14 problem. Thanks.

15 CHAIRPERSON YOUNG: So you have good cops
16 and you have bad cops. (Laughing) With that, I
17 hope it has been helpful for you guys to hear how
18 we're sort of coming at this. With that, I was
19 going to invite our public comments to start. I
20 think we are going to have a timer set up and
21 perhaps Keith, or Tom, do you want to tell the
22 people who are going to be testifying what you
23 have arranged in terms of the timers? Are you
24 running the timer today? She's running the
25 timer. What are you setting the timer for? I

1 can't see it from here.

2 All right, we have a whole lot of
3 questions, so I think we are going to stick with
4 a three-minute time limit, except that there will
5 be a couple of people who are giving group
6 presentations that we'd like to offer more time
7 to, and the two that I know about will be Matthew
8 Fabry and Allison Chan. But as for the rest,
9 unless I'm advised by staff otherwise, we'll try
10 to stick with the three minutes.

11 MR. KISSINGER: And they'll have the
12 opportunity to submit written comments, as well.

13 CHAIRPERSON YOUNG: Yes, the written
14 comment period has not closed yet, so all of
15 these people will be submitting written comments.

16 Okay, Matthew Fabry, welcome.

17 MR. FABRY: Yes, thank you. Good
18 morning, Madam Chair and Members of the Board.
19 My name is Matthew Fabry and I am the current
20 Chair of the Bay Area Stormwater Management
21 Agencies Association, or BASMAA, and I also
22 manage the San Mateo County-Wide Water Pollution
23 Prevention Program which assists the 21
24 Municipalities in San Mateo County in meeting MRP
25 requirements. And today on behalf of BASMAA, I'd

1 like to provide an overview of some of the bigger
2 challenges permittees face from the MRP with a
3 particular focus on the trash load reduction
4 requirements. And I was unable to attend the
5 June 10th hearing, I apologize, so I would have
6 provided this presentation at that time.

7 So first, and I'm sure it's no surprise,
8 I'd like to talk about funding issues and
9 definitely based on the comments that Board
10 Members have provided so far, a lot of the issue
11 just really comes down to funding. And as you've
12 heard time and time again over the years in
13 regards to the MRP, Municipalities are severely
14 restricted in their ability to generate revenue
15 to meet the continually escalating regulatory
16 requirements. And this is primarily due to the
17 Constitutional restrictions put in place by
18 Proposition 218 in 1996. So any new or increased
19 stormwater tax or fee is subject to voter or
20 property owner approval. And this is different
21 from what it's allowed for water, sewer and
22 garbage utilities, which can only be restricted
23 via protest by a majority of ratepayers.

24 And as soon as you allow voters or
25 property owners to vote on a proposed tax or fee,

1 it invariably limits the amount of funding that
2 will be generated if you are successful.

3 So let's talk about the reality of what
4 this means. The Contra Costa Clean Water Program
5 attempted a Countywide Stormwater Revenue Measure
6 in the form of a property-related fee in 2012.
7 If successful, it would have generated
8 approximately \$8 million per year to fund
9 stormwater compliance activities, including costs
10 for meeting the trash load reduction
11 requirements. It failed 60,000 to 40,000
12 property owner votes, all at a cost of \$1.5
13 million to the Clean Water Program.

14 Our program in San Mateo County is also
15 considering a countywide funding initiative to
16 help Permittees with meeting the cost of MRP
17 compliance. As you can see in the slide that's
18 on the screen, our needs analysis indicates an
19 approximately \$37 million per year shortfall to
20 meet future permit compliance costs, of which \$7
21 million is for trash, and \$23 million for Mercury
22 and PCB reductions via a long term Green
23 Infrastructure approach.

24 And the opinion research that we've
25 performed indicates we can likely get public

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1 support for only \$8 million to \$12 million per
2 year, so we're not going to be able to bridge the
3 gap, and this is going to be at a total cost if
4 we proceed of nearly \$1 million for the entire
5 process. This leads to two simple conclusions.
6 We either need to generate additional revenue, or
7 drive down the cost of permit compliance, and I'd
8 like to briefly touch on both these issues.

9 With regard to generating additional
10 revenue, there are two points worth mentioning;
11 first, there's a new attempt in the Legislature
12 to amend Proposition 218 to give stormwater the
13 same treatment as water, sewer and garbage. If
14 this gets out of the Legislature as a
15 Constitutional Amendment, it goes to a statewide
16 vote, likely the November 2016 election. It's
17 important to note, however, the Constitutional
18 Amendments to fix Prop. 218 have been attempted
19 four times in the past, and it's never gotten out
20 of committee. There appears to be momentum this
21 time, however, and there is statewide interest in
22 fixing Prop. 218 in regards to tiered water
23 rates, and that may provide additional incentive.
24 It may also hurt stormwater, though, if the
25 tiered water rate issue is seen as a higher

1 priority that shouldn't be burdened by a
2 stormwater taxation issue.

3 Secondly, the Legislature last year
4 imposed requirements for agencies to develop
5 stormwater resource plans in order to compete for
6 any voter approved bond funds for stormwater and
7 dry weather runoff capture projects. This
8 reflects a new focus in the state on treating
9 stormwater as a resource, as also evidenced by
10 Objective 1 in the State Water Board's Draft
11 Stormwater Strategic Initiative. But it creates
12 a new and costly hurdle unrelated to the MRP for
13 Permittees trying to get grant funding to
14 implement permit requirements. This will
15 directly impact Green Infrastructure projects,
16 and while some trash control efforts will not be
17 considered a stormwater or dry weather runoff
18 capture project, trash control via Green
19 Infrastructure likely will be.

20 The \$200 million pot of stormwater
21 funding in the Water Bond is for multi-benefit
22 stormwater projects, including Green
23 Infrastructure, and thus likely to require
24 stormwater resource plans be developed in order
25 to compete for those funds.

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1 I think that we're going to see more and
2 more that the funding at the State and Federal
3 level for stormwater will be focused on multi-
4 benefit stormwater projects, limiting our ability
5 to compete for non-multi-benefit projects such as
6 full trash capture. In addition, we now have to
7 develop stormwater resource plans, which are
8 completely disconnected from our stormwater
9 permit requirements. We're challenged as it is
10 to fund Green Infrastructure plans under the
11 permit, let alone stormwater resource plans that
12 address water supply issues. We encourage your
13 leadership in helping to get the state on a
14 singular track in terms of stormwater management.
15 We can't have one arm of the State sending us
16 down a path for managing stormwater as a resource
17 and another arm sending us down a different path
18 to address water quality issues.

19 On driving down the cost of permit
20 compliance, there's significant challenges, but
21 there's also opportunities, especially in regard
22 to Green Infrastructure implementation, which is
23 one of the tools in the trash load reduction
24 toolbox. When it comes to public rights of way
25 and Green Street projects, retrofitting urban

1 environments solely for the purpose of water
2 quality improvement doesn't pencil out, given my
3 previous comments related to Proposition 218. So
4 we need to do a better job of capitalizing on the
5 multiple benefits that come from Green
6 Infrastructure to enable cost sharing with other
7 community priorities to realize this vision of
8 gradually transforming our storm drainage
9 infrastructure from gray to green.

10 And a significant opportunity exists when
11 you look at what the Bay Area is doing in terms
12 of greenhouse gas emission reductions. The Bay
13 Area's Sustainable Communities Strategy calls for
14 dense development around transit and priority
15 development areas, coupled with significant
16 investment in complete streets and active
17 transportation, or, in other words, bike and
18 pedestrian infrastructure, to support getting
19 people out of their cars. The Metropolitan
20 Transportation Commission plans to invest more
21 than \$14 billion in active transportation in
22 priority development areas by 2040. This
23 represents a huge opportunity in the stormwater
24 world, as many of these projects will be tearing
25 up curbs and gutters and putting in pedestrian

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1 bulb-outs, new crosswalks, bike lanes, and
2 streetscape improvements.

3 And as you can see in this slide, we're
4 going to see a lot of funding going to take this
5 existing condition from existing streets to
6 complete streets where you've got widened
7 sidewalks, bulb-outs, enhanced crosswalks, bike
8 lanes, medians, and streetscape and landscape
9 improvements. And we need to get Green
10 Infrastructure integrated with these investments
11 so we can take that one step further to
12 sustainable streets where we're putting in
13 Bioretention, permeable pavements, large canopy
14 trees, things like that to manage stormwater.

15 But right now Green Infrastructure is not
16 even a part of the conversation in these regional
17 discussions about active transportation. If we
18 really want the Green Infrastructure plans under
19 the MRP to be meaningful plans that stand a
20 chance of being implemented in the long term, you
21 and your staff need to engage in these regional
22 processes and align the permit mandates with the
23 realities of how these types of projects will be
24 planned, funded, and built.

25 We're pushing as hard as we can as

1 Permittees on trying to break down the silos
2 between water and transportation in the Bay Area,
3 and the U.S. EPA has recognized the wisdom of
4 this approach by providing funding for BASMAA to
5 implement a State and Regional Stakeholder
6 Roundtable process to develop a roadmap for
7 integrating Green Infrastructure with future
8 climate change and transportation investments.
9 But this will be a major effort and I urge you as
10 Board Members to take a leadership role in this
11 issue and help us push for integration at both
12 the State and Regional levels.

13 Now with regard to the specifics related
14 to trash, I would like to summarize BASMAA member
15 achievements over the term of MRP 1.0. You can
16 see in this slide that since the adoption of MRP
17 in 2009, Permittees have significantly reduced
18 the amount of trash discharged and potentially
19 discharged from the stormwater system. With
20 public dollars supplemented by grants, Permittees
21 have installed over 5,300 devices that treat
22 nearly 30,000 acres of the urban watershed
23 draining to the local creeks in the Bay. That's
24 over five times the area required for treatment
25 by the MRP. These devices must be maintained to

1 operate effectively and maintenance obviously
2 requires public resources, tailoring maintenance
3 programs for optimal cost benefit is key to the
4 long term success of these devices.

5 In addition to full capture devices,
6 Permittees have successfully implemented a number
7 of other actions that reduce trash generation or
8 intercept it before it can get to the stormwater
9 system. With the support of Save the Bay and
10 other NGOs, Bay Area Cities and Counties have
11 been national leaders in adopting local
12 ordinances that significantly reduce or eliminate
13 the distribution of litter-prone items such as
14 single-use plastic bags and polystyrene clamshell
15 takeout containers. They've also partnered on
16 regional outreach campaigns that target teens and
17 twenty-somethings through social media. Enhanced
18 street sweeping programs combined with curb inlet
19 screens and expanded on land cleanup programs
20 have also been put into place. The vast majority
21 of these actions have been shown to significantly
22 reduce the amount of litter observed on streets
23 and in the stormwater drainage system.

24 Permittees have also significantly
25 improved water quality through creek and

1 shoreline cleanups. They've removed tens of
2 thousands of cubic yards of trash from local
3 creeks and the Bay through partnerships with
4 local volunteer groups and nonprofit
5 organizations. Although not all the trash
6 removed from these sites originates from the
7 stormwater drainage system, these efforts
8 significantly improve the quality of these
9 natural resources and engage the public in
10 environmental stewardship. These actions have
11 immediate environmental benefit and the Water
12 Board should continue to promote and incentivize
13 these actions.

14 In summary, a lot has been accomplished
15 over the past five years in regard to trash load
16 reduction. Is there more to be done?
17 Absolutely. You've seen the challenge we face
18 with developing a trash load reduction accounting
19 scheme during a permit term at the same time we
20 were mandated to achieve load reductions; it
21 wasn't an ideal approach in many regards. But
22 we've worked closely with your staff in the past
23 several years to develop an agreed upon
24 accounting system to verify that implemented
25 trash control programs are effective, and that

1 system will move forward into MRP 2.0.

2 And as you heard last month, we don't
3 want to go into MRP 2.0 without an agreed upon
4 accounting system from Mercury and PCBs, so let's
5 be very thoughtful about that.

6 And although we've made a lot of progress
7 and worked collaboratively with your staff on the
8 proposed trash provision, there are still
9 concerns from Permittees, and you'll hear from
10 plenty of speakers today on various issues and
11 recommended fixes.

12 To wrap up, I'd like to highlight that a
13 lot of really important work was achieved in MRP
14 1.0 in both the trash and Mercury and PCBs realm
15 due to \$10 million in Federal grant funding. As
16 I indicated at the top of my talk, it's unlikely
17 we're going to see that kind of funding again for
18 pollutant load reduction, unless it's in the form
19 of a multi-benefit stormwater capture type
20 project. And we're going in that direction with
21 the TO's focus on Green Infrastructure. And
22 there's a glimmer of hope on the Prop. 218 front,
23 but if it gets out of the Legislature and if it
24 gets approved by a majority of voters at the
25 statewide level, it's still going to take time to

1 develop stormwater utilities and ramp up to the
2 levels of funding needed to meet these permit
3 obligations. It's not going to happen overnight
4 if Prop. 218 gets fixed. So there are
5 considerable challenges and uncertainties ahead
6 with attempting to generate more revenue.

7 We absolutely have to be successful in
8 integrating Green Infrastructure with other
9 planned investments in the Bay Area to drive down
10 our long term compliance costs, and we need your
11 leadership in that to make that happen. We also
12 need your leadership in reducing our shorter term
13 compliance costs by taking seriously Permittee
14 recommendations in regard to the proposed
15 requirements in MRP 2.0. Extending the timing of
16 requirements has a major impact on reducing

17 costs. Let's agree on an accounting approach for
18 Mercury and PCBs now and use it for the duration
19 of the Permit. Let's recognize the uncertainty
20 that comes with both trash load and PCB
21 reduction programs and regulate accordingly.
22 Let's utilize statewide or regional approaches to
23 pollutant control programs as much as possible.
24 Let's encourage and support source control as the
25 top tier pollutant load reduction method, since

1 it's also the most affordable. Let's define PCB
2 load reduction limits as numeric action levels to
3 reduce the potential risk of costs associated
4 with third-party lawsuits. Let's align the Green
5 Infrastructure planning requirements with the
6 Stormwater Resource Plan requirements. Let's be
7 conscious of permit design and reduce or
8 eliminate less beneficial requirements in order
9 to allow resources to be focused on the highest
10 priorities such as trash, Green Infrastructure,
11 and Mercury and PCB reductions.

12 You heard lots of good recommendations in
13 June and you'll hear lots more today. So with
14 that, I'm happy to take any questions or turn it
15 over to the next speaker. Thank you.

16 CHAIRPERSON YOUNG: Steve.

17 MR. LEFKOVITS: Thank you for an
18 excellent presentation. You mentioned about
19 half-way through that you recommended the Water
20 Board be more involved in Regional discussions
21 and Regional planning. Could you elaborate a
22 little bit?

23 MR. FABRY: Sure. The way we see things
24 going, you've got Metropolitan Transportation
25 Commission, you've got Association of Bay Area

1 Governments, you've got the Air District, you've
2 got the Bay Conservation and Development
3 Committee, those are the four agencies that are
4 developing Plan Bay Area, which is the
5 sustainable community strategy for the Bay Area
6 that's completely focused on reducing Greenhouse
7 Gas Emissions, so there's really no involvement
8 from the Water Board in any of those discussions,
9 and there's a lot of water-related issues that
10 are associated with the focus on dense housing
11 and job development around transit, there's water
12 supply issues, but there's also a lot of water
13 quality issues. And so there's a complete focus
14 on reducing one environmental impact that comes
15 from transportation infrastructure, and that's
16 vehicle emissions and greenhouse gas emissions,
17 and we're completely ignoring sort of the other
18 environmental impact which is the water quality
19 impacts that come from vehicles and
20 transportation infrastructure. And so I strongly
21 think that the Water Board as an agency needs to
22 get more involved in those discussions and start
23 integrating what's happening at that level,
24 especially in terms of how funding is distributed
25 for transportation projects, because most of

1 these Green Infrastructure projects that we're
2 going to be doing end up being transportation
3 projects where we add on a water quality
4 component to it. And so if we aren't aligning
5 the approach for funding these projects with how
6 regional funding is distributed for
7 transportation projects, we're never going to be
8 successful in making this sort of business as
9 usual for implementing Green Infrastructure. And
10 right now that's the way it is, it's always
11 whoever has a transportation project that's just
12 at the right place at the right time in their
13 design when a Water Quality Grant opportunity
14 becomes available that they can go after that.
15 We don't have integration between our water
16 quality funding sources and our transportation
17 funding sources, and we've got to break down that
18 barrier to make Green Infrastructure business as
19 usual.

20 MR. LEFKOVITS: Thank you.

21 MS. WHYTE: Chair Young? Could I just
22 add a brief comment on that if you don't mind for
23 the record? I just wanted to note that I guess
24 about eight months ago was approved for sitting
25 on ABAG's Joint Planning Committee, so I have

1 been participating in the discussions pertaining
2 to Plan Bay Area, and then I was also asked to
3 participate on a subcommittee which is an
4 entitlements efficiency committee, specifically
5 aimed at looking at permitting and streamlining
6 permitting as it relates to transit-oriented
7 development. So I've been working hard to bring
8 forth a lot of the issues that we've been
9 discussing in context of the MRP forward as the
10 Water Board's representative, and I also know
11 that Board Member Kissinger does sit on the ABAG
12 Commission, as well. So we're working on
13 improving things in that area.

14 CHAIRPERSON YOUNG: But you make a very
15 good point and we would love to have water
16 quality improvements, as well as global warming
17 improvements, to be the beneficiaries of the
18 funding stream that's going to be coming down the
19 pike with that, so your point is very very well
20 taken.

21 VICE CHAIR MCGRATH: The modifications of
22 streets are still subject to the regulatory
23 process, including runoff permits. And so I
24 think it's an excellent point that it needs to be
25 integrated and I think we have to merge the

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1 stovepipes to the degree we can and so I really
2 appreciate that comment, in particular.

3 CHAIRPERSON YOUNG: I'm going to ask you
4 a point of information about what -- you had a
5 good overview of what's happening in lots of
6 different cities. I would be surprised to hear
7 if the trash management efforts of cities are
8 underneath the budgeting component of stormwater.
9 Is that the case?

10 MR. FABRY: In terms of solid waste
11 management?

12 CHAIRPERSON YOUNG: Yeah, I mean, if
13 you're a City Council person and you're looking
14 at a budget, where is trash? Is it in
15 stormwater? Or is it somewhere else? It's in
16 stormwater.

17 MR. FABRY: I think it depends, I mean,
18 the solid waste stuff is usually dealt with
19 through franchise agreements with waste haulers,
20 and so a lot of the fee setting for solid waste
21 pickup and whatnot is done through the solid
22 waste hauler, not through the local agency, but
23 in terms of the trash control requirements of the
24 MRP, I think it's probably linked into the
25 stormwater budgets that municipalities have in

1 terms of the trash control. So I think it
2 probably is both.

3 CHAIRPERSON YOUNG: Okay. Thank you.

4 MR. FABRY: Sure.

5 CHAIRPERSON YOUNG: Thanks for your
6 comments. Next, let's have Allison Chan, please.

7 MS. CHAN: This is a really intense
8 spotlight. All right, good morning. My name is
9 Allison Chan, I'm here on behalf of Save the Bay
10 and I appreciate having a few minutes to speak
11 this morning, and I also appreciate the
12 conversations I've had with many people in the
13 audience here, as well as staff over the last few
14 months to hash this out, and for me to learn
15 more, and for me to understand individual and
16 collective challenges among Permittees and for me
17 to refine how I feel about all of it. So I'm
18 appreciative of the process and appreciative of
19 the opportunity to continue being involved.

20 So I will just jump right in. As far as
21 the Permit language goes, I guess I'll just start
22 on the first page with the plans that are
23 currently being required in the current draft for
24 failing to comply or failing to meet the sort of
25 suggested milestones, the non-mandatory

1 milestones. And the requirement right now says
2 submit a plan that dictates how the Permittee
3 plans to achieve the mandatory reduction down the
4 line. And I think that's fine, but what I would
5 like to see more of, what we would like to see
6 more of, is an active role for staff in actually
7 certifying those plans and ensuring that they
8 include activities that we can have a high level
9 of confidence in as far as achieving results.
10 So, you know, the ones that I know of, and I
11 don't consider this an exhaustive list, that tend
12 to be more effective and that can be measured,
13 include street sweeping, business improvement
14 districts, or other regular on land cleanup
15 programs, and additional full trash capture.

16 So this is really just to say that if a
17 Permittee is not meeting a performance guideline,
18 then they're not on the right path for achieving
19 a mandatory reduction. And so these plans should
20 have a high level of certainty in terms of
21 putting them back on a path of success. So
22 that's what we'd like to see, to see that section
23 refined.

24 So in situations where Permittees fail to
25 achieve the mandatory reductions, wherever those

1 end up being, we think that there's some
2 significant changes that need to be made to the
3 current requirement as they're written, you know,
4 just big picture, 27 waterways in the Bay Area
5 violate Clean Water Act standards for trash, and
6 it's been that way for several years.

7 And if a Permittee is failing to achieve
8 a pretty significant reduction close to a decade
9 or longer into that timeline since those
10 waterways had been designated as impaired, then
11 that's just an indication of a continued problem
12 and a very very persistent one. And so we feel
13 that it's reasonable at that point for Permittees
14 that do fail to achieve the mandatory reductions
15 to be required to engineer the solution and not
16 simply another plan for attaining compliance
17 using many of the same activities that
18 unfortunately weren't effective enough up until
19 that point.

20 So we're recommending to push Permittees
21 up to the mandatory reduction, depending on where
22 they're falling short, that additional full trash
23 capture should be required to close that gap, in
24 other words. I understand that full trash
25 capture is not physically possible everywhere,

1 and I think that in those situations staff should
2 work, Water Board staff should work with these
3 Permittees to identify the mixture of activities
4 that will be full trash capture equivalent.

5 So the receiving water monitoring, I've
6 had a lot of really educational conversations
7 about this and I'm still wrapping my head around
8 it, as I think we all are. But there's two
9 things that I think should happen, well, first of
10 all, I think that there's an agreement that
11 receiving water monitoring hasn't been actually
12 defined yet, so we don't really know exactly what
13 we're talking about here, but what I think would
14 be a good start for a program is to require two
15 different types of monitoring, both along the
16 creek bank, and in the receiving water. So we
17 recommend that as far as the first
18 recommendation, that Water Board staff work with,
19 you know, a team, regional experts, stakeholders,
20 of course Permittees, to develop the assessment
21 methods that would be applicable in the near
22 term, as soon as possible, really, to do
23 monitoring along the creek banks, or along
24 shorelines, and I know that there are
25 methodologies that currently exist that many

1 people feel are inadequate in one way or another,
2 but at least it provides a foundation for
3 developing those methods. And we don't need to
4 reinvent the wheel. So that to me seems like a
5 reasonable methodology to develop in the near
6 term. And then, as previously mentioned,
7 the Tracking California's Trash Project is very
8 interesting and is looking at a variety of sort
9 of instream monitoring or trash flux monitoring,
10 and I'm hopeful that the outcomes from that
11 project will elicit some good methodologies for
12 that, and that those should be then incorporated
13 at that time when they're available. So I guess
14 what I'm hoping for is a phased approach that
15 incorporates both the creek bank and shoreline
16 monitoring, as well as the instream monitoring,
17 at times when those methodologies are available
18 and, of course, as soon as possible. So that's
19 what we would like to see there.

20 And then for the on land visual
21 assessments, this section is certainly improved
22 since the administrative draft, so I appreciate
23 the very much increased detail there. But it
24 still lacks specificity on one thing, which is
25 the frequency of assessment. And so we're

1 recommending a standard to be set. I'm going to
2 throw out twice per quarter, I'm happy to be
3 challenged on that, but only going out twice to a
4 specific location just doesn't seem like it will
5 elicit enough data to track any level of trends.
6 And so I think that the most important thing is
7 to have a standard and for that standard to be
8 applied across the region. And we also think
9 that, in the interest of focusing on the areas
10 that need the most attention, we would be
11 comfortable with those visual assessments
12 happening more often in areas that are
13 experiencing more problems. So open to that and
14 think that makes sense.

15 Recent conversations have also elicited
16 an interesting alternative that I think some
17 Permittees are interested in, and that we're also
18 interested in, and other stakeholders are, as
19 well, which is instead of looking at what's
20 happening on land and trying to figure out how
21 that translates into the MS4 and then eventually
22 into the receiving water, why don't we actually
23 try and figure out what's making its way through
24 the stormwater system? And I know that there are
25 some projects that have looked at actually

1 netting or otherwise capturing trash as it is
2 flowing out of MS4s and about to hit the
3 receiving water. I know that that's also not
4 possible in a lot of places, or it would be much
5 more complicated in some geographic areas than
6 others. But I do think that if Permittees would
7 be given the opportunity to develop methods for
8 monitoring that trash in storm drain outfalls,
9 you know, having a detailed protocol, that that
10 could be an interesting alternative where the
11 data would be very informative. But I do think
12 that, in the interest of having no gaps in
13 monitoring, that as those methodologies are being
14 developed, on land visual assessments should
15 continue. But I think that would be an
16 interesting way to go and an interesting new
17 methodology to help to better understand what's
18 actually getting into the MS4.

19 So actually I want to do this one first.
20 So as far as the source control crediting goes, I
21 struggle with this a little bit, and we've all
22 talked about it a lot, so I think everyone
23 understands why we're all struggling with it, but
24 I think that for the reason purely around
25 incentivizing creative approaches to trash

1 reduction and source reduction, that more
2 crediting, more opportunity for load reduction
3 credit would be appropriate. I'm very thankful
4 to have these pie charts that were created by
5 BASMAA -- I believe it was by BASMAA -- a few
6 years ago. And in the previous permit term, the
7 reason why I was comfortable with Permittees
8 being able to claim up to 13 to 15 percent credit
9 for bag and Styrofoam bans is because the data
10 supported that, you know, it showed that plastic
11 bags and Styrofoam were relatively consistently,
12 I know there were two other events after those,
13 but relatively consistent as far as making up 10
14 to 15 percent of the debris, of the trash,
15 rather.

16 And so for that reason, 15 percent made
17 sense. And I think moving forward it makes sense
18 because we're hoping that more source reduction
19 approaches and programs are developed, and I
20 think there's a lot of innovation in the future
21 on this, but without the incentive in the permit,
22 I fear that political will might suffer. So I
23 would be comfortable with seeing -- Save the Bay
24 would be comfortable with seeing -- more credit
25 available there.

1 And then as far as understanding trash, I
2 mean, source control can only be effective if we
3 understand what trash is out there and is ending
4 up in our local waterways. Unfortunately, the
5 sources for this data are really few and far
6 between, and of questionable reliability. So I
7 mean, all of the assessments that are going to be
8 completed as a part of this permit provide
9 opportunities to continue characterizing that
10 trash. The photographs being generated for the
11 visual assessments could be roughly quantified,
12 or not even quantified, just assessed to say,
13 "Well, what are we seeing out there?" And then
14 similar to the previous permit, the trash hot
15 spot cleanups, the maintenance staff conducting
16 those cleanups can, even volunteers can help to
17 characterize what's out there. And I think that
18 is very important information to inform these
19 source reduction activities that I think are very
20 important moving forward and should be
21 incentivized moving forward. So for those
22 reasons, I would really like to see a requirement
23 for some level of noting of dominant trash types
24 in the permit, to have that carried forward.
25 Almost done.

1 So as far as the Direct Discharge
2 section, I do think it's an important section to
3 have because, as Chair Young noted before, we're
4 not interested in just looking at the MS4, we're
5 interested in keeping trash out of our waterways
6 in the Bay, and Save the Bay obviously shares
7 that bigger picture goal. I just want to state
8 our support for this section essentially as it's
9 written, particularly regarding the request for
10 comprehensive plans. I'm comfortable with those
11 activities being incentivized and supported as a
12 part of this process, but I just want to
13 emphasize our support for the need for
14 comprehensive plans that require Executive
15 Officer approval. And we also recommend that
16 those plans include some note of the established
17 funding and staffing plan for that, and a
18 description of whether and how these projects
19 would involve interdepartmental or public/private
20 and public/nonprofit partnerships and
21 collaborations. I think that information is
22 really important to know about, and if it's
23 documented it can help other Permittees to
24 replicate those effective programs. So I think
25 that level of detail should be included in the

1 plans, as well. And I think that does it for
2 Save the Bay's comments, so I thank you again and
3 I'm happy to answer any questions.

4 CHAIRPERSON YOUNG: All right.
5 Questions?

6 MR. LEFKOVITS: Thank you for that. I
7 was just curious in thinking about source
8 control, do you have any insights into the other
9 plastic number that's such a big component of the
10 --

11 MS. CHAN: Oh, well, I mean actually
12 Miriam Gordon can speak to this later in her
13 comments, but it's essentially single-use
14 throwaway items and a lot of food packaging.

15 MR. LEFKOVITS: Thank you.

16 CHAIRPERSON YOUNG: A brief question.
17 Your organization has a great deal of experience
18 in organizing volunteer efforts, doing beach
19 cleanups, and restoration and that sort of thing.
20 A two-part question: from 2009 to the present, do
21 you have any anecdotal observations to offer
22 about whether you think that we've gotten half
23 way the distance to the goal during that time?

24 MS. CHAN: Well, our cleanups mainly only
25 happen once a year, well, twice a year we've done

1 National Rivers Day and Coastal Cleanup Day, and
2 I won't say that there's been a pronounced
3 change. I will say that there's been changes in
4 the composition of that trash, you know, with the
5 bag bans and Styrofoam bans we're seeing less of
6 that, but as far as something that we'd all go,
7 "Hmmm, this is really reduced to a large extent,"
8 or something visually noticeable, not so much,
9 no. But, you know, I think that the source
10 reduction efforts have shown some promise and I'm
11 hoping that with an improved permit that we will
12 begin to visually notice that progress.

13 CHAIRPERSON YOUNG: And I am also
14 assuming that the suggestions you have for
15 quantifying and, not analyzing, but observing
16 what types of trash are out there, that those are
17 perfectly doable by cleanup group, volunteer
18 cleanup groups?

19 MS. CHAN: For trying to characterize the
20 types of trash?

21 CHAIRPERSON YOUNG: Uh-huh.

22 MS. CHAN: Yeah, I mean, I think that
23 there are existing models like the data sheet for
24 Coastal cleanup Day, that's a start, I don't love
25 that data sheet, but I decided not to take it up

1 with them. Yeah, I think that we can build upon
2 that. I think that for data collection it might
3 be better to do it with smaller numbers of more
4 dedicated volunteers for those kinds of efforts,
5 so maybe for cleanups where the interest is in
6 both cleaning up and generating some data, we
7 encourage regular volunteers to come back who are
8 interested in contributing to that; whereas some
9 other activities can be more of an all-hands on
10 deck, get as many people involved as possible,
11 everyone from six-year-olds to seventy-year-olds.
12 And those would have a different purpose. So you
13 know, Save the Bay has a number of dedicated
14 volunteers for our Tidal Marsh Restoration
15 Program that we can rely on to do the more
16 complicated projects in our nurseries and in more
17 ecologically sensitive areas, out on the marsh,
18 but we wouldn't give those tasks to just any
19 volunteer who hasn't had experience. So I would
20 say that there's a potential parallel approach
21 for characterizing trash, as well.

22 CHAIRPERSON YOUNG: All right, thank you.
23 I appreciate it.

24 MS. CHAN: Thank you.

25 CHAIRPERSON YOUNG: All right, I'd like

1 to invite next Mayor Bob Simmons, and then we'll
2 follow Mayor Simmons with Counsel Member Paul
3 Morris, please.

4 MR. SIMMONS: Well, good morning. I can
5 still say it's good morning because it still is.
6 Thank you for the opportunity to speak and thank
7 you for the service that you are providing to our
8 area. I am Bob Simmons, Mayor of the City of
9 Walnut Creek, and I did raise my hand and say,
10 "Yes, I will."

11 The City of Walnut Creek does agree with
12 the objectives of reducing trash into our
13 watershed. We have had an annual creek cleanup
14 for over 25 years, and it has been led by
15 volunteers, but in the last several years it's
16 been significantly benefitted by the City. I
17 participated in about 10 of those and that's
18 other than by standing up as Mayor, City Council
19 Member, and saying thank you, it's by getting
20 down in the creek and cleaning it up. And it's
21 not as easy as it seems. They're not all nice
22 flat creek beds, sometimes there's a pretty steep
23 slope and you can reach out and almost touch the
24 slope. So I really, I think it's important to
25 recognize that this is the last stop before the

1 trash goes into the creek, it goes into the Bay,
2 and it's a really important activity, so I'm
3 going to encourage you to keep the credit up for
4 this, and I'm going to disagree with the Chair
5 and say that you cannot phase this out. This is
6 the last stop. Not all trash comes into our
7 creeks through the storm drain system. We get a
8 lot by direct discharge, as was talked about, and
9 we get a lot by wind. And we just need to
10 recognize that the full trash recapture process
11 is not an end-all solution to eliminating trash
12 from going into our creeks.

13 Second, in 2013, the City of Walnut Creek
14 adopted a classic bag ban that applied not just
15 to retailers, but to restaurants, and a
16 polystyrene ban. They didn't become effective
17 until midway in 2014 because we wanted to give
18 the retailers and the restaurants a bit of a
19 chance to use their existing product and also
20 make the adaption to what we were requiring.

21 In early 2015, we did again, in May we
22 did our annual creek cleanup and the people that
23 run that creek cleanup estimated that there was
24 over a six-month period a 40 percent reduction in
25 the amount of trash at our hot spots in Walnut

1 Creek. This is very similar to what San Jose
2 found. This is one of the most effective things
3 that you can do, so the person that commented
4 that you need to keep that credit up for those
5 source control bans is absolutely correct. I
6 don't think we've had a more dramatic impact on
7 trash in our creeks other than through the
8 adoption of the plastic bag ban, which we applied
9 not just to the retailers, but to the restaurants
10 and the polystyrene ban.

11 The third point I'd like to make, and it
12 was mentioned earlier about one of them, there
13 are three public entities over which we have no
14 control whatsoever, Caltrans was mentioned about
15 them, and the interesting thing about Caltrans is
16 they come back, I think, twice a year in our area
17 and we have a lot of freeways that go in and
18 around Walnut Creek, and we ask them, "Could you
19 increase it?" And they say, "Well, Walnut Creek
20 is not our problem." And it's not like the City
21 is not a problem, but our problem from Caltrans'
22 standpoint is not trash in Walnut Creek, it's
23 trash in other parts that they are responsible
24 for. And so we'd love to see them do a better
25 job because that actually is one of the biggest

1 sources of trash in our area, and if you look at
2 our hot spots, but we can't go in there.

3 The second one is BART. If you walk
4 along the BART tracks where they have fences, you
5 see lots of trash, and if you can find a way to
6 encourage BART to do a better job of cleanup,
7 because they won't allow us in there because of
8 the safety concerns that they legitimately have.

9 The third one is the public schools.
10 Now, it would be interesting if you could think
11 about a way of providing some credit to give us
12 the opportunity to work with the School Districts
13 and in a way using some very limited funds to see
14 if we can encourage teachers to start the process
15 of every month taking their kids out and making
16 sure, because when you talk to the people who do
17 this stuff, the Janitor will say, "Well, my job
18 ends at the outside of the footprint of the
19 building, I'm not responsible for the landscape
20 part." And now that they're not watering the
21 landscape anymore, they're not coming out to take
22 care. Near where I live, there's a City Park and
23 adjacent to that is the high school, one gets
24 cleaned regularly, one does not. So I hope you
25 will look at ways to do that.

1 The fourth suggestion is to hope that you
2 find some ways to move away from this one-size-
3 fits-all approach. We are all very different
4 communities, we have different situations.
5 Whether you're talking about Mercury and PCBs,
6 which except for caulk, we really don't have any
7 in Walnut Creek, and so you wonder why you should
8 have to be doing all these things when you have
9 no evidence, historical or otherwise, of having
10 any of that in the area. We do have some trash,
11 but we're probably one of the cleaner areas
12 because of what we do, so why not recognize that
13 some of the communities, and there's others that
14 are here today, are actually doing a really
15 really good job and give them some credit for
16 that and recognize that. And then focus on the
17 resources on where the real problems are because
18 those are the ones we want to keep the rivers and
19 the Bay clean.

20 The last point, but I have one other
21 thing I want to say, is that I hope you will
22 reevaluate your approach from the standpoint of
23 hopefully recognizing that we have shared goals,
24 we want our creeks to be clean, we want our
25 streets to be clean. If you can find a way to

1 think about our relationship and, yes, you have
2 the final hammer, but to think about it more as a
3 partnership that we can achieve a whole lot more
4 if we can find ways to work together, and you can
5 allow us some room for creativity in terms of how
6 we achieve the objectives, that would be very
7 helpful.

8 The other thing I wanted to mention is
9 that, in another capacity I'm also a Chair of the
10 Walnut Creek Watershed Council, it's a relatively
11 new organization and we've had the opportunity to
12 work with some of the staff of the Water Board.
13 The Watershed is 150 square miles in size, it's
14 the largest one in Contra Costa County, it
15 includes nine cities and towns, all of whom have
16 endorsed the Council, it's a fairly complex
17 entity to sort of create and get moving, and if
18 there was a way for you to look at the watershed
19 as part of this and not just as individual
20 discharge points, you know, our goal -- the goal
21 of the watershed, so I'm not talking as Mayor
22 right now -- is to really restore watershed
23 health. Trash is a component of that, but it's
24 not the only component. And I would hope that
25 you would look for ways to encourage those

1 organizations that are doing those things, and
2 I'll use it this way, moving invasive non-natives
3 and planting native plants because as you make an
4 area of the creek more attractive, more
5 interesting, you also wind up causing other
6 people to spend less time throwing their trash
7 away. So I will conclude with that, but I wanted
8 to thank you again very much for your service and
9 look forward to the final permit.

10 CHAIRPERSON YOUNG: Yes.

11 VICE CHAIR MCGRATH: Mayor, I loved your
12 comments about the cultural changes and I've
13 noticed the same problem with educational
14 institutions and have grappled in my own mind
15 with the best ways to approach school boards,
16 principals, and the like. I'm in a different
17 community than you are.

18 From your perspective, what would be the
19 best way that you think you could try to engage
20 the City of Walnut Creek's educational structure
21 at making clean schools a part of their culture
22 and their sense of pride?

23 MR. SIMMONS: I don't have a specific
24 solution, but I'd love the chance to sit down
25 with our School Boards, to be given some reason,

1 some incentives to do that. We try to meet with
2 our School Boards, we have five School Boards in
3 our small city, there's three that are major and
4 two that are sort of minor. We have two public
5 high schools. And as you go up the chain from
6 elementary to mid-school to high school, the
7 trash seems to grow. And you know, so in my mind
8 as I think about we haven't even had a chance to
9 talk about this or do anything to strategize, but
10 I'd like to have the flexibility, I'd like to be
11 given some -- I'll be blunt -- some incentive for
12 looking at this as a situation that, yes, maybe
13 the cities can work with the School Districts to
14 solve it. In my thinking, if we can find -- and
15 now I'm going to get down to money -- if we can
16 find a way to give a teacher let's say \$2,500 for
17 a year to run a once-a-month clean-up, you know,
18 I mean the teachers need some incentive too
19 because they're not among the most highly paid
20 people we have, so there may be other ways, and I
21 don't know if that was answering your question.

22 VICE CHAIR MCGRATH: Well, let me be very
23 clear, the idea -- I do work with the educational
24 institutions in the City of Berkeley and give
25 them chunks of money for the educational outreach

1 that they do, I would love to have an opportunity
2 to see a Mayor do that and Walnut Creek, or in
3 all of the cities. And if you wanted me to come
4 and join the conversation, I'd be happy to do so.

5 CHAIRPERSON YOUNG: Only if you bring the
6 money.

7 MR. SIMMONS: Thank you very much.

8 CHAIRPERSON YOUNG: Thank you, Mayor.
9 All right, we'll have Council Member Morris next
10 and Council Member -- I'm sorry, then Vice Mayor
11 Hoffmeister following.

12 COUNCIL MEMBER MORRIS: Good morning,
13 Board Chair Young and Members of the Board. My
14 name is Paul Morris, Councilman, City of San
15 Pablo. Yeah, I really appreciate this hearing
16 today. San Pablo is a small disadvantaged
17 community with 67 percent of our residents are
18 considered low income, in other words a poor blue
19 collar town. We don't have a lot of resources
20 and we barely balance our budget every year, so
21 more than half of our residential units are not
22 owner-occupied and more than half are multi-
23 family units. These characteristics are
24 associated with very high litter rates. To meet
25 the trash requirement, the City has installed,

1 trash capture devices, improved solid waste
2 service, and banned Styrofoam and plastic bags.
3 However, to meet this ultimately goal of 100
4 percent, more costly measures will be required.
5 For example, if the City installs twice as many
6 trash capture devices, the ongoing maintenance
7 costs will be approximately 25 percent of our
8 street maintenance budget. Taking from other
9 departments' budgets would mean cutting lunches
10 for low income seniors, for example. We ask that
11 the Board help us in identifying funding for
12 trash capture device installation and
13 maintenance. We also ask that the permit provide
14 some flexibility with compliance as some
15 disadvantaged cities have more difficult time
16 meeting these requirements.

17 Local municipalities understand the
18 importance of protecting the environment, but
19 with some of these overly stressed requirements,
20 this places a great substantial financial burden
21 on many cities, especially our own, and the
22 services we provide.

23 Some of the things that could be cut
24 would be after-school programs, senior services,
25 and law enforcement. Local municipalities do

1 understand this and many of these requirements
2 are far reaching, and the overall goal of the
3 Water Quality Control Board staff seems
4 unquantifiable and unmeasurable to make
5 substantial benefits to the environment. San
6 Pablo asks that the Board direct staff to provide
7 more reasonable and workable solutions to achieve
8 environmental compliance under the new MRP with
9 local municipalities. The Mayor actually sent a
10 letter yesterday to the Board members, which you
11 should have by now, with 27 suggestions attached
12 to the letter. We regularly meet with the School
13 Board now as far as talking about their trash.

14 Our attitude, we've got a very aggressive
15 staff, we've got a very hands on staff, we're at
16 40 percent compliance right now, and for a small
17 city like ours with very little money to expend
18 on these types of things, we're very sensitive,
19 as the Mayor was saying a few minutes ago, to
20 this problem.

21 One of the biggest things right now is
22 our diligence which staff, they're very diligent,
23 they're extremely hard working, and I'm very
24 proud of them, but it just seems to be that these
25 requirements are getting more unreasonable. So

1 all I respectfully ask from the Board is to
2 reconsider some of these far reaching
3 requirements. And I thank you for your
4 attention. Our city is doing very well, last
5 year we were rewarded the All America City Award,
6 and for a small city of 30,000 like ours, we're,
7 very proud of that. In addition to that, we have
8 very little construction or there's been no
9 runoff from anything like that. What we're
10 trying to address in our community is going to
11 the source and educating people, so we're being
12 quite aggressive in that department and we're
13 doing very well to be at 40 percent, we're doing
14 quite well. So it would be very cost prohibitive
15 if we were to install some of these devices which
16 would be, in my mind, a band aid, rather than
17 going to the source itself and putting forward a
18 massive education program like we have with our
19 Childhood Obesity Prevention. All right.

20 CHAIRPERSON YOUNG: Do we have questions?
21 I would like to comment on your comment and also
22 the Mayor's before you about requesting
23 flexibility. That is the path that we did go
24 down in MRP 1.0 and we're going down again in MRP
25 2.0. There are others in the state who prefer to

1 just make everybody do full trash capture and
2 that's what you do. We took the other option,
3 which was to really try to make it, well, try to
4 not just make it possible, but encourage everyone
5 to put together the programs that you think are
6 going to work in your city, whether it's
7 education, it's going to be different everywhere,
8 and that's what we wanted to promote, but I think
9 you would understand that in our position we have
10 to have some accountability if we're going to
11 allow that flexibility, we have to have some
12 accountability, we have to have some kind of
13 monitoring system, and that if there are people
14 who don't perform when given flexibility, you
15 know, unless there's a really good reason, then
16 we have to do these more prescriptive
17 requirements. So I think our philosophy has been
18 in tune with what you're asking and we'll try to
19 keep that philosophy and make it work.

20 COUNCIL MEMBER MORRIS: Sure. Well,
21 Madam Chair, I appreciate your comments, too. We
22 took MRP 1.0 very very seriously and we're very
23 diligent, we were good at educating, we're a
24 small city and so a lot of it is word of mouth,
25 through our eNewsletter, through mailers, through

1 seminars, through just hands on things to where
2 people are becoming a lot more conscious of where
3 the trash goes, you know, leaving their trash
4 container open before trash collection when the
5 wind comes up at night, things like that. So we
6 like to think that we're not one of those cities
7 that are not complying, we are. And we've got a
8 full staff that take this extremely seriously.

9 CHAIRPERSON YOUNG: Well, thank you for
10 coming.

11 MR. KISSINGER: I'd like to throw out
12 something, and I don't think it's a new idea, I
13 vaguely recall that it's been discussed before,
14 and I wanted to ask if it's something that's part
15 of discussions that you've had. Are any of the
16 regional organizations like ABAG exploring and
17 discussing with staff the prospect of being able
18 to get credit where one community in effect
19 subsidizes the kind of work that San Pablo can't
20 afford to do itself, as a mechanism to achieve
21 the overall goals? And even if the work that
22 they're doing isn't in their specific community.
23 So just, you know, Walnut Creek, for example,
24 getting more bang for its buck by doing work in
25 San Pablo. Is that a discussion that's going on?

1 Is that something that has been considered at all
2 on a staff level?

3 COUNCIL MEMBER MORRIS: Not that I'm
4 aware of, no. Because we get a lot of trash
5 blowing in from pretty high winds by the Bay, my
6 house is only three minutes from the Bay and the
7 winds that whip up are just huge, so we get a lot
8 of trash coming in from the BNSF tracks from
9 BART, from Richmond, from our neighbors, you
10 know, it's uncontrollable sometimes, you've got a
11 huge wind and there's nothing you can do about
12 it, but we do our very best. We're very diligent
13 in our cities addressing not only trash blowing
14 around, but also things like graffiti. We've got
15 a van going around every day, for example, all
16 week eradicating graffiti. So we do very well
17 for a small city and, as I say, we don't have a
18 lot of financial resources and we don't want to
19 take away any programs that we have in place for
20 our kids and our seniors, and all the other
21 people in our city who take classes and so on.

22 MR. KISSINGER: Well, I would invite you
23 and other cities that are here to have that kind
24 of conversation because there's no reason why
25 resources shouldn't be directed outside of

1 individual --

2 CHAIRPERSON YOUNG: This Board has been
3 very supportive of the concept of other -

4 MR. KISSINGER: Thank you.

5 COUNCIL MEMBER MORRIS: Thanks.

6 CHAIRPERSON YOUNG: Thank you. All
7 right, Vice Mayor Hoffmeister and then Mayor Pro
8 Tem Haskew, please.

9 VICE MAYOR HOFFMEISTER: Thank you. Good
10 afternoon, Board, and members of the --

11 CHAIRPERSON YOUNG: Welcome back.

12 VICE MAYOR HOFFMEISTER: Welcome back,
13 yes. It's not raining, though, today. It was
14 raining last month. It rains tomorrow, I hear.
15 I just wanted to -- I'm going to go a little bit
16 different than what I thought I'd approach this
17 as, but I just want to go on record that I do
18 support the comments that you heard from both
19 Mayor Simmons from Walnut Creek and Council
20 Member Morris from San Pablo.

21 I did want to follow-up a bit on the last
22 question that was asked --

23 MS. TSAO: Can you state your full name
24 for the record?

25 VICE MAYOR HOFFMEISTER: Yes, Laura

1 Hoffmeister, Vice Mayor of Concord.

2 MS. TSAO: Thank you.

3 VICE MAYOR HOFFMEISTER: Okay. I wanted
4 to follow-up on that question that was asked
5 about cities working together and seeing if we
6 could direct our fund outside of our boundaries,
7 I think it was to address issues, it's not
8 allowed under law, these are taxpayers' funds, we
9 have to use taxpayers' funds within our
10 jurisdiction. I kind of want to get reelected
11 into office, I think I'd have a big problem if,
12 as a taxpayer, I was told that, you know, my
13 monies were being spent in another community even
14 though I may like that community, and we have
15 accountability to our residents and to our
16 taxpayers, so I kind of thought --

17 CHAIRPERSON YOUNG: Just to clarify, I
18 think what Mr. Kissinger was talking about was
19 getting credit for part of one's own compliance,
20 even though the money was being spent elsewhere.
21 Would that --

22 VICE MAYOR HOFFMEISTER: I'm trying to
23 find out whose money would be spent elsewhere.
24 The local jurisdiction, I would not -- in
25 Concord, I would not be able to spend my money in

1 Walnut Creek and get credit for it in Concord.
2 That would be an abuse of the public taxpayers'
3 funds.

4 MR. KISSINGER: It would be no different
5 than mitigation on a project that you might be
6 developing.

7 VICE MAYOR HOFFMEISTER: These are
8 taxpayer funds, they're being paid for on their
9 property tax bill for our stormwater programs, so
10 I think we get into it. I'm not an attorney, but
11 I think there's a lot of legal issues that would
12 prohibit us from doing that. I did want to also
13 --

14 MR. KISSINGER: Well, if I could just
15 interrupt for a second. If it would avoid an
16 enforcement proceeding against your community,
17 that would be --

18 VICE MAYOR HOFFMEISTER: If the Board
19 imposed a fine on us, that's a fine that comes
20 out of the General Fund, and then we wouldn't,
21 like any other fine that the Board imposes, those
22 funds could be directed to mitigation wherever
23 that is mutually agreed to, or however the
24 process works out. But just as an elected
25 official at a Council Meeting, the elected body

1 cannot just automatically go direct taxpayer
2 monies be spent in another jurisdiction. That's
3 a slippery slope there, so I think attorneys are
4 best to probably further address that.

5 But I also wanted to touch on a comment
6 that was raised, or a question that was raised by
7 the Board Members about MTC and ABAG and the
8 interaction, I know you have a staff member that
9 attends those, and the frustration you heard at
10 the beginning of the San Mateo's presentation,
11 too, was MTC is also very constrained on
12 financing. The Federal Government has reduced
13 back Federal funds for transportation projects.
14 We've heard about what's happening in Washington.
15 ABAG isn't really a funding agency in and of
16 itself, so I think what you see there is,
17 although there's an interest in it, MTC is trying
18 to maximize dollars on roadways, not trash, and
19 that's their mandate. And so we have a little
20 bit of a disconnect, and I think it really stems
21 from something that has to be achieved in
22 Washington to try to broaden out the spectrum of
23 what transportation funds can be used for. We
24 don't have enough money now to do the roadway
25 improvements that are on the wish list, so the

1 way those projects are awarded is either per
2 capita funding, or a competitive funding,
3 depending on what pots are going after. So
4 that's a challenge, I mean, it's ideal that it
5 could be all done that way, but we've got a big
6 challenge. The big challenge is there's not
7 enough money to do everything we want to do as
8 quickly as we want to do it. So we're all
9 working with more requirements in a world that
10 has less financial resources available to us.

11 And I do want to touch on Concord. We
12 were one of the communities that did not meet the
13 trash requirement. And where does our money go
14 to pay for trash? It comes out of our stormwater
15 fees. We have a special tax like many
16 communities in Contra Costa, all of them do,
17 we're at our cap, we've been at our cap for more
18 than 10 years. We don't have any other
19 additional revenues. We have a \$4 million to \$7
20 million structural deficit, we've laid off staff
21 over the last seven years, we are not growing our
22 staff. To undertake more requirements is a
23 struggle for us. To undertake struggles with
24 PCB, the Green Infrastructure, and trash, are big
25 items. Trash in and of itself from MRP 1.0 going

1 into 2.0, in and of itself, is going to be a big
2 hurdle for us to achieve. Adding in PCB and
3 Green Infrastructure, all with very short
4 timeframes in our minds, you know, one to two-
5 year horizons to start to ramp up to have plans,
6 to have maps, to have diagrams, with no
7 additional staff is not probably going to happen.
8 We will likely be in noncompliance. The question
9 I have and ask of the Board is, how can we
10 prioritize? What's the most important in the
11 next couple of years for us to focus on? Is it
12 trash? Great, now we can start to look at where
13 we can find resources to try to achieve the
14 Board's objectives on the trash plan, and maybe
15 PCB and Green Infrastructure plans and designs,
16 and all of that work slides out to the end of the
17 permit and we can shift a little bit, and put our
18 bang where the buck is. We used to do volunteer
19 cleanups in our creek in Concord. We don't have
20 the staff to run the volunteer cleanups. The
21 high school that was involved in that program is
22 now a charter high school and they're doing their
23 own things, and they have their own programs that
24 they want to do. Getting involved in our public
25 school district? We have tried. And I

1 appreciate the offer of engaging with our schools
2 from any one of the Board members, but we've
3 heard presentations from them with the Common
4 Core and how they're now handcuffed in terms of
5 how they have to teach curriculum, and there's
6 not the flexibility in the classroom to bring in
7 certain educational models that we have already
8 prepared, that we can hand them. You're lucky if
9 once a year you get a teacher, once every five
10 years you get a teacher who might do a half-day
11 program on education in the environment that
12 helps us in our permit, versus what they have to
13 do for Common Core. So it's a big challenge
14 there.

15 I do think, though, that overall the
16 permit does need to be flexible, I think you've
17 heard this and you'll probably hear of it from
18 more speakers, because there are different
19 approaches in different communities, Concord is
20 not the same as Clayton, it's not the same as
21 Walnut Creek, Walnut Creek has been successful
22 with having volunteer cleanups. Concord has not.
23 We might need to do other approaches. And the
24 bottom line is where do we get the money to
25 address either whether it's volunteer cleanups

1 with staff needing to be out there, the
2 documenting and monitoring of and quantifying of
3 the materials, or to tell us that "you have to go
4 put in more trash capture devices." Okay, I
5 don't have the money. I can't put them in. Now
6 what? I mean, just mandating it to us isn't
7 going to make it happen without the financial
8 resources. So we certainly hope that you will
9 support efforts at the State level to try to
10 provide some of those funding resources for the
11 future so we can achieve more improvement in
12 water quality, and I do say that, as I mentioned,
13 I agree with Save the Bay about -- and it's not
14 often I do that -- so you had a couple very good
15 points about having some flexibility, that it's
16 not one-size-fits-all, I think that was very well
17 recognized by them, and that there does need to
18 be credits for some of these other aspects, the
19 on land cleanup and especially what was
20 mentioned, the plastic bag ban, so to speak, or
21 the source reduction methodologies, codes or
22 ordinances that are put in place by communities.
23 That's been successful. I don't think enough
24 credit has been given to them, and you've seen
25 hesitancy by other communities stepping out and

1 doing that because in MRP 1.0 we thought there was
2 going to be more credit and then it was reduced.
3 Everybody held back and now the state has
4 intervened in the process. But if there was a
5 proper amount of credit provided for those and
6 allowed to be done ongoing into the future, not
7 phased out, you will probably see more engagement
8 by communities where that's the right solution
9 for them. But to have them -- and I feel sorry
10 for the cities who started out on that path, had
11 the credits taken away, and now they're being
12 told, well, it's probably going to be trash
13 capture devices at the end of the day, but they
14 don't have the financial resources to get there,
15 but maybe they had the volunteer groups to go out
16 and do this. Are they going to be out of
17 noncompliance because they don't have the funds
18 to do one, but they had a way to do it a
19 different way? So I think we need to still have
20 that broader flexibility in the permit at the end
21 of the day. So I thank you very much for your
22 attention. I'd be happy to answer any questions.

23 CHAIRPERSON YOUNG: No questions. Thank
24 you very much. We have one more elected
25 official, and -- I have no idea where you are.

1 We'll try to straighten -- I have one more
2 elected official who put down "elected" on the
3 card. And I'd like to offer her, Mayor Pro Tem
4 Haskew, the opportunity to testify. And then we
5 will be taking some kind of a break and we'll
6 figure it out. And then I'll find your card,
7 okay?

8 MAYOR PRO TEM HASKEW: Good afternoon.
9 Apparently that's really important in Walnut
10 Creek, getting the right time. My name is Loella
11 Haskew and I am the Mayor Pro Tem, and I am here
12 readily admitting I am not as imbued in clean
13 water as intellectually as almost everybody else
14 in the room. I will tell you right from the
15 start I like clean water, I support clean water,
16 and I hate trash. So I'm on your side. It's how
17 we get there that seems to be the problem.

18 I'm a CPA by profession and by training,
19 and so I have to relate it to the things that I
20 know, and what I feel that you're trying to do is
21 rebuild the equivalent of the Internal Revenue
22 Code, which is to come up with a solution
23 measured at the end result and working your way
24 back and making it try to be fair, even-handed,
25 yet address so many issues, and therein lies the

1 problem. It's very difficult to be everything to
2 everybody.

3 I'm also an accountant in terms of I'm
4 very language-oriented and in one particular
5 case, I'd like to address the word "certify." We
6 were talking about the cities having to certify
7 certain levels of maintenance. "Certify" means
8 so much to me, it means I take responsibility for
9 completely being able to say without reservation
10 -- kind of sort of accountants don't do that --
11 but without reservation I am assuring somebody
12 that something has been accomplished, and it has
13 been accomplished, and it implies it's been
14 accomplished for a period of time. From what I
15 have learned about clean water and maintaining
16 the catchers, it's hard to completely be able to
17 certify it because circumstances cause them to
18 break down, they get jammed, they're hard to
19 maintain in certain circumstances, so I am very
20 uncomfortable about the word "certify" not only
21 just on the City level, and I'm more comfortable
22 about that because I know we work really hard to
23 do that, but we're also encompassing private
24 people who have catch issues, and I don't know
25 how we're going to be able to completely certify

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1 their level of compliance. I can suggest that we
2 look at standards for certifying them in terms
3 of, in accounting terms, if we have a private
4 person that has good internal controls, they've
5 passed, we've looked at what they do, they do it,
6 we're comfortable in certifying them, and then we
7 get to look at the other people who aren't so
8 good at doing what they need to do, and give them
9 more attention. So I think there need to be
10 standards that apply to this. I also want
11 to talk about the credits. Walnut Creek, I
12 believe, is an early adaptor of source. I believe
13 we are being punished by the arbitrary reduction
14 of our earned credits and so that I think you
15 need to address the issue in terms of when you
16 look at the credits, those of us that adapt early
17 and understand that we have a level of credits
18 applicable to this, that we not just have it
19 jerked away. It does remove some of the
20 incentive to be a leader and I think that has
21 some consequences. And I'm done.

22 CHAIRPERSON YOUNG: Thank you. All
23 right, thank you very much for your comments.
24 It's probably good to take a lunch break and a
25 break.

1 MS. BURGIS: Hello, I'm used to sitting
2 up there on the dais and hearing all kinds of
3 people talk and it's hard to keep paying
4 attention to people when they say some of the
5 same things over and over. I wrote "Executive
6 Director of Friends of Marsh Creek" because
7 that's a big part of the reason why I'm here, but
8 I do wear several hats -- Diane Burgis, and I
9 live in Oakley, California, I'm Executive
10 Director of Friends of Marsh Creek, I apologize.
11 I also wear several other hats, I am Board Member
12 for East Bay Regional Park District, and I
13 currently just got appointed to the ABAG Regional
14 Committee that I sit on with Dyan Whyte. I also
15 served on the Oakley City Council, so I've worn a
16 lot of hats.

17 I do lots of different things with
18 Friends of Marsh Creek. We preserve, protect,
19 and conserve Marsh Creek. But what we're known
20 for is our creek cleanup. Last year we had over
21 400 people come and pick up 6.75 tons of trash,
22 and that's pretty exceptional when there is only
23 a population of under 100,000 people living in
24 those two cities. And I wouldn't say it's
25 because we're dirty, I say it's because we're

1 good at cleaning up.

2 These cleanups have helped inspire our
3 community to support our watershed, and that has
4 turned development from building walls and
5 putting dumpsters next to a creek to turning
6 those buildings around, and facing it and turning
7 it into an amenity instead of something that's an
8 afterthought.

9 It has also helped create support for LID
10 and Green Infrastructure. And although I really
11 do think capture devices are a good thing,
12 they're not that effective. We have a lot of
13 leaves. Those leaves collect and they make them
14 less effective.

15 There is something that happens when
16 someone goes up and picks up trash, and I think
17 it's kind of what you were talking about with
18 behavior changes. And we were talking about
19 monitoring. We have a community that monitors
20 the trash, they go out and clean it up. We have
21 high school kids that come out and clean up, they
22 do water monitoring. So what I would like to
23 recommend is that not all trash that's in our
24 creeks are from our storm drains. Dumping, air
25 blowing, wind blowing, cleanups are very

1 important and I would really expect that it would
2 be cost-effective to support those efforts. And
3 I think you need to give more credit for that. I
4 live in a community that also has been resistant
5 to banning plastic bags and Styrofoam, and I
6 would really encourage you to make those
7 incentives. Thank you for taking the time to let
8 me talk. Have a good day.

9 CHAIRPERSON YOUNG: All right, thank you.
10 Okay, the clock on the wall says it's around
11 12:30. I would propose we take a break and let
12 everybody go out and have lunch, and can you guys
13 all go out and get lunch and be back in a half
14 hour? Well, then, we need to give you longer.
15 We'll shoot for 40 minutes, we'll shoot to start
16 about 10, 10 or 15.

17 (Break at 12:31 p.m.)

18 (Reconvene at 1:12 p.m.)

19 CHAIRPERSON YOUNG: Come up and testify
20 and for those who missed their chance, they won't
21 miss their chance, so we'll cycle back through.
22 Syed Murtuza? No? Timm Borden? Okay, we'll go
23 back to him. Kerrie Romanow. Jay Walter. Oh,
24 are you one of these people?

25 MS. AUSTIN: And Chair Young, just as a

1 matter of procedure, if we could just remind all
2 the speakers to please introduce yourself, first
3 name, last name, if you represent anyone and also
4 to confirm that you took the oath.

5 MR. BORDEN: Okay. I'm Timm Borden,
6 Director of Public Works for the City of
7 Cupertino, and I have not taken the oath.

8 CHAIRPERSON YOUNG: All right. Then
9 we'll do this really fast.

10 MR. BORDEN: Okay.

11 CHAIRPERSON YOUNG: And anybody else who
12 missed taking the oath, you can do it at the same
13 time.

14 (Swearing in repeated)

15 All relevant evidence that any person
16 desires to be considered by this Board must be
17 introduced at this hearing first by the Board
18 staff; second, by the Discharger; third, by
19 public agencies; and fourth, by any other
20 interested persons.

21 The Board and Board counsel may ask
22 questions to clarify the testimony of a witness
23 at any time. Cross examination of any witness by
24 others will be allowed following completion of
25 direct testimony by all persons.

1 Each person testifying will commence by
2 stating his or her name, whom he or she
3 represents, and whether or not he or she took the
4 oath to tell the truth.

5
6 The hearings will not be conducted
7 according to Technical Rules of Evidence. The
8 Board will accept any evidence or testimony that
9 is reasonably relevant to the issues. All Board
10 files, exhibits, and agenda materials pertaining
11 to this matter will be made part of the record of
12 this proceeding. Additional written material
13 will be made part of the record at the discretion
14 of the Board.

15 Those wishing to testify in the hearing
16 and who have not already taken the oath, please
17 rise or raise your hand.

18 Do you promise to tell the truth?

19 MR. BORDEN: Yes.

20 CHAIRPERSON YOUNG: You have to say "I
21 do."

22 MR. BORDEN: I do.

23 CHAIRPERSON YOUNG: Or "yes," one of
24 those things. It feels like one of those ads for
25 those drug things, you know, that they -- thank

1 you, Mr. Borden, and welcome.

2 MR. BORDEN: Thank you very much. Again,
3 hello Board Members, I am Timm Borden, Director
4 of Public Works for the City of Cupertino. And
5 thank you for this opportunity to comment.

6 The City of Cupertino has adopted a
7 variety of trash reduction initiatives and
8 management actions to ensure compliance with the
9 current MRP, including product bans, anti-litter
10 ordinance that requires business property owners
11 to keep their properties trash-free, and
12 commensurate enforcement actions, as well.

13 To address litter that does not come from
14 the City's MS4, staff conducts monthly cleanups
15 at our hot spot and have engaged a local college
16 professor and his Environmental Science classes
17 to participate to gain watershed stewardship
18 experience.

19 By the Annual Report time last year, the
20 City had achieved a little bit more than 70
21 percent trash load reduction, and now to continue
22 that success we are offering the following
23 revisions to the Tentative Order. First, for the
24 value for source controls, I'll save some time
25 and I'll just say that we agree with a lot of the

1 previous speakers that we also think that there
2 should continue to be rewards for these efforts
3 that have proven to be successful, and bold steps
4 have been taken in some communities where they
5 haven't been welcomed, necessarily, some of these
6 product bans, but there's been the bold move to
7 go ahead with them.

8 We also want to incent new measures with
9 good credits that reward those actions and also
10 are backed by data. I mean, we're not asking for
11 credits beyond what data supports, but we are
12 asking for rewards and incentives to continue
13 those successful efforts.

14 Trash generation and area management, we
15 are requesting the removal of the requirement for
16 the screening of all Green Infrastructure
17 treatment facilities. The C3 facilities are
18 already required to remove smaller particles, so
19 we don't feel that the screens are necessary and
20 could induce other problems on private properties
21 such as flooding.

22 The maintenance of full capture systems,
23 we want to be able to have more of a customized
24 approach to really be able to use our resources
25 efficiently and for greater value, so we would be

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1 able to go in and do more of the cleanups where
2 we may have organic debris in those devices,
3 rather than even the high trash areas that don't
4 tend to have a lot of cleanup necessary. So
5 again, we'd like to have a very customized
6 approach and require Permittees to develop,
7 implement and report on permits for specific
8 maintenance programs to achieve and maintain full
9 capture criteria.

10 With regard to Green Infrastructure, I
11 think there also has been a lot of very good
12 comments about how we need to work together with
13 transportation efforts to be able to grow the
14 fiscal pie, rather than each of these important
15 public programs and issues getting smaller slices
16 of the pie, so to be able to fund some of this
17 green infrastructure and be able to capitalize on
18 opportunities where they exist in the future.

19 I would also like to request that the
20 next two years we be allowed to focus on doing
21 good planning and have the governing body approve
22 the Green Infrastructure framework, and then
23 postpone the two-year deadline to complete
24 prioritization and mapping.

25 Lastly, and most importantly, with regard

1 to PCB controls, the City strongly feels that the
2 Tentative Order should be revised so that
3 compliance is based on a control program approach
4 designed to achieve a numeric action level,
5 rather than compliance based on a load reduction
6 number for PCBs. We also request that compliance
7 be based on effective goals and implementation
8 rather than on enforceable targets. Thank you
9 very much.

10 CHAIRPERSON YOUNG: All right, thank you.
11 I think we have a question for you.

12 VICE CHAIR MCGRATH: Thank you. I always
13 appreciate when Public Works Directors are up
14 here because you guys at the end of the day have
15 to maintain the facilities. You asked for a
16 customized approach on your facilities. I assume
17 you've got a combination of facilities that
18 inadvertently trap trash and those that have
19 captured devices. Now, do you have an Operations
20 and Maintenance Manual for your Department?

21 MR. BORDEN: Yes. Yes, we do.

22 VICE CHAIR MCGRATH: And have you over
23 the years identified which facilities are going
24 to need maintenance once or twice a year, which
25 are going to need it, maybe after every storm and

1 the like?

2 MR. BORDEN: Yes, absolutely we have.

3 VICE CHAIR MCGRATH: And is that level of
4 detail in the Operations and Maintenance Manual?

5 MR. BORDEN: I believe that is, yes, in
6 fact I know it is.

7 VICE CHAIR MCGRATH: Okay, that certainly
8 makes your testimony on flexibility more
9 compelling, you know, I think my objective is to
10 make sure that every Public Works Department has
11 a Maintenance Manual. I know from what I've
12 observed that the old-timers in the department
13 know which ones plug up, but how we
14 institutionalize that knowledge and make that
15 routine, and make that part of the report, I also
16 really appreciated your comment about backed by
17 data because essentially creating that kind of
18 linkage of here are the facilities, here are the
19 ones that are high maintenance, here is our
20 record on those of high maintenance, I mean,
21 that's the kind of data. So I appreciate it.

22 MR. BORDEN: I appreciate it. Our old-
23 timers in Cupertino have iPads and iPhones, so
24 thank you.

25 VICE CHAIR MCGRATH: (Laughing) Good.

1 CHAIRPERSON YOUNG: All right, thank you.
2 I have almost 30 cards here, so we are going to
3 start taking the time limit seriously, we gave a
4 lot of extra time to the elected officials and
5 those folks, but if you want to just sign on to
6 other people's comments, that works fine, too.
7 We'll try Sayed Murtuza. Not back yet, okay.
8 Kerrie Romanow? Okay, and then we'll follow with
9 Jay Walter.

10 MS. ROMANOW: Good afternoon. Kerrie
11 Romanow, Director of Environmental Services with
12 the City of San Jose and I did do the swearing
13 thing. Thank you for the opportunity, we've
14 appreciated the engagement and the participation
15 of your staff, as well as these opportunities to
16 provide comment.

17 San Jose is a large city, we're a city of
18 over a million people, the third largest city in
19 California, and the largest city in your service
20 area. And we have 180 square miles and 136 miles
21 of creeks and streams. Like many other cities,
22 we also have a structural deficit in our budget,
23 but in spite of that, we are taking this very
24 seriously. We invest over \$14 million annually
25 in stormwater pollution control activities,

1 approximately \$2 million in capital investment to
2 date on the installation of nine full trash
3 capture units covering 1,200 acres, an additional
4 \$14 million budgeted over the next three years to
5 install up to 20 more full capture units to cover
6 another 5,900 acres. We spend \$200,000 annually
7 on anti-liter programs and related volunteer
8 cleanup activities, and \$3.5 million in the
9 Homeless Encampment Response program, as well as
10 \$5 million in Green Streets Programs.

11 Additional requirements, though, will
12 create additional unfunded mandates for our city.
13 As has been mentioned, the plastic bag ordinance
14 was very successful. Or Styrofoam Food Ware
15 Ordinance is still in its infancy, half the
16 national chains embarked on January 1, 2014,
17 every other restaurant on January 1, 2015, we're
18 now beginning to collect data on that, as well.
19 And we perform both of those ordinances in a
20 manner that other cities could tag along to the
21 work that we've already done.

22 We're doing a lot of work in the
23 creekways with our volunteers, and we have
24 public-private partnerships with the Santa Clara
25 Valley Water District, eBay, Downtown Streets

1 Teams, focused on clean creeks and health
2 communities. Our four-year goal was not only to
3 clean up the encampments, but also to create
4 change in our community. And we've done that.

5 In 2013, we did 29 cleanups of homeless
6 encampments and we collected 174 tons of
7 material. In 2014, we did 99 cleanups, 687 tons
8 of materials. Between 2013 and today, there's
9 been a 37 percent decline in the homeless
10 population in our city. We're very proud of
11 that. We went from 1,200 in 2013 to 778 in 2015.
12 That's had a very positive effect on our
13 waterways and it's also connected our community
14 more to our waterways and impressed upon our
15 community the need to continue to do these types
16 of cleanup activities.

17 What we would request you consider in
18 this new permit is that we check, we reevaluate
19 the source reduction provision. The data
20 collected by Permittees indicate that each
21 individual source reduces between five and 10
22 percent. The proposed five percent maximum
23 reduction simply doesn't afford us the incentive
24 to continue to do these control actions that are
25 producing results. We want to continue to invest

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1 where we are producing results and creating a
2 positive impact on the community. We would like
3 maximum offsets to be more in the 25 percent
4 range and, in my personal opinion, as long as
5 we're cleaning up the waterways and we're making
6 positive progress, that's what we really want to
7 be measured on. Thank you.

8 CHAIRPERSON YOUNG: All right, thank you
9 very much. Questions? Thank you. Then we have
10 Jay Walter. Is he here yet? Okay. Well, I'm
11 sorry to miss these folks. We'll have Miriam
12 Gordon and -- is she here? She is. And then
13 we'll have Tom Dalziel from Contra Costa.

14 MS. GORDON: Thank you, Board Members.
15 I'm Miriam Gordon, I'm the State Director of
16 Clean Water Action, a National Environmental
17 Organization founded in 1972. These are
18 highlights of my comments, I have written ones
19 for you.

20 First of all, we implement Rethink
21 Disposal, a partnership program with eight Bay
22 Area jurisdictions aimed at reducing single-use
23 food and beverage packaging at the source; for
24 more information, go to RethinkDisposable.org.

25 One significant issue in this proposed

1 Order is the vagueness of how compliance will be
2 determined. For receiving waters, Permittees
3 must demonstrate 100 percent reduction of trash
4 load by 2022, or no adverse impact to receiving
5 waters. There's no explanation of what no
6 adverse impact is, or what 100 percent means.
7 Here, we suggest that in order to meet the
8 beneficial uses under Porter-Cologne, as the L.A.
9 Regional Board determined in its TMDL, even a
10 single piece of trash can be detrimental, it can
11 harm marine wildlife, therefore no adverse impact
12 at 100 percent should be something equivalent to
13 no trash being present in receiving waters.

14 In trash generation management areas, it
15 seems Permittees must demonstrate both full
16 capture device equivalency and a reduction of
17 high moderate trash to low trash generation. The
18 problem with full capture device equivalency is
19 that there's been no determination of how much
20 trash is sent down a storm drain system by a full
21 capture device in very large storm flows. So
22 there's no instruction there.

23 In terms of trash reduction methods, we
24 appreciate the inclusion of source control
25 credits, but source reduction could achieve a

1 great deal of overall trash load reduction and
2 save Permittees and taxpayers millions of dollars
3 in reduced trash management over time. Combined
4 source reduction efforts could achieve much more
5 than five percent; for example, in our 2011
6 street litter study, straws represented four
7 percent of street litter, plastic lids was four
8 percent, bottle caps were three percent, paper
9 cups were two percent. All of these things can
10 be source reduced and combined; that is 13
11 percent in addition to other measures like
12 plastic bag bans and foam bans. Permittees could
13 achieve a greater reduction than five percent.

14 In addition, this Order fails to address
15 trash smaller than five millimeters flowing
16 through the MS4s, not the plastic pellets
17 controlled by the industrial permit, but just the
18 trash less than five millimeters. Source
19 reduction is the only measure in this Order that
20 will reduce that small debris.

21 Our recommendation is that the Board
22 provide up to a 15 percent incentive for
23 Permittees to pursue source reduction.

24 Data. For visual assessments in water
25 monitoring and in hot spots, Permittees should be

1 required to collect data characterizing the
2 products present in the trash load. It's
3 essential to identify products in order for
4 Permittees to obtain an improved understanding of
5 the types of trash or litter and their sources.

6 One note about lack of enforcement, I
7 want to echo Board Chair Young's concerns that
8 the Board must be required to certify or accept a
9 plan if it comes up short, and determine what the
10 full capture equivalent is for the City. The
11 same thing is true for failure to achieve the
12 compliance, the full 100 percent compliance.

13 A couple other comments on receiving
14 water monitoring I won't go into, but I want to
15 say finally, regarding funding for local
16 municipalities to implement this, I'd like to
17 suggest that the Permittees work together to
18 explore a litter fee assessment on litter prone
19 items and how to construct it to avoid Prop. 26
20 limitations on local fees. Thank you.

21 CHAIRPERSON YOUNG: All right. Thank you
22 very much. Questions? No. Thank you, that last
23 proposal was very interesting. We always
24 appreciate hearing something new in the long day,
25 middle of a long day. We have Tom Dalziel,

1 welcome back to you, too, and then Lesley Estes.

2 MR. DALZIEL: Madam Chair, Members of the
3 Board and staff, thank you. Good afternoon, my
4 name is Tom Dalziel and I am the Contra Costa
5 Clean Water Program Manager. I'm here on behalf
6 of the 21 Contra Costa Clean Water Program
7 Permittees requesting more time for obtaining the
8 70 percent trash load reduction goal.

9 Nearly five years were provided under the
10 current permit for municipalities to plan,
11 implement and attain the 40 percent trash load
12 reduction goal. Only three years, if you count
13 back from July 1, 2014, when we were to achieve
14 40 percent, only three years is being provided to
15 attain the evermore difficult and challenging 70
16 percent reduction. This is not realistic and it
17 ignores the lessons learned and the knowledge
18 gained over the last permit term.

19 Under the current permit, Permittees and
20 Water Board staff lost time when we agreed to
21 develop a revised map-based compliance system for
22 developing, implementing and assessing our trash
23 load reduction actions. One year was lost while
24 Permittees and Water Board staff worked
25 collaboratively to develop this new framework,

1 which we continue to refine.

2 Additionally, many of the actions
3 identified by Permittees in their short term
4 trash plans back in February of 2012 and the
5 anticipated trash reduction benefits of those
6 measures had been reduced in this proposed Draft
7 Tentative Order. For example, and you've heard
8 about this, many cities went through a very
9 difficult and challenging process to institute
10 single-use plastic bag bans and Polystyrene food
11 container bans. At the time these efforts were
12 initiated, the maximum anticipated credit for
13 those actions provided was 14 percent. Under the
14 Draft Tentative Order, the credit given for these
15 bans and any additional source control actions
16 taken or implemented during this MRP 2.0 is fixed
17 at a maximum of five percent credit. This
18 maximum percent credit is arbitrary and runs
19 counter to everything we've heard about the
20 importance and long term effectiveness of source
21 control. Permittees' efforts to
22 reach the 40 percent trash load reduction goal
23 was greatly assisted by the \$5 million grant that
24 we received. These grant funds are responsible
25 for the majority of the full trash capture

1 devices that have been installed around the Bay
2 Area. There are no new additional sources of
3 funding anticipated to assist local agencies with
4 their trash reduction programs. As you've heard,
5 the Contra Costa Clean Water Program attempted to
6 increase local revenues for Stormwater Compliance
7 Programs in 2012. We failed by a 59 percent
8 margin of voting property owners.

9 The trash mandates combined with the
10 mandatory numeric reductions in PCBs by programs
11 for which we have limited control of, and the
12 monumental planning and changes required for
13 development of our Green Infrastructure plans
14 without any relief in the many less beneficial
15 tasks we previously articulated to your staff
16 puts Permittees in an untenable situation. We
17 need you and your staff to work collaboratively
18 with us as partners and as public servants to
19 effectively and efficiently as possible obtain
20 our water quality goals.

21 CHAIRPERSON YOUNG: Thank you.
22 Questions? All right, thank you. We'll have
23 Lesley Estes, welcome, and then James Scanlin,
24 please.

25 MS. ESTES: Good afternoon. Lesley

1 Estes, City of Oakland. I'm not going to talk
2 about our money problems because that's a given,
3 you know we have them. I'm not going to talk
4 about our trash problems, again, you know we have
5 them. It's a very challenging place to be. I
6 think you already also recognize our genuine
7 commitment to addressing these really difficult
8 problems.

9 Instead, what I want to do is talk about
10 choices and I think that every City really wants
11 to have a path to compliance, a very clear path
12 to compliance, and I think the Water Board
13 members want that clear path, and so do the
14 staff. And we've really been struggling with
15 this for five years.

16 The thing I'm primarily concerned about
17 is that in our effort to go to that clear path of
18 compliance, we might be losing some of the meat
19 of some of the programs that will have
20 sustainable long term changes that may not really
21 be easy to put in a box and say you're complying.
22 And things like incentivizing source control, I
23 think you're really hearing a lot about that. A
24 good example would be a plastic bag ban. We have
25 a plastic bag ban in Alameda County. Recently we

1 at the Stormwater Program on a countywide basis
2 tried to expand that ban and even offered up some
3 funding to Waste Management Authority. They
4 didn't take it and it didn't move forward, and
5 we're sad about that, but in reality I think it's
6 a miracle that all the Cities in Alameda County
7 said "we're going to put more money toward this,"
8 knowing we weren't going to get more credit
9 towards meeting our compliance goals because we
10 feel that strongly that this is an important
11 thing to do. Well, with this new permit, I think
12 we're further de-incentivizing those kinds of
13 efforts, and I think that's going to be a big
14 loss. I think also looking at volunteer efforts,
15 I know that it's a really hard thing to calculate
16 how much this is doing.

17 But I want to just put an example out
18 there. Oakland has increased its efforts to
19 clean up parks, medians, creek sites, shorelines,
20 storm drains, by 3,000 percent since the adoption
21 of the MRP. We have about 65,000 volunteer
22 hours. We don't want that to go away, we want to
23 continue moving towards that, and we don't want
24 to trade that for checking off more boxes and
25 assessments in the new MRP. Again, education,

1 it's very hard to gain credit in the MRP the next
2 MRP for education outreach efforts, but that's
3 where sustainable long term change takes place.

4 I think ultimately we want to focus our
5 efforts on programs that are making a difference,
6 and also increasing the quality of life for
7 Oakland. That doesn't mean we're trading that
8 for trash, it's just we want to achieve both
9 goals. So in our desire to have a clear path for
10 compliance, I hope we don't lose our motivations
11 and our incentives in the new MRP so that we can
12 look at the long term for sustainable change.
13 Thank you.

14 CHAIRPERSON YOUNG: Thank you. Mr.
15 Scanlin and then we'll have Heidi Geiger from San
16 Jose DE Department? Yes.

17 MR. SCANLIN: Good afternoon, Madam
18 Chair, Board Members. James Scanlin, Manager of
19 the Alameda Countywide Clean Water Program. A
20 couple things I'd like to hit on. A couple of
21 people talked about K-12 schools and what we
22 could do about those schools, and they're often
23 one of our trash problems. We have a very robust
24 effort to work with teachers and kids and go out
25 and do weekly or monthly cleanups and teach the

1 kids about watersheds and storm drain protection.
2 We have a number of different programs that are
3 very good, but they are labor intensive,
4 expensive, and they take time to implement. I
5 think one of the problems with the way the permit
6 is set up is you don't really get credit for that
7 long term benefit you get from that. You can go
8 around the school and say this school is cleaner
9 than it was before, but you can't really measure
10 the benefit of teaching kids to be less, you
11 know, of litter bugs in the long term.

12 Also, K-12 schools were in the Phase 2
13 Stormwater Program, I believe, and then they were
14 eliminated from that for some reason. I think
15 Region 2 has the ability to put other types of
16 entities into the Phase 2 Program and you could
17 put them in, say, just for trash, which might be
18 a useful thing to do.

19 Visual assessment protocols. I don't
20 think they're ready to be used as in a compliance
21 tool. I know a lot of people think that we need
22 data, we need firm ways to talk about compliance;
23 it doesn't seem like the visual assessment
24 protocol is there yet. You saw those nice
25 pictures of A, B, C, and D, and a very small

1 stretch, and it's like, oh, yeah, this is A,
2 that's B, that's C, that's D. You walk down a
3 street and it's A, B, maybe C, uh, oh, this is A,
4 very hard, a lot of subjectivity, a lot of
5 variability. We have no idea how we're going to
6 take these assessments that we do over time and
7 say this is now, reduced by a certain amount. So
8 that's, I think, a problem we need to look at.
9 We think it should be used as an assessment tool,
10 but not as a compliance tool during this permit
11 term.

12 Another thing is just long term, it's
13 been a moving target. I agree with Tom Dalziel,
14 70 percent in a couple years, I admire your
15 enthusiasm for this, but it's a Herculean task
16 what we're trying to do here. We were talking
17 about comparing it to the recycling, they had 11
18 years to get 50 percent of the recycling waste
19 down, and now it's 26 years later they're trying
20 to get the 75, it's a huge task, we need more
21 time, we need to know what the path is to
22 compliance now. It seems to still be moving. I
23 hear a lot of talk that full trash capture might
24 not be the end target. I think we need to figure
25 it out, give it more time, maybe 2019 or 2020 as

1 a 70 percent target is when we need to get there.
2 So my time is up, thank you.

3 CHAIRPERSON YOUNG: Jim has a question
4 for you.

5 VICE CHAIR MCGRATH: On education, you
6 know, I volunteer in a grade school and I've seen
7 kids go from first grade to seventh grade and
8 eighth grade, and the only education efforts I've
9 seen in that school, which is Le Conte Elementary
10 in Berkeley, are from the kids doing Science Fair
11 projects or citizenships. So I'm definitely
12 interested in raising the consciousness, but I'm
13 also interested in whether or not that's cost-
14 effective. And I think the consistent testimony
15 that I have found most persuasive ask for credits
16 where there's data to support it. So I would
17 love to see testimony, further testimony from
18 you, or anybody about the value that you think
19 educational efforts can give because that's the
20 kind of information I need to place this in the
21 context where I'm willing to lean on the staff
22 and say give them some credit. So tell me what
23 you've done, tell me how effective you think it
24 is, and better yet, tell me what data you have to
25 support that view. I mean, I know for sure the

1 kids litter, I have no question about that, and
2 they don't even see it. But how do we
3 effectively address that and what are the roles
4 of the different parties?

5 MR. SCANLIN: Just in response, we have a
6 school outreach program, we did refocus it last
7 time, we started a year ago, we had a litter
8 focus rather than just more general stormwater.
9 And a lot of it was, how are you going to show us
10 that you're changing the amount of litter? So
11 they're going out, they're collecting trash bags,
12 they're measuring it, they're looking for
13 reductions over time. I've been talking to Tom
14 about having some of these groups maybe come give
15 you a presentation, you know, before meetings
16 sometimes, maybe over the next couple months, and
17 talk about what they're doing and how we're
18 making change here, if you're open to that.
19 They're very -- you see what the kids do and the
20 kind of response they have to what they've
21 learned, and it's inspiring, you can't help but
22 think that it's making a difference in the amount
23 of litter out there.

24 VICE CHAIR MCGRATH: All right.

25 MR. KISSINGER: I've got a question, but

1 I address it more broadly, also. I want to bring
2 together two points that you made, the first was
3 the imprecision, you know, talking about the
4 photos A, B, C, and D, and how difficult that is,
5 also the Herculean task that we're setting up to
6 try to achieve 100 percent. But you said at the
7 end of your comments just now that we ought to
8 just try and achieve 75 percent reduction by the
9 deadline, not 100 percent.

10 MR. SCANLIN: No, not the final deadline.
11 Chair Young was spelling out a hard deadline of
12 2019 or 2020 --

13 MR. KISSINGER: Right.

14 MR. SCANLIN: I was suggesting the 70
15 percent might be more appropriate for that, not
16 that there wouldn't be 100 eventually, but --

17 MR. KISSINGER: No, no, no, I understand.
18 But my point bringing it together is by saying 70
19 percent, it at least suggests that you think it
20 is possible to have a way of measuring it,
21 notwithstanding your comments at the beginning
22 that there's some vagueness in what's currently
23 out there. So if in fact you think, and I can
24 address this more broadly, that there is a way to
25 have precision to say what a 70 percent reduction

1 looks like, I welcome those comments in whatever
2 written form you may be submitting it because
3 that would be helpful to me.

4 MR. SCANLIN: Okay.

5 CHAIRPERSON YOUNG: All right. All
6 right, we'll have Ms. Geiger and then George
7 Torgun, please.

8 MS. GEIGER: Okay, thank you for this
9 opportunity to speak. My name is Heidi Geiger
10 from the City of San Jose, Department of
11 Transportation. I am representing the
12 hardworking men and women tasked to maintain and
13 protect the City of Jose's 1,200 miles of storm
14 sewers, 3,100 storm inlets, and 1,500 outfalls,
15 as well as the creeks.

16 My concern today is the prescribed
17 maintenance and reporting requirement contained
18 in C10 section of the MRP. The prescribed
19 maintenance frequency and reporting requirements
20 do not allow a lot of flexibility for stormwater
21 systems where the stormwater response are dynamic
22 and variable, with lots of different things
23 happening all the time. I have talked to
24 different crew members and different people, and
25 they've discussed with me some of the issues that

1 happen with plugging. One of the issues was if
2 you have a plug, you should increase your
3 frequency. Well, most of the per se plugging
4 occurs more or less because leaves just block the
5 drainage, the grates in front of the drainage
6 devices. It may not even have anything to do
7 with our maintenance, it might be just a windy
8 day, a big stick falling into something wrong, or
9 doing things like that.

10 And then there's different rain seasons.
11 The rain seasons vary all the time. We've had a
12 relatively dry winter where we had December being
13 a big month and January being really dry, next
14 year we're hearing we're going to have something
15 different and we're going to need to be flexible.
16 Storm response is a flexible requirement.
17 Preventative maintenance is something we can
18 think about, but reality is that a lot of things
19 happen right at the storm, and it's a very quick
20 hardworking staff that have to go out, they get
21 tired, they get hungry, and the last thing they
22 need to do is be burdened by more reporting
23 requirements and different things like that that
24 are discussed in this MRP.

25 In addition, the inlet cleaning is hard

1 work. I'm going to just tell you, what they do
2 is they actually literally take shovels and
3 actually clean out these inlets in the inlet
4 responses, and that's a really big burden and a
5 lot of hard work. And I think we've got to be
6 really effective in how we handle these things
7 because it's a worker safety issue, as well. We
8 want to make sure that they are protected in all
9 the areas, as well. It's not easy to do the HDS,
10 as was presented in this presentation earlier
11 because what we're finding is that some of the
12 HDS systems are very deep, we're having to get
13 new trucks, new equipment, new everything in
14 order to do it. Our staff has been really great
15 about trying to find flexible ways to get things
16 around in the different system and be able to
17 pump out, so I encourage people to think about
18 that, that it's not an easy thing to do HDS, that
19 there's a lot of things that go on.

20 What we recommend is letting us -- and
21 we're still learning a lot -- and letting us have
22 the ability to do a site-specific assessment. We
23 have an 85 percent of the matter is vegetative
24 and is maybe different canopies, we have a lot of
25 trees in some areas, and they end up bringing, as

1 beautiful as they are, they end up causing
2 issues. So if you could give us a lot more
3 flexibility and allow us to do our own site-
4 specific maintenance, we'd appreciate it and also
5 ease the reporting requirements for us. Thank
6 you.

7 CHAIRPERSON YOUNG: All right, thank you.
8 Thank you, Heidi. George Torgun and then Karineh
9 Samkian.

10 MR. TORGUN: Good afternoon. George
11 Torgun with San Francisco Baykeeper. I greatly
12 appreciate the time the Board is taking on this
13 very important issue. I'd just like to start off
14 by saying we've been fairly disappointed about
15 how the first permit term has gone in terms of
16 trash, going from the failure to establish a
17 baseline to the rampant noncompliance we've seen,
18 to just our overall assessment of the lack of
19 significant progress we've seen on trash in our
20 waterways, and that's really what's important
21 that Baykeeper is seeing the quality of our
22 receiving waters be improved, and we want an
23 approach that ensures that our waterways are in
24 fact cleaned up.

25 There's been concern expressed, and I

1 greatly agree with this, about the visual
2 assessment and the mapping-based approach for
3 compliance that is being proposed. We don't
4 think that this corresponds well to actual
5 improvements in the quality of receiving waters,
6 and it's especially troubling to us given the
7 safe harbor vision in Section C.1, which
8 basically says compliance with all the provisions
9 in C10 is compliance with the receiving water
10 limitations and discharge progressions in the
11 permit. So I don't have time to get into it
12 today, but in our written comments which we'll
13 submit this week, we are going to propose an
14 alternative compliance approach which will
15 essentially evaluate trash loading at the end of
16 discharge using an end of pipe full capture
17 device, which has been used in LA, and has been
18 evaluated by the San Francisco Estuary
19 Partnership, and will provide a lot of details in
20 that. We think that's a lot simpler way to
21 establish a baseline to show actual trash
22 reductions from the MS4 system, and to ensure
23 that our waterways are actually being cleaned up.

24 I wanted to respond to a couple comments
25 or themes that I've heard today. As far as

1 offsets and credits, all the plastic bag bans and
2 Polystyrene bans and education programs are
3 great, and they certainly need to continue, but
4 as far as giving credit for those, I would think
5 the credit should be seen in terms of how much
6 trash is on the streets and how much trash is
7 coming out of the MS4. If those programs are
8 working, you should see improvements in the
9 amount of trash coming out of the system and
10 that's all the credit that you should need from
11 those programs.

12 Chair Young mentioned the lack of
13 consequences for not meeting the deadlines. I
14 think we fully agree with that, we want to see
15 very specific measures, control actions that
16 should be taken and very specific timeframes that
17 need to happen if noncompliance continues. You
18 know, based on the testimony I've heard today, it
19 hasn't inspired a lot of confidence that the
20 performance guidelines or mandatory deadlines
21 going forward are going to be met, so if we
22 continue to see noncompliance we want to see very
23 specific actions happen and if this type of
24 flexibility that the Board has provided has not
25 improved matters on the ground, I think the Board

1 and the staff should consider WDRs and a TMDL
2 approach going forward. Thank you.

3 CHAIRPERSON YOUNG: Thank you very much.
4 All right, we'll hear from Ms. Samkian and then
5 Elisa Wilfong.

6 MS. SAMKIAN: Good afternoon, Madam Chair
7 and members of the Board. My name is Karineh
8 Samkian and I'm with the City of San Pablo, I'm
9 the Environmental Program Analyst there. I want
10 to first thank you for the opportunity to speak
11 to you on this very important topic today.

12 I have worked for the City for over 12
13 years and from day one, and before the NPDES
14 Permit even required trash controls, trash has
15 been a big priority of the Cities, as well as
16 mine. I believe some of the trash provisions in
17 the current permit have had a positive impact at
18 reducing trash. However, I'm here to discuss one
19 of the proposed provisions in the current draft
20 permit that we believe as currently written will
21 require a lot of resources with very little
22 benefit.

23 I'm referring to Provision C10.A.ii.b,
24 I'll summarize it here for you, it requires
25 private properties greater than 5,000 square feet

1 that are plumbed directly to the storm drain
2 system to put in trash capture devices or an
3 equivalent measure. It also requires Cities to
4 map all the drainage systems on private property.
5 I think the intent of the provision is to capture
6 trash from private properties, however, the
7 majority of the properties that are impacted, at
8 least in my city, are not trash sources.

9 A lot of single-family residential
10 properties in our City fall within this category,
11 and it is impossible to install trash capture
12 devices on those properties as they don't have
13 area drains.

14 In addition, they are not a high trash
15 source for us and even if a few become a source
16 during this permit cycle, our current ordinances
17 in Contra Costa County allow us to require trash
18 controls.

19 Finally, I think this is the biggest
20 issue for us, is the mapping of private drainage
21 system. This is a huge undertaking for Cities,
22 and it will require dye testing and a lot of
23 looking at property information because what
24 we've seen is private property owners do not own
25 any infrastructure detailed maps. This task

1 alone we estimate could take one staff member up
2 to six months, and this is time that would be
3 taken away from implementing other important
4 provisions within the permit.

5 Therefore we recommend the provision be
6 amended to allow each municipality to identify
7 their high trash source properties, which are
8 typically commercial sites in my City, and work
9 with the owners and property managers to address
10 the issue either by installing trash capture
11 devices, or an equivalent measure such as
12 sweeping, you know, twice a day.

13 In summary, we believe mapping the
14 drainage system is a costly exercise that
15 provides no direct benefit to trash reduction and
16 that resources would be better used by targeting
17 high trash source properties. Thank you for your
18 time.

19 CHAIRPERSON YOUNG: All right, I have a
20 clarifying question.

21 MS. SAMKIAN: Yes.

22 CHAIRPERSON YOUNG: I'm trying to put
23 this in the context of the structure of the
24 permit that we're considering. So are you saying
25 that a lot of your properties are effectively

1 Green Zones?

2 MS. SAMKIAN: No, I'm not saying that.
3 I'm saying the property itself, we actually have
4 a lot of residential that falls in yellow or red,
5 but a lot of that, the sources of that trash is
6 littering by residents walking by, the schools
7 nearby, and car littering. I think a lot of the
8 source properties that I think the trash is
9 coming from the property is a lot of our
10 commercial. And we already know which ones they
11 are, and we've already begun to have discussions
12 with them.

13 CHAIRPERSON YOUNG: Yeah, but the ones
14 that you don't want to be responsible for
15 mapping, I'm trying to get my arms around what
16 one of those looks like. Are you talking about
17 like a big condo development or something where
18 the property is owned by one owner and it's
19 pretty clean? Would that be an example?

20 MS. SAMKIAN: So for example, I just did
21 a quick GIS query yesterday. Just talking
22 single-family homes, I'm not even talking about
23 commercial or subdivisions, larger, or something,
24 we have about 1,900 households, single-family
25 households, out of that 1,100 would fall under

1 this requirement of 5,000 or greater. As far as
2 it being plumbed to sanitary, a lot of the old
3 ones were plumbed to sanitary. A lot of them
4 have direct connections with their ring leader,
5 so there's no room to put this in. So, yes, I'm
6 talking residential, single-family residential,
7 I'm also talking about commercial. Some of these
8 commercial sites may have 10 area drains, but
9 they don't have the maps, we don't have the maps
10 to know how they're actually connecting to the
11 storm drain system on the street. So that's why
12 I said we'd probably have to do dye tests. The
13 data is just not there. I mean, the public
14 perception is that Cities have maps for
15 everything, you know, we really don't. We barely
16 have it for our own infrastructure, let alone for
17 private. So when it's private, it requires a lot
18 of research to try to go back and see when this
19 project was approved. The property owners just
20 don't have them.

21 CHAIRPERSON YOUNG: Okay, thank you for
22 the clarification, I appreciate it.

23 VICE CHAIR MCGRATH: I'd like to follow-
24 up. This is great kind of testimony because
25 it's specific, it seems to me that perhaps an

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1 exemption for single-family detached housing
2 which is not likely to be one of our high
3 priorities might resolve some of those concerns.
4 I'm seeing you nod. Why don't you say yes on the
5 record?

6 MS. SAMKIAN: I think that would help,
7 but I think the exercise of mapping in itself, I
8 question the validity of that because I think if
9 you work with the property owners, let's say on a
10 large commercial site, mapping it isn't the big
11 issue, the issue is do they have a trash problem
12 and, if they do, just put in trash capture or
13 sweep it daily. I don't think we need the maps to
14 tell us that.

15 VICE CHAIR MCGRATH: That's the second
16 point, is that mapping need not necessarily be
17 done automatically. Again, I think the
18 production of data to demonstrate that these are
19 hot spots and these aren't, you know, I've lived
20 in San Pablo, so I know the community pretty
21 well. I lived there for about a year and a half.
22 That was a long time ago, I don't even think you
23 were born.

24 No, I think the data to support that kind
25 of an argument, it's great testimony and it makes

1 it more useful to us in sorting through these, so
2 you've got until Friday. Thank you.

3 MS. SAMKIAN: Thank you.

4 CHAIRPERSON YOUNG: Thank you. This will
5 be Elisa Wilfong, followed by Vaikko Allen.

6 MS. WILFONG: Okay, Members of the
7 Board, staff, I'm Alisa Wilfong and I manage the
8 Stormwater Program for the City of Hayward, and I
9 confirm I took the oath.

10 Thank you for the opportunity to comment
11 regarding C10, I have three points I would like
12 to say in three minutes.

13 First, Hayward has undergone an extensive
14 review of locations to install trash capture
15 devices in tandem with the citywide trash
16 assessment effort for efficient placement of
17 these devices. Our findings are telling us there
18 are few locations for contiguous drainage to
19 maximize what funds we have to treat stormwater
20 for trash using large devices. We prefer large
21 devices over small devices as our experience with
22 cleaning both has proven that large devices are
23 more financially sustainable for maintenance
24 costs.

25 Because we have limited locations to

1 install trash capture devices, we ask that the
2 trash reduction requirements be extended to allow
3 for other trash control measures such as BASMAA's
4 Inlet Screen and Street Sweeping Study to be
5 complete, so we have another more cost-effective
6 means to control trash and meet trash reduction
7 goals. Purchasing, installing and program
8 management is going to take more than the time
9 that the permit allows.

10 Second, Hayward spends a considerable
11 amount of time and resources to engage with its
12 populace and outreach to its community about
13 trash and other blight problems in the City.
14 Even more programs will be implemented this
15 fiscal year and beyond because the community
16 deserves and desires this action and is true
17 source control other than banning trash products
18 altogether.

19 Also, by the good graces of the EPA,
20 Hayward was awarded through the Water Quality
21 Improvement Fund our project to develop first
22 through 12th Grade trash reduction curriculum and
23 reach out to all public and private schools in
24 our city in the next four years. No trash
25 reduction credit is given towards these efforts.

1 Unfortunately, these efforts also cannot be
2 linked to a specific street or area where trash
3 assessments can result in credit.

4 We ask that Water Board staff provide
5 credit under a reasonable scale for outreach
6 efforts for this nature if these efforts are
7 documented by cities. If no credit continues to
8 be the standard, then we ask that trash outreach
9 in C.7 be removed as it does not support C10
10 efforts.

11 And lastly, though we appreciate credit
12 allowed for additional creek and shoreline
13 cleanups, a maximum credit of five percent is not
14 enough. Please reconsider more credit to be
15 allowed for such an important control measure.
16 Hayward cleans creeks at least twice per year,
17 preventing a large load of trash from entering
18 the Bay. We would appreciate more credit where
19 we feel credit is due from our maintenance staff
20 and volunteers because they work tirelessly to
21 control trash. Thank you very much.

22 CHAIRPERSON YOUNG: Thank you. No
23 questions, thank you. Mr. Allen and then Eric
24 Anderson, please.

25 MR. ALLEN: Good afternoon. My name is

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1 Vaikko Allen, I'm the Regulatory Director for
2 Contech Engineered Solutions, and I did take the
3 oath.

4 I wanted to kind of bring a cautionary
5 tale from Los Angeles to you. As you know, they
6 have trash TMDLs down there, and last month they
7 reopened the trash TMDLs for the LA River and
8 Ballona Creek, and one of the important things
9 that they found there is that they couldn't
10 really tell how far along the cities had come as
11 far as reaching their compliance goals, which are
12 100 percent either this year or next year for
13 those two waterways.

14 Part of that was the lack of consistent
15 reporting by the Permittees back to the Board, so
16 the Board was looking at the information saying,
17 "We don't have enough information here in a lot
18 of cases to actually assess whether or not you're
19 in compliance." So there obviously is an
20 opportunity to improve on the process here by
21 having some more consistency in that reporting
22 back. A big part of it was the maintenance
23 reporting, that's all self-reported and there
24 isn't a consistent method whereby the Permittees
25 are reporting the status, the kind of operational

1 condition of their BMPs back.

2 The other thing is that there was no real
3 clear evidence in the receiving waters that we
4 had had any impact at all. There was some
5 photographic and anecdotal evidence, but there
6 was no receiving water monitoring required as
7 part of the TMDLs, and therefore it just wasn't
8 conducted. That's not to say there isn't good
9 progress being made, but it just was simply not
10 quantifiable. And since we are working toward
11 very numeric, prescriptive targets here, you
12 know, 10 percent per year for example, we need to
13 be able to judge that somehow.

14 So a couple of things that this MRP
15 version does right, I think, we are looking at
16 receiving water monitoring as an integral
17 component here, and I think that that needs to be
18 strengthened and possibly strengthened even more
19 than the current draft offers.

20 On the O&M side of things, I would
21 suggest that photos are very powerful.
22 Typically, as especially people are cleaning out
23 full capture systems, it's very easy to take a
24 before and after photo, and that can be something
25 that the Board can use to go back after the fact

1 and see just how well these things are doing, and
2 actually be used by the public works people, as
3 well, to go back and say, "Are we cleaning these
4 things often enough? Because here's the picture
5 when we went out there on this date and it was 40
6 percent occluded," or whatever.

7 Last in the remaining, I just want to
8 address a comment before about the C3 devices,
9 kind of a little bit of a separate topic. So
10 these are thinking about biofilters and things
11 like that. I just want to point out that there's
12 a sizing difference between those systems and the
13 trash capture standard. Trash systems need to be
14 sized for the one-year, one-hour storm event and
15 the C3 devices are sized for the 85th percentile
16 design event. What that really means in
17 practical terms is that often times the C3
18 devices are sized for about .2 inches per hour,
19 and the one-year, one-hour intensity is typically
20 .4 to .6 or .7 inches per hour. So if we just
21 used those devices for trash, we have to
22 recognize that we're going to need to send two,
23 maybe three times as much flow through them.
24 Just simply screening the outlet I'm not sure is
25 the right approach there because then you end up

1 surcharging, sending a lot more flow through,
2 which can scour mulch and cause all kinds of
3 other issues, so we need to be careful what we're
4 doing there. We don't want to adversely affect
5 the performance of those systems. Thank you.

6 CHAIRPERSON YOUNG: Thank you.
7 Questions? Thank you very much. Mr. Anderson
8 and then Kirsten Struve, please.

9 MR. ANDERSON: Hello, my name is Eric
10 Anderson, I'm the Environmental Safety
11 Coordinator for the City of Mountain View. And I
12 have taken the oath.

13 Thank you for the opportunity to provide
14 comments on Provision C10 of the reissued
15 Municipal Regional Permit requiring trash load
16 reduction actions. The City has reduced an
17 estimated 41 percent of trash loading through its
18 storm drain system by installing and maintaining
19 full trash capture devices and implementing other
20 trash control measures.

21 City staff have been evaluated projects
22 and actions to reduce an additional 38 percent,
23 which is required to achieve the 70 percent trash
24 reduction requirement by 2017. During this past
25 fiscal year, the City contracted with a

1 professional engineering firm to complete a
2 citywide trash capture feasibility study. The
3 goal of the study was to evaluate trash
4 management area information and the City's storm
5 drain system to identify potential full trash
6 capture projects that could be implemented to
7 achieve the additional trash reductions to comply
8 with the 70 percent trash reduction.

9 The study evaluated 25 different full
10 trash capture options. Ultimately six potential
11 projects have been recommended that would
12 increase the City's trash reduction to 70.2
13 percent. The estimated total lifetime cost for
14 the six projects is \$7 million. That's a large
15 amount with limited funds. And it only gets us
16 part of the way.

17 The City is committed to implementing
18 trash reduction actions, including full trash
19 capture projects; however, the high cost to
20 install and maintain the full trash capture
21 devices has put the City in a position of seeking
22 lower cost alternatives. The City is also
23 tracking trends related to stormwater funding
24 mechanisms to plan for long term implementation
25 of trash and other MRP requirements such as the

1 Green Infrastructure projects.

2 The extent of capital projects required
3 to comply with trash and the Green Infrastructure
4 requirements, and the high costs associated with
5 these projects, will require careful evaluation
6 and planning. Extending the deadlines and
7 timeframes to achieve the trash reduction
8 requirements will allow Cities to implement trash
9 actions in a strategic and more cost-effective
10 way. Additionally, extending the timeframes or
11 building in flexibility will allow Cities to
12 align trash reduction projects with long term
13 Green Infrastructure projects.

14 And just lastly, I'd like to support
15 previous comments about increasing the trash
16 reduction credits for source controls, cleanup,
17 and direct discharge trash actions. It will
18 provide a more accurate accounting of trash
19 reduction actions implemented by the City. Thank
20 you.

21 CHAIRPERSON YOUNG: All right. Thank you
22 very much. Ms. Struve and then Nancy Humphrey,
23 please.

24 MS. STRUVE: Good afternoon, Honorable
25 Board Members. My name is Kirsten Struve, I'm

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1 with the City of Palo Alto Public Works
2 Department. I will be speaking about the source
3 control provision in C10. Thank you so much for
4 the opportunity to comment and thank you for
5 including source controls in this MRP in
6 recognition of the importance to reduce trash in
7 our creeks and bay.

8 Echoing many of the other commenters, we
9 would like to see the maximum reduction raised to
10 up to 25 percent because the trash assessments
11 that we conduct, the visual assessments are not
12 designed to detect small changes in trash, and
13 these changes can be small. The City of Palo
14 Alto has been a leader in implementing source
15 controls for litter even before the first MRP.
16 Palo Alto was one of the first Municipalities
17 back in 2008 to adopt a plastic bag ban for
18 grocery stores, and adopted a Polystyrene ban and
19 non-recyclable plastic at food vendors in 2009.

20 Each of these actions has required
21 extensive staff time. In order to expand our
22 plastic bag ban in 2013, we had to conduct an
23 EIR. We have now expanded it to all retail and
24 restaurants. We have extensive data showing how
25 these actions have reduced trash. We have

1 compliance data from our stores. We've sat
2 outside of grocery stores and pharmacies since
3 2008 every year to see what customers are using
4 when they're exiting the store. We have found
5 that 76 percent of customers are now using re-
6 usable bags or no bags, exceeding even the
7 expectations in our EIR.

8 We also track what we find in our trash
9 cleanups and we also were one of the first Cities
10 to implement a trash boom, so we track that data
11 separately, as well. And a comparison of litter
12 counts at Matadero Creek between 2014 and 2012
13 shows an 85 percent reduction in plastic bags.
14 And field observations prior to and after the
15 2013 expansion show a 90 percent reduction in bag
16 litter. Based on this data, we claimed seven
17 percent for our bag ordinance and five percent
18 for Polystyrene in our last Annual Report. We
19 plan to do more of these actions, we want to
20 expand our Polystyrene ban to include the sale,
21 we've done outdoor smoking bans, we would like to
22 look at working with Clean Water Action on
23 reducing disposables, so we really feel there is
24 more that we can do and that it shouldn't be
25 phased out because it will be a long term

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1 benefit, and so again we would like to see the
2 maximum reduction to be up to 25 percent to keep
3 an incentive going and allow us to have funding
4 for these programs. Thank you very much.

5 CHAIRPERSON YOUNG: All right, thank you.
6 Okay, Ms. Humphrey and then Chris Sommers,
7 please.

8 MS. HUMPHREY: Hi. I'm Nancy Humphrey and
9 since I did take the oath to tell the truth, I'll
10 let you know that I'm representing Emeryville
11 today. We Permittees want what you want, we want
12 cleaner creeks and a cleaner Bay. We want what
13 you want. And we work hard with all these people
14 and many behind them are working hard every day
15 toward that. And you can help expand our
16 effectiveness pretty easily and maybe by a lot,
17 and that is in my issues with the reporting. And
18 it's not so much with the manner of reporting,
19 electronic or paper or what, it's what is the
20 depth and breadth of what is asked for each year.
21 As I have said in some cases, in some meetings, I
22 estimate that about 30 percent of my time
23 available for stormwater is spent on the
24 reporting. I would like to use that time better,
25 and I know that the volume of information that

1 the staff gets and the frequency, the annual
2 frequency with which they get it, means that they
3 can't make their way through it either. I think
4 if we really radically rethought the reporting
5 schedule and what is reported in a way that
6 boiled it down to key indicators, it would help
7 us accomplish what we need to accomplish and help
8 the Board staff know what we're doing and what
9 we're not doing. So that is my main request.

10 So my ideas are, as I say, either reduce
11 the volume of the data, boil it down, reduce the
12 frequency, or stage them so that each
13 municipality isn't doing it each year, that would
14 all help. And last, as I asked at the last
15 hearing, please don't have us report on the two
16 permits in one reporting period. That's what
17 I've got today.

18 CHAIRPERSON YOUNG: Okay. Well, I
19 appreciate those comments. And you probably know
20 that I've been struggling for a long time on how
21 to actually go about reducing the reporting
22 requirements and, in fact, one of the previous
23 workshops that we had on trash specifically
24 listed we would love to have your ideas on how we
25 can reduce the reporting requirements and still

1 have accurate measurements of what your
2 compliance level is. And at that workshop, we
3 got zero comments on suggestions for reducing
4 reporting, so, you know, our door is still open
5 is the message I want to convey on figuring out
6 how to rethink the reporting requirements so
7 that, as we can move into a system where, you
8 know, you've got monitoring on the street, or
9 you've got monitoring in the receiving water and
10 you're showing results, that the tradeoff is that
11 you reduce the reporting requirements
12 accordingly. But I think you as the Permittees
13 could really be helpful in helping us to figure
14 out how to design that shift. So I'm glad you're
15 interested and we'll continue the conversation.

16 MS. HUMPHREY: Okay. Thank you.

17 CHAIRPERSON YOUNG: Thank you.

18 VICE CHAIR MCGRATH: I want to echo that
19 and this isn't over at this stage, I mean, I as a
20 Board Member am going to press for stronger
21 monitoring, stronger monitoring that is results
22 oriented comes out of a very clear decision we
23 made at the last permit stage to not put as much
24 money into monitoring as some were urging, to let
25 each local government try to tailor a program.

1 My look back at that is that we don't
2 have enough results information to be able to
3 tune the programs and we need to do that. So I'm
4 distinguishing between monitoring which could be
5 used to adjust the program and report it.
6 Whatever we're likely to do and whatever the
7 close of comment period is, is not going to stop
8 you continuing on all of the efforts to try to
9 help us develop a program that effectively
10 monitors without overly reporting. So that
11 doesn't -- you've got more than until Friday!

12 CHAIRPERSON YOUNG: As my mother, who
13 would be very old by now, used to say, you know,
14 "The proof is in the pudding," you guys have all
15 heard that expression; my feeling, and I'm pretty
16 sure Jim shares this, is if we can go out into
17 the waterways, or even into the streets, and
18 document that there is compliance, then we don't
19 need to see all the other reports telling what
20 you did and how you did it. And that's the point
21 we want to get to.

22 MS. HUMPHREY: Uh-huh.

23 CHAIRPERSON YOUNG: So again, appreciate
24 your comments.

25 MS. HUMPHREY: All right, thank you.

1 CHAIRPERSON YOUNG: Did you have
2 something?

3 MR. LEFKOVITS: I do have a question.
4 Can I ask it in a different way, are there any
5 things that come to the top of your mind that are
6 examples of extraneous things that get asked for
7 in reporting?

8 MS. HUMPHREY: You know, I'm one of the
9 worst people to ask that because I've only been
10 through one cycle. But what I do know is, I was
11 just looking at -- this is just off the top of my
12 head -- we're required to list all the projects,
13 private projects, that we did with LID coverage
14 and a lot of data about each of those projects.
15 We have to gather that off, you know, building
16 permits, stormwater permits, and we sort of run
17 around the building trying to get that. I don't
18 know that that is useful, that those individual
19 lines of information are useful, or even that
20 what the volume is, it's just does your city
21 require this? Yes/No. You know? That should
22 cover it. Yeah, every project that was over
23 5,000 or 10,000 square feet, we did this to a
24 minimum of the four percent, you know, coverage
25 and we did the LID treatment as required. I

1 can't see your staff spending a lot of time
2 looking at each of those developments. That's
3 just one example.

4 MR. LEFKOVITS: That's a good example,
5 thank you.

6 MS. HUMPHREY: Okay, thanks.

7 CHAIRPERSON YOUNG: All right, Mr.
8 Sommers and then Gene Waddell, please.

9 MR. SOMMERS: My paper says good morning,
10 but I don't think it's morning. Good afternoon,
11 my name is Chris Sommers. I did take the oath.
12 I coordinate the Trash Committees for both the
13 Santa Clara and the San Mateo Countywide
14 Stormwater Programs. I've had the pleasure also
15 of serving for about the last 15 years on the
16 Regional Monitoring Program's Technical Review
17 Committee working with SFEI and their staff, and
18 assisted in designing a number of creek
19 monitoring programs throughout the Bay Area and
20 other places in California. I also serve for
21 BASMAA as the Project Manager for the Tracking
22 California Trash Project, which has been
23 mentioned a few times today.

24 So my comments are really focused on
25 monitoring and I did want to get back to the

1 reporting piece at the end of my comments, as
2 well, specifically, the receiving water
3 observation piece. And, you know, I've spoken
4 with a number of the Permittees, NGO
5 representatives, other regulatory agency
6 representatives, and I think we're all just a
7 little bit confused by how it's written right
8 now. We're not really sure about what the
9 overall intent of the receiving water monitoring
10 is, we're not necessarily opposed to it, we just
11 want clarity and exactly what it's trying to
12 achieve. And I know those who have been involved
13 in monitoring before know that it all stems from
14 the question you're trying to answer at the
15 beginning, right? That question right now is not
16 really well-defined within the permit itself, and
17 so I really think we need to take a hard look
18 collectively on what we're trying to achieve by
19 receiving water observations. I think there's a
20 lot of kind of talking past each other about what
21 is compliance determinations versus which we've
22 kind of set up this process in the permit now
23 about how compliance is being determined through
24 full capture, on land assessments, other
25 effectiveness assessments, versus receiving

1 waters which also are inundated with other
2 sources of trash, which clouds our ability to
3 detect improvements associated with the on land
4 management actions that are happening, as well.

5 So I really encourage staff over the next
6 two or three months for us to really figure out
7 kind of what is that provision really trying to
8 achieve. And then let's phase this process
9 through the next, you know, few years. There's
10 not really clear methods. I'm the first one to
11 tell you that as the expert on this issue, there
12 are not real clear methods, monitoring methods,
13 on how to monitor trash for what outcomes in
14 receiving waters. We're testing that through the
15 Tracking California Trash Project, we've done the
16 literature reviews, there's a reason why we
17 didn't actually start with outfall monitoring at
18 the beginning because it's really really hard to
19 do. These outfalls are in very hard places to
20 get to. Just putting a net over the end of an
21 outfall is not really a good approach, it's been
22 very rarely tried through our literature reviews.
23 One place it was tried, as was said earlier, was
24 in LA County through Caltrans, it was a very
25 discreet, you know, right next to the roadway

1 outfall that they could get to very easily and
2 look at storms. It is not something that can be
3 done on a vast type of approach. That means we
4 have to look at other types of monitoring, you
5 know, as surrogates for both our improvements up
6 on the land, via on land visual assessments.
7 There was a little bit of discussion about that,
8 I just want to say it is a work in progress, that
9 protocol. You know, me and my staff kind of
10 created that protocol based on what we found out
11 in the literature through other nations, through
12 other groups that have been doing this around the
13 world. We are through the Tracking California
14 Trash Project trying to create the linkage
15 between what we're seeing on the land, what's
16 coming through the storm drain system, and our
17 grades that we give the streets at the end of the
18 day, that is our goal through that project which
19 will end at the end of the next calendar year in
20 2016.

21 And then we're in the process of
22 analyzing all the data that we've collected for
23 on land visual assessments, which is up to over
24 1,500 sites now, 1,500 assessments, I should say.
25 This has been done in Santa Clara and San Mateo.

1 So we're learning a lot through that process
2 around variability of those spatial and
3 temporally. You know, how many assessments does
4 it take to actually get adequate depiction of
5 what's happening out there on the streets, both
6 at that site and extrapolation to other areas.
7 And so we're learning through this process, but
8 it does take time.

9 And then lastly on the reporting side of
10 things, you know, a good concrete example on the
11 trash piece is that we now report on every trash
12 management area, so there's a table associated
13 with every trash management area that talks about
14 the control measures being implemented, the on
15 land assessment results, the outcomes associated
16 with that, the full capture acreage, all of that.
17 So every TMA has at least one page, maybe more
18 than one page, for some like the City of San
19 Jose, they have something like 47 TMAs, so it's a
20 huge report at that level and volume of material.
21 So I think there's other ways we can work with
22 staff on trying to reduce the volume of material
23 that is coming and getting the right indicators
24 and getting the right information that we all
25 agree is depictive of what's happening out there.

1 So that's all I have.

2 CHAIRPERSON YOUNG: Okay. All right,
3 thank you. Gene Waddell and then Dan Cloak,
4 please.

5 MR. WADDELL: Honorable Board and Board
6 members, my name is Gene Waddell. I've taken the
7 oath. I work with the City of Fremont,
8 Environmental Services Division, where I am
9 involved with the City's efforts to reduce trash
10 and comply with C10 requirements. I'm here to
11 comment on three elements of proposed C10
12 provisions, private lands, maintenance intervals,
13 and source control reduction credit.

14 Before commenting on the first two items,
15 I'd like to offer some background on Fremont's
16 approach to trash capture device installation and
17 maintenance. Our strategy for reducing trash
18 centers on an aggressive program of installing
19 full trash capture devices that meet Water Board
20 requirements and standard city-owned drain
21 inlets. These devices easily integrate into the
22 City-owned drain inlet infrastructure and do not
23 cause any site disturbance or conflict with any
24 other utilities.

25 During the past four years, we've

1 installed more than 500 of these devices in or
2 directly adjacent to high and moderate trash
3 generating areas, most of which are located along
4 busy thoroughfares or near commercial areas. We
5 plan to install another thousand to 1,100 of
6 these devices over the next few years to provide
7 additional trash capture coverage. We're also
8 hoping that our collaboration efforts with
9 Caltrans will allow even more of these devices on
10 the Caltrans right of ways that transect our
11 city.

12 We've had good experience with these
13 devices and there have been no instances of
14 flooding, evidence of trash bypass, or device
15 damage. And we attribute this good experience to
16 two factors: careful device siting, we make sure
17 that the vault size of the drain inlets is
18 adequate and that the conveyances within the
19 drain vaults are appropriate to sustain effective
20 trash control. We also target our maintenance
21 for inlets with full trash capture devices. This
22 targeted maintenance includes a pre-rainy season
23 inspection to determine the amount of material
24 that's organic matter and trash, in each trash
25 capture device and inlet vault. We also do

1 priority cleaning for trash capture device inlet
2 vaults containing more than 10 percent of
3 material.

4 So in respect to the proposed private
5 lands requirement, we feel that expanding trash
6 capture requirements to retrofit private lands
7 will be extremely burdensome at local agencies.
8 Fremont estimates it will cost over \$100,000 per
9 year to create the storm maps, and then allocate
10 the staffing resources needed to create storm
11 drain maps and then allocate needed to ensure
12 compliance. It's also unclear whether the local
13 agencies have the legal authority to compel
14 private owners to retrofit properties with trash
15 capture devices and demonstrate an acceptable
16 level of inspection and maintenance in the
17 absence of them seeking a development permit from
18 the City, or having to abate a nuisance.

19 Also, recent field visits to shopping
20 centers of varying age as an experiment showed a
21 wide disparity of drain sizes, shapes, and depth.
22 Staff concluded that some of the drains would
23 support devices and, of course, others wouldn't.
24 Further, while Fremont has a good storm drain map
25 resource for public rights of way, drainage lines

1 for private lands are also unmapped or archived
2 on building plans.

3 So as an alternative to proposed
4 language, we suggest that expanding trash capture
5 devices to private lands be included on a going
6 forward basis as part of C3 new development and
7 redevelopment projects. Such an approach for
8 regulated projects would allow a structured
9 method of updating private storm drain maps,
10 increasing trash capture coverage, and reducing
11 the chance of flooding and trash bypass due to
12 private infrastructure constraints. We feel that
13 this strategy would achieve the desired effect
14 without causing an unreasonable staffing and
15 fiscal burden to member agencies.

16 With respect to maintenance interval
17 requirements, our position is that the prescribed
18 maintenance intervals proposed may not strike the
19 right balance between existing staff resources
20 and ensuring the trash control devices are
21 working properly. We believe that using the
22 approach of site-specific targeted maintenance,
23 such as I described earlier, of pre-rainy season
24 inspection and priority cleaning would be a more
25 effective way to prevent plugging, flooding or

1 bypassing of trash.

2 We ask that the Board remove new
3 maintenance frequency requirements for high and
4 very high trash generation areas.

5 On the last point, I just agree with what
6 everyone else said about source control. We feel
7 that we should do more credit for that. That
8 concludes my comments. Thank you.

9 CHAIRPERSON YOUNG: All right, thank you.

10 VICE CHAIR MCGRATH: Excellent
11 organization of the testimony. You, if I
12 remember correctly, you've installed 500 devices
13 and you plan for 1,100 more.

14 MR. WADDELL: Yes, sir.

15 VICE CHAIR MCGRATH: You know which ones
16 are kept sharing things and you've been careful
17 in siting, which thrills the bejabbers out of me,
18 you know, as an engineer. I mean, it's kind of
19 what needs to be done. Can you tell me off-hand
20 roughly what your cost and your range of cost is
21 for annual maintenance for a device?

22 MR. WADDELL: Yes.

23 VICE CHAIR MCGRATH: I thought you could.

24 MR. WADDELL: It's just a little bit more
25 than our regular maintenance, so we call it a

1 half hour a drain, call it \$75.00 a drain per
2 year.

3 VICE CHAIR MCGRATH: And for the second
4 question, which is the concern that we have about
5 capturing perhaps poorly designed facilities, if
6 I read your testimony correctly what you're
7 arguing is that for your old sloppy commercial
8 areas, you expect them to be redeveloped at an
9 appropriate rate and in that process you can
10 capture proper drainage requirements from them?

11 MR. WADDELL: Exactly. We could have
12 them draw up a proper map when they apply for the
13 building permit, they would be required to have a
14 properly sized conveyance system, they could put
15 in appropriate trash control devices, and they
16 would be subject to C4 already established
17 inspection methods.

18 VICE CHAIR MCGRATH: All right. Well, I
19 just got to tell you editorially, some people
20 come prepared to give really clear and convincing
21 testimony and you're one of them. Thank you.

22 CHAIRPERSON YOUNG: Well, I'm just so
23 blown over, I don't even know where we are now.
24 Okay, this is Dan Cloak, and then we will have
25 Michelle Mancuso.

1 MR. CLOAK: Hi. I'm Dan Cloak, I'm here
2 for the Contra Costa Clean Water Program. I'm a
3 consultant and I've been assisting California
4 Municipalities with Stormwater NPDES compliance
5 for, oh, since about 1992.

6 Just on measurement, it just hadn't been
7 quite stated explicitly today and I just wanted
8 to say, you know, in the stormwater business the
9 inherent variability in the data is often so much
10 that you cannot detect a trend, and it's very
11 difficult to detect a trend in the short term.
12 But for a lot of these programs, particularly
13 when people were talking about wanting credit for
14 outreach and education and source control
15 programs, those have to be budgeted in the short
16 term, and we're up against some very hardnosed
17 fiscal people on the municipal side, and if they
18 want to see the results early, and you'd like to
19 see the results early, but if you demand the
20 results early or say no credit, well, those
21 things are going to go away because they're not
22 going to be budgeted for. So you've got to have
23 a little faith, I think, and say, yeah, if you
24 think education is a good idea, you've got to put
25 some credit in the permit for it for the

1 compliance; if you think source control is a good
2 idea, you've got to have a little faith and say,
3 yeah, we're going to give substantial credit,
4 enough to incentivize that.

5 There's two things where we really have
6 seen, surprisingly enough, hey, something really
7 worked and we can see it. One is the source
8 control requirements, we've seen that with
9 Diazinon, we saw it with plastic bags, I think
10 we'll see it with other things. So often a
11 product ban works.

12 The other thing that works is treatment.
13 It only works where you're actually doing the
14 treatment, but you can obviously see a big change
15 in the water quality from the inlet to the outlet
16 side of the treatment device.

17 We like LID for all pollutants, but also
18 for trash. One of the reasons we went to LID was
19 it's there on the ground, you can see it working,
20 you can see the trash collecting, you can get the
21 trash out of there, the community gets involved
22 often in removing it, and so we think that it's a
23 preferred solution. The issue has been raised
24 about, first of all, I think Mr. McGrath, you
25 raised the issue about its practicality for use

1 in this. It's working great as long as the
2 criteria are reasonable on development projects.

3 On Green Infrastructure, I think it
4 remains to being seen what I'm seeing out in the
5 field as I try to design these, is in the right
6 place it's really cheap and easy, in other places
7 it can get really really hard, so you've got to
8 have the flexibility to apply it in the right
9 places.

10 I want to specifically address the issue
11 that was raised about whether these LID
12 facilities are full trash capture and how we make
13 sure that they are. I just want to say the
14 hydrology is a little more complex, I think,
15 maybe than Vaikko Allen was suggesting. Facility
16 design for C3 compliance basically captures
17 almost all of the one-year, one-hour storm, even
18 before it starts to treat because obviously
19 you've got a pond which is going to capture a
20 good part of that volume. What we don't know yet
21 is how that volume and the maximum intensity
22 relate to each other as that design storm passes
23 through. We talked about it a lot over the last
24 two years, but we never had the arrangement or
25 the authority to go and do the study to see how

1 the storm that we're designing for, for C3, and
2 the storm that we're designing for for trash,
3 relate for each other. What we're asking for is
4 enough flexibility in the permit language, we've
5 provided a specific example basically to say, if
6 needed, we would make some alterations on the
7 outlet end in order to ensure that it meets the
8 trash requirements, as well as the C3
9 requirements. I think we may find that it
10 doesn't. Thank you.

11 CHAIRPERSON YOUNG: All right, thank you
12 very much. This is Michelle Mancuso, then we'll
13 have John Konnan.

14 MS. MANCUSO: Hi, good afternoon. I'm
15 Michelle Mancuso from Contra Costa County. I
16 would like to bring up a couple concerns that
17 Contra Costa County has relating to, 1)
18 maintenance requirements of full trash capture
19 devices, and 2) the certification requirement
20 that devices are being maintained.

21 Unincorporated Contra Costa County is
22 pretty is pretty large, it's about 720 square
23 miles. We have about 7,000 drainage inlets and
24 at this point we have about 260 trash capture
25 devices. As others are put in overtime, there

1 will be additional trash capture devices. Our
2 Public Works Maintenance cleans the devices,
3 replaces parts, and maintains the system, and
4 they're very aware of the different inlets and
5 devices that have specific problems or may
6 acquire specific needs due to different
7 situations. And different types of capture
8 devices have different issues, whether they're
9 retractable screens and they get stuck, or bent,
10 or top hats have filter material that needs to be
11 replaced, or gets clogged.

12 In this revision of the permit, we thank
13 you for changing the automatic doubling of the
14 maintenance frequency that was initially
15 proposed, that would have been quite burdensome
16 and difficult to keep track of. In Provision
17 C10.b which is the demonstration of trash
18 reduction outcomes, the County requests that the
19 Board, 1) establish maintenance requirements
20 based more on characteristics of device type,
21 drainage area, and related characteristics such
22 as vegetation and amount of trash.

23 We propose a minimum requirement of
24 inspecting the trash capture devices of once per
25 year. Maintenance, of course, will be inspecting

1 them more often as appropriate to make sure
2 they're properly functioning, and will not create
3 flooding or have other problems. But it becomes
4 burdensome to have too many specific requirements
5 to manage and then report on.

6 The second item we request is that the
7 Board review the certification requirements. We
8 request that the certification be an overall
9 certification of a municipality's operation and
10 maintenance program, thereby certifying that a
11 municipality has a maintenance and operation
12 program that appropriately incorporates
13 maintenance of trash capture devices, as opposed
14 to having a more specific certification that is
15 linked to all the specific devices, similar to,
16 as Mayor Pro Tem Laura was talking about, I
17 believe she was from Walnut Creek.

18 For Contra Costa County, maintenance is
19 ongoing and there's any number of problems that
20 are sometimes out of our control at any one
21 particular time, which is why it's difficult to
22 certify that all of the devices are working 100
23 percent at all times, being the reason why we
24 would like an overall certification.

25 We appreciate your consideration on these

1 issues and we hope that we can focus on the goal
2 of cleaner stormwater as opposed to detailed
3 permit requirements. Thank you.

4 CHAIRPERSON YOUNG: All right, thank you.
5 John Konnan and then John Steere.

6 MR. KONNAN: This is a long item.
7 Hopefully we're getting into the home stretch.
8 Chair Young, Members of the Board, I'm John
9 Konnan with EOA here on behalf of BASMAA. And I
10 took the oath.

11 I'd like to change course briefly and
12 talk about provision C12, for just PCBs, with the
13 goal just to hit a few highlights, point you guys
14 in the right direction, and then when you get the
15 comment letters you can delve into the details,
16 if I may.

17 So Chair Young, you mentioned earlier
18 some areas requiring Permittee analysis and some
19 concern around that. One of those was an
20 accounting system to determine whether or not
21 load reduction requirements are met. We agree
22 wholeheartedly with the need for certainty on
23 accounting and we actually provided staff with a
24 complete system for PCBs already. Most of that
25 is in the Fact Sheet, but not all of it.

1 MS. WON: Excuse me. Mr. Konnan, are you
2 going to testify about trash or PCBs? Because
3 this hearing is for trash.

4 MR. KONNAN: PCBs. We were hoping that
5 PCBs would not get lost in all the talk about
6 trash and so forth, it's of critical importance
7 to the Permittees, and really I just wanted, as I
8 said before, to point these guys in the direction
9 of some highlights for the comment letters that
10 will be submitted.

11 CHAIRPERSON YOUNG: We had a full day's
12 opportunity for testimony last month on PCBs, so
13 what I would ask you to do is to hit the
14 highlight points very very quickly and then we'll
15 read your written comments, of course.

16 MR. KONNAN: Okay, thank you. That's the
17 intent. Okay, so we talked about the accounting
18 system. The problem is that some of the
19 parameters have huge uncertainty and that's
20 something that's not going to get better any time
21 soon, and also many of the parameters in the
22 accounting system are beyond Permittee control.
23 Examples include rate of development, rate of
24 demolition, and the number of hot spots that will
25 be found and referred for cleanup.

1 So because of this uncertainty and lack
2 of control, Permittees might miss the load
3 reduction numbers and therefore would be very
4 vulnerable to third party lawsuits, which could
5 be very costly.

6 So topic 2, PCBs in building materials.
7 We also talked about that earlier today. Very
8 glad to hear that you feel that a statewide
9 approach is worthwhile. This is a good cause,
10 everybody recognizes that, there's no doubt about
11 that. The catch is that many of the issues go
12 well beyond water quality and it's going to take
13 more than three years to develop a statewide
14 approach.

15 So what we are asking is that you please
16 direct your staff to allow at a minimum the
17 entire permit term to allow Permittees to work
18 with the State, with U.S. EPA, building industry,
19 and other stakeholders to develop a holistic
20 statewide program that would be analogous to
21 existing asbestos and lead paint programs.
22 That's it. Thank you.

23 CHAIRPERSON YOUNG: All right, thank you.
24 Now we'll have John Steere and then Gary De
25 Jesus.

1 MR. STEERE: Good afternoon, Board. My
2 name is John Steere, a Watershed Planner with
3 Contra Costa County Watershed Program. My points
4 are really hearkening to community engagement
5 points that were first made by Directors
6 Kissinger and Lefkovits, and also alluded to in
7 Save the Bay's comments and those of Diane
8 Burgis, Lesley Estes, and a few others.

9 I think really speaking to one of the
10 best source controls is changing human behavior.
11 We recognize, as sort of attested here behind
12 you, that the new MRP should recognize and credit
13 trash load reduction actions that are based on
14 community engagement, education, and
15 participation, and that seek to demonstrate a
16 Permittee's investment in that long term
17 behavioral changes in reducing littering and
18 illegal dumping in a trash challenged community
19 such as I'll be discussing momentarily, like
20 North Richmond or Bay Point as are in Contra
21 Costa.

22 So revising specifically MRTCl0A which is
23 regarding the non-full trash capture device
24 actions to include in these incentives and
25 provide a credit of, you know, at least five

1 percent, maybe going up to 10 for Permittees'
2 collaboration, long term, with community groups
3 and members, and implementing long term
4 engagement, education, and cleanup initiatives in
5 trash challenged communities will go a long way
6 to, I think, institute no service needs for
7 communities like North Richmond.

8 We would like to encourage the Board to
9 direct their staff to work with Permittees to
10 explicitly credit these kinds of programs to
11 ensure that these programs will continue. It
12 isn't enough for the Board to encourage these
13 programs and then approve a permit that doesn't
14 really provide incentive or credits towards this
15 compliance.

16 The need for the Permit to recognize and
17 credit trash load reduction actions that may not
18 pay dividends immediately need time to be
19 realized is an issue associated with North
20 Richmond, in particular, and also in Bay Point,
21 which these are two of our most trash challenged
22 communities. And so the County has really made a
23 point to invest in these communities. In the
24 case of North Richmond, we are engaged in
25 something called the North Richmond Green Team

1 Project, and that is a long term effort which
2 will ultimately engage the community in hiring
3 people in the community to clean up after and do
4 beautification projects. This is sort of the
5 pilot project in the North Richmond Green Team
6 and you can see we're cleaning up here on Wild
7 Cat, and then also with respect to other
8 beautification projects, working essentially to
9 do regular street cleaning on two of the most
10 trashy streets. This is a good way for the Board
11 to recognize if you have credits, a five-day
12 percent will be a good way to reward and
13 recognize these kinds of efforts which go a long
14 way towards the multi-objective approach, which I
15 think we've heard a lot of here today, not simply
16 about single purpose full trash capture devices,
17 but really about creating a community that works
18 for everyone, not only the trash, but
19 beautification in this case, also creating a
20 native plants garden. So I encourage you to go
21 forward with this kind of approach because I
22 think it will bear long term fruits.

23 CHAIRPERSON YOUNG: Thank you very much.
24 Mr. Gary and then Cece Sellgren, please.

25 MR. DE JESUS: Good afternoon, Board,

1 Chair. Gary De Jesus, City of San Mateo. I'm
2 here to share with you some of my thoughts on the
3 Permit. You've heard more detailed testimony
4 than I plan to share with you in the next minute
5 and a half or so, but I was very encouraged at
6 the beginning of the meeting to hear the Board
7 talk about the importance of public behavior in
8 curbing trash reductions, and I think that's the
9 only way we're going to get to where we need to
10 be in 2017, is by collaboration with the public
11 and looking out and seeking innovative ways to
12 reduce trash.

13 Unfortunately, the way the draft is
14 written out with the five percent credit kind of
15 seems to me to be a disincentive to that, so it
16 appears there is maybe a little disconnect
17 between what the Board's view is of public
18 involvement and the actual way the Permit is
19 written.

20 The other thing Matt pointed out a little
21 while earlier was funding for a lot of these
22 things that we have in our Permits. You know,
23 there is a whole array of different ways agencies
24 are doing it. Some have a stormwater fee, some
25 have a solid waste fee, some even charge their

1 General Fund or their wastewater enterprise
2 funds.

3 With these ever increasing mandates,
4 agencies need to find a way to pay for this type
5 of stuff and it's encouraging to see that the
6 State has taken another look at 218, but it's
7 going to require something like that so that
8 agencies like San Mateo can begin adopting or
9 increasing fees to offset the costs of these
10 programs, and so to get to where we need to get
11 to in 2017, I think it's going to have to be a
12 combination of working with our communities and
13 also seeking out ways to fund this type of
14 activity. And so if there's anything that the
15 Board can do to help in that area, it would be
16 greatly appreciated for cities like ours.

17 And then the final thing is maintenance.
18 I think there's a great opportunity here in the
19 permit to rely on our experts in the field to
20 help us develop maintenance plans and programs
21 that we can use to clean our trash capture
22 devices; I think arbitrarily calling out two
23 times a year, or whatever it may be is probably
24 not the most effective way. I think it would be
25 great to take advantage of our experts in the

1 field and have them submit plans to the Regional
2 Board that can be evaluated and recognized for
3 their innovation and maintenance. And that's all
4 I have.

5 CHAIRPERSON YOUNG: All right, thank you.
6 Ms. Sellgren and Obaid Khan.

7 MS. SELLGREN: Hi. My name is Cece
8 Sellgren and I am the Stormwater Manager for
9 Unincorporated Contra Costa County, as well as
10 the Flood Control District. I'm going to be
11 speaking mostly about County issues, but will
12 touch on hopefully if I have time a couple of
13 flood control issues.

14 So what I'd like to talk about is the
15 County's approach to dealing with trash in what
16 we call the trash challenged communities. And
17 Contra Costa County is not alone at this, there's
18 several cities in Contra Costa County that are
19 also trash challenged, there are other cities and
20 other counties, as well, that are trash
21 challenged.

22 So basically we are approaching this with
23 three stages of compliance. The first one we're
24 calling "Trash Service." We literally hired a
25 company to go out there and pick up trash in road

1 right of way in these trash challenged
2 communities to get us to 40 percent. And we
3 think that worked for us very well. But that is
4 not a long term plan because it costs a heck of a
5 lot of money, and it's probably not a good use of
6 taxpayer dollars in the long term, but it did get
7 us to that deadline.

8 Our second step is what we're going to
9 call "Self Service" and John Steere, who just
10 gave his presentation, he's with my group, and I
11 think this is an excellent example where we are
12 engaging the community and, indeed, we're going
13 to go out with a request for proposals from local
14 nonprofits in our trash challenged communities to
15 try to hire those nonprofit organizations to
16 start picking up trash and implementing an
17 outreach campaign, and that's a really big part
18 of that because ultimately we need to move from
19 trash service to self-service to no need for
20 service, and that's going to create a cultural
21 shift, okay? And indeed, it's going to be a
22 really challenging cultural shift to achieve.
23 And when you think about it, you know, imagine
24 yourself living in one of these trash challenged
25 communities and, you know, here a family is not

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1 making very much money, and you don't earn enough
2 money to be able to feed your kids, or pay the
3 utility bill, or maybe even pay the rent. And
4 you realize it's not safe to let your kids play
5 outside, or walk to school. And when you're in
6 those sort of situations, you really, the issues
7 of litter and trash in your community are an
8 aesthetic issue. It's about beauty. And for
9 those communities, for those members of these
10 communities, trash is not a priority. And so the
11 efforts that we're making to set the stage, this
12 is how clean your community can be, work with
13 nonprofits to be the ones that are making it that
14 clean, and then creating that cultural shift so
15 that the ordinary resident in that community
16 says, "Oh, yeah, look, it's a piece of trash, I'm
17 going to pick it up and put it in my pocket."
18 That's going to take a long time. And to be
19 quite honest, I don't think I'm going to meet the
20 70 percent goal through this strategy, and I
21 don't think I'm going to meet the 100 percent
22 goal through the strategy on your deadlines. And
23 I would posit that many of the other trash
24 challenged communities in the Bay Area are in a
25 similar situation. But we're going to get there,

1 it's going to take us a little longer, and it's
2 going to take a lot more effort, but we're going
3 to get there. But we will need accommodation.
4 Thank you very much.

5 CHAIRPERSON YOUNG: All right, thank you.
6 We'll hear from Mr. Khan and then Brett Calhoun,
7 please.

8 MR. KHAN: Honorable Chair, Vice Chair,
9 and the Board Members, I'm Obaid Khan,
10 Transportation Operations Manager for the City of
11 Dublin. Thank you for giving this opportunity to
12 speak at today's hearing. I appreciate your
13 staff work, working with the different agencies,
14 and coming to this point, MRP 2.0 draft permit
15 that we have in front of us. However, we still
16 have some significant concerns, some components
17 of Provision C10 Trash Reduction related
18 provisions. I'll go down, I really have three
19 specific comment and one last one about
20 reporting.

21 The Draft Permit requires visual
22 assessment covering 10 percent of a
23 municipality's trash management area's street
24 miles. This is an unduly burdensome requirement
25 and no rationale or protocol for this assessment

1 is provided. Dublin is a relatively small
2 municipality and as such we have limited staff
3 dedicated to our stormwater program. Given the
4 lack of scientific rationale or protocol, we do
5 not find the visual assessment a good use of our
6 limited staff resources. We believe that these
7 resources are better used to implement trash and
8 projects like full trash capture devices.

9 We ask that the MRP 2.0 only require such
10 assessment when a scientific protocol is
11 established that could generate useful data for
12 future programs or projects. So what we are
13 saying is that we are not opposed to these
14 assessments, but they need to have some rationale
15 or protocol that we can all follow.

16 Provision C10 requires municipalities to
17 conduct receiving water assessment to verify if
18 control measures being implemented within a
19 particular trash management area, reducing trash
20 within the receiving waters. Now we are trying
21 to link the land to the water. The amount of
22 trash within the receiving water is not
23 necessarily an indication that the onsite control
24 measures are effective or ineffective. Trash
25 within the receiving water is extremely variable

1 and can include trash that doesn't originate from
2 the MS4s. For example, trash from homeless
3 encampments and windblown trash, as we heard
4 before, like from Caltrans freeways. We
5 recommend that this requirement be removed from
6 the Permit or delayed until a reasonable study
7 has been done that provides a quantifiable link
8 between trash within the MS4 and the receiving
9 waters. Again, we are not opposing it, we are
10 asking for clarification and some guidance. We
11 also request that Provision C10 be revised to
12 provide additional incentives to municipalities
13 to implement source control measures. Source
14 control is an important strategy in reducing
15 trash in its current form and municipalities can
16 claim a five percent reduction. A five percent
17 load reduction for all source control action is
18 not adequate and does not incentivize cities to
19 implement source control measures. The City of
20 Dublin currently does not have a citywide
21 Polystyrene, a food source service ban would
22 realize the significant environmental benefit of
23 such a ban. The adoption and implementation of a
24 Polystyrene foam food source ban will require
25 considerable staff resources and political

1 support. Without additional incentives, it is
2 difficult to justify moving forward with such a
3 band. Would it command that the five percent
4 reduction be increased to 15 percent?

5 And then lastly, I think you have heard
6 that please keep one report for one permit, and
7 not ask us to do two reports. Thank you.

8 CHAIRPERSON YOUNG: All right. Thank
9 you. All right, Mr. Calhoun, and then Michelle
10 Daher.

11 MR. CALHOUN: Hello, I'm Brett Calhoun,
12 Senior Water Quality Specialist, Santa Clara
13 Valley Water District. Thank you for the
14 opportunity to speak before you. I'd like to
15 also thank staff for being very receptive during
16 this round of MRP 2.0. We've worked on issues
17 from water utility discharge and temperatures in
18 creeks, to some of these things and they've been
19 very very available, so I certainly appreciate
20 that.

21 I'm going to speak to the source control
22 issue, as well. We are not a co-permittee that
23 worries or has to meet the requirements of 4070-
24 100. We are a non-population-based co-Permittee.
25 However, the source control measures benefit us

1 greatly. In our cleanups and things like that,
2 we've noticed trash booms and elsewhere that
3 we've got many fewer plastic bags in our
4 assessments. All of that is reflected in the
5 past two annual reports, it took a year for the
6 change in the reduction of plastic bags.

7 Another issue I think for some leniency
8 with source controls is when you take a look at
9 stormwater program activities, so all the
10 combined activities of, say, SCVRP, benefit
11 towards trash reduction removal efforts, that's
12 not accounted anywhere. So the Water District is
13 a significant contributor to SCVRP, some of that
14 money also goes to support BASMAA that helps in
15 these efforts. That continued partnership need
16 to be getting some credit somewhere. It's the
17 think tank of these solutions or proposals to
18 come up with high to low trash areas, and things
19 like that.

20 The district expends enormous financial
21 and labor resources on collaborative encampment
22 cleanups. The District contributes significant
23 resources to support homeless to housing
24 opportunities such as financial support of the
25 City of San Jose and EPA's Clean Critics Health

1 Communities Program, and has just funded Phase 2
2 of that program, so we're committing again. We
3 have actions that do displace homeless, we're
4 also trying to find places for them to go.

5 We let numerous grants out to be provided
6 or allocated for NGO cleanups, Adopt a Creek
7 Programs, the District financially supports and
8 helps coordinate Coastal Cleanup and National
9 River Cleanup Days. So a lot of these actions
10 should be looked at from a stormwater program,
11 we're part of the SCVRP Team, we would like to
12 see our counterparts get some leniency with their
13 source control credits for all of those
14 activities we work on together.

15 Secondly, I think there's some low
16 hanging fruit out there. I think we need more
17 action from Caltrans, Caltrans trashes in our
18 creeks, not just the Cities. And finally, we
19 need some help with California Redemption Values.
20 It would be nice to see the State do something
21 about that, we're still getting lots of bottles
22 and cans, and if you all could help out, that
23 would be fantastic.

24 CHAIRPERSON YOUNG: Okay. Thank you.
25 Michelle Daher, and then Laura Hoffmeister again.

1 MS. DAHER: Good afternoon. Nice to see
2 you all and nice to see a lot of my colleagues
3 from the Stormwater Compliance side of the world.
4 I'm Michelle Daher and I'm here on behalf of the
5 City of East Palo Alto. I'm here to provide
6 testimony after reading the Tentative Order as
7 the rest of my colleagues have done. Like Brett
8 Calhoun's, Santa Clara works with the City of
9 East Palo Alto, as well. We're not in Santa
10 Clara Valley, we're in San Mateo County, but
11 because Santa Clara Valley shares a creek with
12 us, we're in the same watershed. And all of this
13 goes forward to, you know, emphasize the fact
14 that although East Palo Alto is only two and a
15 half square miles, we're all impacted. We get
16 the bottom of the drain and in many cases the
17 City has very little ability to address the trash
18 that's coming through. One example is, this year
19 starting March 2015, we no longer have access to
20 the creek, legally. We don't have an easement
21 that allows us to go into the creek to clean it
22 up, there's illegal dumping continuously in that
23 creek, and in the past we've assumed
24 responsibility because we thought we had legal
25 access, but we don't. That's a big challenge for

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1 municipalities. It's the first time some of your
2 staff has heard about this issue, it's the first
3 time I've heard about this issue as a resident of
4 that creek, that's my watershed. I'm in the
5 creek all the time with my kids. I don't have
6 legal access to be in that creek. We're in
7 there, we're activating the waterway, we're
8 reducing the incidence of homeless encampments by
9 being in the waterway, but it's illegal. So
10 that's a big issue that I haven't heard brought
11 up yet because maybe nobody else has been
12 challenged; I have been challenged. I've been
13 challenged by attorneys and threatened by
14 attorneys, and my City Attorney has determined we
15 cannot access the creek legally, so they've asked
16 me to ask you for assistance. So that's the
17 first challenge that we're facing.

18 It's important that the City of East Palo
19 Alto's residents are able to access the creek
20 because at this moment that creek is nothing but
21 a flood hazard. They don't value it as a
22 resource because of that. When they get in the
23 creek, I've gotten several City Council Members
24 into the creek for the first time, they never
25 would have considered going into that creek

1 without a creek cleanup. To them it's always .
2 been a threat because of the previous flooding.
3 And so I'm going to again reiterate that we need
4 your help to try to get access into the creek,
5 there's 100 land owners that line two counties,
6 it would take a lot of work for the City to try
7 to undertake that. And it's not just the City of
8 East Palo Alto that shares that creek, it's Menlo
9 Park which is the City I live in, and so please
10 consider looking into that.

11 I do want to mention that, as the primary
12 person for stormwater compliance and
13 environmental compliance, and sustainability for
14 the City of East Palo Alto, I wear a lot of hats.
15 Every person in East Palo Alto wears a lot of
16 hats. We work hard, the City Council wants to do
17 this, so please help us to be able to achieve
18 these goals. Thank you.

19 CHAIRPERSON YOUNG: All right, thank you
20 very much. Ms. Hoffmeister.

21 VICE MAYOR HOFFMEISTER: Good afternoon
22 again, members of the Board. I'm Laura
23 Hoffmeister representing the City of Clayton. I
24 am the Stormwater Manager there, as well as an
25 elected official over in Concord, so I get to

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1 speak to you twice today. But from Clayton's
2 perspective, I wanted to share a few thoughts
3 with you on the MRP 2.0 as it relates to trash.
4 We were one of the few cities that basically got
5 to, because of the size and dynamics of our
6 community, we're Green in the trash management
7 plan that we submitted in the last go-around. I
8 knew a very envious position for many of the
9 communities that are striving to get there over
10 the next several years. However, it cost us a
11 lot of money to still prepare the type of plan
12 that needed to be mapped, and do all the work
13 that went into it. And now we still have to do,
14 I believe, possibly, as I think I heard from you,
15 Chair Young, about concern about maintaining the
16 accuracy of Green as time goes on, to make sure
17 that there's a way to monitor that to make sure
18 it doesn't slip into a different category, and I
19 think that's important. My concern is how many
20 times a year we might have to go out to validate
21 that. I would hope that it be just on an annual
22 basis and be documented as part of our annual
23 report process, something very simple and very
24 streamlined. It did cost us close to 10,000 to
25 prepare the map, do all the field assessment

1 work, and prepare the plan. And for a city with
2 a very small budget, it was very impacting to us.
3 We achieved that through the installation and
4 luckily through the grant through ABAG, was the
5 Trash Capture Devices, so we've used full trash
6 capture devices as our solution. We have 25 of
7 them in town, and they run us \$200.00 per unit to
8 clean, photograph, inspect, look and analyze
9 materials that come out of there, and
10 characterize the materials. That's not just the
11 visual inspection we do for pre-rainy season
12 where we take the leaves out, that's a different
13 inspection, but just the ones we do to document
14 the trash component. It's a one two-man crew,
15 one truck, and approximately on average an hour
16 per device, so that's around two hundred bucks a
17 device. So that adds up for our little small
18 budget somewhere between around \$5,000. When I
19 add in the other inspections that we do the pre-
20 rainy season, we're spending another \$13,000 on V
21 Ditch inspections and drainage inlet inspections.

22 Overall, I'm very concerned about
23 additional permit requirements on trash ramping
24 up, but also the Green Infrastructure and the PCB
25 because we've ramped up on all this trash stuff,

1 and I don't have the money to address the other
2 components that are coming into the permit that
3 we spoke about last month because I've ramped up
4 already on the trash, and I'm out of money.
5 Right now, I had \$128,000 is what's collected
6 from our taxpayers, I have about \$56,000 that's
7 remaining for maintenance work, so I've lost a
8 lot of it right at the top, \$24,000 a year goes
9 toward group program costs, those go for regional
10 monitoring, all the things we do collaboratively
11 through the Clean Water Program. Eight thousand
12 dollars is my business inspection for a
13 commercial business inspection. Ten thousand
14 dollars is my San Francisco Regional Water
15 Quality Control Permit in the State Regional
16 Permit a year. That's gone up ten-fold over the
17 last several years, that's a big hit to our
18 budget. That would be several drainage insert
19 devices that we could put out there or other
20 cities could put out there to maintain. So
21 budgets are a concern to all of our communities,
22 and when we look at this I think it comes down to
23 prioritizing, and if trash is what we've been
24 trying to work on, and I know we've worked on
25 this, a lot of people think it's just started, it

1 has just started for what we're doing, but way
2 back in 2005, we did hot spots, we started with
3 the hot spots, and that was kind of the start of
4 looking at trash issues and looking at hot spots
5 and now focusing on Citywide areas. It is a
6 change for us financially to try to figure out
7 how to come up with the funds and, like I said,
8 in Clayton alone, I've down to -- I have \$20,000
9 less money to work with than I did 10 years ago.
10 I've lost that money because it's the same
11 amount, I've collected the same amount from every
12 taxpayer because we're a built-out city, so it's
13 very easy to use us as a comparison to see what's
14 happened over time. \$20,000, yes, is coming back
15 to me at return to source because of the other
16 cost that we have to do for the group cost, and
17 for the permit fees. And during that same time,
18 inflation has gone up 25.5 percent. So I'm
19 really down from what would be \$86,000 is what I
20 get today to work with locally. In real dollars,
21 it's \$65,000 compared to where we were in 2005,
22 so it's very challenging for all the communities,
23 and I just want to end on this note about letting
24 us focus maybe on trash if that's the priority of
25 the Water Board, maybe first, we can't have

1 trash, PCB and Green Infrastructure all be the
2 number one priority with all the same timeframes.
3 We need to be able to have some flexibility and
4 work with you, and for you to identify what's the
5 first thing for us to tackle. I hope it would be
6 trash because we've already been working on
7 efforts for several years, these other couple
8 things have come in recently in 2.0, maybe they
9 could be pushed out a little bit further because
10 behavior change, as was mentioned earlier, is a
11 tough nut to crack, it doesn't happen overnight.
12 You realize a lot of you probably are Mr. Funnel
13 Head Program, no dumping oil down the drain, it
14 goes to the Bay, that was a 20-year program to --

15 CHAIRPERSON YOUNG: Can I get you to wrap
16 up?

17 VICE MAYOR HOFFMEISTER: -- so I just
18 wanted to let you know that the behavior change
19 is something that takes a lot longer than we'd
20 all like to have done and we need the time to
21 work on that avenue, as well as the other avenues
22 to achieve clean water going forward in the
23 future. We're getting there, but it's going to
24 take more time than what is listed now in the MRP
25 2.0. Thank you.

1 CHAIRPERSON YOUNG: All right, thank you.
2 We're going to take a break. Come back in --
3 let's make it 12 minutes, 20 after on that clock.
4 And then we will have opportunities for the Board
5 and the staff to ask each other questions and do
6 some clarifying, and then also do some wrap-up.

7 (Break at 3:07 p.m.)

8 (Reconvene at 3:20 p.m.)

9 CHAIRPERSON YOUNG: All right, we're
10 going to come back to order. We'll do questions
11 first, thank you. All right, we're going to do
12 three things in sequence, we're going to have the
13 Board members if we've come up with questions we
14 want to ask staff, we can do that. I'd like to
15 give the staff the opportunity to respond to some
16 of the comments that you heard to the extent that
17 you want to do that today, and then the Board
18 Members will offer some of our perspectives and
19 we will have the opportunity to discuss with each
20 other what our perspectives are. So any specific
21 questions at this point?

22 MR. LEFKOVITS: I just had one. Well,
23 no, I'll save it.

24 MR. KISSINGER: I'll ask a question. I
25 am interested to know what your reaction is to

1 giving more credit to source reduction and the
2 extent to which -- and this is probably my own
3 fault for not reading the permit as closely as I
4 should have at this point -- the degree to which
5 there's optionality and flexibility for
6 communities to achieve the ultimate outcomes in
7 different ways. And with particular focus on
8 maximizing the effectiveness of the scarce
9 resources that they have to bring to bear on the
10 problem. I guess those would be the two things
11 that I'd be interested in hearing about.

12 DR. MUMLEY: Okay, this is Tom Mumley,
13 I'll respond. On the first issue on creating an
14 incentive for source control -- .

15 MR. KISSINGER: And greater, I mean --

16 DR. MUMLEY: Greater than the five
17 percent. Just to clarify, that's on top of the
18 benefit that is expected to be -- put it this
19 way, source control is fully credited because it
20 should reveal itself in reduction and trash
21 generation in trash management areas. But we
22 propose additional incentive of up to five
23 percent on top of what would be documented
24 through observations in the trash management
25 areas. So there's a point where you would have

1 to phase out any such incentive because
2 ultimately you would end up with greater than 100
3 percent then, because there's a double-dipping
4 factor.

5 The higher we would create the short term
6 incentive for source control, the more we'd have
7 to consider offsetting that by minimizing double-
8 dipping in the changes in mapped observations of
9 trash generation. Do you follow that? So that's
10 the general approach why we thought that we
11 should provide that incentive, but limit it to
12 minimize the double-dipping factor.

13 MR. KISSINGER: Okay, and what about just
14 then structurally is the permit created and is it
15 subject to further review and refinement so as to
16 provide or rather to avoid the one-size-fits-all
17 approach? Do you feel that the staff has done
18 all it can do to try and create lots of different
19 ways to get to the top of the mountain?

20 DR. MUMLEY: The short answer is yes. I
21 mean, and then to clarify, we start with as
22 proposed, and this is building off of the current
23 permit requirements, is that there's a hybrid of
24 use of full trash capture devices, and then other
25 things. And even in the full trash capture

1 device arena, there's the opportunity to consider
2 a suite of the various types of devices. Dale
3 explained that the two major categories, the
4 large in underground, in the storm drain system,
5 one versus the screen ones, but there's some
6 variations in there about the types of full trash
7 capture devices, where, when and how, and as you
8 heard some testimony by some of the
9 municipalities about their successes and
10 challenges with the different types, I mean, so
11 there's flexibility in terms of the use of and
12 types of full trash capture.

13 And as far as others, we have always
14 promoted anything else that works is fair game,
15 and the permit allows essentially anything else,
16 as long as its benefit is demonstrated. We do
17 bias our expectations towards certain actions
18 which we have more confidence will work, as Dale
19 pointed out, better street sweeping, enhancements
20 and improvements of street sweeping, we know that
21 collects more trash, and then there's human trash
22 collection, trash collection by humans, I should
23 say, has also been a demonstrated benefit. We
24 had during one of our workshops we had testimony
25 from the City of Emeryville talking about that,

1 it daily has a work crew out walking its streets
2 picking up trash, so it's essentially the
3 equivalent of full trash capture using live
4 bodies.

5 So I mean, we understand the major
6 challenge being how to change behavior, we
7 unfortunately still have a lot of people who
8 don't think twice about just littering and
9 dumping trash, and we aren't going to solve the
10 problem just for full trash capture, we're going
11 especially to get to the 100 percent known first
12 effects level. So that's where the long term
13 benefit of education is really going to reveal
14 itself and the sustainability of all our actions.

15 So again, my long answer is that there's
16 lots of flexibility provided in the scheme
17 proposed, but it's up to the Municipalities to
18 demonstrate that the approach that any particular
19 municipality wants to pursue works, because we
20 promote outcome-based demonstration of actions,
21 not just getting credit for actions for the sake
22 of taking action.

23 MR. KISSINGER: There are lots of
24 comments about frequency of reporting and it
25 should only be annually. Is there more than

1 annual reporting required now in the Draft Permit
2 that's here?

3 DR. MUMLEY: I'm hesitating because it's
4 really just - there's an annual report, albeit I
5 believe in monitoring. We might have offset, the
6 reporting to not just be coincident with the
7 Annual Report, but that's --

8 CHAIRPERSON YOUNG: I think --

9 DR. MUMLEY: But the regular reporting of
10 actions except for potentially some monitoring,
11 it's annual, once a year.

12 CHAIRPERSON YOUNG: In last month's
13 testimony, there was at least one example of
14 where last permit and this permit were going to
15 overlap and create in some people's minds dual
16 reporting, and we said don't worry about that,
17 that's not going to happen, you won't have to do
18 two reports. That's what we were saying in that
19 context and perhaps it's the same thing.

20 DR. MUMLEY: Well, that particular issue
21 of the fact that we're in a fiscal year within
22 which the current permit applies, and assuming
23 the Board acts within this fiscal year, a new
24 permit will be in effect, we will work that out
25 so that we'll do that simplified transition from

1 reporting from one term to the text, and so a lot
2 of the reporting doesn't change, some parts
3 change, so to the extent that there's a clear
4 burden and without benefit to new reporting, we
5 can build a transition into the final Order. And
6 then we certainly have always been aware of the
7 burden associated with reporting, and we
8 continually have dialogue, albeit perhaps we need
9 to have more, roll up our sleeves dialogue with
10 the Municipalities to really deal with what is an
11 optimum reporting scheme that works for all,
12 that's accountable and useable for them and, as
13 well, for us because requiring a lot of
14 information that's not being used has caused us
15 to say, well, why is it being required? So we
16 will continue to look at all the reporting
17 requirement to make sure that we could upon
18 challenge respond to say that information is
19 valuable and will be used; otherwise, we
20 shouldn't be having you require that it be
21 reported.

22 CHAIRPERSON YOUNG: Okay, other
23 questions? Mr. Lefkovits.

24 MR. LEFKOVITS: Well, I have a half
25 formed observation to make and I think when I

1 look at this, you know, I only understand let's
2 say 70 percent of it now, so I can say --

3 CHAIRPERSON YOUNG: But it's before 2417,
4 so --

5 MR. LEFKOVITS: You know, and I hear what
6 you're saying about wanting to, 1) not provide
7 double credit for things that are effective and,
8 2) to focus on outcomes rather than process. But
9 it looks to me like the permit is full of
10 process-based things. I mean, the first question
11 I asked six months ago was about trash, and the
12 first answer was we have a really time measuring
13 it, right? That's the one thing I remember, "we
14 have a really hard time measuring trash." And
15 so, you know, I'm struck today by a mix of things
16 that we hear, some of those common sense
17 agreement that certain things tend to work,
18 certain activities that we favor. I'm looking at
19 some of the tasks that we're requiring in terms
20 of training and a lot of administrative things
21 that we're asking municipalities to do that are
22 activities, that don't have any clear outcome
23 attached to them. And I just think that we have
24 to find some way to reconcile the common sense
25 things that we want and the common sense things

1 that other people want. I think as a common
2 sense matter, I think most people in this room
3 who lived through the '70s would agree that
4 education about trash reduction has some impact,
5 right? We all remember people throwing stuff out
6 into the street and they don't do it that much
7 anymore. And so when I hear you say that we
8 don't want to give double credit, I guess that
9 what I hear is, well, we have a certain amount of
10 uncertainty about the measurement and while we're
11 still working on improvement the measurement, you
12 know, maybe we should give some additional
13 thought to activities that we have some strong
14 belief will have an impact on outcomes
15 particularly down the road. I don't think
16 they're mutually exclusive.

17 CHAIRPERSON YOUNG: Let me suggest that we
18 circle back to the issues of offsets and
19 crediting and take that on as a subject matter
20 for our discussion when we do the Board
21 discussion because I think each of us probably
22 has something that we want to throw into the ring
23 on that, if -

24 MR. LEFKOVITS: I was trying to phrase it
25 in the form of a question, but I guess I didn't

1 get to -- so, I'm mean, if anyone has anything
2 that would help me understand the distinction
3 between the tasks that we list and the tasks, you
4 know, I'd welcome that. But maybe we'll just
5 have it as Board discussion later.

6 CHAIRPERSON YOUNG: No, no, no, I was
7 trying to make you feel like you didn't have to
8 explain it all at once.

9 MR. BOWYER: When trying to meet the 40
10 percent in 2014, most, the vast majority of
11 Permittee cities only claimed one or two percent
12 from their education program. And one whole
13 county, Alameda County, didn't claim anything per
14 city. So very few cities have claimed more than
15 just a one or two percent from that. One or two
16 have asked in the past to claim more than just a
17 couple of percent from that activity. And I
18 think almost every Permittee has in some cases
19 multiple programs attempting to educate their
20 populace, school age children, adults, on some
21 aspect of trash and litter at a minimum,
22 sometimes other components of stormwater
23 pollution, but they've kind of focused on trash
24 in more recent years because of the recent focus.
25 So I don't think those programs are really going

1 to go away and we could credit them, but it's
2 just going to be a free credit on kind of the
3 top, that won't necessarily significantly change
4 their compliance status, I don't think. But I
5 think you're going to find them still finding
6 sufficient motivation to carry on those programs
7 is just my personal opinion. You can ask them,
8 maybe they have a different take.

9 DR. MUMLEY: I feel like I should clarify
10 something, though, that Dale said just because I
11 can anticipate some of the Permittees saying,
12 "Well, but...", because they didn't claim more than
13 a small percent because we advised them not to,
14 let's be fair, because unless they could show
15 some sort of assessed benefit. So we posed that
16 challenge and, as a consequence, most responded
17 with if they did claim it, it was a low value
18 because that was our direction. So in fairness,
19 I think it's important to call that out. It is
20 difficult to be able to try to quantify the
21 benefits of some of these general actions, and
22 that's the nature of the beast. But you struck a
23 positive chord in my mind because that's one of
24 our challenges. As we strive to be able to
25 quantify outcomes, we're recognizing that there's

1 always going to be a certain amount of
2 variability and uncertainty, so where is the
3 noise level? So five percent certainly is within
4 that noise level, so by providing an incentive
5 with a five percent cap, or perhaps a 10 percent
6 cap, we potentially are not getting -- we're
7 potentially avoiding getting deep into the
8 double-dip arena because we wouldn't be able to
9 make the distinction between of our limited
10 ability to observe a distinction at a five
11 percent level and perhaps maybe higher. So
12 you're right, that's why you see the permit
13 having this combination of more process driven
14 actions versus outcome. The ideal that it would
15 all be outcome, and that's how our POTW permits
16 are written, but those systems by design are end
17 of pipe treatment systems all driven by monitored
18 specific pollutant concentration levels, and if
19 it was so easy, if it was easy, that's how this
20 permit would be crafted. So we're walking that
21 fine line between trying to track and account for
22 process, which unfortunately translates to
23 reporting burden versus outcome-based measured
24 levels, which comes into the burden of having the
25 tool box and ability to measure change.

1 MR. LEFKOVITS: Thank you.

2 CHAIRPERSON YOUNG: Having said that,
3 we're a lot closer to being able to measure
4 change than we were at the beginning of the last
5 permit. So are there sort of overview comments
6 that you folks want us to hear at this point in
7 time? I mean, I know you get to write all the
8 responses.

9 DR. MUMLEY: Yeah, I'm kind of hesitant
10 to get too deep into responding without having
11 the benefit of allowing everybody to put their
12 comments in writing and because we've got to make
13 sure we're balancing our review because you start
14 commenting on one issue without taking into
15 context other views on it. But there is one area
16 beyond the source control cap that I made a note
17 on that I considered, wanted to clarify during
18 testimony, and it has to do with this issue of
19 mapping of private lands. And we already have
20 started some discussion with the Permittees on
21 this that, as presented, the testimony is not
22 reflective of the intent behind that requirement.
23 The intent is to just ensure that the private
24 land areas area accounted for and in recognizing
25 that some of them by the way they drain won't be

1 accounted for in right of way type trash control
2 stuff. So in those circumstances, they need to
3 make sure that they're appropriately accounted
4 for. And when we talked about mapping, we were
5 talking about gross level mapping, at least no
6 greater than the detail in the mapping of trash
7 generation areas, that we're not talking about
8 actually getting into the detailed storm drain
9 mapping, it could easily be stipulated that
10 commercial area parking lot has its own drain
11 system. We don't necessarily care about the
12 details, we care more about whether trash from
13 that area is being managed. And so I will just
14 tell you that we can be responsive to that
15 requirement by being clear that the consequences
16 expressed and the costs associated with those
17 consequences were not the intent. And I think we
18 will have adequate middle ground to resolve those
19 concerns by those Permittees that brought that
20 up.

21 MR. WOLFE: I'll just reiterate that I'm
22 looking at the provision in question and it's on
23 C10-2, and in that it's clear we're trying to
24 spell out a tool that Permittees should be using
25 moving forward because, as part of this where we

1 say Permittees shall map, we then say this
2 information shall be retained by Permittees for
3 inspection upon request. In other words, we're
4 not asking for it, we would like the Permittees
5 to do this as a tool moving forward for their own
6 decision making. And so we could certainly look
7 at that to how we're clear on what the
8 expectations are.

9 CHAIRPERSON YOUNG: All right, then.
10 We'll provide the opportunity for Board members,
11 then, to react to what we've heard today. And I
12 think everybody probably has something to say
13 about offsets and credits. So why don't we
14 perhaps take up that piece of subject matter, and
15 then we'll see what other pieces of subject
16 matter people want to discuss. Anybody want to
17 start?

18 VICE CHAIR MCGRATH: I'll start. I'm
19 glad I waited for Tom's comments. I think that
20 was helpful in focusing it. And I think some
21 back and forth from the Board is a good idea. So
22 let me start it at the top and the easiest one.

23 I'm definitely interested in new source
24 control measures that could result in long term
25 benefits, I mean, we gave some incentives for

1 product bans, they were probably more generous
2 than the evidence now suggests, but it's still
3 now that's part of the baseline that we've got
4 those reductions, and I think it illustrates the
5 benefit of that, an investment perhaps over-
6 crediting for something with a long term benefit.

7 Miriam Gordon's suggestion on reducing
8 trash generation by specific fees that send a
9 price message to the products is certainly
10 something that I'm intrigued by, and I've had
11 some discussions with her. I would like to see
12 Cities develop their own mechanisms and funding
13 mechanisms. I know that most of them have an
14 economic interest and a social interest in
15 creating trash-free commercial areas. The
16 ability to innovate and use fees so that it's
17 sustainable is something that's intriguing and
18 certainly warrants, I think, a credit.

19 Another bit of testimony that I found
20 persuasive was, and surprisingly so, was the
21 excellent testimony from the Marsh Creek Group
22 about the value of creek cleanups in creating a
23 stewardship culture and political support for
24 presentation and enhancement of creeks, which
25 we'll need if there is flood control benefits and

1 water quality benefits that are eventually going
2 to be taken to the voters.

3 So perhaps those measures need to
4 eventually erode away so that we're not double-
5 dipping, but I think the long term benefits of
6 creating that culture warrant a retention for a
7 period of time.

8 And then, like the rest of you, I've
9 struggled with its education idea and how do you
10 effectively test education and your effectiveness
11 of your measures. I mean, we know that there's
12 litter around schools, we know that there's
13 litter around higher education entities. I think
14 we need to think about ways to engage the
15 University of California and having a trash
16 cleanup day. I think we need to figure out ways
17 to engage the school boards for what educational
18 effort goes on. I'm going to push it back to the
19 staff and the other Board members of how far we
20 go with something that's kind of squishy. It does
21 seem to me that accepting a program like
22 Hayward's where they're kind of committed to
23 doing it and they've developed the idea, or
24 perhaps Contra Costa County's which is somewhat
25 different in outreach, at least on a trial basis

1 provides some intriguing possibilities, but I
2 would also think that we would have to do some
3 outreach and maybe looking for grants and support
4 from somebody like EPA or the State Board to
5 evaluate how effective is this, and is this
6 something we want to invest in just kind of on a
7 pilot basis to see how it works, or is it
8 something that's scalable. So the question there
9 is, okay, I think it's certainly worth trying,
10 how do we know whether or not it's scalable? So
11 those are my thoughts on the credit question.

12 CHAIRPERSON YOUNG: Okay.

13 MR. KISSINGER: So I guess I'll pick up
14 on that. I agree with those comments, and I
15 guess I want to echo what Board member Lefkovits
16 was raising and when I was sort of starting at,
17 as well, which is we are not an agency which is
18 well suited to this endeavor, we're fairly well
19 suited to measuring the contaminants coming out
20 at the end of the pipe, and with great precision,
21 we're talking about concentrations of chemicals.
22 And you can feel the agency's desires to have
23 mathematical precision, and I don't want to
24 double-count credits because that would be wrong,
25 when in fact the numbers that we're playing with

1 are, to use your term, squishy I think is the
2 word. And so I've forgotten whose testimony it
3 was who said we ought to have a little faith in
4 and suggested we ought to for source control, for
5 example, and education efforts, for example, and
6 just stream cleanup efforts, I don't have a
7 problem with double-counting. If it is going to
8 be part of a policy choice that this agency
9 decides to make because we have some hunch that
10 it's going to be successful, and maybe it needs
11 to be more than a hunch, but I think there's some
12 empirical evidence out there that that it is
13 effective. By way of example, the source control
14 with bags has been. And I was very struck the
15 other day, I was taking my 90-year-old father
16 shopping and we went to the supermarket and they
17 asked, "Do you want a bag? It's \$.10 a bag," and
18 my dad furiously, "These God damn stores, how
19 dare they charge, they're always trying to make
20 money!"

21 CHAIRPERSON YOUNG: That's me.

22 MR. KISSINGER: It's me. But when I
23 explained the reason, it makes sense. And I do
24 think, you know, you used to see bags everywhere
25 and you don't see it now, and I do think which

1 sort of brings me to where I want to get to
2 ultimately, which is I do think that there should
3 be built into this permit a real effort for
4 flexibility, a real sense of we don't know the
5 right way, and I get the idea of a safe harbor
6 and that's fine. But I think at the end of the
7 day we should really try and explore, invite,
8 welcome different approaches by different places.
9 I was so struck by the testimony today at the
10 huge range of experience that's occurred from
11 some cities that have literally 500 of these, you
12 know, catch basins and, you know, 1,300 more on
13 their drawing board, and it hasn't been really
14 that much more expensive than just cleaning up
15 the leaves. To others, it saves a huge burden.
16 I don't know whether that's just a resistance to
17 change by some of the other places, or if it's a
18 function of, in fact, it's different there, or a
19 different tax base, but I'm more than willing to
20 accept the proposition that there are different
21 ways to achieve our ultimately goal, and when our
22 ultimately goal is something that we know it when
23 we see it, but we have a very hard time measuring
24 it, inviting creative approaches to get there,
25 which is not really different from what you were

1 saying, Jim. And that's what I'd like to see in
2 this draft permit.

3 CHAIRPERSON YOUNG: I've save you a
4 moment.

5 MR. LEFKOVITS: Well, no, no. I really
6 appreciated all the testimony today, I thought we
7 had some great variety and, you know, I echo
8 everything that's been said. And the one thing
9 as I review my notes that I really see is a lot
10 of uncertainty, a lack of clarity about what's
11 the right thing to do. And after whatever it's
12 been, five hours, I'm struck that no one raised,
13 "Hey, you know, in some other country, here's how
14 they do it right." Here's how in a more
15 Draconian regulatory environment where they've
16 got totalitarian control, here's what they do to
17 keep -- I was waiting for somebody to bring up
18 Singapore, honestly. Right? But so I'm really
19 struck that I'm still, I don't know, are we it?
20 Are we the best? I mean, I would have welcomed
21 hearing examples of how other jurisdictions, how
22 other regions better measure, coordinate, plan,
23 fund, credit, you know, I like brainstorming.
24 It's a lot of problems to brainstorm on of these
25 days and I think that might be useful just

1 stepping back just to think about ultimately how,
2 what would be a best management practice for this
3 total process of a next phase.

4 The other thing that really struck me
5 personally was the complexity of entities
6 involved, and just thinking about Mayor Simmons'
7 testimony about the other public entities,
8 Caltrans, BART, and the schools. You know, I
9 thought about Caltrans myself a couple of months
10 ago, thinking about the amount of trash that is
11 in our highway system that spills over into our
12 communities, and just throw out there that I
13 think it would be really useful to think about
14 these big exceptions through this process and how
15 they relate to the rest of the system, and if
16 there are easy wins to be had coordinating
17 something at the regional or state level, with
18 the other public actors, I'm not sure who would
19 do that or where it's done, but I think it's
20 important in thinking about it and making the
21 process legitimate that we account for the fact
22 that so much of this area is covered with
23 highways. And that's really it.

24 CHAIRPERSON YOUNG: Okay. I'm going to
25 circle back to the issue of credits and offsets.

1 The cleanup offsets and the direct discharge
2 offsets are called offsets for a reason, you
3 know, they sort of trade progress over here for
4 progress over there. It makes a lot of sense to
5 me. When I mentioned at the outset that we might
6 want to consider phasing out some of these
7 things, one of the things I was thinking of was
8 the cleanup offsets because at some point we
9 don't want to be cleaning up afterwards, we want
10 to be not having the trash in the first place on
11 the shorelines. So it makes sense to me that
12 that is something that we might have offsets for,
13 for a certain period of time, but not down the
14 road. And I would like for the staff to consider
15 how that might work.

16 I also had in mind the source reduction
17 credits as being ones that could be phased out,
18 and I'll explain. The two pieces of testimony
19 that I thought summed up what's going on with the
20 source reduction offsets the best were the
21 gentleman from Baykeeper, I believe, who said
22 basically what Tom said later on, which was that
23 if you give a credit for source reduction, you're
24 already reaping the benefit in your percentage
25 reduction of trash, and then you have an

1 additional credit on top of that, so you do get
2 to double-dip.

3 Another gentleman got up, Dan Cloak from
4 Contra Costa, pointed out the very important
5 consideration that for some of these source
6 reduction actions, there is a big upfront
7 investment in people's time and political capital
8 to get them done, and so there's a sort of a
9 disincentive built into doing those things,
10 unless we counteract it with an incentive, and I
11 think that's a really good point, and that's why
12 we would put the credit in in the first place
13 with the source reduction. But my question is,
14 so you do a bag ban for certain kinds of
15 facilities, how long does that last? Does it
16 last forever? Well, no, because we want to get
17 to 200 percent eventually, but we also, I'd like
18 to be able to give people credit for a certain
19 amount of time for doing something like a bag
20 ban, have that credit phase out, and then give
21 them another source reduction credit that would
22 have a new time clock stamp on it for doing
23 another new thing that required enormous upfront
24 investment. So that's where I'm coming from on
25 the phase-out and on the net credits. I'm pretty

1 comfortable with five percent, I mean, I wouldn't
2 just tear my hair out of it got higher, but I
3 actually think with all the credits and all the
4 offsets that we put in this package, 20 percent,
5 that's quite a bit.

6 With respect to do we do something like
7 that for education, well, you know, the arguments
8 always sound pretty compelling, but I am just
9 overcome by squishiness. I'm one of the people
10 who likes to see the benefits and be able to
11 measure them, and education as the centerpiece of
12 our entire culture, I firmly believe in that, but
13 I'm not sure that a credit for education has a
14 part in this permit. I'll let other people
15 continue to chew on that, but I'm not on the
16 bandwagon.

17 MR. WOLFE: And I would think it's worth
18 noting that that could also be considered another
19 double-dip because under our public participation
20 and requirements under C7, we already have
21 extensive education requirements, and so then to
22 call them out again in C10 and give credit could
23 be considered another double-dip. Certainly, we
24 want to encourage them, but I think really at the
25 end of the day we're trying to as much as

1 possible take all the components of this permit
2 and get them aligned in such a way that the
3 Permittees by taking a selected group of actions
4 are complying with all of these components, and
5 not having to do different programs for all 15
6 different components. And so that's the
7 challenge I think we get into when we start
8 providing sort of the multiple credits.

9 CHAIRPERSON YOUNG: So let me respond to
10 a couple of other things that I heard, and then
11 we'll cycle back around again if need be.

12 I was also struck by the idea that we've
13 got Caltrans and highways and BART and all this
14 stuff running through all of our communities, and
15 I guess we have some kind of a permit out on -- I
16 don't understand the structure of how we're
17 dealing with Caltrans on this issue right now,
18 but it clearly isn't effective. And so while the
19 Cities are working on this stuff in MRP 2.0, we
20 need to be working on our relationship with
21 Caltrans in making sure that that works, and
22 BART, and whoever else falls into that category.
23 So it's not fair for us to rely on these folks to
24 do that.

25 With respect to the reporting burdens, I

1 suspect that we're not going to be able to solve
2 that issue before you bring back a proposed final
3 permit for us to vote on, but what I would ask
4 for is that we try to find a way, this is
5 probably lawyer territory, try to find a way so
6 that if people were able to come up with some
7 better ways to build that mousetrap, that give us
8 the information that we need and yet take less
9 time to do the reporting, that we would be able
10 to phase that in within the permit term somehow.
11 I think people started to think about that as,
12 well, anyway, I heard some interesting
13 suggestions today and I'd like to not have people
14 stop thinking about it for another five years.

15 With respect to, again, one of the other
16 things that kept coming up was people wanting
17 flexibility on the maintenance schedule for full
18 trash capture devices. I guess my view after
19 listening to the testimony would be that I didn't
20 see anything in the permit that looked like it
21 was inappropriate, particularly based on what is
22 happening in other jurisdictions. However, if
23 somebody has a better way to determine that they
24 are doing appropriate maintenance of full trash
25 capture devices and can warm the cockles of Jim's

1 heart with their maintenance manuals and
2 programs, I'd like to create the opportunity for
3 them to propose to you guys on the staff that
4 they have an alternative system that's going to
5 work just as well and it would require EO's
6 approval, but in that case we would accept it.
7 If they've got a better method, not necessarily a
8 better method, but a more site-specific method
9 that's based on their own experience.

10 With respect to the receiving water
11 observations, yeah, I think we need to do some
12 work on better defining the management questions
13 that we're going to answer, that was -- oh, you
14 all know who that was -- he knows how he is,
15 anyway, Chris Sommers. I agree with that. I do
16 think we need to have a strong receiving water
17 program initiated in this permit term, and we
18 need to put it in this permit, but we need to do
19 some work on sort of firming up how we're going
20 to get that initiated and what the requirements
21 are going to be and defining why we want it.

22 I'm sort of at the end of my notes here.
23 You know, I gave a long list of observations
24 about this permit at the outset, and I didn't go
25 through scratching out a lot of things and

1 changing my mind during the testimony, sorry. I
2 still think it's doable. And I definitely still
3 think we need to have an enforceable point, 2019
4 or 2020.

5 When I mentioned in the context of
6 spelling out the consequences for noncompliance,
7 having the Executive Officer have the option of
8 requiring full trash capture for people who were
9 out of compliance, I still think that's a good
10 idea, because you guys don't like it at all, and
11 it's really going to push you towards compliance,
12 clearly, because what we've done in this permit
13 is I think extraordinarily flexibility. We
14 basically say, "Go out and do whatever you think
15 works." But we can't just not have a way to
16 either judge compliance, a) we need to have a
17 method of judging compliance, and I think the
18 mapping is as close as we're going to get, and
19 it's a perfectly good system for right now, or
20 for MRP 2.0, and b) then we have to do something
21 if people are out of compliance. And we have to
22 have a path that's pretty clear and give the
23 Executive Officer that authority without having
24 to go through a whole separate set of enforcement
25 measures. So that's where I'm at. I've held the

1 floor for long enough. I want to hear if you
2 guys have additional comments.

3 VICE CHAIR MCGRATH: Let me start. I'm
4 assuming, and I'll defer to Dr. Young on
5 monitoring because I think we have gotten
6 together and expressed to staff, and it should be
7 on the record, some concerns that more detailed
8 monitoring is necessary. And I think I've already
9 articulated that, for me, that's part of putting
10 this into a how do we make adjustments during the
11 course of the permit.

12 So let me start with priorities and there
13 was a lot of really good testimony today, some of
14 it very succinct, some of it not so succinct, but
15 one of the ones that struck me was very early on,
16 it was Matthew Fabry's, and it goes to the heart
17 of priorities and priority setting. Now, the
18 numbers he gave I suspect were for San Mateo
19 County, and I may have written them down wrong,
20 but he was talking about program costs for PCB,
21 control of 23 million and 7 million for trash.
22 And that gives me great pause in terms of
23 priorities of what we do over the next five
24 years. I think that we could do a lot more to
25 move the dial on trash than we can on PCBs,

1 frankly. Its association with a very
2 extraordinarily fine material and the weaknesses
3 in our understanding of where it is, there's a
4 lot of process costs in moving to more
5 specificity. I certainly think that we need to
6 do the no regrets action, I certainly think that
7 we need to get local governments thinking about
8 what priority watersheds we've identified. But
9 in my mind, as one Board Member, trash is not a
10 three to one underdog in terms of level of
11 effort.

12 Second, Caltrans. I've already chewed
13 Bruce's ear at least once about a project by
14 Caltrans that went by without trash control and
15 full capture devices that enter into a lagoon in
16 my city. I expect to see action on Caltrans.
17 They've got some, I think, outstanding IOUs out
18 there and they're a big vector, so I'm not sure
19 how litter gets out of the doors and windows of
20 BART on the mechanisms, I puzzled that through,
21 but I really don't think that that's a big trash
22 factor, I may be wrong.

23 Oh, stations. All right, then we can
24 focus on that and that's also a little more
25 limited. Then the maintenance thing. I want to

1 spend a little time on what we do with full
2 capture devices and something that I don't think
3 we've captured in testimony. I do think it's
4 overly-prescriptive to say we should have two
5 maintenance events a year for every trash device.
6 I mean, some it may be four, some it may be one,
7 and I really want local governments to figure
8 that out, but there's another I think more
9 important question here, which is the decision
10 making tree you want to make. We've put in a lot
11 of devices, a lot of them I heard them call "top
12 hats" today, you know, there's quick and easy
13 retrofits of existing drop structures that trap
14 sediments. One of the very persuasive
15 testimonies was that the larger devices are much
16 cheaper to maintain if they're put in the right
17 places, so there is a decision making process
18 that I don't want to avoid, or let local
19 governments avoid going down the road, which is
20 how well are your devices working. Should you be
21 maintaining them more often? Or should you be
22 thinking about replacing all the top hats you
23 have with one single much larger device down the
24 road? And to me, part of the information we have
25 to have is kind of evaluating what the most cost-

1 effective solution for the Cities are. We nudged
2 everybody and bribed everybody with grants and to
3 putting in a certain level of devices, but it's
4 not over. If those really aren't the smartest
5 things for Cities to be doing with their ongoing
6 maintenance funds, we need to have a decision
7 process in this process to figure that out and
8 replace those devices with more cost-effective
9 devices. So to me that's more important than
-10 maintenance, it's like what's your cost over
11 time?

12 CHAIRPERSON YOUNG: Can I ask you a
13 clarifying question?

14 VICE CHAIR MCGRATH: Sure.

15 CHAIRPERSON YOUNG: You said "we." And
16 what I internalized, and maybe incorrectly, was I
17 was thinking that the Cities need that sort of --

18 VICE CHAIR MCGRATH: The Cities do.

19 CHAIRPERSON YOUNG: Okay, not we the
20 Regional Board?

21 VICE CHAIR MCGRATH: No. But if you have
22 devices that are \$200.00 a year to maintain and
23 other devices that are, you know, \$400 or \$500,
24 or \$800, and there's many more of them, you want
25 to be thinking that through in a present worth

1 analysis about the cities want to be thinking
2 that through in a present worth analysis, and we
3 want to make sure that that goes on so that then
4 we can perhaps help in searching for funding, or
5 searching for mechanisms that provide the
6 necessary time for construction. So that to me
7 is a very important question. And I think we've
8 been a little over prescriptive here, rather than
9 capture the real analytical point that needs to
10 be made. And that's it, I'm done.

11 CHAIRPERSON YOUNG: You have exhausted
12 them. All right, we all have a lot of food for
13 thought. And I want to thank everyone who came
14 today and last month, as well, for a lot of
15 really very helpful testimony and I'm sure you'll
16 be seeing a lot of it reflected in our thinking
17 going forward and we appreciate it very much.
18 All right, we will wrap up this item, then.
19 We're done with Item 6.

20

21 (Adjourned at 4:10 p.m.)

22

23

24

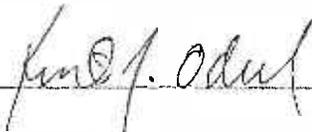
25

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of July, 2015.



Kent Odell
CER**00548

TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of July, 2015.



Karen Cutler
Certified Transcriber
AAERT No. CET**D-723

ATTACHMENT 5

Falk, Robert L.

From: Won, Yuri@Waterboards <Yuri.Won@waterboards.ca.gov>
Sent: Tuesday, July 07, 2015 11:44 AM
To: Falk, Robert L.; Gary Grimm (ggrimm@garygrimmlaw.com)
Cc: Jim Scanlin
Subject: RE: Margaret Abe-Koga participation in MRP 2 Process

Gentlemen:

Thanks for bringing to my attention Gov. Code § 82030(b)(2); it has not come into play in prior storm water permits because until a couple of years ago, Water Code section 13207 was an absolute bar to Board member participation in matters involving a discharger with whom the member is connected to as a director, officer or employee. In any case, I have talked to Ms. Abe-Koga and she understands that she has no financial conflict under the Political Reform Act. Nevertheless, she is sensitive to perception issues and wants to continue recusing herself to avoid the appearance of bias.

Yuri

From: Falk, Robert L. [<mailto:RFalk@mofa.com>]
Sent: Monday, July 06, 2015 1:58 PM
To: Won, Yuri@Waterboards
Cc: Jim Scanlin; Gary Grimm
Subject: RE: Margaret Abe-Koga participation in MRP 2 Process

Yuri – thanks in advance for looking into this further. In addition to the issue Gary raises below, it would appear that, separately, disqualification would probably not be required under these circumstances pursuant to 2 Cal. Code Regs. Section 18703(e)(7), so you may want to have a look at that too.

From: Gary Grimm [<mailto:ggrimm@garygrimmlaw.com>]
Sent: Monday, July 06, 2015 1:19 PM
To: Yuri Won
Cc: Falk, Robert L.; Jim Scanlin
Subject: Margaret Abe-Koga participation in MRP 2 Process
Importance: High

Yuri,

This is in follow-up to our telephone conversation last Thursday regarding the recusal of Margaret Abe-Koga in the MRP 2 adoption process.

Upon further investigation and discussion with Bob Falk, we have come up with the attached California Attorney General Opinion concerning whether a salary paid by a local government counts as income for purposes of the disqualification provisions under the conflict of interest rules in the Fair Political Practices Act. Although the Opinion addresses many issues, on the issue of a local government salary, it concludes that it does not count as income. Although the Opinion is from 1975, it remains effective as the underlying Government Code sections have not changed - See Govt. Code 82030(b)(2) which excludes local government salaries from the income test in question.

In addition, the Attorney General's practice guide on the FPPA conflict of interest rules further describes this as a "frequently applicable" exception. See <http://ag.ca.gov/publications/coi.pdf> at p.14.

On behalf of my client, the Alameda Countywide Clean Water Program and its member co-permittees, we would appreciate it if you would review with Ms. Abe-Koga the initial recusal decision. I'm sorry for not raising this issue sooner, but this is due to my travel schedule in June and the complexities of the many MRP permitting process issues.

Thanks,
Gary

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ATTACHMENT 6

California Regional Water Quality Control Board

San Francisco Bay Region

PARTIAL TRANSCRIPT

Item 7. Municipal Regional Stormwater NPDES Permit -
Municipalities and Flood Management Agencies in Alameda
County, Contra Costa County, San Mateo County, Santa
Clara County, and the Cities of Fairfield, Suisun City,
and Vallejo in Solano County - Reissuance of NPDES Permit

November 18, 2015, 9:00 a.m.

Elihu M. Harris Building

First Floor Auditorium

1515 Clay Street

Oakland, CA 94612

Reported by:
Julie Link

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James McGrath, Vice Chair
John Muller
Margaret Abe-Koga
Newsha Ajami
Steve Lefkovits
William D. Kissinger

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Thomas Mumley, Assistant Executive Officer
Dyan Whyte, Assistant Executive Officer
Tamarin Austin, Counsel to the Board
Yuri Won, Counsel to the Board
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Tam Doduc, Member, State Water Resources Control Board
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Donna Marie Ponferrada, San Francisco Resident
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Lisa Dunseth, San Francisco Resident
David Hooper, San Francisco Resident
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Diane Fleck, Engineer, USEPA, R9
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Craig Johns, Partnership for Sound Science in
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Ian Wren, Staff Scientist, Baykeeper
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Loella Haskew, Council Member, Pro Tem Mayor, City
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David Durant, Vice Mayor, City of Pleasant Hill
Michael Metcalf, Vice Mayor, Town of Moraga
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Mike Anderson, Council Member, City of Lafayette
Harry Sachs, Council Member, City of San Ramon
Greg Lyman, Mayor Pro Tem, City of El Cerrito
Bill Kelly, Council Member, City of Hercules
Dean Orr, Mayor of Orinda, City of Orinda
Matthew Fabry, Chair, Bay Area Stormwater Management
Agencies Association
Khalil Abusaba, Scientist, BASMAA
Robert Falk, Santa Clara Program Counsel, BASMAA
Nancy Woo, Assistant Director, Water Division, EPA, R9
Phil Bobel, Assistant Director, Public Works, City of Palo Alto
Joe Sbranti, City Manager, City of Pittsburg
Allison Chan, Clean Bay Campaign Manager, Save The Bay

APPEARANCES (Contin.)

Melody Tovar, Regulation Programs Division Manager, City
of Sunnyvale
Joe Calabrigo, Town Manager, Town of Danville
George Torgun, Baykeeper
Ian Wren, Staff Scientist, Baykeeper
Barbara Hawkins, City Engineer, City of San Pablo
Craig Johns, Partnership for Sound Science in
Environmental Policy
Vaikko Allen, Regulatory Director, Contech
Engineered Solutions
Lesley Estes, Watershed Manager, City of Oakland
Tom Dalziel, Storm Water Pollution Control Manager,
Contra Costa Clean Water Program
Beth Baldwin, Watershed Planner, Contra Costa Clean
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Leah Goldberg, Senior City Attorney, City of San Jose
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Gary Grimm, Attorney, ACCWP
Matthew Fabry, Manager, San Mateo Countywide Water
Pollution Prevention Program
James Scanlin, Program Manager, ACCWP
Geoff Brousseau, Executive Director, BASMAA
1 John Steere, Watershed Planner, Contra Costa County

1 Other Business

2 Item 7. Municipal Regional Stormwater NPDES Permit -
3 Municipalities and Flood Management Agencies in Alameda
4 County, Contra Costa County, San Mateo County, Santa
5 Clara County, and the Cities of Fairfield, Suisun City,
6 and Vallejo in Solano County - Reissuance of NPDES Permit

7 MR. WOLFE: Right. I'd like Keith
8 Lichten to make the staff report.

9 MR. LICHTEN: All right. Well, good
10 morning Chair Young and Board Members. I'm Keith
11 Lichten, Chief of the Watershed Management
12 Division. I took the oath. And I'll be giving
13 the staff presentation for Item 7, the Municipal
14 Regional Stormwater NPDES Permit, or MRP. And I
15 should note there's a supplemental for this item
16 which hopefully you all picked up at the table.

17 And for those of you in the audience who
18 want to speak on the item, if you have not yet
19 submitted a green card, there's some more out on
20 the table and now would be a perfect time to do
21 it.

22 So today I will summarize the Permit
23 Reissuance process, briefly describe the MRP and
24 its regulatory role, and describe MRP items on
25 which we received significant comments, including

1 Green Infrastructure planning in the new and
2 redevelopment section, monitoring, trash
3 reductions and PCB reductions. Also, today I
4 will talk about the supplemented and Revised
5 Tentative Order before you as MRP II, or the
6 Permit. And I already mentioned the previous
7 MRP, which would be reissued by MRP II as MRP I.

8 Here's how we got to today's adoption
9 hearing. We'll take the lights down, bear with
10 me for just a moment here. The three bullets on
11 the left represent work, including about 100
12 meetings over two years with the Permittees,
13 USEPA, and other interests. These were both
14 broad meetings about the entirety of the permit,
15 as well as subject-specific work group meetings
16 such as on PCBs, trash, or Green Infrastructure.
17 They include 60 comment letters submitted during
18 the written comment period, and also as you may
19 recall prior to the close of that written comment
20 period you held two workshops, where we gave you
21 an overview of the permit.

22 Today, you've just heard and you'll hear
23 some concerns about the MRP, but the concerns are
24 not because we haven't communicated about what's
25 in the permit. Overall, you can see the

1 significant investment of time that you, we, and
2 permittee staff and other stakeholders made in
3 this process. That is shown, as well, in your
4 package for this item which includes a Revised
5 Tentative Order, which I just made in response to
6 the comments we received, a summary of notable
7 changes, the written comment letters, and our
8 response to those comments.

9 We put out the Revised Tentative Order on
10 October 19th. You'll note in your package it's
11 dated November 10th, that's because we corrected
12 a few Errata, so we updated the date. As I noted
13 earlier, there's a supplemental for the item, as
14 well.

15 Okay, a little bit of brief background
16 just as a reminder. The MRP is the NPDES
17 Stormwater Permit that implements Federal Clean
18 Water Act requirements for discharges from all
19 large municipal storm sewers in the Bay Area. It
20 covers a total of 76 Cities, Counties, and Flood
21 control Districts. I'll note in passing that the
22 MRP does not cover all municipalities in the Bay
23 Area, the remainder are covered by a statewide
24 NPDES Stormwater Permit for small municipalities.

25 Stormwater Permit coverage for most of

1 the 76 Co-Permittees began in the early 1990's
2 when most were permitted on a County-wide basis.
3 In 2009 you consolidated six separate Stormwater
4 Permits into a single regional permit with
5 consistent requirements for all Permittees, MRP
6 I.

7 MRP II includes requirements for the
8 continuing implementation, consistent with
9 Federal Regulations of permit elements that most
10 Permittees have been complying with and helping
11 to develop since the early 1990's. And here are
12 the General MRP elements:

13 MRP II includes requirements intended to
14 ensure that dischargers of pollutants via the
15 storm drain are properly minimized. It's built
16 around the program areas shown here, which are
17 required by Federal Regulation. For example,
18 Municipal Operations, which includes ensuring
19 that Municipal Corporation Yards are operated in
20 a clean way, or Industrial and Commercial
21 Controls, which includes a robust municipal
22 business inspection and enforcement program. In
23 most respects, MRP II is similar to MRP I. MRP
24 II follows the structure of MRP I in which we've
25 dedicated sections to each of these required

1 components.

2 Now I'll focus on areas where we've had
3 significant discussions, this is a part of the
4 public process. Those are new and redevelopment
5 -- whoops, apparently trash PCBs, Mercury and New
6 Redevelopment -- there we go, and Monitoring.

7 For each area of discussion, I'll touch
8 on the issue of question, the significant
9 comments, and our response in the Tentative
10 Order. But before I get to that, there's one
11 change I want to note now that touched on a
12 number of sections.

13 Many Permittees ask that we adjust the
14 start date of new or modified requirements that
15 are at the beginning of the Permit term to align
16 with their fiscal year and also the reporting
17 year. Where requested, we've worked to adjust
18 that timing to simplify implementation and
19 reporting throughout the Permit.

20 Okay, let's discuss changes to Permit
21 requirements for impacts associated with new and
22 significant redevelopment of projects. In
23 general, as a reminder, this provision requires
24 implementation, operation and maintenance of low
25 impact development measures, like Bioretention

1 cells in specified new and significant
2 redevelopment projects. For example, these
3 measures are required for projects that create or
4 replace 10,000 square feet of impervious surface,
5 or more.

6 There are also requirements to minimize
7 adverse increases in the volume and frequency of
8 stormwater runoff, Hydromodification. These
9 requirements date to permits you adopted
10 beginning in 2001.

11 The most significant difference in MRP II
12 is the requirement for long term Green
13 Infrastructure planning, which was incorporated
14 in lieu of more prescriptive requirements for
15 Permittees to retrofit existing infrastructure.

16 In addition, at the Permittee's request,
17 it includes an option to model Hydromodification
18 control measures in a new way which could result
19 in more efficient control sizing.

20 And I want to make a note about pervious
21 pavements, there are pavements like porous
22 concrete, lattice pavers, or paving stones
23 through which water can infiltrate into the
24 subgrade, and they can be a key part of LID
25 designs, or Low Impact Development designs.

1 Sometimes they are used on smaller projects to
2 reduce the impervious area below the threshold
3 requiring treatment.

4 It's important to inspect and maintain
5 pervious pavements because they can clog with
6 sediment, which can render them ineffective. MRP
7 II clarifies that inspection and appropriate
8 operation and maintenance of pervious pavements
9 is required just like for other controls like
10 Bioretention cells.

11 Okay, a significant new element in C3 is
12 the requirement for all Permittees to complete
13 Green Infrastructure plans, or GI plans. These
14 are plans to shift our traditional gray
15 infrastructure, impervious surfaces connected to
16 storm drains, hard plumbed to creeks in the Bay
17 to green, and they are different from the MRP I
18 approach in that they are intended to be
19 proactive plans for long term Green
20 Infrastructure implementation, as opposed to the
21 current approach of incorporating this into
22 project designs as those projects happen.

23 As a reminder, Green Infrastructure can
24 provide numerous benefits, not just removing
25 pollutants from runoff in recent

1 Hydromodification impacts, but also drainage
2 systems that can be more resilient in the face of
3 climate change, they can decrease the urban heat
4 island effect, and complement complete streets to
5 make urban infrastructure safer for users,
6 including pedestrians.

7 In addition, the GI Plans comprise
8 significant elements of the stormwater resource
9 plans that are now required to obtain state and
10 grant funding. Green Infrastructure
11 implementation will play an important role in
12 achieving San Francisco Bay PCB and Mercury TMDL
13 compliance because these are pollutants that are
14 distributed across portions of the urban
15 landscapes at relatively low concentrations.

16 And requiring Green Infrastructure is
17 consistent with the State Water Board's recent
18 Decision on the Los Angeles Stormwater Permit.
19 That decision allows the use of GI as an
20 alternative compliance approach to meet receiving
21 water limitations.

22 Permittees asked for additional time to
23 complete the GI plans, and that planning dates be
24 aligned with the relevant dates for the TMDLs.
25 In response, we added half a year to the various

1 deadlines for completing those plans and aligned
2 the dates.

3 Okay, let's go through a few others just
4 on C3. Pervious pavements are an important part
5 of LID measures and projects, and they're subject
6 to clogging when not maintained, as I mentioned,
7 which renders them ineffective. MRP II clarifies
8 that appropriate O&M of pervious pavements,
9 including inspections, is required.

10 Now, Permittees expressed concern about
11 the challenges associated with those inspections
12 and reporting. We did not change the
13 requirements because of the importance of those
14 inspections to ensuring that the pavements are
15 working appropriately. Often, we think these
16 inspections are likely to be incorporated into
17 inspections of a project's other LID measures..

18 Mr. McGrath, you expressed an interest in
19 the section requiring Contra Costa Permittees to
20 further evaluate and potentially modify their
21 existing Hydromodification approach. In Response
22 to Comments from those Permittees, we extended
23 the timeline for doing so by a year and clarified
24 our expectations.

25 Finally, MRP I and MRP II both include an

1 option for certain projects to relax the
2 requirement that they treat runoff entirely with
3 Low Impact Development measures. Under the
4 relaxed approach, the project designs may use
5 other kinds of treatment controls like
6 underground vault-based filters. These projects
7 are so-called Special Projects, such as certain
8 higher density transit-oriented developments.
9 They are thought on the whole to have reduced
10 environmental impacts, as compared to lower
11 density designs. And Permittees submitted
12 comments asking that the proposed language be
13 loosened to allow a greater number of projects to
14 qualify for the relaxed standard.

15 LID is an effective approach that can and
16 should be incorporated into even very high
17 density projects. We maintained language that
18 sets the bar for when the LID requirements may be
19 relaxed. In addition, I should note that we
20 expect to propose phasing out this category in
21 MRP III.

22 So we'll touch on monitoring trash, and
23 then I've kept the excitement of PCBs to the last
24 bit.

25 So let's move on to Monitoring. We

1 received comments that monitoring should focus on
2 storm drain outfalls similar to the design used
3 in Southern California. Unlike our counterparts
4 to the South, MRP Permittees have monitored our
5 urban runoff for 25 years, and we're building on
6 what we've learned from this large dataset.
7 Additionally, we believe that the proposed
8 monitoring goes further than requested by
9 environmental groups by sampling in the dry
10 season, as well as during storms, and evaluating
11 physical and biological, as well as chemical
12 conditions that may be affected by storm drain
13 discharges.

14 The monitoring requirements meet Federal
15 Regulations to demonstrate compliance with permit
16 requirements and to yield data that is
17 representative of the monitored activity. And
18 they are responsive to USEPA guidance on
19 municipal stormwater monitoring, which calls for
20 implementing a more holistic approach than
21 continued end of pipe monitoring.

22 Here are the changes we have made since
23 MRP I, including revisions to the Tentative Order
24 since it was issued in May. First, we reduced
25 some requirements for creek monitoring where we

1 weren't learning anything by completing further
2 monitoring; second, we consolidated the pesticide
3 and toxicity requirements at the Permittee's
4 request, which will lead to improved sampling
5 design and reporting. And for pollutants of
6 concern, we allow more flexibility and sampling
7 times and locations. Instead, we specify the
8 overall level of effort needed to address five
9 Management questions.

10 The last point is key. We've moved
11 beyond outfall monitoring to consider broader
12 management questions, for example, identifying
13 sources and demonstrating effectiveness of
14 actions. This is monitoring intended not only to
15 detect where we have problems, but to support
16 taking actions to fix them.

17 Let's move into trash. MRP II includes
18 requirements to reduce discharges of trash to
19 receiving waters. And first let me talk through
20 the two images on this slide. The lower left
21 photo shows a photo guide for determining on land
22 trash conditions. The A image in it represents a
23 low or green trash condition, and moving to the
24 right, the images show increasing trash levels,
25 medium, high, and at right very high, or D. The

1 figure at the lower right is a map of a
2 Permittee's trash management areas. Areas shown
3 in green, or on some maps blue, but in this case
4 green, are either equipped with appropriately
5 maintained full trash capture devices, or are the
6 A, or low levels shown in the photo guide.
7 Yellow, red and purple denote medium, high and
8 very high levels of trash, respectively.

9 MRP II requires Permittees to shift the
10 condition of the trash management areas to green.
11 This is done via either the construction or
12 placement in operation of full trash capture
13 devices like swirl separators, or other actions
14 confirmed via an on land visual survey method
15 developed by the Permittees to determine each
16 area's trash condition, again, the guide for
17 which is shown at the lower left.

18 In the Supplemental, we've proposed
19 clarifications to the Fact Sheet in which we
20 clarify our interpretation of the necessary
21 frequency of visual assessments.

22 MRP II continues the schedules set forth
23 in MRP I, which targeted a 70 percent reduction
24 from 2009 levels of trash by July 2017, leading
25 to a 100 percent reduction, or no adverse effect

1 to receiving waters by 2022.

2 In response to concerns that leaving the
3 80 percent by 2019 reduction as a guideline would
4 result in reduced effort during the final three
5 years of the permit, we changed that reduction to
6 a mandatory requirement.

7 In July, you heard Permittee concerns
8 that MRP II would require very detailed mapping
9 of private parcels to address discharges of trash
10 to the storm drain from those parcels. For
11 example, these are parcels like Wal-Mart's, which
12 have parking lots that are plumbed directly to
13 the storm drain. We've revised the language to
14 clarify that, while control of trash discharges
15 to the storm drain from private parcels is
16 necessary to meet the trash reduction goals,
17 detailed mapping is not required. Rather,
18 Permittees must maintain a list of such parcels
19 greater than 10,000 square feet, and those
20 parcels' trash control status.

21 Well, effective trash management can
22 consist of a range of actions and many Permittees
23 have adopted Source Control Ordinances to reduce
24 the use and subsequent discharge of persistent
25 trash items. To recognize the effort required to

1 enact these ordinances and the benefit they
2 provide, MRP II allows for a reduction value
3 towards the required 70 percent and 80 percent
4 reductions. That value was increased to 10
5 percent from five percent in Response to
6 Comments. And direct discharges of trash to
7 receiving waters are those that do not go through
8 the storm drain. They're most commonly
9 associated with homelessness and illegal dumping.
10 As we discussed in December in June, some
11 Permittees are making significant efforts to
12 address direct discharges.

13 In Response to Comments, we increase the
14 offset for hot spot cleanups that are above and
15 beyond those required in the Permit, and the
16 preparation and implementation of a robust direct
17 discharge cleanup plan. As shown, the hot spot
18 offset was increased to 10 percent from five
19 percent and the direct discharge cleanup plan was
20 increased to 15 percent from 10 percent.

21 Now, these numbers, these offsets, are
22 obtained in part via estimates of trash cleaned
23 up and the Assemblywoman spoke to this briefly,
24 where Permittees can claim a gallon of credit for
25 every 10 gallons of trash they clean up. That

1 ratio and the percentage limits are there for
2 several reasons, first, this is a credit for a
3 one-time removal of trash as compared to the
4 ongoing load from the MS4. Second, there is
5 great uncertainty in the 2009 loading estimates
6 to which the cleanup volumes are being compared
7 as much as several orders of magnitude. So the
8 comparison is rough at best. Third, a portion of
9 the directly discharged trash cleaned up,
10 particularly large items, would be unlikely
11 ultimately to have discharged to receiving water.

12 Finally, the goal expressed in the MRP is
13 to get to a 100 percent reduction in discharges
14 from the MS4 to receiving waters' trash
15 discharges, or no adverse effect by 2022. The
16 larger the offset maximum is here, the more we
17 are delaying fully addressing MS4 discharges of
18 trash, and the harder it will be for
19 municipalities relying on these efforts now to
20 get to a full reduction by 2022.

21 I want to be clear that these offsets may
22 be phased out in the next permit term as we get
23 to a 100 percent reduction requirement.

24 Finally on trash reduction, we heard from
25 Permittees concerned that we do not yet have

1 available effective receiving water monitoring
2 methods, and that monitoring would be expensive,
3 but not yet meaningful in terms of influencing
4 on-land trash reduction actions. Environmental
5 groups, on the other hand, expressed support for
6 monitoring, in large part because they want to
7 ensure the need for trash controls is emphasized.

8 We are not in any doubt about the need to
9 control trash from all sources. And the level of
10 receiving water monitoring is already provided by
11 the Permittees' hot spot cleanup efforts.

12 We revised the permit to require
13 development of receiving water monitoring
14 methods, as we revise the May Tentative Order, to
15 require development of receiving water monitoring
16 methods. Some of that work is already underway,
17 funding by tracking California's trash grant from
18 USEPA. The intent is to develop and test
19 additional methods during this permit term for
20 broader application during the next. This
21 testing will include monitoring at representative
22 sites.

23 Last but not least in our discussion of
24 notable changes is the Permit's PCB Load
25 Reduction Requirements. I'll note that there are

1 also requirements to reduce Mercury. During MRP
2 II, actions to reduce Mercury will be met by
3 implementation of measures to reduce PCBs, so I'm
4 going to focus on PCBs today. As a reminder,
5 Permittees are required to implement the San
6 Francisco Bay PCBs TMDL to help ensure fish from
7 the Bay are safe to eat.

8 The PCBs TMDL estimates that PCB's load
9 from urban stormwater runoff is 20 kilograms per
10 year, it assigns stormwater a waste load
11 allocation of two kilograms per year, thus
12 requiring a reduction of 18 kilograms per year
13 after 20 years, and about 14 kilograms of that is
14 assigned to the Permittees.

15 MRP II would require a reduction of half
16 a kilogram per year of PCBs by midway through the
17 second year of the permit, and that would
18 increase to three kilograms per year by the end
19 of the permit term. That's about one-fifth of
20 the PCBs TMDLs 14 kilograms per year load
21 reduction requirements for the MRP Permittees,
22 and it would be achieved half-way through that
23 20-year TMDL schedule.

24 You've just heard and I think you will
25 hear concern today that Permittees cannot meet

1 these numeric limits, that the limits are setting
2 up some Permittees for enforcement and instead
3 they should be proposed as action levels. We
4 don't agree. Rather, the load reduction numbers
5 are well grounded and make significant use of the
6 work the Permittees completed during the current
7 permit. And more on that in a moment.

8 In June, you also heard Permittee's claim
9 that there was not a clear path to compliance
10 with the permit requirements. In looking at the
11 comments, we think that concern over the path to
12 compliance boils down to two related issues,
13 first, uncertainty over how compliance would be
14 determined and load reductions assessed. This
15 also involves concern over the controllability of
16 factors relevant to achieving load reductions.
17 And second, concern over the achievability of
18 load reductions both at the regional scale and at
19 the scale of the individual permittee.

20 In response, we have made important
21 clarifying revisions that speak to these issues.
22 On compliance determination, the permit is clear
23 in terms of the required load reductions at the
24 regional, county, and permittee levels. We've
25 also made it clear that if the overall load

1 reductions for the region are met, there will be
2 no need to assess compliance at either the County
3 or Permittee level.

4 The County level and individual Permittee
5 load reduction requirements are based on
6 population. And this is consistent with how
7 allocations were assigned to Counties in the
8 PCB's TMDL.

9 We have also provided flexibility, so
10 each county may submit its preferred method of
11 allocating the County level load reductions.
12 These changes would have to be a permit amendment
13 approved by you, the Board.

14 Another way in which we made the path to
15 compliance clearer is through beefing up the Fact
16 Sheet. The Fact Sheet identifies several types
17 of actions, many of which were pilot testing
18 during the previous permit terms, so during MRP
19 I. Namely, we expect strong efforts in dealing
20 with PCBs from addressing building materials
21 during demolition, from Green Infrastructure,
22 particularly in older industrial areas, from
23 referral of PCB contaminated sites for cleanup,
24 from addressing PCBs in storm drain
25 infrastructure, and street sweeping and other

1 enhanced maintenance measures in contaminated
2 areas.

3 We ensured that the Fact Sheet includes
4 all of the parameters needed to compute the load
5 reductions from those control measures. We also
6 allow modifications to the accounting parameters
7 based on lessons learned. These changes would
8 have to be approved by the Executive Officer.

9 A common comment was concern that the
10 Permittees could not control the pace of
11 demolition, so they could not guarantee a
12 predictable load reduction every year from
13 control of PCB containing materials during
14 demolitions.

15 We have accounted for this variability by
16 using an average pace of demolition and PCB
17 content in buildings and that's presented in
18 reports from MRP I. So we now specify the two
19 kilograms per year of the required three
20 kilograms per year will be recognized provided
21 that Permittees implement a comprehensive and
22 effective program to address PCBs in building
23 materials by the end of the third year of the
24 permit.

25 There were also concerns about meeting

1 the required load reductions from Green
2 Infrastructure and C3 treatment controls. We
3 fully expect these load reductions can be
4 achieved because we are requiring load reductions
5 of a similar magnitude to those achieved during
6 MRP I. To put it bluntly, if the Bay Area
7 experiences a pace of redevelopment equivalent to
8 that experienced during the worst recession in 70
9 years, these load reductions can be achieved.

10 Continuing in that path, let's talk about
11 the achievability of load reductions. In our
12 experience, the best way to ensure that load
13 reductions will be realized is to require them in
14 a way that is enforceable. But of course, the
15 Water Board retains enforcement discretion. If a
16 municipality has exhausted all available load
17 reduction options and the regional load
18 reductions are not met, and if the County load
19 reduction in which that municipality resides is
20 not met, then the Board may look at the
21 circumstances in determining appropriate
22 enforcement. But please keep in mind that
23 individual accountability only comes into play if
24 there is wholesale failure on the part of
25 multiple Permittees to take action and achieve

1 results.

2 MRP II includes numeric load reduction
3 requirements which are numeric limits. As I
4 mentioned, they're intended to spur actions that
5 will reduce PCBs in runoff. The Permittees
6 commented that, rather than having limits, the
7 Permit should have action levels and require
8 completion of specified BMPs. However,
9 Permittees for some time have not been able, or
10 have been unwilling to make firm commitments to
11 implement specific BMPs at specific locations
12 during MRP II. We need the Permittees to make
13 substantial progress in load reductions
14 consistent with the TMDL during this permit term.
15 As a result, MRP II requires the load reductions
16 and reporting on where, what and when actions
17 will be taken to achieve them.

18 Some of the implementation actions are
19 likely to require additional resources. It has
20 been our experience that it's easier to get
21 resources when there's a clear requirement for
22 the action.

23 The numeric limits have been setup in
24 part based on work done by the Permittees. Their
25 achievability is based on the Permittees' own

1 estimates of load reductions achieved during the
2 last permit term. The half kilogram per year
3 reduction by 2018 can be achieved by a
4 combination of measures that include Green
5 Infrastructure and other treatment associated
6 with development at the same rate that was seen
7 during the great recession, and modest additional
8 levels of effort to clean out PCB contaminated
9 sediment in storm drains, additional street
10 sweeping, and similar actions.

11 Much of the three kilogram per year
12 reduction by 2020 can be achieved by implementing
13 a program to control discharges of PCBs
14 associated with demolition projects.

15 Given recent positive meetings, we are
16 convinced that the PCBs program can be
17 accomplished through adaptation of existing
18 Permittee efforts to oversee building demolition
19 and this is already happening for some projects.
20 The remaining one kilogram per year would be made
21 up of the continued operation of Green
22 Infrastructure projects, as well as new projects.
23 Reductions from referrals of legacy PCB sites
24 with high levels of PCBs for cleanup and
25 continued improvements to the operation and

1 maintenance of urban infrastructure including the
2 storm drain system.

3 Looking to future permit terms, the Green
4 Infrastructure plans required under the new and
5 redevelopment section will be a significant tool
6 to ensure PCB reductions and we expect they will
7 be a part of reasonable assurance plans to ensure
8 the reductions.

9 As I mentioned, we've aligned Green
10 Infrastructure dates and PCB dates.

11 And the last slide here on PCBs, to
12 summarize, our changes to the PCBs provision
13 address identified uncertainties while still
14 requiring Permittees to implement significant
15 actions to reduce PCBs. They create a clear path
16 to compliance via modest increases in existing
17 efforts and Green Infrastructure implementation
18 largely by private parties. Significantly, we've
19 committed a credit of two kilograms per year of
20 the required three kilograms per year reduction
21 for a building demolition control program.
22 However, the permit also allows permittees to
23 develop their own accounting system, or proposed
24 changes to the default acceptable to the
25 Executive Officer.

1 For changes to the County-specific load
2 allocations, MRP II contains provisions that
3 allow the Board to reopen the permit. You may
4 also reopen it if there are substantial new or
5 changed information that calls into question the
6 numeric limits or related requirements.
7 Similarly, we will exercise enforcement
8 discretion for good actors. Good actors are
9 those who are undertaking efforts sufficient to
10 meet the load reductions.

11 Also, we commit to working with the
12 Permittees to ensure that there are no surprises.
13 We will do this by retaining a work group that
14 will be a forum for discussions on the path to
15 compliance. It will be comprised of key
16 municipal representatives and other decision
17 makers to ensure we are remaining in good
18 communication as we move forward.

19 In summary, the Revised Tentative Order
20 and related documents have been developed as the
21 result of an extensive stakeholder process. That
22 process resulted in incorporation into the permit
23 of significant concepts proposed by the
24 Permittees such as Green Infrastructure Plans.
25 We also made revisions to the Tentative Order in

1 Response to Comments. These included changes to
2 implementation and reporting dates, revisions of
3 the 80 percent by 2019 trash reduction number,
4 and commitment to a clear default accounting
5 approach for PCBs reduction.

6 And I would remind that there is a
7 Supplemental for this item, and just as I finish,
8 I'd like to take a minute to recognize our staff
9 who worked on the item and in particular our
10 Management Services Division staff who were
11 responsible for photocopying this brick and
12 getting it to you, but also Tom Mumley, the AEO
13 who is leading the Permit, Dale Bowyer, the
14 Section Leader who has led it, Richard Looker and
15 Jan O'Hara who worked on pollutants of concern
16 and monitoring, and Sue Mah and Selena Louie, who
17 worked on everything else, and Farhad Ghadrati if
18 he is still here, who worked on Pacifica
19 pathogens.

20 So that concludes the staff presentation.
21 I'd be happy to take any questions you might
22 have.

23 CHAIRPERSON YOUNG: All right. Questions
24 for staff?

25 DR. AJAMI: You know you had those

1 pictures, A, B, C, D with the street size. I
2 wonder like are there specific, like depending
3 which day of the week you take that picture, that
4 can't look very different, right?

5 MR. BOWYER: I'm sorry?

6 DR. AJAMI: For the street cleaning,
7 depending on which day of the week you take that
8 picture, it can look different, so do we really
9 know like how often they need to clean up to make
10 sure they maintain the quality? I'm just saying
11 this because like in San Francisco they can come
12 clean it up on Monday and then, depending on the
13 season, like on Wednesday it can look really bad
14 from the trees, you know.

15 MR. BOWYER: We directed them to do their
16 assessments half-way between whatever BMPs
17 they're using, so it's not the worst case, it's
18 not the best case. This is a work in progress.
19 There's enormous uncertainty about what's the
20 appropriate frequency and we are really leaving a
21 great deal of flexibility to the Permittees to
22 dictate what the level of effort that's going to
23 be necessary is. They have to convince us that
24 they're doing enough visual assessment to
25 determine the status of these trash management

1 areas and that they're understanding the effects
2 of their actions. We're going to be looking very
3 carefully at what they're producing and saying,
4 "Is this really enough?" "Is this frequent
5 enough?" "Are we convinced?" And as I said,
6 it's brand new.

7 DR. AJAMI: Sure. And then the way we
8 figure this out or they figure it out is through
9 like if there's a storm that through monitoring
10 they'll figure out a cleanup is not enough, or
11 there's clogging. Is that how they --?

12 MR. BOWYER: Well, there are various
13 ways. We have full trash capture devices in some
14 locations that can be used to determine what made
15 it into the storm drain system given the
16 condition on the street. That would be sort of a
17 research method test, a backstop on this kind of
18 thing.

19 DR. AJAMI: Okay.

20 MR. BOWYER: But we're stepping into this
21 area and we're going to try to determine the
22 answer to the question you're asking, we don't
23 have the answers right now.

24 DR. AJAMI: Okay.

25 DR. MUMLEY: I'd like to add, I'd like to

1 call attention to the Supplemental that we
2 presented to you this morning because in there
3 the number one change that we added language into
4 the Fact Sheet, providing clarification on the
5 frequency of visual assessments, speaking to the
6 factors that would have to be considered in
7 determining what is the right frequency in
8 addition to spatial considerations. So a lot
9 depends on how well you understand the management
10 area, what the current level of trash generation,
11 and then what types of actions is one taking in
12 response to that, or combination of actions would
13 then dictate the expected -- you have to project
14 the expected benefit and then observe in
15 accordance with that protective benefit, so sort
16 of the more robust the action perhaps the less
17 frequent the observations may need to be. But a
18 lot depends, again, on the level of the trash
19 generation, the drainage system, the type of
20 action taken. So we struggle with trying to
21 identify a default backstop versus providing some
22 general guidance in the Fact Sheet and expecting
23 the municipalities to use their knowledge of
24 their drainage systems to determine the best
25 optimum approach towards these assessments to

1 demonstrate that their actions are being
2 effective.

3 DR. AJAMI: May I ask a follow-up
4 question quickly?

5 Are there any specific best management
6 practices out there that, depending on the size
7 of the city, you know, or municipality, you can
8 basically implement use and guide this kind of
9 decision making? Or this is more random?

10 MR. BOWYER: There's nothing -- street
11 sweeping, picking up the trash with crews, that's
12 basically it. We've got some other little
13 devices that can screen the storm drain inlets
14 and then pop open if there's flooding threatened.
15 So there aren't a lot of other options besides
16 these basic things, and they all cost a lot of
17 money to deploy on a massive scale. And so
18 Permittees are all putting these different
19 methods in place, determining what's the most
20 efficient. What they're also saying to us is,
21 the more effort we spend, the more staff we have
22 out there doing the visual assessment, the less
23 we have available for the other actions. So it's
24 all going to be a balance and we have to come up
25 with the most efficient balance.

1 DR. AJAMI: Okay.

2 MR. KISSINGER: What's the status quo
3 right now? Obviously on different aspects of
4 this permit. But what's in the law right now
5 with regard to PCB and how is this changing
6 practices going forward, and likewise with -- I
7 mean, it's not covered by trash. Trash is not
8 covered currently by the Permit that's in place.
9 Tell us what the status quo is versus where we're
10 going to. Not all of this is new, trash is new,
11 obviously we've been talking about trash for a
12 while, but other aspects of it are in place
13 today. What's in place today?

14 DR. MUMLEY: Sure, I'll speak to that, so
15 I'm gathering your question is broad, it's trash,
16 PCBs, etc. So just to start with, trash is we're
17 carrying on, building upon the requirements in
18 the existing previous permit, going to the next
19 stage of load reductions, right? So I think you
20 understand it. For PCBs, the major driver here,
21 the current permit took the approach as outlined
22 in the TMDL Implementation Plan that we envision
23 phased implementation starting with Phase I is
24 let's do pilot studies to consider the various
25 types of actions and the relative benefit of

1 those actions. So the current permit required a
2 number of pilot studies be conducted considering
3 everything from enhanced operation and
4 maintenance cleaning out the storm drain systems,
5 actually evaluating the efficacy of actually
6 treatment systems like Low Impact Development
7 measures, or even looking at the effectiveness of
8 some of these full trash capture systems, these
9 systems that may collect PCBs, as well. So the
10 current permit had a mandatory number of studies,
11 pilot studies that needed to be done, didn't have
12 load reduction requirements. But consistent with
13 the TMDL implementation phased implementation
14 strategy, this permit then takes lessons learned
15 to date and other information and establishes
16 focused requirements that are based on the
17 concept of focused implementation, so that's why
18 the load reductions are based on the expected
19 outcome of focused implementations in the various
20 watersheds throughout the region. So, again, PCB
21 requirements are a continuation and expansion of
22 the existing requirements and there's a parallel
23 with the Mercury requirements that build upon
24 what's been done in the past, but mostly the
25 focus is on PCB reductions, and where we're going

1 to get PCB reductions we're anticipating Mercury
2 reductions. So those are the main new drivers
3 are the trash and PCBs, and they are expansions
4 from the existing permit requirements.

5 MR. KISSINGER: Thanks, Tom.

6 CHAIRPERSON YOUNG: Any clarifying
7 questions at this time? All right. Thank you
8 for the overview. That would have taken me twice
9 as long to do that presentation, he talks so
10 fast. It was great.

11 What we often do with very complicated
12 permits, or controversial permits like this, is
13 to allow the Board Members at this point in time
14 to state what our preliminary thoughts are based
15 on what we've read so far, and the purpose of
16 doing that is to give you folks the opportunity
17 to target your comments to convince us of the
18 things that you really want to convince us of,
19 which if you didn't know what we were thinking
20 you might not be able to target it quite as
21 effectively. So that is what I would like to do
22 right now.

23 MR. GRIMM: Madam Chair, could I address
24 that question procedurally?

25 MS. WON: That is unusual, but it is

1 within your discretion to allow this comment or
2 not.

3 CHAIRPERSON YOUNG: All right, well let's
4 hear your concern.

5 MR. GRIMM: Thank you. I'm Gary Grimm
6 and I'm the attorney for the Alameda County
7 Program, 17 Permittees. We have a concern with
8 Board Members expressing tentative opinions prior
9 to hearing all the public testimony. We think
10 it's very beneficial to hear the public
11 testimony. You've heard the staff and we'd like
12 you to hear the public testimony before you state
13 any kinds of conclusions; hear it, and then
14 decide. Thank you.

15 VICE CHAIR MCGRATH: I understand the
16 value of due process on both sides and as I look
17 at a matter, I want to make sure that the public
18 has a chance to talk me into or out of something.
19 Now, I've spent the last four days going through
20 hundreds and hundreds of comments and assessing
21 them, and there may be something that comes up
22 today that I haven't heard, in that meeting, the
23 two workshops, the previous permit, or the notes
24 that I've kept for the last three years, but I
25 kind of doubt it. I think the outline of the

1 issues that are before us is pretty clear. Now,
2 there are opinions on both sides about
3 approaches, but it is not like something that is
4 de novo, where forming an opinion prior to any
5 testimony is completely inappropriate, and there
6 I would agree with the comment. But here, this
7 is the third iteration of the permit, it has been
8 workshopped, and there have been literally
9 hundreds of comments, so I think it's a much
10 different situation.

11 MS. WON: If I may chime in, I see no
12 problem with Board members giving their
13 preliminary thoughts about the Revised Tentative
14 Order. As Mr. McGrath said, you know, we've had
15 two hearings on this issue, we have this huge
16 packet with all the comments, and so you are
17 completely free to give your preliminary
18 assessment. That's not to say that you've made
19 up your mind, you are going to hear the testimony
20 today, and we'll reserve judgment until the very
21 end.

22 CHAIRPERSON YOUNG: All right, do other
23 Board Members want to --? Well, I appreciate you
24 bringing up the concern, Mr. Grimm. I think what
25 I have in mind is something quite different

1 because, as Mr. McGrath said, we have met and had
2 many workshops on this stuff before. We have
3 volumes and volumes of documents that we read
4 through, and if we didn't have any preliminary
5 thoughts at this point, I mean, that would be
6 really surprising. We're supposed to have
7 preliminary thoughts at this point, having done
8 our homework. So the point of sharing with you
9 what our preliminary thoughts are is not to say
10 this is what we're going to do and you guys don't
11 matter, quite the contrary, it's to say these are
12 our preliminary thoughts and if you don't like
13 which direction they're going, come on and talk
14 to us about it, in addition to -- it's an
15 opportunity for you folks, as I see it, to be
16 able to target your comments towards the things
17 that you most want to convince us of. So I would
18 actually like to go ahead and do that despite
19 your suggestion.

20 All right, do you want me to kick it off,
21 do you want to kick it off, anybody?

22 VICE CHAIR MCGRATH: I've got four points
23 and I'll make them I think relatively briefly.
24 First of all, Green Infrastructure is not a new
25 requirement. The suggestion in the revised staff

1 recommendation is that it be done on a more
2 comprehensive basis, a planning basis, that seems
3 at least initially to me like a good idea because
4 there are other reasons that we're going to have
5 to deal with our urban stormwater infrastructure,
6 other than water quality, and it is better to tie
7 these things together. So that's the first
8 issue, Green Infrastructure, doing this on a
9 planned basis rather than prescribing some
10 minimum square footage seems like a good idea.

11 There are three issues that I've
12 highlighted to staff, I believe they are in the
13 Order, but perhaps not as clear, but I want to
14 make sure that everybody understands the
15 importance of them. First of all, and there's
16 been debate and I did look at some of the permits
17 issued by the Los Angeles District in comparison.

18 So the end of the pipe monitoring, which
19 is a request that has been made, I think there is
20 material in the staff recommendation that makes
21 it clear that some end of the pipe monitoring
22 will be necessary to evaluate the effectiveness
23 of some of the measures that are controlled.

24 There's a lot of discretion in individual
25 Permittees to propose things, there will need to

1 be some monitoring to look at what's already been
2 installed, it's not the wholesale monitoring
3 that's done in Los Angeles where the distinction
4 is made, but I want to make sure that everybody
5 understands that there is going to be some end of
6 the pipe monitoring likely down the road.

7 Second, I want to make sure that
8 everybody understand that this is a five-year
9 permit, there will be another permit, what I owe
10 the next Board given this is my second crack at
11 this permit is to make sure that there's a robust
12 process where we look at the lessons learned,
13 where we try to figure out what's working best
14 and we have that analytical process, and people
15 have an opportunity to have input. So there's a
16 taking stock process with enough independence
17 from both Dischargers and staff so we can draw
18 the lessons learned. That's in there, it's not
19 as clear, staff showed me last night where it was
20 in there, I just want everybody to have a heads
21 up and an opportunity to comment on the value of
22 taking stock.

23 And third, and perhaps I show a little
24 more conclusion here, but then I've followed some
25 of this down into the weeds at my city in

1 Berkeley to watch the actual implementation on
2 the ground. I want to make sure that these items
3 are maintained and that there is a structure and
4 changes in the current maintenance procedures in
5 most local governments to make sure that the
6 facilities that are going to be installed -- at
7 whatever pace -- are adequately maintained. So
8 those are my four concerns that I would most be
9 appreciative in hearing comments on.

10 MR. LEFKOVITS: Thank you very much. I
11 guess I just have two high level or general
12 responses, I mean, I think that with all the
13 workshop work that's been done, the preparations,
14 the meetings, you know, I'm not really someone
15 who can adequately address some of the technical
16 things in here, but I see a couple of themes
17 going through that I just want to highlight.

18 The first is that I think it's really
19 important that we have very specific
20 requirements. I think the general call for
21 looser requirements, or non-enforceable action
22 levels, or guidelines that, you know, we can pay
23 homage to but not respect, I think there's a
24 couple of things, and I think the most important
25 one is that it doesn't encourage problem solving.

1 I think all of the problem solving that gets
2 done, all the innovation that happens in any of
3 our fields, in any of our areas, happens because
4 of a specific need. And I think that there's
5 sufficient flexibility in the approach here to
6 encourage municipalities to encourage individual
7 problem-solving, and I think we have enough
8 flexibility with the staff and with the Board
9 that individual approaches can be accommodated.
10 But I think it's important to have clear lines
11 and markers about where we see problems and needs
12 rather than saying there are things that don't
13 need to be addressed. So I think that's the
14 first thing that I'd bring up.

15 And the second thing is that when I read
16 through the comments, I'm really struck by they
17 fall into two different categories, they fall
18 into the category of "we don't want this
19 regulation" and then the ones that actually
20 propose a specific alternative. And for me as a
21 layperson, the comments that don't provide an
22 alternative are much less useful than the ones
23 that do provide an alternative. And so not to
24 trivialize or make light of any of this, but I
25 think about this in regard to how we talk to our

1 Fourth Grader son about the things he doesn't
2 like, so, if you tell us you don't like
3 something, we have one response; if you tell us
4 that you don't like something and there's a
5 different way to get it done that achieves our
6 basic goal, that's quite another. And so when I
7 read through the comments, I'm really struck by
8 the comments that come with a background of, "We
9 are trying to meaningful address and solve the
10 problems that we commonly share," and those that
11 don't. And I just want to say, you know, when
12 you read through, even skimming through, a stack
13 like this, it's really clear where we as a Board
14 can get additional help and I just think with
15 respect to the process and everyone who has
16 contributed, just in general, it's really
17 important to provide alternative thinking and
18 different creative ways of addressing a problem
19 just not saying "this should be struck." So
20 that's my response.

21 MR. KISSINGER: So my concern from the
22 get go has been are we putting something in place
23 a permit which is enforceable, in a predictable
24 way, that there are clear metrics that people can
25 achieve. And so from my perspective as I listen

1 to the testimony today, I'll be interested to
2 hear whether the municipalities are being set up
3 to fail, whether they can comply with the terms,
4 the suggestion has been made in lots of the
5 comments, including the opening comment today,
6 that it's not achievable, I guess I want to hear
7 that, I want to hear why there's maybe a
8 skepticism about the flexibility that was
9 included in the staff's report about being able
10 to be flexible, to work with the Permittees to
11 achieve compliance. The staff report went a long
12 way in responding to what has always been my
13 concern, certainly, on the trash issue about how
14 the metrics are going to be measured for people
15 to achieve historical benchmark which frankly
16 I've always had some skepticism can be clearly
17 established. So that, I think, is the key issue
18 here. And fundamentally because I don't think
19 there ever will be precision, I don't kid myself
20 to think that there is any set of metrics that
21 can be put into place that can be scientifically
22 established, whether or not we should take to
23 heart that the staff can be trusted to show the
24 flexibility to ultimately make this fair, but
25 achieve what I think everyone agrees are

1 important goals here, which is reduction of PCBs
2 and trash.

3 DR. AJAMI: First of all, it's amazing
4 how much work and time has gone into this permit
5 and since this is very close to my heart,
6 generally speaking, the whole implementation of
7 Green Infrastructure and sort of using natural
8 system to clean up some of the water quality
9 issues that we have, there were two things that I
10 was very interested to look at in these permits,
11 one was very similar to the concern I raised
12 earlier as well, like how do we measure success.
13 And I think that's definitely an unfolding issue.
14 I think it's not just our challenge; generally
15 speaking, there is this is a national and maybe
16 an international challenge how to clearly sort of
17 measure the performance of these kind of
18 infrastructure. Having said that, that should
19 not stop us from using these techniques, and
20 using these technologies to change the way we've
21 managed stormwater and we've managed our cities
22 in more creative ways.

23 I personally appreciate the challenge
24 with cost associated with implementing some of
25 these plans. I don't think that necessarily has

1 to stop us from moving forward with a permit like
2 this, I think often as we have seen in the energy
3 sector, you come up with a Regulation, gradually
4 there are so many creative - people, actually
5 their creativity starts unfolding more and come
6 up with ideas of how to implement these solutions
7 in a more cost-effective and productive ways.
8 And the opportunity to cost share with the
9 customers, there are opportunities to encourage
10 change in a path that can help the Cities to move
11 toward more sort of to a greener way of managing
12 stormwater. Again, my one and only concern
13 which, again, I don't think necessarily should
14 stop us from moving forward with this, is coming
15 up with ways to measure and some sort of a metric
16 so they can measure performance of this
17 infrastructure for the good of a society as a
18 whole, because I think, again, this is an
19 unfolding issue, we are trying to figure out how
20 to do that, it's not just us as a region, you
21 know, since I've worked on this topic, a lot of
22 different cities and municipalities and regions
23 around the country are trying to figure out how
24 to do that, and I think as we start thinking
25 about this, I think hopefully in the coming

1 years, you know, we'll have a better way of -- by
2 the time we have these plans already done and we
3 are moving toward implementing the solutions,
4 hopefully we have a more accurate way of
5 measuring success, but I don't think necessarily
6 I have any specific concerns about any of the
7 points that are in the Permit, in general.

8 CHAIRPERSON YOUNG: All right, thank you.
9 Okay, I'll try to make this relatively fast. As
10 you know, you guys were mostly at all the
11 previous workshops and I did make some -- they
12 had lots of questions -- and make some comments
13 about the close of the previous workshops, and
14 then at the next workshop, we reported back on
15 previous workshops. I had lots of asks for
16 changes and I got some of my asks, and I didn't
17 get others, so I'm probably in the same position
18 as a lot of you in that respect, but specifically
19 with the PCBs, Low Impact Development and Green
20 Infrastructure; however, I think that the staff
21 did make some substantial and I think very
22 important changes in response to the comments
23 that we heard at the workshop. And so what I'm
24 going to be interested particularly in hearing is
25 why that wasn't enough. I feel like the

1 requirements were clarified a lot, the methods of
2 measuring compliance were clarified a lot, and
3 frankly compliance was made easier significantly,
4 as well. And so I'm wanting to hear why, given
5 the changes that have already been made, why
6 people might still have concerns.

7 With respect to trash, you know, same
8 thing, I got some of the things I would have
9 liked to have seen and not others. I think what
10 I see in the Supplemental actually clarifies many
11 things that I thought were kind of unclear just
12 as a matter of how this package was written.

13 There's one area, though, that I continue
14 to have real concerns about because I think it's
15 really not clear what we're asking, and I do want
16 to explain that in a little bit of detail, and
17 that's in the receiving water monitoring
18 component of the trash item. That's C.10.B.5, I
19 think. I'm not looking at it, but somewhere
20 close to that anyway. You all will know what I'm
21 talking about.

22 To me, it's not clear whether we're
23 asking the Permittees to develop and research new
24 methods for measuring trash flux in the water
25 column, or whether we're asking Permittees to

1 develop a monitoring program that uses bank and
2 shoreline monitoring as a surrogate. I'll call
3 the first that sort of research on new methods,
4 I'll call it monitoring 3.0 and using existing
5 methods or adapting existing methods doing visual
6 kinds of things, I'll call that Monitoring 2.0,
7 so I don't have to re-name them each time. It
8 seems to me that if we're expecting monitoring
9 3.0, then it's very expensive, the timelines have
10 to be very long, and in my view, I'm not sure at
11 all that it should be paid for exclusively by the
12 MRP Permittees, or even exclusively by anybody in
13 this region because it's something that affects
14 everybody else in Coastal California and a lot of
15 people in other parts of the U.S.

16 But the timelines seem to sort of match
17 up to that sort of research project of Monitoring
18 3.0. On the other hand, if we expect Monitoring
19 2.0, where it's going to be a lot easier to get
20 stuff off the ground, it started because other
21 places in California are swamp protocols, we've
22 already got pretty good methods that could be
23 adapted to do that. Then we want the timelines
24 to be shorter and we could actually get some
25 information or some monitoring done in this

1 permit cycle, so I see what we have right now is
2 kind of an unclear mush, and I want to clarify it
3 and make it not a mush.

4 What I would suggest personally is to the
5 Monitoring 2.0, do the simpler, cheaper thing
6 that gives us information in this Permit Cycle.
7 Specifically, I'd like to have some actual
8 monitoring of actual places during this permit
9 cycle, as I mentioned, so that we can start
10 getting some "where the rubber hits the road"
11 sort of feedback on what this monitoring is going
12 to tell us.

13 I think also that it would be advisable
14 to offer to the Permittees to push back many of
15 the deadlines. If they join in sort of an all-
16 region-wide, all Discharger group program, not
17 just MRP Permittees group program, but all of the
18 other Dischargers, as well. We've done that with
19 the 2019 option in this draft, I think we should
20 extend that to the other deadlines that are in
21 that section. And I also think we need to
22 clarify what we're talking about in Section A.
23 We talk about a program to test tools and
24 protocols, we never defined what tools and
25 protocols are, and we have a long list of things

1 that are sort of part of a normal monitoring
2 program. So I think we need to clarify our
3 language in that.

4 Having said all that, not wanting to
5 leave anything to chance, I have written up some
6 or offer to everyone some potential language that
7 we could use that does those things that I just
8 listed. And it would be very interesting to me
9 to hear your reactions to those thoughts and
10 specifically that language in addition to your
11 thoughts on the supplemental, and in addition to
12 of course the changes that were made since the
13 last time we had a workshop and could talk about
14 all this stuff. And so this is all in an effort
15 to really get down to the nuts and bolts, to be
16 specific to allow you to respond to very specific
17 things, and so we can go forward. I'll let the
18 staff put the "supplemental supplemental" from
19 the Chair out on the tables and you can take a
20 look at it. So that's where I'm going.

21 We are looking forward to hearing from
22 all of you -- all of you is a lot of people --
23 what we're going to do is to try to take -- we
24 are going to take the Elected Officials first out
25 of deference, and I'd like to start with a little

1 bit of testimony from the Elected Officials
2 before anybody thinks about breaking for lunch if
3 we're not going to have a mutiny on that score,
4 and see how much we can do.

5 As you know, normal rules apply, we'd
6 like to not hear exactly what you said before, we
7 want to hear the things that are relevant to the
8 newer package we didn't already have the workshop
9 on, we are going to allow five minutes per
10 speaker for the Elected Officials, you really
11 don't have to take all of it if you don't want
12 to, and with that, unless I've neglected to
13 mention something, I think we would begin hearing
14 the testimony. Staff has very kindly organized
15 all these cards for me.

16 First, we might have Steve Glazer, State
17 Senator from District 7, and then Zack Ross, who
18 is a Representative of Assemblyman Kevin Mullin.

19 MS. GHERINGTON: Good morning, I am not
20 Steve Glazer, I am Teresa Gherington and I am
21 here today representing him. Senator Glazer --
22 and I think I was supposed to say I did take the
23 oath before I began. I'm here today representing
24 Senator Steve Glazer. Senator Glazer represents
25 the seventh Senate District, which includes the

1 majority of Contra Costa County, as well as parts
2 of Eastern Alameda County. He has asked me to
3 convey the following: The Senator is firmly
4 committed to and values the importance of clean
5 stormwater and eliminating trash from our
6 waterways, and he agrees that we need to work
7 together to protect our creeks and the San
8 Francisco Bay. He has asked that I congratulate
9 you and your staff in the thoughtful process that
10 you have conducted, and he fully supports the
11 goals of the Board and the intent of the proposed
12 permit.

13 However, Senator Glazer respectfully asks
14 that the Board not adopt the proposed permit and
15 Tentative Order today, rather, he encourages the
16 Board to continue to work with the environmental
17 groups and local government agencies to come up
18 with a solution that is environmentally
19 responsible and financially feasible, while
20 avoiding the risk of unintended legal
21 consequences.

22 It is reasonable to hold the Cities and
23 other local entities accountable for what they
24 can control. Cities, towns and County
25 Governments in this District are actively

1 addressing water quality on their own initiative.
2 As Assembly Member Baker noted earlier, many of
3 them have environmental staff and programs to
4 reduce pollutants in our land, air and water, and
5 beyond their locally self-imposed efforts, they
6 do continue to work with regional, state agencies
7 and Board to protect and preserve our precious
8 resources.

9 In the current proposal, however, puts
10 too broad a responsibility on them. Under the
11 current language, local entities will be
12 responsible for matters outside of their control.

13 Similarly, the Senator supports
14 enforcement of these local entities by public
15 agencies, but he is concerned that enforcement
16 through private party litigation will adversely
17 affect the Cities' financial stability.

18 Again, Senator Glazer supports the
19 ultimate goals of the Board and believes that
20 there is a better solution to ensure
21 accountability for Cities, towns, and Counties in
22 his District, while implementing cost-effective
23 steps that are within their control. Thank you
24 for your time and consideration.

25 CHAIRPERSON YOUNG: Now I'd like to

()
1 invite Zach Ross and then after that we would
2 have Candace Anderson.

3 MR. ROSS: Hi. Thank you very much for
4 your time and your consideration today. My name
5 is Zack Ross from the Office of Assemblyman Kevin
6 Mullin, and I'm here on behalf of Assemblyman
7 Kevin Mullin, as well as Assemblyman Rich Gordon,
8 that's I guess the lion's share of San Mateo and
9 Santa Clara County, Assembly Districts 22 and 24.

10 Municipalities are truly limited in their
11 ability to generate stormwater revenue as a
12 result of Proposition 218 from 1996. The
13 Governor has indicated interest in trying to
14 address these issues next year, and I note
15 there's also been interest in the Legislature
16 itself to address these issues. But as of now
17 there is really nothing that's successfully been
18 achieved. And even if it is achieved, it will
19 have to go through the Statewide ballot
20 initiative process before anything gets
21 accomplished, and even if successful, it will
22 take a substantial amount of time for
23 municipalities to start generating that revenue
24 of the magnitude necessary to meet overall
25 stormwater management needs.

1 Second, last year the Governor signed SB
2 985 into law, a bill requiring the agencies to
3 develop a stormwater resource plan in order to
4 compete for voter approved bond funding. The
5 State must look at managing stormwater as a
6 resource, given the historic drought conditions
7 we are experiencing, as well as the pending El
8 Niño conditions. Stormwater resource planning
9 takes into account water quality concerns, but
10 also looks at the larger vision of stormwater
11 management, including opportunities for
12 recharging groundwater and addressing the
13 inevitable risk of increased flooding, resulting
14 from climate change and, like I said, the El Niño
15 conditions. As such, Municipalities are being
16 asked to do even more in regard to stormwater
17 than just addressing water quality issues, and on
18 different timelines than your Regional Permit.

19 Given these competing Stormwater
20 Management needs, and overall limitations on
21 generating stormwater-specific revenue, we
22 recommend the Water Board be thoughtful in
23 prioritizing water quality concerns to allow
24 Municipalities to focus what revenue they do have
25 on solving the most pressing problems, and

1 consider providing flexibility through phasing
2 requirements to spread the cost over longer
3 periods of time.

4 The Water Board may also want to provide
5 more local time for the agencies to identify and
6 pursue multi-benefit solutions to particular
7 water quality issues that essentially do more
8 with less in helping to address California's
9 important water management needs.

10 Thank you again for your time and your
11 consideration.

12 CHAIRPERSON YOUNG: Thank you. Candace
13 Anderson, and then followed by Vice Mayor Rose
14 Herrera.

15 MS. ANDERSON: Good afternoon. I am
16 Candace Anderson, Contra Costa County Supervisor
17 and also a former member and Mayor of Danville's
18 Town Council, and have been working on this issue
19 for many many years. I am here today to request
20 that you do make a few more changes to the
21 proposed plan so that our Cities and our Counties
22 can reasonably comply with the updated permit.

23 Specifically, I'm here to talk trash.
24 Contra Costa County agrees with the goals and
25 values of trash reduction, but we have some

1 serious concerns with the details in the
2 Tentative Order, and I'm going to explain to you
3 how in my County we're going to be impacted.

4 Unincorporated Contra Costa County has 19
5 County Watersheds and our unincorporated areas
6 encompass all those 19 areas. The County owns
7 some of the parcels, Flood Control District has
8 facilities there, many of these areas, of course,
9 are magnets for illegal dumping and homeless
10 encampments. And our County Watershed Program
11 staff conducts many instream cleanups each year,
12 but continuing the efforts as we have with the
13 proposed credit system and receiving only one
14 gallon of trash reduction credit for every 10
15 gallons of trash cleaned up, and then requiring
16 them also to take place twice a year makes these
17 continuing efforts of the instream cleanups
18 financially unviable.

19 Currently, Contra Costa County's instream
20 cleanup efforts includes sponsoring eight to 10
21 cleanups per year and offering grants to local
22 watershed groups to do so, connecting three to
23 five instream cleanups, and each of these events,
24 of course, takes dozens of hours of staff time to
25 plan, advertise, set up, implement, we also

1 contribute \$20,000 a year of financial support to
2 the Countywide coordination of our California
3 Coastal Cleanup Day. We work on cleaning out
4 over a dozen homeless encampments each year in
5 our flood control main facilities and our
6 instream cleanups of litter, illegally dumped
7 items, is just one of the many elements of these
8 permits. So these two significant areas, the
9 10:1 offset, as well as doing it twice a year,
10 would result in our offset ratio being 2.7
11 percent this year if we use the 10:1 ratio.
12 Alternatively, if you went to using the three
13 gallons cleaned up to one gallon credit, we would
14 instead be at a nine percent. And so for us
15 that's a significant impact, a significant use of
16 our resources. The requirement to clean each
17 area two times instead of one time per year
18 obviously doubles the cleanup requirements and
19 creates volunteer fatigue. The benefit of these
20 cleanups to the community are not just that we're
21 getting it clean, but we're getting the community
22 to invest in our creeks and our areas. They
23 develop a stewardship over it, not only are they
24 no longer dumping items in there, but they're
25 acting as the people standing there making sure

1 others are not, as well. And so we ask you to
2 take a second look at this, look at the offset
3 for the gallons cleaned up. We would ask you to
4 go back to the 3:1 ratio that was used in this
5 year's annual report, and only require one
6 cleanup per year. Thank you very much.

7 CHAIRPERSON YOUNG: All right, thank you.
8 Vice Mayor and then Councilmember Don Biddle,
9 please.

10 VICE MAYOR HERRERA: Good morning, Madam
11 Chair and Members of the San Francisco Regional
12 Water Quality Board. I am Vice Mayor Rose
13 Herrera, here today on behalf of the Mayor and
14 City Council of San Jose to address the City's
15 outstanding concerns with the Revised Tentative
16 Order scheduled for adoption today. I bring with
17 me letters from the Mayor and City Council, which
18 I've handed there and hopefully they can get
19 distributed to you.

20 First, allow me to say that the Mayor and
21 Council understand that the Revised Tentative
22 Order represents years of hard work by your staff
23 and stakeholders throughout the Region, including
24 the City of San Jose. And secondly, we
25 appreciate the Water Board's objective to protect

1 the San Francisco Bay and its tributaries through
2 this regulatory framework.

3 The City of San Jose shares the Water
4 Board's goal to protect local waterways and the
5 San Francisco Bay, and strives to continue its
6 environmental leadership, particularly in
7 stormwater pollution prevention. Unfortunately,
8 the Revised Tentative Order undermines and
9 undervalues the City's efforts to implement
10 control programs to reduce stormwater pollution,
11 which is part of what we're concerned about, but
12 ultimately our goal is to restore the health of
13 local creeks and effectively improve the quality
14 of life for our residents, so both of those goals
15 are very critical.

16 San Jose has continually demonstrated its
17 commitment and forward thinking to address the
18 challenging issue of how to reduce trash in the
19 community.

20 The City of San Jose was the first city
21 of its size to implement a single use plastic bag
22 ban ordinance that paved the way for other
23 jurisdictions. The City has also adopted an
24 ordinance banning Styrofoam food ware use in
25 restaurants. These two source control actions

1 have resulted in tangible improvements in our
2 community, including an observed 71 percent
3 reduction in the number of bags found in our
4 waterways.

5 San Jose exceeded current permit
6 requirements, installing full trash capture
7 system, serving an area encompassing 1,200 acres,
8 more than required by the MRP, and more than any
9 other jurisdiction in the region. The City has
10 also taken bold and innovative action to address
11 the regional issue of homelessness, recognizing
12 the detrimental environmental impacts of homeless
13 encampments within the riparian corridor.

14 San Jose's significant investments to
15 address homelessness began with its pilot Clean
16 Creeks, Health Communities Program supported by
17 grants funds from the Environmental Protection
18 Agency. The City now has established a homeless
19 response program which has resulted in direct
20 water quality improvements with the removal of
21 over 1,400 tons of trash from homeless
22 encampments along creeks last year alone.

23 And perhaps more importantly, the Mayor
24 and City Council have recently approved actions
25 to provide additional funding for increased

1 housing opportunities for our homeless.

2 With regard to Pollutants of Concern, San
3 Jose has been an active participant in regional
4 efforts to reduce PCBs reaching the Bay,
5 partnering with BASMAA in the EPA funded Clean
6 Watersheds for a Clean Bay project. Through this
7 effort, the City has participated in studies to
8 test the effectiveness of management practices
9 and has successfully identified and referred a
10 significant PCB source property to your agency
11 for follow-up action.

12 Quite simply, the Revised Tentative Order
13 does not reflect the direct experience or local
14 knowledge of the City's watersheds or the
15 thoughtful approaches which the City, in
16 coordination with its Regional Partners would
17 employ to address the unique sources of
18 stormwater pollutants such as trash and PCBs.

19 So we're asking for some changes. We
20 think small changes, but these changes have big
21 impacts on our City's ability to meet your
22 requirements: Regarding trash and PCBs.
23 Regarding trash, the City requests that the Water
24 Board remove the maximum allowable trash
25 reduction percentage offset cap for homeless

1 encampment cleanups, allowing the City to claim
2 credit to a level more commensurate with the
3 degree of investment the City has made to reduce
4 encampment trash, and the directly associated
5 benefit that work provides to the health of our
6 creeks. Additionally, we ask the Water Board to
7 eliminate the July 2016 and July 2018 trash goal
8 and to instead maintain the trash reduction
9 timelines and goals established in the current
10 MRP. Implementing trash reduction measures can
11 require significant lead time to secure resources
12 and ensure appropriate scheduling, particularly
13 for capital projects such as large trash capture
14 installations.

15 The Water Board's addition of earlier and
16 additional compliance deadlines assumes that the
17 work being done is linear, though it is not and
18 potentially sets the City up for failure.

19 Finally, the City needs a clear and
20 feasible path to compliance with the Revised
21 Tentative Order provisions for PCBs. The
22 reductions are based on very broad assumptions
23 and often dependent on actions outside of local
24 agency control, which despite San Jose's genuine
25 and diligent efforts, will put the City at risk

1 of non-compliance and associated legal actions.
2 Imposing population-based requirements and
3 identifying municipalities as the sole
4 responsible parties for addressing PCBs is an
5 inadequate approach for achieving the designated
6 level of pollutant reduction. We request that
7 the Water Board reevaluate the TMDL and base
8 compliance on developing cost-effective PCB
9 control programs designed to achieve Numeric
10 Action Levels, not a number that is based on a
11 TMDL that is a questionable basis.

12 In closing, the City of San Jose will
13 continue to work closely with the Water Board and
14 its Regional partners to protect waterways and
15 the health of our community. Thank you for this
16 opportunity to provide comments on the Revised
17 Tentative Order, it is our hope that they will
18 help influence the adoption of a Final Permit
19 with terms acceptable to the Water Board and the
20 City of San Jose. Thank you so much.

21 CHAIRPERSON YOUNG: Vice Mayor, we had a
22 question.

23 VICE CHAIR MCGRATH: I do have a question
24 on PCBs. As some may remember, I was not
25 entirely convinced about the wisdom of this

1 approach at the workshop stage, and I read fairly
2 carefully the staff presentation which makes,
3 first of all, the case that a significant amount
4 of PCBs is coming from building demolition and
5 from the weathering of existing buildings and
6 provides a system that provides two-thirds of the
7 sought credits for simply a building inspection
8 program that assures that. So the first question
9 is, is San Jose willing to provide such a
10 building inspection program and get two-thirds of
11 the way there?

12 VICE MAYOR HERRERA: I am going to defer
13 the answer to that question to our Technical
14 staff that is following behind me.

15 VICE CHAIR MCGRATH: Okay.

16 VICE MAYOR HERRERA: I know that San Jose
17 is willing to work with this Board in any way we
18 can to achieve these goals.

19 VICE CHAIR MCGRATH: Well --

20 VICE MAYOR HERRERA: But your specific
21 question, I'd rather have our Technical staff
22 answer.

23 VICE CHAIR MCGRATH: Okay, but like we
24 said at the beginning, we do want specifics, just
25 so you know, and I recognize this is pushback,

1 but it's also seeking for understanding the
2 remaining calculations for PCB removals were
3 included in the staff report, and they did
4 indicate that at least in the short term, those
5 could be made by modest insulation of Green
6 Infrastructure. So I want a little more than we
7 need more time, I'm seeing something that looks
8 highly reasonable to me, and if I'm going to be
9 convinced to change it, I want a little more
10 specifics.

11 VICE MAYOR HERRERA: I think you're going
12 to get that in a few minutes. But thank you so
13 much for allowing me to speak today, I appreciate
14 it.

15 CHAIRPERSON YOUNG: All right, I have one
16 question for our staff before Councilmember
17 Biddle starts.

18 Do I need to rule on the admissibility of
19 those letters?

20 MS. WON: My understanding is she just
21 read this letter verbatim, so it need not be put
22 into the record because it's already in the
23 record.

24 CHAIRPERSON YOUNG: Okay, very good. And
25 we will have Councilmember Biddle, and then Mayor

1 Marchand, please.

2 COUNCILMEMBER BIDDLE: Good afternoon,
3 Board. I guess the afternoon statement brings
4 about that long meeting syndrome with me and a
5 lot of other members that understand your
6 situation here, so... I'm Councilman Don Biddle
7 from the City of Dublin and thank you for this
8 opportunity.

9 The City has some concerns about several
10 components in the plan and will try in my
11 presentation to address and recommended changes.
12 I'll also kind of cut out some of my comments
13 because I think other people have already
14 commented and I'm sure future speakers will
15 comment on that.

16 The three areas that we're concerned
17 about are primarily the Green Infrastructure, the
18 trash loading reductions, and the PCBs. But
19 we're extremely concerned about the imposition of
20 additional unfunded mandates.

21 As far as the Green Infrastructure, we
22 feel that there's a lack of direction and
23 information for the development of the Green
24 Infrastructure Plan. There are no guidelines or
25 reference plans that we can now develop a plan to

1 meet the Board's pollution reduction criteria.
2 So the City's concern is that we'll expend
3 resources to develop a Green Infrastructure Plan
4 that won't meet the Board's requirements.

5 In addition to that, the siting of the
6 Green Infrastructure projects within roadways
7 will give us some significant challenges because
8 of right-of-way constraints. The need for
9 additional right-of-way, to construct Green
10 Infrastructure improvements will create
11 significant financial burdens for future roadway
12 maintenance projects, and then limit our ability
13 to incorporate other roadway improvements such as
14 parking and bike lanes.

15 As far as the trash reduction, we request
16 that the provision C.10 be revised to provide
17 additional incentives to municipalities to
18 implement source reduction measures. The source
19 control is an important strategy in reducing
20 trash in its current form, and municipalities can
21 claim a 10 percent reduction for the information
22 control measures. But we would recommend that
23 that 10 percent reduction be increased to 15
24 percent and we also are concerned about the
25 possibility of losing source control credits in

1 the future and request that such credits be
2 permanent.

3 And then as far as PCB load reductions,
4 Dublin is concerned with the default load
5 reductions of the PCBs. The permit states that
6 in the year 2017 Annual Report, the Permittees
7 shall report the method of assigning specific
8 load fractions for PCB reductions, but the actual
9 method of linking and treating the PCB in the
10 environment to stormwater loading will not be
11 developed until the 2019-2020 report, so we feel
12 that this is a little backwards.

13 And then furthermore, as a current
14 default method, the load reduction would be
15 allocated by a proportion of the County
16 population in each City. The City of Dublin has
17 a relatively high population, however, we have
18 very little old industrial or urban areas. So
19 the majority of development in Dublin has
20 occurred within the past 10 or 15 years. So
21 using that default approach would result in
22 Dublin requiring a high, despite the fact that we
23 have almost no source PCBs.

24 And then in conclusion, I just want to
25 emphasize the unfunded mandates. The City is

1 very concerned about the cost of these various
2 infrastructures, the PCBs and the trash control.
3 The City has already allocated about \$2.65
4 million toward the trash reduction goals, but it
5 would be extremely difficult for us to find the
6 additional resources to comply with the other
7 mandates. So we urge you to reevaluate the cost
8 implications of the various mandates in the new
9 Permit. So thanks again for your listening to
10 us, we appreciate the opportunity.

11 CHAIRPERSON YOUNG: All right, thank you.
12 It occurs to me that I should be clear sort of at
13 what we're doing here. We want to hear from all
14 of the Elected Officials and know that they're
15 busy people, so we're trying to do that as
16 rapidly as possible, we are taking notes,
17 however, and so the issues that you're bringing
18 up, I'm sure, will be also part of other people's
19 comments, but the issues that you're bringing up,
20 we will circle back to staff and ask for their
21 additional information on it, and discuss the
22 issues as we go along. But we're trying not to
23 do that right now because that would hold you all
24 in the room.

25 UNIDENTIFIED SPEAKER IN AUDIENCE:

1 (Indiscernible).

2 MS. WON: It's up to you as to whether
3 you're going to allow him to speak.

4 MAYOR MARCHAND: Do I have to fight him
5 for the microphone?

6 CHAIRPERSON YOUNG: We'll see.

7 MR. DALZIEL: Tom Dalziel with the Contra
8 Costa Clean Water Program. The Elected Officials
9 had agreed to, and understood that BASMAA would
10 be allowed to make a short 15-minute presentation
11 prior to their testimony and we're just simply
12 asking that you reconsider that request.

13 CHAIRPERSON YOUNG: All right. Thank
14 you, but I would like to go ahead and hear from
15 the Elected Officials. I think we will be able
16 to figure out how to put two and two together,
17 but I understand your concern. Mr. Biddle, you
18 are so patient and after you we will have Mayor
19 Marchand, please.

20 MAYOR MARCHAND: No, that was Don Biddle,
21 I'm Mayor Marchand. That's okay, it's all good.

22 CHAIRPERSON YOUNG: Well, you're so far
23 ahead of the game.

24 MAYOR MARCHAND: That's okay, no. Don's
25 great, we work very closely together.

1 CHAIRPERSON YOUNG: After you, we'll have
2 Mayor Grayson from Concord, thank you.

3 MAYOR MARCHAND: Great. Thank you very
4 much and thank you for the opportunity to speak
5 to you today. I am John Marchand and I am the
6 Mayor of the City of Livermore. I'd like to
7 start by saying I absolutely agree with the
8 comments from Assembly member Baker and Senator
9 Steve Glazer. They are great Representatives for
10 the Cities and they understand the impacts of
11 these mandates that Mr. Biddle had spoken about.

12 Before I was elected Mayor, I spent 15
13 years as a Board Member for the Zone 7 Water
14 Agency and for over 30 years my career was
15 dedicated to Water Quality as a Chemist for the
16 Alameda County Water District. With this
17 demonstrated commitment to water quality, I am
18 concerned that significant resources may be spent
19 without a demonstrable improvement to water
20 quality.

21 With regards to the Green Infrastructure
22 Plan requirements, there is not an existing
23 funding source for these type of projects. And
24 as Mr. Biddle pointed out, one of the challenges
25 with retrofitting existing roadways to

1 incorporate Green Infrastructure is that there's
2 a limited amount of right of way that we have
3 within existing neighborhoods.

4 With regards to the trash load reduction
5 requirements, the City of Livermore contracted
6 with Schaaf and Wheeler to develop a plan to
7 install full trash capture devices to comply with
8 the requirements of this provision. Based on
9 this study, it is estimated that it will cost the
10 City approximately \$7 million to install full
11 trash capture devices. There is no existing
12 funding source available for this project and
13 there is no mechanism to create a revenue stream.
14 I was at first heartened by Board Member
15 Lefkovits' comments about flexibility, but then I
16 was stunned with his comment comparing the
17 Elected's who are charged with making their
18 Cities work to petulant Fourth Graders. We need
19 to find a way to make this work and work
20 together. Cities will have to choose between
21 funding public safety, Police and Fire, or
22 funding improvements for stormwater runoff.

23 At a minimum, the City encourages the
24 Board to revise this provision to be in alignment
25 with the time tables established by the State

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1 Water Board's trash amendments to the Water
2 Quality Control Plan for ocean waters of
3 California. In doing so, Permittees would have
4 10 years from the effective date of the Permit to
5 install trash capture devices to comply with this
6 provision. Alignment of this provision with the
7 State Water Resources Control Board's Ocean Plan
8 would not only allow a reasonable time period for
9 municipalities to plan and secure funding for the
10 capital improvement projects necessary to
11 demonstrate compliance, but it would also
12 establish a fair and uniform regulatory
13 environment in regards to trash for all
14 municipalities throughout the state.

15 Furthermore, storm drains are engineered
16 for the primary purpose of efficiently removing
17 and preventing the backup of stormwater runoff.
18 We have not had normal rainfall for several
19 years; no provisions are made for the significant
20 operations and maintenance costs.

21 If new Regulations require that these
22 drains are re-engineered for secondary purposes,
23 removing trash, particularly if local governments
24 do not have sufficient implementation time, then
25 the end result may well be catastrophic flooding

1 within our neighborhoods.

2 Finally, with the PCBs, the
3 Polychlorinated biphenyls, Permittees will be
4 required to manage PCB wastes during building
5 demolition projects. A program that manages PCBs
6 during building demolition has not been
7 implemented anywhere else in the country.

8 I spent my career as a water quality
9 chemist basing my work on good science. One of
10 the greatest concerns of the Permittees is that
11 apparently there is no validated science
12 demonstrating a connection between building
13 demolition and PCBs in water runoff.

14 I spent my career in the world of water
15 quality and I have seen firsthand the disastrous
16 consequences of competing regulations without
17 adequate stakeholder input. Competing
18 regulations were behind the Cryptosporidium
19 outbreak in Milwaukee in 1993 that sickened over
20 400,000 people and killed over 100. Competing
21 Regulations were behind the use of MTBE as a fuel
22 additive that resulted in the loss of 65 percent
23 of the San Gabriel Valley Drinking Water wells.

24 No one understands their infrastructure
25 better than those who operate it, the Cities. It

1 is my hope that the Regional Water Quality
2 Control Board will continue to work with the
3 Cities to create an MRP that will encourage
4 success. To do that, we will need to work
5 together, we will need sufficient time, and we
6 will need sufficient resources so that we can all
7 succeed. Thank you very much.

8 CHAIRPERSON YOUNG: All right, thank you.
9 Mayor Grayson.

10 VICE MAYOR HOFFMEISTER: I am not Mayor
11 Grayson, I'm Vice Mayor Laura Hoffmeister. Tim
12 took ill today, so I've been asked to step in in
13 his stead.

14 The City of Concord is certainly
15 appreciative of the work that the staff has done
16 and the Water Board has done in the Draft Permit
17 to get to this point in time. We continue to try
18 to work and are standing here to work with the
19 Water Board and the Water Board staff on
20 additional refinements we think that are
21 imperative to provide success for us in
22 compliance with the Permit.

23 We do support the comments that were made
24 earlier this afternoon by Supervisor Candace
25 Anderson regarding trash, and Councilmember

1 Marchand regarding the issues that he just
2 articulated.

3 The City of Concord has three areas of
4 concern, one is the trash, one is PCB, and Green
5 Infrastructure. Regarding the trash, we do
6 believe that there should be additional increase
7 in the ratio to a more reasonable level of 1:3
8 for various cleanup actions. The City of Concord
9 has already installed 300 trash capture devices,
10 which cost \$500,000, half a million dollars.

11 In order to achieve the increase to 90
12 percent, 100 percent, we will need to have 900
13 more trash capture devices in our community.
14 That would cost us another \$1.5 million. At this
15 point in time, our City budget is in a deficit
16 mode, we've already received approval from the
17 voters for a sales tax increase continuation,
18 which does not include additional unfunded
19 mandates, this is just to maintain our existing
20 City services.

21 With that said, our employees today are
22 on strike because they are looking for additional
23 wage and benefits. We are struggling with
24 unfunded liabilities and mandates to meet those
25 requirements, as well. Additional new activities

1 that require new revenues that we don't have any
2 ability to achieve because of Prop. 218, Prop.
3 13, etc. is very troubling to us. We want to
4 achieve the objectives, but we don't have the
5 revenues in the prescribed out of time that's
6 placed before this Board in the Draft Tentative
7 Order to achieve them. So we are asking for some
8 additional time. So we believe that the
9 additional time should be provided and go back to
10 the 70 percent, and 100 percent reductions as was
11 indicated in the MRP that we currently have,
12 accelerating the timeframes, we're not going to
13 get there. We won't have the money to put in
14 trash capture devices, we will be in
15 noncompliance, and you can fine us all you want,
16 but we won't have the money to pay the fine.

17 I don't think that's what you want,
18 that's not what we want. I think we need to work
19 on a reasonable timeframe to achieve the
20 outcomes, which is continuing to work on reducing
21 the trash that gets into our waterways and
22 ultimately the Bay, and the Region as a whole.

23 As far as the PCBs, a Building Inspection
24 Program, that would require additional staff
25 resources, additional funding that we don't have.

1 Where would we achieve that? We don't know.
2 There's not going to be the ability to go out and
3 undertake that program, so there again we would
4 be in noncompliance. I think working with
5 Statewide Regulators to try to encompass a
6 statewide standard that includes construction
7 activities and requirements very similar to what
8 the Air Board did with lead abatement and
9 asbestos abatement would be the better avenue to
10 go where it's mandated through Permit
11 requirements that is then placed onto the private
12 owners versus the local agencies having to go out
13 and do the assessment, the inventories, and take
14 on that additional workload without having the
15 prescribed funding to achieve it.

16 As far as the green infrastructure goes,
17 it's very troubling when we're a fairly built out
18 community, it's not difficult for new
19 construction, for new areas, so that's not our
20 challenge. Our challenge is what do we do with
21 existing right of ways that are fully built out
22 to try to achieve accommodation of Green
23 Infrastructure when all that we're doing is
24 putting new pavement and patching pavement in our
25 existing roadways. We don't have the ability to

1 have new funds, and as was mentioned by Kevin
2 Mullin's Office earlier, and I've talked to Susan
3 Bonilla, Assembly member from our District,
4 there's not new monies that are magically going
5 to appear from Sacramento to provide us grants
6 and other funding mechanisms in the near term.
7 It will take several years for the Legislature,
8 if they're to be successful, to accomplish that,
9 where we would then be able to take advantage of
10 it. Again, it's an unknown and it will take
11 longer time.

12 Green Infrastructure is very challenging
13 in existing built environments. We have right of
14 way constraints, we have no additional Federal
15 funding coming from Transportation, we just had
16 the bills being reauthorized in Washington and
17 it's a status quo funding. MTC and ABAG do not
18 have additional funds. They are short funds for
19 just maintaining existing infrastructure.

20 Our public has a \$20 million -- through
21 the sales tax we've been able to set aside \$20
22 million to just repair existing roads. Our
23 infrastructure for repair of existing roads is
24 \$80 million in needs, we're only going to be able
25 to put \$20 million into it for the next 20 years.

1 Our roads will continue to deteriorate, we don't
2 have the funds for the Green Infrastructure, the
3 right of way constraints are difficult, and I
4 think we need to have some additional time to
5 figure out how to achieve that objective.

6 We'd ask that, you know, you've got three
7 new objectives that are very aggressive, maybe
8 trying to focus on which one of the three is the
9 most important, as was mentioned by one of the
10 Board Members, PCB, you know, where does that fit
11 in all of this, maybe that could be delayed,
12 maybe we can still focus on trash and start to
13 make some initial progress with some additional
14 time on Green Infrastructure and work with the
15 state on regulations related to PCB. Thank you
16 for your time and your attention.

17 CHAIRPERSON YOUNG: All right, thank you.
18 I think we need to have a little sidebar here
19 about lunch.

20 What I would like to do, actually what
21 they would like to do is to take a short break
22 for lunch. What we're going to do is to try to
23 limit it to 25 minutes, 20, 25 minutes. All
24 right, we're going to hear from one more speaker,
25 we're going to take a 20-minute break for lunch

1 and when you folks come back, you'll see that
2 we're still eating. Before we break for lunch, I
3 will announce to you who the next people are who
4 are coming up so that if you're not one of the
5 very next people, you can take longer for lunch.
6 So we'll try to work with it that way. Yes, sir.

7 MAYOR HARDCASTLE: Thank you. My name is
8 Doug Hardcastle, Mayor of Oakley. I just had my
9 knee replaced three weeks ago, that's why I'm in
10 pain and want to leave, so I mostly just want to
11 say ditto to what a lot of people have already
12 said here. I've lived out in Oakley for 35 years
13 now and actually our stormwater goes out into the
14 Delta where we actually draw our drinking water
15 out of. So we want clean water just like
16 everybody else does. I don't think there's
17 anybody here that doesn't want clean water.

18 We have Marsh Creek that runs through
19 both Brentwood, which is our neighbor in Oakley,
20 and we go out there three times a year and we
21 clean up the creeks. So we've got one of the
22 nicest watersheds, I believe, in East County out
23 there. And I know your guys' focus is on clean
24 water; where my focus is on is Fire, Police,
25 safety of the people that I am the Mayor of out

1 there.

2 Right now we've got three fire
3 departments, and we're going to open a fourth.
4 Our fire department covers 249 square miles and
5 we should have 10 fire stations out there. So
6 we're just going to now just going to have four.
7 So it was hard enough to get people to vote for a
8 fire station, let alone voting for water that we
9 actually drink out of right now. So, you know,
10 our people of our District take great pride in
11 the way we treat our environment and everything.
12 It kind of reminded me, when I sat in here
13 earlier, it reminded me of my seventh grade P.E.
14 teacher, the ladies might not understand this,
15 but when the first class went to gym, there was a
16 big rope that went up to the ceiling and it
17 looked like it was like 75 feet up there, it was
18 probably only 25 feet. But the teacher said, "In
19 order to pass this class, you've got to climb
20 that rope up and get to the top in order to pass
21 the class." So we didn't have to pass the class
22 that time, but everybody tried, nobody got up
23 there. But eventually we all hit the top wrung.
24 So we just have to make sure that you as a Board
25 have to give us enough time to reach the goals

1 that we always want to reach. So thank you for
2 your time and allowing me to speak early.
3 Appreciate it.

4 CHAIRPERSON YOUNG: All right, thank you
5 very much. Okay, when we do come back, here are
6 the first six people that I will plan to call,
7 it's Councilmember Haskin from Walnut Creek,
8 Councilmember Arnerich from Danville, Vice Mayor
9 Durant from City of Pleasant Hill, Vice Mayor
10 Mike Metcalf from Moraga, Vice Mayor Kinney from
11 the City of San Pablo, and Councilmember Anderson
12 from Lafayette. And then the rest of you will be
13 after that. So you can take a longer lunch.
14 Thank you.

15 (Off the record at 1:14 p.m.)

16 (Back on the record at 1:45 p.m.)

17 CHAIRPERSON YOUNG: We have a quorum, we
18 have a Court Reporter, we have staff, we're going
19 to get started. If Councilmember Haskin --
20 Haskew, oh, I'm sorry.

21 COUNCILMEMBER HASKEW: That's all right.
22 It's probably wrong on the card.

23 CHAIRPERSON YOUNG: No, no, it's right,
24 it was just not -- it could have gone either way.

25 COUNCILMEMBER HASKEW: Fair enough.

1 Okay, I think by virtue of shouting across the
2 room, I have identified myself, and I believe I
3 am also required to -- my name is Louella Haskew
4 and I am Mayor Pro Tem of Walnut Creek. The
5 Mayor is out of town and I'm representing our
6 Council. I have taken the oath. And this is
7 addressed to the Board.

8 "You did it. You encouraged Cities to
9 undertake through Management, Ordinance and
10 Policy to meet the goal of removing and, more
11 importantly, stopping the introduction of trash
12 at source. Our City of Walnut Creek embraced the
13 concept and implemented several changes to effect
14 the exact change you wanted. Under a great deal
15 of political pressure to do otherwise, our
16 Council was one of the first in our County to
17 enact a single used plastic bag ban. I had to
18 withstand a lot of internal lobbying because my
19 very spouse said he needed those bags to deal
20 with the kitty litter. He's now adapted.

21 Spurred on by the bag ban and again under
22 a great deal of negative political pressure, the
23 Council passed the polystyrene ban. These two
24 measures were specifically to address the
25 elimination of the most common of pesky forms of

1 litter alongside roads and in storm drains.

2 So a couple years later, let's find out
3 how it worked. For plastic bags, the compliance
4 rate for surveyed retailers and restaurants was
5 80 percent, meaning they didn't use the bags.
6 Fifty percent of the surveyed customers brought
7 their own reusable bags. I had been using canvas
8 grocery bags since the '70s, I know that's a
9 surprise, I don't look that old, and it's taken
10 me a bit of while to find the appropriate bag to
11 take to fashionable downtown to shop for goods,
12 but we're all trying really hard.

13 The Polystyrene compliance rate for
14 surveyed restaurants was 93.4 percent. During
15 the annual creek cleanups last May, the
16 coordinator and volunteers were struck by the
17 reduction of plastic bags and pieces of Styrofoam
18 found in and around the creeks.

19 Under the expired permit, the City of
20 Walnut Creek claimed 11.7 percent of the trash
21 load reduction credit. Now, under the proposed
22 Regs, we're only going to be allowed
23 approximately 8.6. We believe we have proof that
24 source controls work. We also believe that it is
25 the most effective way to control trash. It is

1 -- and this is very important -- cost-effective
2 to implement and enforce. We believe we are
3 helping to create a market to spur manufacturers
4 to develop more ecologically friendly alternative
5 components.

6 We have identified other ecology bad guys
7 such as single-use plastic water bottles to
8 ultimately include into the program.

9 There is a very real problem for we
10 Cities that have already maximized our meaningful
11 maintenance activities and have led the way
12 toward limiting trash at source. Our options to
13 meet the required numbers to be in compliance are
14 very practically limited. We are asking you to
15 increase -- and here's where I get greedy -- the
16 maximum trash load reduction credit to 20 percent
17 and make it permanent. Such a change adds to our
18 enthusiasm, our creativity, and to encourage us
19 to get real results.

20 Lest you think that I am an escapee from
21 *Legally Blonde Part 4*, I echo the comments made
22 before me and my turn, and I am sure that I am
23 going to support those comments coming after me.
24 There is a one-size-fits-all feeling about this
25 permitting system and it doesn't fit us. We're

1 all uniquely different, we all have uniquely
2 different problems, and we all have uniquely
3 different ways to address getting to the
4 achieved, desired and very necessary goal of the
5 Board. Thank you."

6 CHAIRPERSON YOUNG: All right, thank you
7 very much, Councilmember Haskew. Got it right
8 that time. Now we'll have Councilmember Arnerich
9 and following that Vice Mayor Durant.

10 COUNCILMEMBER ARNERICH: Good afternoon.
11 My name is Newell Arnerich, five time Mayor,
12 Councilmember in Danville. The past two decades,
13 two and a half decades, I've been involved in
14 this process. And as well, for the past four
15 decades, I've been an Architect, the Managing
16 Partner of an Architectural Urban Design firm
17 here in the Bay Area and in Los Angeles. I know
18 well how these Permits work on both sides, both
19 on the implementation side and on the actual side
20 of the person trying to make that happen.

21 And today I want to tell you three basic
22 things of some suggested changes. But I want to
23 make one point and I want to underscore this. We
24 are the experts, with all due respect. And what
25 I mean by that, you can set policy, write paper,

1 you're not out in the field, you all have varied
2 backgrounds as we do, but we, the municipalities
3 implement, we see what works and what doesn't.
4 So while your staff is pushing for high levels of
5 standards, we're telling you, and we're not here
6 to argue about the permit, we are your partners
7 and we wholly and fully believe in this.

8 But we are here to tell you a few
9 important changes that will make this permit work
10 and will allow us to achieve it. I want to tell
11 you what three of those are and you'll hear from
12 others. But also I want to share with you that
13 as a government official, an elected person, I
14 have to make sure that we use our resources
15 responsibly. Unfunded mandates, as you know,
16 when they get to a certain level that they're
17 unfunded and they are deemed as a mandate,
18 they're not enforceable. We don't want to be in
19 that position.

20 As you know, there are no new additional
21 funding sources. In Contra Costa County, all 19
22 Cities and the County, we have a supplemental fee
23 that we've had for a very long time that is a
24 dedicated stream of money to pay for these types
25 of services. They're all maxed out. On the last

1 permit, we told you we're maxed out, but we also
2 made a promise that we would go out to our voters
3 and try to sell this, tell them the value
4 proposition, and share with them why this was
5 important and ask for more money, and it was only
6 a couple of dollars. And there was a resounding
7 no.

8 We are limited in what we have,
9 therefore, please keep that in mind and we will
10 do our best with the resources that we have.

11 Advocating for clean water is part of
12 being strong Environmental Stewards, and in
13 Danville we've taken significant steps to reduce
14 our carbon footprint through solar arrays,
15 conversion of our vehicle fleet to hybrid and
16 electric, passed a comprehensive plastic bag ban
17 that applies to over 200 retail and restaurant
18 businesses. We've reduced our water usage by 40
19 percent since 2013. We work collaboratively with
20 groups like Walnut Creek Watershed, Friends of
21 San Ramon Creek, to enhance our waterways.

22 The new permit includes a significant
23 step, which you've mentioned, as the Chair, the
24 development of Green Infrastructure Plans that
25 will radically change the way public drainage and

1 transportation infrastructure is built and
2 maintained over the next several decades. This
3 is a significant effort, one that we're going to
4 require from what we see as the person who will
5 implement it great resources and money which we
6 do not have.

7 We believe there are other requirements
8 that are contained in the new MRP that should be
9 adjusted, and you'll be hearing from others
10 specifically on this. My three specific
11 concerns, I'd like to leave you with, is
12 Provision C.1.2, PCB reductions, goes to great
13 numbers to come up with the calculations and a
14 way of doing that. Most of us as small rural
15 cities, PCBs are not an issue, but yet we are
16 held to the same Standard.

17 As an architect, I know that we
18 eliminated asbestos, we eliminated in the waste
19 stream some of the most hazardous materials.
20 Emeryville, the projects I've worked on in
21 cleaning up green brown sites, every kind of site
22 you can imagine, with PCBs. The fact is through
23 the entitlement process, through the permitting
24 process, at a statewide level you cannot do it by
25 the vector. The vector, you say, is water, and

1 that you want us to go upstream and try to find
2 it. We don't have the legal authority to do
3 that. Stop the source and remove it so it does
4 not get into the water. I ask you to consider
5 that change.

6 Provision C.1, Trash Load Reduction.
7 You've heard a little bit of about Danville is a
8 clean city, we ask you to change the trash load
9 reduction formula to allow fair credit for
10 shoreline cleanups. The suggestion was a 1:3
11 ratio, one gallon credited for every three
12 gallons removed, to a maximum credit of 15
13 percent. This will help our partners in our
14 communities be supporters because we engaged
15 them. This is how we engage them. It is
16 important that we keep them in.

17 Private landfill full trash capture
18 mandate, we don't have the legal ability on
19 private property. Property rights prevent us,
20 unless they have an entitlement. We can do it
21 for new developments, it's easy through
22 Conditions of Approval. Existing land that has
23 no changes, we can't cross that property line to
24 take action.

25 In conclusion, thank you for listening.

1 We need you to view local government as your
2 partner, understand the challenges and
3 limitations we face, consider the changes that
4 are being requested and recommended to the Draft
5 permit language carefully, as we are the experts.
6 Use your voice to help us tell the Legislator and
7 the Governor to help find a way to pay for this.
8 Thank you very much.

9 CHAIRPERSON YOUNG: All right, thank you.
10 Councilmember Arnerich (*Sic*) followed by Vice
11 Mayor David Durant.

12 VICE MAYOR DURANT: Good afternoon,
13 ladies and gentlemen. Thank you for your time.
14 My name is David Durant. I am the Vice Mayor of
15 the City of Pleasant Hill. We're a small city,
16 about 32,000, 33,000 people over the hill and
17 we're green already. We do a lot to contain
18 growth and development and to manage the waste
19 that is produced through our city. So we
20 strongly support the comments made by my
21 colleagues who have spoken before me. Let me add
22 a few things that haven't perhaps been covered.
23 The first is, I think what's being offered here
24 and what's being tried, what's being looked at,
25 is laudable. It is important for us to continue

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1 to be good and perhaps great stewards of our
2 environment, of our waterways, and for those of
3 us in local governments equally with the funds
4 that our citizens put in our care. And as a
5 small city, we look at the proposal what the
6 Tentative Order proposes and we think to
7 ourselves, how can we possibly do it? How can we
8 possibly put more money into programs when we're
9 already financially constrained?

10 We in Pleasant Hill have done what some
11 other cities haven't, and what other places in
12 Government have, and we've tightened our belts
13 consistently and repeatedly for a decade. We
14 fought the political battles that allowed us to
15 do that and allowed us to make significant
16 progress, while at the same time increasing
17 standards and we hope improving our community.

18 So when I read this, and I always worry
19 about unfunded mandates and low funded mandates
20 and mandates that haven't yet contemplated
21 funding. And I ask myself, how can this be? We
22 get saddled with unfunded mandates, and low
23 funded mandates from the State, from the County,
24 from everybody else, and we have no place to go
25 but to our own citizens. And as Mr. Arnerich

1 said, we can't go anymore. When we go, we get
2 whacked, we get told no by our constituents.

3 And so we think that it's important to
4 look to see what we can do without increasing the
5 financial burden on local governments that are in
6 fact being responsible today.

7 We also look for greater levels of
8 partnership and cooperation. When we identify
9 areas where there is help needed, where the
10 larger polluters are, where the trash comes from
11 that is beyond our borders, where we cannot
12 really impact or effect change. That's where the
13 larger sources of pollution come from.

14 So we ask in connection with the other
15 Cities for a collection of changes, alterations
16 to the Tentative Order. Not that we're opposed
17 to goals, not that we're opposed even to stretch
18 goals, stretch goals are important, they help us
19 grow, they help us exercise the muscle and look
20 for creative new ways to solve problems. It
21 helps us to find partners in private industry who
22 can help us in those regards, too. But as
23 currently written, the Tentative Order seems to
24 suggest, or at least seems to contemplate, that
25 we already have new unfound and untested

1 technologies available to find and eliminate
2 sources that we cannot today.

3 So I ask you to take that into
4 consideration. Let me try to hit a couple of
5 specifics. A 50 percent reduction in Mercury.
6 We as a small city, we look and we say, in a
7 universe where we were granted previously a \$5
8 million grant under MRP 1.0, there may be some
9 money to explore solutions, but ours is not a
10 large city where there's lots of Mercury, and
11 there's really not very much we think we can do
12 to impact Mercury reduction. Similarly, PCBs.
13 We look out and we see that other Permittees like
14 us, who are not largely industrial, don't have
15 large sources of pollutants that we can control,
16 contain, and where we can implement changes that
17 can help us really have a meaningful impact on
18 reduction.

19 Similarly with Green Infrastructure
20 projects, which are one of the key and real areas
21 where we can effect PCB reductions, we already
22 have a Green Infrastructure Plan, if you will,
23 that we've been implementing. We ran a pilot
24 project with other cities that cost over \$1
25 million and unfortunately it only treated a

1 miniscule amount of PCBs. So as we look at
2 creating a Green Infrastructure Plan, I think we
3 need to be sure that the money we're spending and
4 the way that we're asking Cities and other local
5 governments to address this is really cost-
6 effective and cost-efficient.

7 Last but not least, because I see time is
8 running here, we like the other cities that
9 you've heard from have already implemented a
10 series of measures including plastic bag bans,
11 and we're looking at a Styrofoam ban and some
12 other things that we're looking to implement. We
13 believe it's important to let those measures run
14 their course and see what kinds of reductions
15 those achieve before implementing new standards
16 that don't take those things into account. Thank
17 you very much for your time, we appreciate it.

18 CHAIRPERSON YOUNG: All right, thank you.
19 Next we'd like to ask Vice Mayor Metcalf of
20 Moraga, followed by Vice Mayor Rich Kinney of San
21 Pablo.

22 VICE MAYOR METCALF: Madam Chair and
23 Members of the Board, I'm Michael Metcalf, the
24 Vice Mayor of Moraga. Thank you for allowing me
25 to speak today on the matter of Proposed

1 Regulations for regulating stormwater
2 contaminants.

3 You just heard from my colleague, David
4 Durant, from Pleasant Hill which is a neighboring
5 city. He characterizes Pleasant Hill as a very
6 small city. Well, we're half that size, we're
7 16,000. You can go over next to Concord and Vice
8 Mayor Hoffmeister, you heard from her before
9 lunch, is from Clayton, even though she actually
10 is on the staff at Clayton. That's 11,000.
11 We're very small cities.

12 As many other agencies who will be
13 impacted by the Proposed Regulations, we have
14 submitted in writing our concerns with the
15 Regulations as originally drafted. We're very
16 pleased to see that some of the comments have
17 been considered, but we do remain concerned with
18 the Draft Regulations as they currently stand.
19 Please understand that we believe stormwater
20 contamination control can be an extremely
21 important issue; after all, stormwater does reach
22 the water that our citizens consume and it also
23 reaches the Bay.

24 We applaud your efforts to craft
25 Regulations that control these contaminants,

1 however, the best intentioned Regulations are not
2 worth much if they are not directly relevant to
3 the impacted agencies. They won't be of much
4 value either if they can't be applied
5 effectively.

6 We've got concerns in three areas, and
7 you've heard some of these already, but I think
8 they have to be reemphasized. With regard to
9 capture of trash, Moraga is a residential
10 community with very very little nonresidential
11 land. There are about three areas in which
12 significant trash enters the stormwater
13 collection system, Campolindo High School, and
14 two commercial centers. Campolindo High School
15 generates much smaller quantities of trash than
16 do the retail centers. They are part of the
17 Acalanes Union High School District. School
18 Districts have their own governance. They are
19 not answerable to their host cities. School
20 Districts are under no obligation to follow the
21 Regulations of the host cities. Acalanes School
22 District has no obligation to follow our
23 regulations. We can only urge the Districts to
24 install full capture devices at the points where
25 their stormwater enters our drainage system and

1 hope that they will do so.

2 The retail centers are privately owned.
3 One center has six individual owners -- six. We
4 are exploring with legal counsel through the
5 legality of imposing requirements on these owners
6 to install trash capture devices on the
7 stormwater inlets on their private property.
8 These are centers that have been in existence for
9 many many many years. But even if legal, getting
10 the private owners to comply will be a challenge,
11 certainly within the timeframes envisioned by the
12 Regulations, namely five years.

13 With regard to PCB and Mercury
14 contaminants, please understand that Moraga was
15 until very recently entirely agricultural where
16 cattle were far more common than people. We are
17 proud that Moraga was once the largest commercial
18 producers of pears in Northern California. You
19 didn't know that? This was the only industry
20 that Moraga has ever seen, the only one. We're
21 not aware that PCBs have ever been a problem with
22 pear production. Indeed, the only thing pear
23 production has in common with PCBs might be in
24 the spelling, the letter "P." They aren't
25 present. How can we measure them? We can't

1 quantify them, can't find them, they aren't
2 there.

3 Mercury is no doubt present, but it's
4 there probably in much smaller quantities than
5 you believe. Our plea is simply that contaminant
6 control requirements be realistic, certainly be
7 realistic for Moraga, and to be realistic for
8 every agency that is going to be affected.

9 With respect to Green Infrastructure, the
10 only realistic opportunities for such capital
11 works are on public streets, they are in
12 nonresidential areas. Right of ways, you've
13 heard, on these streets is limited which makes
14 timely construction a significant challenge.
15 Moreover, funding for capital projects is
16 extremely difficult. We are not in a position to
17 demand of our citizens that they accept tax
18 levies for infrastructure problems such as
19 stormwater collection.

20 It was difficult enough to convince them
21 for a one percent sales tax levy to repair our
22 streets. That brings us close to the 10 percent
23 limit on sales tax. Winning two-thirds majority
24 for any other kind of revenue is almost
25 impossible. There are very limited ways to tax

1 the public. You have to understand that.

2 Even if money were no object, we can't
3 see how it's possible to develop a program of
4 projects for meaningful contamination control.
5 Certainly, no meaningful projects could be
6 developed, prioritized and completed within the
7 five-year timeframe contemplated by the Regs.
8 What sense would it make to do gratuitous
9 projects that have little or no impact that are
10 beneficial? Our citizens deserve much better
11 than that. They rightly insist that we do the
12 right things and do them right -- repeat, do the
13 right things and do them right.

14 CHAIRPERSON YOUNG: If I could ask you to
15 wrap up?

16 VICE MAYOR METCALF: Thank you for your
17 attention.

18 CHAIRPERSON YOUNG: Great. Thank you so
19 much. All right, Vice Mayor Kinney followed by
20 Councilmember Anderson from Lafayette.

21 VICE MAYOR KINNEY: Chair Young and
22 members of the Board, thank you for this time
23 today. I'd like to just state at the top here
24 that I'm requesting that we --

25 MS. WHYTE: Could you please introduce

1 yourself formally on the mic? Thank you.

2 VICE MAYOR KINNEY: Thank you. My name
3 is Rich Kinney, Vice Mayor of the City of San
4 Pablo. I'd like to just begin by saying that we
5 are requesting today that you extend the 70
6 percent trash reduction requirement to the end of
7 the Permit term, giving that flexible time that's
8 needed rather than the 18 months to two-year
9 period that right now is what you're stipulating.

10 The City of San Pablo is a disadvantaged
11 community with very transient population, many of
12 whom do not speak English as their first
13 language, and these are qualities that are
14 typical with trash challenged communities. All
15 these factors make public outreach even more
16 challenging, and so implementing the programs are
17 more difficult than the uptake or, if you will,
18 getting our residents to engage in the process of
19 change is a little slow.

20 But I want you to be assured that we are
21 fully committed in our City to reducing our
22 carbon footprint. I think that's really what
23 we're all here talking about. And as a City,
24 even with these difficulties and these
25 challenges, we've chosen to take a very proactive

1 approach and so some of the things we've already
2 done is we've gone after the low hanging fruit,
3 the easiest things, but also take a lot of money
4 and time and education. So we were able to
5 introduce two product bans, we banned plastic
6 bags and Styrofoam, and are happy to report that
7 after a period of time we've done our hot spot
8 cleanups that we actually found in the three
9 creeks that are in our city, that there were no
10 plastic bags in our creeks, so we're very happy
11 to report that.

12 So the program does work. We've
13 increased our recycling and compost collection
14 from once every other week to every week now, so
15 that our residents are able to have a little bit
16 more space in their bins and the waste doesn't
17 end up on the streets and sidewalks because of
18 previous times that we were doing it.

19 We also perform creek cleanups that
20 collect up to 500 cubic yards of trash a year,
21 and we've been doing that for years and will
22 continue to do that. And we've developed bulky
23 item collection and a dump voucher program for
24 all our residents to discourage the illegal
25 dumping. And we've also installed already over

1 75 of these trash capture devices in strategic
2 areas in our city. But I think it's important to
3 note that since we've had these there long enough
4 now to do a little research, we found out that
5 they're very inefficient. And they're the best
6 that the market has available to our cities, and
7 we really need to be aware of that. At best, we
8 find that we're collecting 80 percent of what
9 these trash collectors and devices capture, 80
10 percent of it is soil and tree and bush debris,
11 so that remains only 20 percent of trash. And we
12 all know that no matter what kind of trash
13 collection system we put on storm drains, as soon
14 as the systems are overwhelmed with flooding, all
15 the light paper, bottles, Styrofoam, all of that
16 is going to just float off the top and not be
17 collected at all, so we really need to take a
18 serious look at how much time we're allowing R&D
19 and our local businesses to come up with better
20 efficient programs for our cities if we're going
21 to impose this upon them.

22 These programs took us four years to
23 implement and we barely are able to meet 40
24 percent of the reduction requirement. And that
25 was the easy part comparatively to now what we're

1 facing with this new permit before us. The next
2 20-30 percent is going to be next to impossible,
3 but there are some things that we believe we can
4 do, but we need your cooperation to relax the
5 time for these requirements.

6 In our future outlook, we are looking at
7 an 18-month timeframe that we're expected to
8 reduce our trash by another 30 percent, but yet
9 at the same time the Board is reducing the
10 incentives, the tools by which our City has to
11 achieve the goal, limiting our credit for
12 progress made already. And we're looking at a
13 system that you're devising here that's going to
14 punish our cities for any progress they make or
15 have made, rather than rewarding them, and I'd
16 like to encourage you to put in place pieces in
17 your system that are going to reward our cities
18 so that they and the rest of our society can see
19 that this agency and our cities are working very
20 well together for the benefit of all of us in the
21 Bay Area. Thank you very much.

22 CHAIRPERSON YOUNG: All right, thank you.
23 Vice Mayor Kinney (Sic) of San Pablo and then
24 Councilmember Anderson -- oh, welcome Mike
25 Anderson, and next up we would have Mr. Sachs.

1 COUNCILMEMBER ANDERSON: Hi, I'm Mike
2 Anderson, Lafayette City Council. It's really
3 been very interesting for me to listen to my
4 fellow Councilmembers speak to you on a lot of
5 issues. First of all, the City of Lafayette is
6 not a huge city, 24,000 people. We have a
7 standing creeks committee that is actually right
8 now engaged in \$150,000 creek study to look at
9 ways to open and make the creeks more inviting
10 for public use, so clearly this is something
11 we're very concerned about in terms of stormwater
12 and trash getting into those creeks, and creating
13 more of a nuisance than a benefit, or an amenity.

14 Like other cities, we've also passed the
15 plastic bag ban, which has had a result in
16 reducing plastic bags in the creeks, and we see
17 all of our waterways in the creeks as being an
18 amenity that we want to protect. I say that
19 because we really are partners with you in this
20 effort, we really do want to make sure that this
21 water remains clean and we have the least amount
22 of erosion on creek banks and silt getting into
23 the system.

24 With all that said, the constraints on us
25 are real and I know each time I've come, I've

1 come once before in 2011 and talked to you about
2 issues then, money just keeps popping up as an
3 issue. It's real. And of course we said it
4 then, but we've moved ahead. The cost for these
5 full trash control devices is huge -- huge. And
6 I'm not totally clear that they actually work in
7 talking to some of the staff, so I think that
8 it's important that we take a hard look at source
9 reduction as a benefit that achieves the same
10 goal. Mayor Pro Tem Haskew mentioned the one to
11 three ration, one gallon, three gallon ratio as
12 opposed to what's proposed, we would certainly
13 support that and would love to see the credit for
14 that cleanup effort be at 20 percent maximum
15 because that is a lot of what we're doing is we
16 have our volunteers going out, cleaning the
17 creeks, it's part of our creeks committee, and
18 that's our way of dealing with this issue.

19 The other thing that people have
20 mentioned that I think is important to understand
21 is industry in our city is really not a factor
22 for us. PCBs, I can't say whether they exist or
23 not, but I would imagine since we have so little
24 industry it would be very minor, which brings me
25 to the question of whether or not this one-size-

1 fits-all approach that I just proposed is
2 appropriate, given the variety of situations that
3 you're trying to address. Maybe what's needed is
4 a little more of a bottom up approach where
5 cities have an opportunity to tell you exactly
6 what they can or cannot do, and you do a tailored
7 containment program that looks at that
8 particularly situation, quoting percentages for
9 particular materials that are actually in that
10 environment, not the blanket PCB statement or
11 Mercury statement, which may or may not apply.
12 More work, but similar to what we ended up doing
13 on the Rena numbers and ABAG, a process once
14 again which is a regional scale, but took into
15 account our general plans and our own community
16 processing in that whole measure.

17 The other thing I wanted to say is that
18 we have a bunch of I guess redlines, strikeouts
19 coming from the Contra Costa Clean Water Program,
20 I know those have been presented to staff. We
21 certainly support all of those changes, revisions
22 that are being proposed, with these additions
23 that I've mentioned, and to finish, we simply
24 want you to remember that we're kind of the
25 implementation arm for your thoughts, we're very

()

1 much a part of what you want to do, we very much
2 value the goals that you have, but we have
3 certain limitations and our muscles can only lift
4 so much, and I think that's what you hear when
5 people talk about the constraints on funding and
6 the inability to get people to come on board and
7 give us more money to take on some of these
8 issues that you put before us. Thank you very
9 much for taking the time to do this and I
10 appreciate your work very much. Thank you.

11 CHAIRPERSON YOUNG: All right, thank you.
12 All right, on deck we would have Mr. Lyman,
13 Councilmember from the City of El Cerrito, and we
14 are welcoming Mr. Sachs from San Ramon.

15 COUNCILMEMBER SACHS: Great. Members of
16 the Regional Water Board, thank you for the
17 opportunity to present. My name is Harry Sachs,
18 Councilmember, City of San Ramon. First, I want
19 to applaud the Board for incorporating changes
20 previously recommended by local officials, as
21 well as BASMAA, and I urge the careful
22 considerations to the testimony that's being made
23 today. While your staff suggests modifications
24 to the permit here, they in our view do not go
25 far enough to ensure full compliance, which is

1 everyone's end result.

2 From an Elected Official standpoint, and
3 I took the day off from teaching 170 middle
4 schoolers today, so you can see how important
5 this reaches down to our level. The more onerous
6 the unfunded mandate, the more likely the lack of
7 efficacy. Cities are going to be forced to
8 invest already scant resources towards
9 implementation and, as has been mentioned, the
10 rigid one-size-fits-all compliance is very
11 burdensome. Now, I think even a casual observer
12 could forecast the litany of lawsuits that are
13 potentially very valid here regarding the
14 mandates as proffered. Specifically, I'm looking
15 at the CEQA process as a former planning
16 Commissioners, and I'm wondering how this is
17 going to be incorporated into that, the
18 usurpation of local control. This potentially
19 has the negative impacts as a disincentive to
20 Smart Growth, which so many cities, especially in
21 Contra Costa, are striving for, and priority
22 development areas; my City has two of those and
23 we find that this would be a burden to
24 development.

25 MR. KISSINGER: Can you explain why?



1 COUNCILMEMBER SACHS: And I will
2 certainly footnote what has been said earlier,
3 the roadway infrastructures for LID, the rights
4 of ways, and so forth. Again, those are
5 potentially very cost prohibitive. I think from
6 a private developer standpoint, coming through
7 and for cities having to do Green Infrastructure
8 Plans that are on some levels very vague, and not
9 fully vetted, I think, in terms of practical
10 applicability, I really do see where that can be
11 a problem for us at the local level.

12 As folks have said, we ask you, and I
13 think this goes to the point that everyone is
14 making, to closely measure the practical
15 applicability of certain mandated aspects of MRP
16 2.0. I'd like to focus your attention on
17 creating mechanisms of compliance which would be
18 financially sustainable to municipalities in the
19 Bay Area, both large and small. This was
20 mentioned by one of the Board Members, I believe,
21 Ms. Ajami. You know, unfortunately Cities are
22 not in the business of printing money and the
23 raising of revenues is also very prohibitive
24 given 218 and other legislative thresholds that
25 have to be done there.

1 Of great concern, as you have heard, is
2 the PCB numeric load reduction criteria. The
3 path to compliance should be action-based, rather
4 than reduction mandated. Development should
5 follow protocols that do create a safer removal
6 of harmful agents. But reduction mandates are
7 inapplicable to all agencies due to varying
8 levels of commercial, residential, and public
9 agency development, which is market driven and
10 thus achieved to varying degrees across all 76
11 agencies that this permit affects. Regarding the
12 Green Infrastructure component, we would ask that
13 the Counties and special districts work with
14 their local agencies to develop general GI
15 platforms for protocols, which would represent in
16 effect minimum qualifications or thresholds, thus
17 escaping the one-size-fits-all syndrome here.
18 San Ramon's development in infrastructure needs
19 differ from our friends and other municipal
20 agencies as they differ county to county, and so
21 on and so on.

22 In looking at this, I'm concerned about
23 this being policy in a vacuum. This is made
24 without recognition of the interconnectivity of
25 development tasks. The transportation and

1 housing needs, they're just so critical. This
2 creates in very broad terms potential
3 disincentives for those objectives to be met. To
4 down mandates with over 160 pages of specific
5 actions requiring significant local financial
6 inputs, these are counterproductive and
7 financially burdensome to the good actors, as it
8 were.

9 We ask on the issues of PCB, trash,
10 Mercury load handling and measurement
11 requirements and the Green Infrastructure Plan
12 mandates for further deliberative consensus
13 building to achieve the desired results. Again,
14 practical applicability and financial
15 sustainability go hand in hand and are the key
16 elements of successful public policy
17 implementation. We ask to continue the dialogue
18 for better solutions. Thank you very much.

19 CHAIRPERSON YOUNG: All right, thank you.
20 Mr. Lyman and then on deck Councilmember Kelly
21 from Hercules.

22 COUNCILMEMBER LYMAN: Good afternoon,
23 Chair Young, Vice Chair McGrath, Board Members.
24 My name is Greg Lyman, Mayor Pro Tem with the
25 City of El Cerrito and Chair of the West Contra

1 Costa County Regional Waste Management Authority.

2 First, I want to thank staff for their
3 hard work and acknowledge that we're hearing
4 today just about a handful of issues. And I want
5 to support all of the funding comments from my
6 colleagues and I hope to bring a new perspective
7 for your consideration.

8 My professional career in the Bay Area
9 here includes over 15 years of working restoring
10 endangered species habitat. And I and many El
11 Cerritans support your ultimate goal, one
12 highlighted at the State of the Estuary this
13 year: a cleaner Bay and Delta. Water quality
14 improvements over decades come from the type of
15 focus on pollutants this Board seeks; however,
16 placing municipalities at risk of third party
17 lawsuits undermines cooperative efforts.

18 I urge you to develop incentives for
19 Cities to comply, not to hide their heads in the
20 sand. Please do not chose the path of target
21 levels that will cause Cities to resist
22 collecting information out of fear of third party
23 lawsuits. Allowing your staff selective
24 enforcement, a tool to acknowledge the
25 hardworking Cities like El Cerrito with our rain

1 gardens, Green Infrastructure, weekly street
2 sweeping, extensive street and creek cleanups,
3 bans on Styrofoam, plastic bags, and outdoor
4 smoking is laudable. Selective enforcement does
5 not stop third party lawsuits. As staff knows,
6 El Cerrito was threatened with legal action this
7 last summer for self-reported values in 2011 and
8 2012. Action levels encourage Cities to collect
9 data to make informed management decisions and
10 embrace science to measure success of
11 technologies implemented. To think that El
12 Cerrito with our world class recycling center,
13 bans on Styrofoam containers, plastic bags, and
14 cigarette butts, EPA and Regional Board
15 recognized rain gardens and Green Infrastructure
16 facilities, and passionate volunteers performing
17 regular almost monthly cleanups on our streets
18 and creeks, would become potentially noncompliant
19 and subject to more third party lawsuits should
20 cause great concern.

21 So today I urge you to please consider
22 changing the PCB performance criteria to action
23 levels so you can focus on encouraging cities to
24 work toward implementing available technologies
25 and your enforcement would be based on

1 implementation efforts and not on target levels.

2 I urge you to please consider changing
3 the trash load formula to better recognize
4 efforts cities like El Cerrito have and are
5 making to reduce trash in creeks, homeless
6 encampments, and streets. Change the trash ratio
7 to one to three gallons removed through these
8 efforts with higher maximums. Changing the
9 formula will continue to encourage Cities to
10 control trash at the source. It will encourage
11 cities to maintain the type of green
12 infrastructures and BMPs that you guys want in
13 place, and to provide more convenient trash
14 receptacles, and to provide more prescription
15 drug, needle and hazardous waste drop-off
16 locations that will reduce illegal dumping.

17 So I want to thank you for your listening
18 today and I hope you'll consider these issues.

19 CHAIRPERSON YOUNG: We do have a question
20 for you.

21 VICE CHAIR MCGRATH: Greg, I'm
22 sympathetic to your comment about third party and
23 I've thought about it a little bit, certainly I
24 want us to be doing enough monitoring so we can
25 figure out what is working for the next round,

1 and I don't want that to create the potential for
2 a third party lawsuit. Have you suggested
3 anything specific in terms of safe harbor
4 language to the staff in the way of commentary
5 that you think would resolve this problem from
6 your perspective?

7 COUNCILMEMBER LYMAN: I would love to
8 have some safe harbor language in there, but I
9 have not specifically proposed that. I don't
10 know if our technical lead has. I'm seeing a
11 nod, so I'm going to hope that something has been
12 --

13 VICE CHAIR MCGRATH: We're a long way
14 into this process. Specifics really help. Thank
15 you.

16 COUNCILMEMBER LYMAN: Thank you.

17 CHAIRPERSON YOUNG: Next, we have Mr.
18 Kelly, Councilmember from Hercules, and on deck
19 Mr. Orr, Mayor of Orinda, please.

20 COUNCILMEMBER KELLY: Good afternoon,
21 Chairperson and Dr. Young, Vice Chairman Mr.
22 McGrath, and Members. My name is Bill Kelly and
23 I am a member of the City Council in the City of
24 Hercules. And I have been sent here today by my
25 colleagues and our staff to address one point

1 only, one that's been hit several times.

2 I agree with almost everything I've heard
3 said here by my colleagues. Our biggest concern
4 goes to certain language to term load reduction
5 performance criteria. As we see that, it is a
6 setting of a level at which, if we don't reach
7 it, we are subject not only to action by this
8 Board, but third party lawsuits. And those
9 concern us greatly.

10 Hercules, as many people know, is going
11 through a period in addition to all the finance
12 issues faced by everyone, we had what I'll call
13 malfeasance --

14 VICE CHAIR MCGRATH: Irregularities.

15 COUNCILMEMBER KELLY: Irregularities,
16 that's a very nice word for it. They're close to
17 irregularities. And we don't want to go into
18 bankruptcy. So we're very very sensitive to how
19 we spend our money. We still operate a City
20 that's only four days a week, we've cut our
21 Police Department already from 32 to 21, our
22 Planning Department is one person, we bring in
23 outside issues for certain things, we have our
24 building inspection done by contract, we're
25 running pretty bare bones as operation goes now.

1 And to have to live up to these is going to mean
2 doing things, either accept the fact that we're
3 going to be in violation and have to deal with
4 that, we've been successful in reducing our legal
5 fees the year before last over three quarters of
6 a million dollars, last year they were less than
7 half a million, a pretty substantial improvement.

8 And we're afraid of seeing lawsuits based
9 on this. We prefer the action level language.
10 And several or at least two of your members have
11 talked about flexibility, and I want your staff
12 to have flexibility and I believe that language
13 allows them to do that. It merely runs up a flag
14 that says we may be looking at a problem here,
15 let's see what's happening, how did we get there?
16 Where were they before? Where are they now?
17 What direction are they headed in? Not a rigid
18 number that's universally applied that says
19 you're either here or you're in trouble.

20 And we strongly urge you, you know, we
21 feel that in addition to the other comments made,
22 we think it's just bad public policy. And not to
23 mention the term "unfunded mandate" has come up,
24 well, we see that greatly and that's where the
25 bad public policy comes in. We're going to be

1 required to make a choice between spending money
2 on these cleanups as opposed to spending money
3 providing barebones services. Our citizens have
4 made it very clear that public safety is at the
5 top of their list in two elections, the one most
6 recently this month in which they gave us a
7 continuation on a temporary tax issue to be sure
8 that we continue to have local police services.
9 We strongly believe that it would be best if the
10 staff was given the flexibility to look case-by-
11 case at what's going on in City, in Permittee by
12 Permittee, and make a determination, rather than
13 rigidly calculate your violation because you're
14 half a point too high, or you're half a point too
15 low.

16 And as a practicing attorney I'm very
17 concerned about our exposure to lawsuits with
18 these rigid numbers. Thank you very much.

19 CHAIRPERSON YOUNG: Thank you, sir.
20 We'll now have Mr. Orr, the Mayor of Orinda, and
21 on deck Vice Mayor Metcalf from Moraga -- is that
22 a duplicate?

23 MAYOR ORR: I believe he already
24 spoke.

25 CHAIRPERSON YOUNG: I think that's a

1 duplicate card.

2 MAYOR ORR: He's always trying to get in
3 a second! I know him well.

4 CHAIRPERSON YOUNG: So then on deck we
5 would have Ms. Pierce from Clayton.

6 MAYOR ORR: Good afternoon, Chair and
7 Board. Thank you for allowing us this
8 opportunity to speak. First, I would like to
9 also thank -- oh, sorry, I apologize -- Dean Orr,
10 Mayor of the City of Orinda.

11 Going back, I would just like to also
12 thank and really echo the comments that I thought
13 were provided incredibly efficiently by our
14 Assembly member Catherine Baker who was first to
15 speak this morning.

16 I'm going to actually just try to be
17 brief and focus on two points where I think a
18 couple of the provisions affect our community and
19 where we see them happening, and the first is in
20 Provision C.10 in the Trash and Load Reduction.

21 Based on the formula in the Revised
22 Tentative Order, 308 gallons of trash would have
23 to be collected in Orinda in order to achieve a
24 one percent reduction. The City of Orinda
25 partners with the Friends of Orinda Creeks to

1 conduct creek cleanups throughout the year.
2 These cleanup events draw in hundreds of
3 volunteers and are extremely effective in
4 preventing our native habitat and maintaining a
5 clean and healthy watershed.

6 In Fiscal Years 2014 and 2015, additional
7 creek cleanup events drew over 250 volunteers and
8 resulted in the collection of approximately 700
9 gallons of trash. Using the formula in the
10 revised TO, Orinda would achieve a two percent
11 reduction credit. The amount of the resources
12 and additional funding necessary to achieve the
13 full 10 percent is simply infeasible, therefore
14 the formula should be revised to allow for a fair
15 and attainable credit.

16 I would echo many of what we've heard
17 earlier following back to the 1:3 ratio, and I
18 would also strongly suggest that we use 15
19 percent, at least, as a maximum. These events,
20 what we've also found, not only of being
21 incredibly effective is trash and cleanup
22 productions that are amazing community events,
23 that we certainly wouldn't want to see pushed
24 away.

25 Following up again on the trash

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1 reduction, the City of Orinda supports an overall
2 goal of reducing trash from our streets and storm
3 drains to improve water quality. Control
4 measures such as increased street sweeping,
5 increased on land cleanups, installation of full
6 capture devices, and improved trash bin locations
7 have proven to be effective in preventing trash
8 and litter from entering our waterways. Given
9 the vast majority of Orinda has a load trash
10 generating rate, meeting the current trash load
11 targets mandated by the Permit have been
12 extremely challenging. Of the just slightly over
13 8,000 acres that compromise the total
14 jurisdictional area of the City of Orinda, 97
15 percent is categorized as a low trash generating
16 area. Yet Orinda achieved a trash reduction of
17 just 33 percent by implementing control measures
18 between Fiscal Years 23 and 2015.

19 Implementation of the measures prescribed
20 in this provision have resulted in public monies
21 being expended with little water quality benefit
22 and the trash reduction targets and the revised
23 TO leaves the City at risk for noncompliance.

24 The last point that I would like to bring
25 back again on how I think we see this affecting

1 within our community is related to Provision C.12
2 on the PCBs. The City of Orinda is particularly
3 at risk for noncompliance in their local
4 reduction in the performance criteria. PCB
5 containing properties are less prevalent in
6 Orinda and this requirement will significantly
7 increase costs associated with monitoring,
8 implementation and abatement, without the
9 certainty that compliance can and will be
10 attained. This provision does not provide
11 Permittees with a clear and feasible pathway to
12 attaining compliance with this load reduction
13 performance standard. Compliance, as many others
14 have spoken of, we believe should be based on
15 implementing the actions outlined in the
16 provision. We can form the public actions that
17 will be implemented and a schedule for
18 implementation, however, the many factors that
19 are key to meeting the load reduction performance
20 criteria are uncertain due to the factors that
21 are beyond our control, example is the extent of
22 source properties that will be found, building
23 demolition rates, and redevelopment rates. And
24 with all due respect to staff who spoke in the
25 beginning, and the Fact Sheet that was provided,

1 the majority of the program options outlined by
2 staff earlier simply don't exist in our
3 community. And with that, I would like to close
4 by just saying we certainly support the
5 initiative that's in front of us and everything
6 to protect our natural resources and hope that we
7 can continue to work in a collaborative manner
8 that realizes the differences in all of our
9 communities. Thank you.

10 CHAIRPERSON YOUNG: All right, thank you.
11 Is Julie Pierce here?

12 UNIDENTIFIED SPEAKER: She had to go to
13 an MTC meeting.

14 CHAIRPERSON YOUNG: She may have had to
15 leave. Well, I wanted to thank her for all she
16 has done and did when she was leading ABAG, so
17 somebody pass that along.

18 UNIDENTIFIED SPEAKER: She's still
19 President of ABAG, they have Joint Meetings.

20 CHAIRPERSON YOUNG: So everyone can pass
21 along our thanks to her, she's really doing a lot
22 of work on everybody's behalf, and I know it's a
23 tough job, particularly right now.

24 As far as we know, we have already heard
25 from all of the Elected Officials who are here,

1 so if we missed anybody, contact one of the staff
2 and we'll try to work you in.

3 At this point in time, I would like to
4 start with Mr. Bobel and -

5 DR. MUMLEY: This is where BASMAA comes
6 in.

7 CHAIRPERSON YOUNG: This is where this
8 stack comes in. I need another organizer. So
9 that's what we were trying to do. We wanted to
10 hear from Mr. Fabry, who is the Chair of BASMAA
11 and it is my understanding that he will be
12 accompanied by Dr. Abusaba and Mr. Falk, and
13 together the three of them will do a combined
14 presentation that we have, since it is a combined
15 presentation on behalf of all of the Permittees,
16 we've decided to allow them some extra time,
17 which you don't have to take all of if you don't
18 want.

19 MR. FABRY: Thank you, Madam Chair. My
20 name is Matt Fabry, I'm the current Chair of
21 BASMAA and I did take the oath earlier. I'm
22 going to kind of go off script since we had
23 intended to sort of set the stage for things
24 earlier, and a lot of comments have already been
25 made.

1 So I guess I'm going to start off with a
2 bit of a negative statement that I'd like to
3 express disappointment on behalf of all the
4 BASMAA agencies in terms of the fact that we
5 continue to have to have recusals of the
6 Municipal Representatives from the Board on these
7 issues. That continues to be a concern for us.

8 We do want to thank the staff for the
9 collaborative process over the past two years, as
10 Keith indicated there have been a lot of meetings
11 that went into reissuance of this permit,
12 starting back in July of 2013, and it's been a
13 huge commitment of resources and time on behalf
14 of the Permittees to go through this process, and
15 that's all on top of everything that we have to
16 do to comply with the permit. So I think when
17 our concerns about Permittees not being committed
18 and not taking actions and needing to put
19 enforceable limits in the permit to get us to
20 take action, I think we've demonstrated that
21 there is a commitment to doing what the intent of
22 this permit is, and meeting the goals of the
23 requirements.

24 I think that this permit represents a
25 paradigm shift in how we manage stormwater in the

1 Bay Area, by moving towards more sustainable
2 drainage systems with the Green Infrastructure
3 Plans. It's a huge step forward and I think
4 we're going to see over the coming decades
5 significant benefit from this approach, and so I
6 don't want to underestimate how important that
7 is, I don't think you've heard a lot of comments
8 about that because it seems like a somewhat more
9 manageable requirement in terms of developing
10 plans. I think there's going to be a lot more
11 concern after we develop the plans about whether
12 we can actually develop the resources to
13 implement the plans, but I think there's a
14 commitment over the term of this permit to try to
15 work on some of those issues, as I talked at the
16 last workshop about trying to integrate Green
17 Infrastructure and transportation investments.

18 So I think that what you're doing is
19 putting three major programs, trash, Mercury, and
20 PCBs and GI planning front and center as equal
21 priorities in this permit, and that's going to be
22 on top of everything else we have to do to
23 maintain the core program efforts with the
24 business inspections, municipal operations, and
25 water quality monitoring, and all the things that

1 we've been doing for many many years. And I
2 think that this equal prioritization is going to
3 result in limited resources that we have being
4 spread thinly across all three of those
5 priorities, and so I guess I would challenge the
6 Board potentially in your wrap-up comments today
7 to give us feedback on what really is your
8 highest priority with this permit. Is it trash?
9 Is it Mercury and PCBs? And if there is a
10 prioritization, is there a way that we can craft
11 the permit requirements to allow us to focus our
12 limited resources on what the highest priority
13 is?

14 I think you've heard a lot of comments on
15 the trash issues. I think there is a lot of
16 concern about the offsets, you know, the 10:1
17 offset in terms of getting credit for cleanups.
18 I think there's a lot of concern about the source
19 control limitation to 10 percent. I think that
20 municipalities have already demonstrated that
21 they've probably achieved more than 10 percent
22 reduction by plastic bag bans and foam food ware
23 bans, and I think that provides very little, if
24 any, incentive for municipalities to pursue other
25 source control efforts, which is a universally

1 supported approach to dealing with the trash
2 issue. It doesn't give any incentive for dealing
3 with things like plastic straws, or lids, or
4 plastic bottles, or any source control measures
5 that we haven't even yet contemplated. So I
6 would encourage you to provide more flexibility
7 in how we can request credit under the source
8 control portion of this.

9 I think it's inherent in the process that
10 it's going to get harder and harder to deal with
11 trash the further and further along we get. The
12 low hanging fruit are gone at this point. I
13 think Board Member McGrath commented at the last
14 workshop, he doesn't think we're anywhere near
15 close to have meeting the 40 percent. I think
16 the Permittees might disagree with that, but I
17 think if that's really the way Board Members feel
18 about this, then let's think seriously about
19 whether 70 percent by 2017 is realistic.

20 And so I think BASMAA agencies would be
21 supportive instead of having two enforceable
22 requirements, let's shift it to a 75 percent
23 requirement in 2019. I think that's something
24 that probably is more feasible in terms of the
25 timeline for achieving these reductions. You've

1 heard a lot about the Mercury and PCBs, I think
2 the biggest issue we have is that a lot of the
3 things that are going to have to happen to make
4 Mercury and PCB reductions occur are beyond the
5 control of the Permittees. We don't know how
6 many source properties we're going to be able to
7 find and refer for cleanup, we don't know how
8 we're going to develop the building materials
9 program, I think we're committed to doing that
10 and hopefully we can be successful on that, but
11 it's not been done before.

12 We don't know what the rates of new and
13 redevelopment are. I know Keith said that if we
14 have development rates similar to what we've had
15 during a Great Recession that we'll meet these
16 requirements for the Green Infrastructure
17 component, but that's only 120 grams, we're still
18 looking at, you know, even if we have double the
19 amount of development that occurred, we're going
20 to still have a significant chunk of PCB
21 reduction that's going to have to occur, that
22 isn't going to be through a building demolition
23 program, or through redevelopment, and that's
24 going to require public Green Infrastructure
25 which is challenging in terms of developing

1 funding and finding locations to do it, and it's
2 challenging in terms of enhanced maintenance
3 activities with street sweeping or cleaning out
4 storm drains to achieve significant reductions.

5 So I think of all these reasons, we're
6 simply requesting that the performance criteria
7 be switched to action levels, it doesn't mean
8 that our commitment to doing programs is going to
9 be any different, it just limits the liability
10 that we face in terms of enforcement and third
11 party lawsuits for things that are generally
12 somewhat out of our control. That's all we're
13 asking. And so I think, with that, I'll close
14 and let Khalil give more information about the
15 challenges in meeting the Mercury and PCBs
16 requirements.

17 DR. ABUSABA: Good afternoon, Madam
18 Chair, Members of the Board, for the record my
19 name is Dr. Khalil Abusaba with Amek, Foster,
20 Wheeler, and I have taken the oath.

21 We provide consultant technical support
22 to the Contra Costa Clean Water Program and I'm
23 here today to offer just a few brief technical
24 comments on behalf of BASMAA to help you
25 understand as Board Members why Legal Counsel

1 elected officials and staff of the Permittees and
2 their programs are deeply concerned about numeric
3 performance standards for PCB load reductions.

4 A simple remedy for our concerns would be
5 to use the same load reduction numbers expressed
6 as action levels rather than enforceable numeric
7 performance standards.

8 A couple quick examples I'm going to
9 bring in today will give you some specifics
10 responsive to questions that have been asked by
11 Board Member McGrath and Board Member Kissinger.

12 After meeting two-thirds of the PCB load
13 reduction goals set in the permit through a
14 building demolition program, which is we would
15 still need to show another thousand grams per
16 year through stormwater treatment enhanced O&M,
17 and so as property referral and abatement.

18 Keith, I want to give you the redevelopment,
19 okay? Let's say that we double your number and
20 come up with 250 grams through redevelopment and
21 we get lucky in the next five years. We still
22 need to find another 750 grams and we're just
23 concerned that we can't do that, and it's not for
24 lack of trying. Board Member McGrath, you know
25 me, and you've seen my work at New Almaden and

1 New Idria, are the two largest Mercury producers
2 in North America. If there were similar glaring
3 opportunities to abate PCB sources to the Bay, I
4 would dearly love to be here today telling you
5 about them. We're looking and what we're
6 discovering is a few troublesome properties that
7 account for grams of PCB per year and a much more
8 diffuse urban background that will be much more
9 challenging to control.

10 Just a couple of quick examples to help
11 put this into context. How are we going to find
12 750 grams through these special projects? This
13 is an example of the North Richmond Pump Station
14 Diversion Project, a pilot diversion to the
15 nearby West County Wastewater District, required
16 under Provision C.12.F of MRP 1.0. It's one of
17 five such pilot diversion projects implemented by
18 the MRP Permittees at your direction. It diverts
19 stormwater from a 400 acre watershed that is the
20 poster child for old or urban, you can see the
21 wide swatch of railroad in the lower left-hand
22 corner and the watershed dominating the
23 landscape.

24 Because of capacity limits and sanitary
25 sewer conveyance, we could not size a diversion

1 larger than 250 gallons per minute, that's what a
2 250 gpm pipe looks like in the upper right-hand
3 corner going into Sanitary Sewer. If we were to
4 move a pumped watershed like this towards zero
5 discharge, because we can't get much of a storm
6 with 250 gpm, it's a very small part of the early
7 leading storm, it's a few tenths of a gram. If
8 we wanted to take theoretically a watershed like
9 this to zero discharge, you'd have to have three
10 or four of the much larger 2,500 gpm pipes like
11 I'm standing next to in the lower right-hand
12 corner. And you'd have to have tens of millions
13 of gallons of storage so you could bleed it back
14 into sanitary slowly when they can take it, or
15 you'd have to have thousands of GPM of onsite
16 treatment. That would be a 10-year planning
17 design and implementation project costing
18 millions of dollars and if it was executed,
19 monitoring by the San Francisco estuary institute
20 shows that it would get for this entire watershed
21 10 grams. Okay, 740 to go.

22 This is a pilot stormwater treatment
23 retrofit that was implemented along Cutting Blvd.
24 in an old industrial area, and it was under the
25 Clean Watersheds for a Clean Bay Grant Program

1 and it was one of our most challenging
2 implementation areas, this is responsive to Board
3 Member Kissinger's question of, well, why?
4 What's the problem? Well, it's near sea level as
5 most old industrial areas are. It's got utility
6 conflicts. This particular design, this
7 particular BMP that's being monitored in this
8 picture, the design had to be iterated to work
9 around a 10-inch gas main that was running
10 through the project area, and so that severely
11 limited the treatment capacity on the far side of
12 it. This application that you're seeing in this
13 picture is worth at best a few tenths of a gram
14 per city block, so how are we going to get to
15 1,000 grams of PCBs per year? These large
16 watershed opportunities are limited and
17 constrained, retrofitting even one is a big job.

18 We screen hundreds of potential source
19 properties to get one or two referrals, then each
20 one of those is worth grams per year, mostly
21 single digit grams.

22 Green Infrastructure planning takes time
23 and resources, and we can't force or predict the
24 rate of redevelopment.

25 To close off, I need to put into context

1 for you, you know, just the very technical simple
2 plain facts of why we find these numeric
3 performance standards infeasible. If you were to
4 get to your goal of 18 kilograms of PCBs reduced
5 per year, you know, a load reduction of 18
6 kilograms per year, your final TMDL goal, and
7 you're going to do that by treating urban
8 stormwater which generally has a tenth of a part
9 per million PCBs, you're talking about O&M
10 enhancements and stormwater treatment that is
11 capturing enough dirt to fill 6,800 trucks per
12 year. Even if you look at the smaller scale of
13 750 grams that we're struggling to think through
14 how we're going to find that in the next five
15 years, we would have to generate 300 trucks full
16 of dirt per year. I'm not sure where the
17 projects are going to come from that can harvest
18 urban dirt on that scale.

19 The real world implementation
20 uncertainties about how to reduce loads lead us
21 to conclude that we cannot guarantee compliance
22 by the deadline that you've established in the
23 permit, and we're just asking would you please
24 replace PCB performance standards with Action
25 Levels. We do appreciate your time and

1 attention. I'm happy to take questions.

2 MR. FALK: My name is Robert Falk. I'm
3 legal counsel to the Santa Clara Program and
4 BASMAA Managers invited me to speak to you all
5 today about the Mercury and PCB numeric limits.

6 I come bearing gifts, so you don't have
7 to strain your necks, I have copies of the
8 PowerPoints.

9 CHAIRPERSON YOUNG: This is an exact copy
10 of the Powerpoint you're going to present?

11 MR. FALK: Yes.

12 CHAIRPERSON YOUNG: Then my lawyer says
13 I'm okay.

14 VICE CHAIR MCGRATH: That's why I was
15 looking at her.

16 MR. FALK: So I'm going to go through
17 most of these slides very quickly to get to some
18 of the questions the Board members have asked.
19 So there is some good news here to start with,
20 which is I think there is broad agreement on the
21 strategy here. And by the way, there's broad
22 agreement on almost all of this permit, which is
23 a remarkable achievement in itself. In terms of
24 Mercury and PCBs, the strategy is to implement
25 Green Infrastructure and other controls on new

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1 and redevelopment projects, and try to capture
2 the loads that way and through site cleanups
3 where we identify problematic properties.
4 Everybody agrees on that.

5 What we don't agree on, as you heard from
6 the many many Elected Officials who testified, is
7 the use of numeric effluent limitations as a
8 regulatory tool, as opposed to Numeric Action
9 Levels. And the reason, as you heard from the
10 elected officials and from Khalil and from Matt,
11 the Cities cannot guarantee meeting these numeric
12 limits through their actions, there are too many
13 uncontrollable factors, particularly in terms of
14 the number of site cleanup orders you issue, the
15 time schedules in those, whether they're complied
16 with, as well as whether projects, building
17 projects, will come through the pipeline, let
18 alone be approved and built out within the
19 timetable predicted.

20 In response to that, we raised this issue
21 at the Tentative Order stage, we requested that
22 what was called ambiguously numeric performance
23 criteria be clarified to identify them as Numeric
24 Action Levels. And the staff Response to
25 Comments issued only two weeks ago for the very

1 first time, the staff said, "No, we're not going
2 to do that. In fact, these numeric performance
3 criteria are interim numeric effluent limitations
4 and fully enforceable as such." That's the first
5 time any member of the public was alerted to
6 that, there hasn't been a reopening of the public
7 comment process to let people speak to that
8 change. That, I think, is a problem Mr. Grimm
9 will later address some other procedural concerns
10 we have. In terms of this specific concern, I
11 would ask that these PowerPoints be made part of
12 the record in order to cure that concern.

13 So let's talk a little more specifically,
14 than anyone has today about what the difference
15 between NALs and NELs are. So NALs have actually
16 been embraced by the State Board. The State
17 Board jettisoned the use of NELs in its two
18 General Stormwater Permits for construction and
19 for industrial activities. In doing so, the
20 State Board explained that NELs, they're not just
21 like soft numbers out there that people might pay
22 attention to sometimes, they are requirements by
23 which the effectiveness of best management
24 practices are necessarily to be measured, and if
25 the measurements suggest that the benchmarks are

1 not being made, then it puts an onus on the
2 discharger to come back and identify further
3 actions. So they are a regulatory tool and they
4 are a regulatory tool that the State Board itself
5 has decided to use.

6 NELs, in contrast, are Numeric Effluent
7 Limitations enforceable per se any explanation as
8 to why you don't meet them may be nice, it may be
9 the basis for this Board to exercise discretion
10 to not take enforcement action itself, but that
11 will not preclude whether or not there could be a
12 Federal Lawsuit over the noncompliance, and
13 you've heard the concerns about that.

14 Now, in responding to comments, what does
15 staff say? Well, staff says that the NALs are
16 okay because, you know, we had this Great
17 Recession and look how much was produced during
18 the Great Recession, we'll produce that much now,
19 but there's no guarantee of that. Nobody knew
20 the Great Recession was coming. In fact, the
21 Great Recession actually ended in 2010 before
22 this permit went into effect. We've been in a
23 very big growth cycle in the Bay Area, as all of
24 you know. Growth cycles lead to both crashes in
25 the economy, unfortunately, but also even if

1 there's no crash, they lead to building
2 moratoriums. San Francisco just had one on the
3 ballot.

4 The State's expert panel, the staff says
5 in its Response to Comments, "The State expert
6 panel approved NELs for mass space limits," like
7 we have in this permit, just not for
8 concentration limits. That's not correct. I
9 have the Expert Panel Report, you all have access
10 to it through the State Board's website, it says
11 without qualification Numeric Effluent
12 Limitations are not feasible for Municipal
13 Stormwater Permits, and it's recommendation is to
14 use NALs as the tool.

15 USEPA and the State Board have said you
16 should only use Numeric Effluent Limitations to
17 implement TMDLs where feasibility has been
18 demonstrated. The State Board in reviewing the
19 Los Angeles Permits specifically said the Los
20 Angeles situation was unique and we decline to
21 direct other Regional Boards to use NELs in all
22 Municipal Stormwater Permits. The situation in
23 L.A. is very distinguishable, they had 33 TMDLs
24 to implement, we have two here. The pollutant
25 primarily of concern in L.A. were pathogens that

1 are transient and carried by urban runoff; here,
2 we're dealing with legacy pollutants that are not
3 transient.

4 So what do we want? Mr. McGrath, you
5 asked this question, I have submitted to staff
6 not once, not twice, but three times specific
7 language changes in the Permit that would
8 implement the use of NALs, all of those have been
9 rejected thus far, so we are asking you today to
10 adopt a finding in this Permit or add a footnote
11 in this permit that characterizes the numeric
12 performance criteria as NALs. If you would like,
13 you can further go on to say that the Dischargers
14 must explain the shortfalls due to uncontrollable
15 factors, and identify what follow-up actions
16 they're going to attempt to take to make up the
17 shortfall.

18 If you choose not to take that
19 alternative, we would ask at a minimum you do
20 what the L.A. Board did, which is to say
21 specifically that for these interim NELs, a
22 Permittee shall be considered in compliance with
23 the Numeric Performance Criteria if it's fully
24 implementing all required actions on a timely
25 basis. So you have specific cures to the issues

1 we've raised. We very much appreciate working
2 with the staff. As I said, this is my fifth
3 Municipal Stormwater Permit in the Bay Area, I've
4 been doing this for 25 years. It's an incredible
5 credit to the staff and to the Municipalities
6 that they've narrowed the differences down on
7 this permit that we're talking about today to
8 such a small set of issues. We ask you to
9 consider them and to consider all the testimony
10 of the municipalities and, again, on behalf of
11 the Santa Clara Program, we also endorse the
12 comments that Mr. Grimm will make about some
13 process concerns. Thank you very much.

14 CHAIRPERSON YOUNG: Thank you. Are there
15 questions?

16 VICE CHAIR MCGRATH: I understand the
17 issue now.

18 CHAIRPERSON YOUNG: Once we get the
19 lights back on, we would like to have Nancy Woo
20 from EPA if she's still here, there she is.

21 MS. WOO: Hello. My name is Nancy Woo.
22 I am the Assistant Director of the Water Division
23 at EPA, Region 9. Thank you for the opportunity
24 to provide comments on San Francisco Bay's
25 Regional Municipal Stormwater Permit. We are so

1 fortunate to live in the Bay Area and work with a
2 diverse community, united on protecting and
3 restoring the aquatic resources that define our
4 communities. Thanks to the Regional Board staff
5 and Managers for leading a very inclusive permit
6 renewable process that involved Permittees and
7 others, including key members of my staff.

8 We all know that implementation of the
9 Permit by Municipalities is critical to achieving
10 success and they must also be recognized here for
11 all they have done, and what they will continue
12 to contribute.

13 I am pleased to express my support for
14 the development of this forward thinking
15 Stormwater Permit, particularly in terms of
16 addressing legacy pollutants that may take
17 decades to address; tackling trash which has
18 relatively recently entered into the regulatory
19 realm; advancing the planning and implementation
20 of Green Infrastructure that is important to
21 water quality and enhancing the livability and
22 sustainability of our communities; and inclusion
23 of a pilot municipal program that will implement
24 BMPs to minimize PCBs released into stormwater
25 drains during demolitions of certain buildings.

1 We must continue to make progress, even
2 in areas that will be challenging. Echoing our
3 comment letters, we support the Board staff on
4 the inclusion of numeric interim milestones and
5 an accounting system to document reduction of
6 PCBs and Mercury, as called for in TMDLs. And
7 the requirement of developing of a monitoring
8 program and protocols for trash and receiving
9 waters.

10 We look forward to working collectively
11 with you on monitoring and other needs over the
12 next permit term. We are already active in
13 supporting advances in the stormwater management
14 of the Bay Area, and we provided up to a \$1.7
15 million Grant to the San Francisco Estuary
16 Partnership, San Francisco Estuary Institute,
17 BASMAA, San Jose, Oakland, San Mateo, and
18 Richmond for improvement in Green Infrastructure
19 planning tools, identifying innovative finance
20 mechanisms and improving standardized technical
21 designs. These and other grant funded projects
22 should significantly help with permit
23 implementation.

24 As well, we have co-sponsored a workshop
25 in September with the Regional Board for sharing

1 technical information on how Green Infrastructure
2 Plans can give assurance towards achieving
3 pollutant load reductions. This approach is
4 similar to other MS4 permits in the state and we
5 appreciate the Board's inclusion of relevant
6 information within this permit.

7 We plan on continuing to work with you on
8 guidance to develop these green infrastructure
9 plans.

10 In closing, we support the adoption of
11 this forward thinking permit and appreciate the
12 opportunity to work with you and your staff and
13 local organizations and permittees on its
14 implementation. Thank you.

15 CHAIRPERSON YOUNG: Thank you. I have
16 one question. Could you just repeat what you
17 said the focus of the \$1.7 million grant was? I
18 didn't quite catch it all.

19 MS. WOO: Okay, so we're doing quite a
20 bit, actually. One of the grants, \$1.7 million
21 grant, is with the multiple parties led by San
22 Francisco Estuary Partnership, as well as SFEI,
23 and a multiple number of partners to refine and
24 ensure the application of Green Infrastructure
25 Planning Tools, so we're working with SFEI and

1 others to make sure that communities who need to
2 develop infrastructure plans have a number of
3 tools in order to do that. And we're also trying
4 to figure out financing options because we're
5 trying to figure out how we can leverage funding,
6 how we can better time infrastructure
7 improvements that have been identified in the
8 Green Infrastructure Planning process, so we're
9 trying to ensure the linkages there with
10 planning, leveraging of funding, and assuring
11 appropriate timing of financing. And also, we're
12 trying to come up with a suite of standardized
13 technology so that there is a better
14 understanding of what technology is out there to
15 control certain types of stormwater flows and
16 pollutants associated with stormwater. So we
17 have an annual grant program and we expect to
18 continue funding good projects like this for the
19 benefit of communities and Permittees and
20 ultimately improving the Bay water quality.

21 CHAIRPERSON YOUNG: All right. Thank you
22 so much. Okay, we'd like now to hear from Phil
23 Bobel from the City of Palo Alto and following
24 that we'll have Joe Sbranti from Pittsburg.

25 MR. BOBEL: Phil Bobel, City of Palo

1 Alto. Thank you, Chair and Board Members. I'll
2 just make two points. You know, I started my
3 little career, long career, actually, with EPA
4 putting numeric effluent limits in permits for
5 municipalities. I actually worked for your
6 Regional Board on loan for a period of time
7 preparing the first permits for the oil
8 refineries with numeric effluent limits. I'm a
9 fan of numeric effluent limits used in their
10 right place, and then when stormwater permits
11 came along I found myself with the City of Palo
12 Alto having to say, hmmm, those numeric effluent
13 limits that we used so effectively in the
14 industrial and POTW world don't work for
15 stormwater permits because stormwater permittees
16 don't have control over what comes to them, nor
17 do they have a treatment system that treats all
18 these myriad of pollutants. So they just don't
19 work for stormwater permits. We said that 25
20 years ago and I'm probably one of the few people
21 in the room that have been with this, like Bob
22 Falk has for 25 years, how he avoided all the
23 gray hair that I've gotten, I don't know, but
24 during that whole time, that's sort of our
25 mantra, to be honest with you, I mean, that's

1 been a very fundamental point. So for us, this
2 permit now is a possible major turning point, and
3 that's what scares us, to be honest with you, at
4 least it scares me, I'll speak for myself, is
5 that for the first time, and Bob emphasized this,
6 too, this would be the first time that you've
7 clearly identified -- there have been numbers
8 floating around in stormwater permits for a while
9 -- but this is the first time you've clearly
10 identified it through your staff Response to
11 Comments, as a numeric effluent limit, as opposed
12 to a Numeric Action Level where there's a number,
13 but the outcome of not meeting the number is
14 further action required by you for our agencies.
15 So it's a very fundamental problem we're having
16 with this permit, and I think Bob Falk has given
17 you some very simple, several choices of ways to
18 proceed. Several of the Board Members said we
19 need specifics, I agree, I now think you've got
20 them in what Bob Falk has presented, it's simple,
21 it won't take long, and it sort of leads to my
22 second point, which is that there are a number of
23 changes that apparently you want to make to this
24 permit anyway, your staff has given us and
25 addendum sheet, the Board Chair has an Addendum

1 Sheet, Bob Falk has an Addendum Sheet, so there
2 seem to be a number of changes we are interested
3 in making here. So I would, if you don't feel
4 you can make them today, if you feel they're
5 major enough changes that more review is needed,
6 put this off, or make them today.

7 The one I would say, though, that we have
8 a lot of discomfort with was the last paragraph
9 in the first page of the staff addendum sheet.
10 That essentially tripled the amount of trash
11 assessments that we'd have to make and we weren't
12 counting on that at all. That surprised us this
13 morning, this language about increasing this
14 number of assessments to dramatically. Our quick
15 estimate is that it would do it by a factor of
16 three. We can't make that kind of change
17 quickly, actually we don't think it's needed, so
18 that one took us off guard. And we certainly
19 have to ask that you not implement that one, that
20 you not adopt that one today.

21 So that's my pitch. Two pitches, really.
22 If you do it today, be sure to do what Bob Falk
23 suggested, if you want to put it off, that'll
24 work too and we can work with you on that. And
25 many thanks. We do need your support and your

1 pushes on this, it is important to have a
2 stormwater permit, having worked with both the
3 Environmental Protection Agency, with you guys,
4 and now with the City, it is a good sort of
5 marriage to have a strong Permit and have an
6 agency like ours implementing it. We frankly
7 need it, we use it when we go to our City Council
8 and explain what needs to be done, so I wouldn't
9 at all argue that we don't need this kind of
10 push, it's just that on these two things that
11 I've mentioned today, one step too far, one in a
12 very fundamental way that causes us a lot of
13 heartburn. Thank you.

14 CHAIRPERSON YOUNG: All right, thank you.
15 Mr. Sbranti, Allison Chan is next, this is my on
16 deck.

17 MR. SBRANTI: Okay, good afternoon.
18 Again, my name is Joe Sbranti, I'm the City
19 Manager of the City of Pittsburg. I've been with
20 that City now 19 years, seen a tremendous number
21 of changes. I'd like to start by echoing and
22 supporting the comments that we heard from many
23 of the previous speakers, the Elected's, and our
24 consultants earlier, as well, very well spoken
25 and I'm not going to spend my time repeating what

1 they said. But I will say that I have a
2 particular fondness of the creek cleanups and the
3 plastic bag bans, and I think those are worthy of
4 consideration of a higher level of credit, if you
5 will. They do a lot for our community. We've
6 see it in Pittsburg.

7 Just briefly, I want to go back to a
8 topic that you've heard over and over today with
9 regard to the PCB reduction by quantity. We have
10 specific concerns on that and you heard a great
11 presentation on it earlier that I can nowhere
12 begin to compete with, but I do want to talk
13 about the building demolition portion of that.
14 We heard from your staff that even during the
15 Great Recession there was a significant number of
16 building demolitions, and even if we just had
17 just what we had the, we would have a significant
18 reduction of PCBs. I just want to remind you
19 that during that period of time, there was a
20 couple of dynamics, one was at least in
21 Pittsburg, we were taking advantage of the
22 blighted portions of our community and buying up
23 all of the very reduced valued properties with
24 redevelopment money and tearing them down. It
25 was our way of cleaning up Pittsburg and we were

1 very glad that we took that opportunity when we
2 did because we were getting, I can give you one
3 example, we were getting four-plexes for
4 \$125,000, those same buildings today are over
5 \$600,000. We happened to hit the market right at
6 the right time. We were able to do a lot of
7 demolition during that period of time; these were
8 old old buildings that were right in your target
9 zone.

10 My point is, we may or may not be able to
11 meet the demolition numbers that we saw during
12 the Great Recession. Regardless, if we put this
13 in as an action approach, as you've already
14 heard, if we ask for the development of a program
15 to control PCBs during building demolitions and
16 not based on some projections, you would lose
17 nothing because if your staff is correct and if
18 those numbers continued to be high as they have
19 been in the past, you will get the same reduction
20 of PCBs. If they are not, at least you won't be
21 struggling with how to handle something that was
22 just unachievable.

23 Moving quickly, I'm going to jump over to
24 Green Infrastructure. I mentioned I've been with
25 the City of Pittsburg 19 years, the majority of

() ,
1 that time was spent either managing our
2 Engineering Department or Public Works, or both.
3 During that experience, we had an opportunity to
4 see a lot of changes, saw that back in the '90s
5 if you were doing a construction project and you
6 wrapped a construction project with a straw
7 waddle, you were state-of-the-art in terms of
8 keeping the water clean. A lot of changes since
9 then. I live in a newly constructed home, it has
10 not one, not two, but three filtration basins on
11 my property that I have to maintain. That is
12 new. That is new construction. The challenge
13 comes when you deal with the retrofitting of an
14 entire City and bringing it up to the
15 requirements that you're setting forth today.

16 You've heard over and over again the
17 challenges that we have with our streets, how we
18 have to maintain our streets and they're
19 extremely expensive. In Pittsburg our backlog of
20 street maintenance exceeds \$50 million.
21 Countywide for Contra Costa, we've just gone
22 through this because of another discussion, it's
23 over a billion dollars countywide in a backlog of
24 street maintenance costs, not including Green
25 Infrastructure or the conversion to complete

1 streets.

2 So when we talk about that, we're not
3 making this up. These are huge numbers, extreme
4 challenges, but as I mentioned, I'm an Engineer
5 by practice, by experience, by training, and we
6 like a challenge. I think there are a lot of
7 folks out there that would love to work on this
8 and try to make progress on this. I will go back
9 to 15-20 years ago when ADA requirements hit us
10 with every time you touch a street, you have to
11 put in a curb ramp. Little by little over the
12 past, as I said I've been with Pittsburgh 19
13 years, we had 2,000 curb ramps to retrofit. I'm
14 happy to say that we've done 1,000, but that's 19
15 years and I've got to tell you, they're a lot
16 less expensive than retrofitting all of our
17 streets. This is a real problem, something that
18 we ask you help with, specifically what I'll just
19 leave you with is that if you could extend that
20 timing, make it more realistic for us to achieve
21 the goals, we want to be your partner and
22 continue to work together. And I'll stop at
23 that. Thank you.

24 CHAIRPERSON YOUNG: All right, thank you.
25 We are going to hear from Allison Chan and Melody

1 Tovar.

2 MS. CHAN: Good afternoon. Thank you for
3 giving me an opportunity to speak today. My name
4 is Allison Chan and I'm here on behalf of Save
5 The Bay. Thank you to the Board and Staff for
6 all the work you've done over the past -- I wrote
7 here several months, but a couple years.

8 Save The Bay feels that the changes made
9 to particularly Section C.10 of this Permit
10 sketch out a stronger path toward achieving zero
11 trash loading in storm waters. Getting to zero
12 in seven years will obviously be a challenge, but
13 with 27 waterways in our region listed impaired
14 just for trash, meeting this requirement as
15 quickly as possible is necessary to protecting
16 the health of the Bay.

17 We strongly support the additional
18 mandatory reduction milestones. It will help to
19 ensure incremental progress towards zero trash,
20 and will highlight situations in which a change
21 in strategy is necessary. We don't want to wait
22 until 2022 to find out what is and isn't working.

23 Save The Bay is committed to working with
24 Permittees and communities to secure the
25 resources and support necessary to get to zero

1 trash, but we can't do that without clear and
2 consistent assessments of which load reduction
3 strategies are working and which are not. We
4 support the additional guidance on the frequency
5 of visual assessments to verify an area that has
6 been converted to a low generation rate. We
7 respectfully ask for the Board and staff's
8 commitment to assist Permittees in verifying load
9 reductions and to ensure transparency in this
10 process.

11 With respect to receding water
12 monitoring, while we are pleased that the permit
13 requires development of plans, we urge Permittees
14 not to wait until the next Permit term to begin
15 consistent monitoring and data collection. We
16 fully expect to see many on land areas going from
17 red or yellow to green over the next couple of
18 years, but we need to verify this progress and
19 progress on other sources in the water. We urge
20 the Board and staff to assist permittees with
21 this, as well.

22 I brought with me today a letter signed
23 by 880 people urging you to adopt a stronger
24 permit that will get the region to zero trash
25 loading. These are people from all over the

1 region who are concerned about the impact of
2 trash in the Bay and who we will call upon to
3 support the projects and programs that Permittees
4 will be implementing. But they want assurance
5 that this regulation will be effective. We
6 believe this permit has great potential for that
7 and we urge you to adopt it without changes to
8 the timeline or relaxing the requirements.

9 Finally, although we appreciate the
10 attention to direct discharge of trash in this
11 permit, it's clear from many of the comments
12 before me that there is still a need for a better
13 solution to regulate trash from non-stormwater
14 sources. We urge the Board and staff to develop
15 a separate and more comprehensive process for
16 monitoring and reducing these sources of trash in
17 our waterways. So thanks very much for your
18 consideration and I've got copies of our letter
19 and signatures here. Thank you.

20 CHAIRPERSON YOUNG: Thank you. Can you
21 tell me if you have summarized the content of the
22 letter in your testimony just now?

23 MS. CHAN: Yeah, definitely, yes.

24 CHAIRPERSON YOUNG: I would think it
25 would be okay in receiving a copy into evidence.

1 MS. WON: I'm sorry, what is that,
2 exactly? It's --?

3 CHAIRPERSON YOUNG: It's a letter signed
4 by 800 of people who read their website.

5 MS. WON: And the substance of the letter
6 has been communicated orally by Ms. Chan?

7 CHAIRPERSON YOUNG: Was summarized by Ms.
8 Chan.

9 MS. CHAN: Absolutely, I mean, yes. The
10 letter is much more general than the comments
11 that I just gave, but certainly covers the same
12 topics and I was directed by staff to bring the
13 letter along with the signatures to this meeting,
14 so hope to be able to pass that out.

15 MS. WON: Well, I think that that letter
16 signed by 800 people constitutes new written
17 evidence, so I would recommend that you not
18 accept it because the written comment period has
19 passed. It doesn't sound like she read verbatim
20 the letter, so that's the issue in my mind.

21 MS. CHAN: I'm happy to do that. I had a
22 minute and a half left in my comment period.

23 CHAIRPERSON YOUNG: All right, read it
24 fast.

25 MS. CHAN: Just saying.

1 CHAIRPERSON YOUNG: It's really short,
2 right? Read fast.

3 MS. CHAN: It's short. You guys ready?
4 Okay, "Dear Chair Young and Board Members: As a
5 local Bay Area resident, I'm concerned about...,"
6 -- oh, I'm changing it, sorry, I didn't mean to
7 -- "...as a local Bay Area Resident, I am
8 concerned about the health of San Francisco Bay,
9 hundreds of thousands of gallons of trash flow
10 into our Bay from City streets. Please adopt a
11 strong municipal stormwater permit for 76 Cities
12 and Counties in the Bay Area. I urge you to
13 adopt a stormwater permit with stronger policy
14 and regulation that will get our region to zero
15 trash by 2022. The path to zero trash will be
16 challenging, but if our Cities, Agencies, and
17 communities work together, we can reach our goal
18 as a region. Please adopt the Municipal
19 Stormwater Permit without delays to our Bay
20 Area's Zero Trash timeline." Signed by 880
21 people.

22 CHAIRPERSON YOUNG: We did it.

23 MS. CHAN: Are we good?

24 CHAIRPERSON YOUNG: I think we're good,
25 it's the same as this thing that we got from the

1 other folks, so it's now on the record.

2 MS. CHAN: Thank you.

3 CHAIRPERSON YOUNG: All right, we're
4 hearing from Melody Tovar and then on deck we'll
5 have Joe Calabrigo from Danville.

6 MS. TOVAR: Good afternoon, Chair and
7 Board Members. My name is Melody Tovar. I'm a
8 Division Manager with the City of Sunnyvale's
9 Environmental Services Department. And I took
10 the oath earlier today.

11 I'm going to start us off with one more
12 paper moment. I need to clear up an issue with
13 the City of Sunnyvale's comments on the July
14 Tentative Order, apparently they never got to the
15 Water Board. We noticed quite recently that they
16 weren't posted, and that they weren't responded
17 to, but we did send them and we never got a
18 kickback. I've been asked to bring a copy of
19 them here today.

20 CHAIRPERSON YOUNG: How do we do that?

21 MS. TOVAR: And ask that you -

22 MS. WON: Our favorite way, read into the
23 record.

24 MS. TOVAR: So what I'm going to do is I
25 just want the record to reflect that we believe

() (,
1 we sent them and that we don't note that they
2 were received, and that above all we want to
3 acknowledge that we incorporate the comments of
4 SCVRRP and BASMAA made during that same period,
5 and then I'll just use my limited time to reflect
6 remarks that I think were there, but I can
7 elaborate based on where we are today to be most
8 useful.

9 CHAIRPERSON YOUNG: Thank you.

10 MS. TOVAR: Sure. So today --

11 MS. AUSTIN: Pardon me, I'm sorry, Ms.
12 Tovar. So just to be clear, I'm just suggesting
13 that we come up with a consistent application, so
14 for example the first letter that was read into
15 the record, we did not include in the record.
16 We've now heard from Save The Bay, who read a
17 letter into the record, so I would suggest just
18 being consistent in either allowing them all into
19 the record, or consistently saying "please read
20 it into the record," and then we're not going to
21 accept the letters.

22 CHAIRPERSON YOUNG: Okay, well, my
23 understanding is the only things that I have
24 accepted into the record today -- are my memory
25 -- that's a better way to put it -- are things

1 that were either put up on the Board or verbatim
2 read into the record. I did not just accept this
3 into evidence.

4 MS. AUSTIN: Correct. So there have been
5 two letters and one slide presentation.

6 CHAIRPERSON YOUNG: Right.

7 MS. AUSTIN: As far as I know, there may
8 have been more than one slide presentation. Who
9 was the first letter --?

10 CHAIRPERSON YOUNG: Sorry, folks.

11 MR. WOLFE: The letter from Mayor of San
12 Jose was read into the record.

13 CHAIRPERSON YOUNG: But that was read in,
14 I thought.

15 MS. AUSTIN: It was, correct. And we did
16 not accept it into the record because it had been
17 read into the record.

18 CHAIRPERSON YOUNG: But it was in the
19 record.

20 MS. AUSTIN: So again, with Save The Bay,
21 they've now read the letter into the record, and
22 the question to you is whether or not to also
23 have the letter as part of the record, so this
24 would be a similar instance of do we want to ask
25 Ms. Tovar to read the letter into the record.

1 I'm just suggesting consistency. It is a matter
2 of discretion for the Chair whether or not to
3 accept late written materials, which as a general
4 matter counsel recommend that are not accepted
5 into the record because it does present a problem
6 of prejudice for staff and other stakeholders to
7 be able to respond to those.

8 MR. KISSINGER: Isn't one of the
9 questions whether what's being submitted
10 duplicative of what BASMAA has already put into
11 the record? Are there new arguments that haven't
12 been otherwise presented?

13 MS. TOVAR: So my intention was to focus
14 my verbal remarks today on things that I think
15 are in addition to what has already been
16 discussed and/or put into the record.

17 MR. KISSINGER: Well, whatever you say
18 will be in the record.

19 MS. TOVAR: That's correct, yeah.

20 MR. KISSINGER: The question is whether
21 those not perceived comments --

22 CHAIRPERSON YOUNG: I did not -- I
23 thought our understanding is, between the
24 presenter and me, and maybe some other people,
25 was that she was not asking for formally for me

1 to accept it into the record, and so I did not.
2 She is going to summarize her points, she is
3 going to leave it with us that there seems to be
4 a mystery and then it will fall to you to clarify
5 that. I thought you were raising a different
6 issue.

7 MS. TOVAR: To be clear, Board Chair, I
8 was requesting that you include it in the record,
9 and open to your deliberation on that, but I am
10 requesting that you put it in the record.

11 MR. KISSINGER: And then the question for
12 us is whether or not she read it all into the
13 record, and I hope if it's lengthy that we don't.

14 CHAIRPERSON YOUNG: I think it's lengthy.

15 MS. TOVAR: I do read fast if that's any
16 consolation to you. Junior High Debate.

17 VICE CHAIR MCGRATH: Melody, I certainly
18 remember your testimony, you always give good
19 talk and good work. From your perspective,
20 however this didn't arrive, I'm not comfortable
21 with it, but what I want to make sure is your own
22 assessment of is there anything substantive in
23 that testimony that has not been addressed in the
24 existing comments and responses. And if so,
25 could you summarize that now? Or could you

1 stipulate that the comments of the City of San
2 Jose and the comments of the other parties cover
3 the substance in a similar manner?

4 MS. TOVAR: Sure, sure, sure. So my
5 sense is that they cover most of them, that there
6 are a couple of things that I don't think got
7 proper attention through the rest of the
8 comments, and Response to those, and I'm going to
9 make those now. And with that, we accept your
10 ruling, but I did make the request and I just
11 need to note your ruling on it.

12 CHAIRPERSON YOUNG: Yeah, so my ruling is
13 that I don't think we can accept the written
14 testimony right now; however, if we find out that
15 it was stuck in our mail room or something else
16 happened that made it go astray, then I'm going
17 to wait for the lawyers to figure out how we
18 might be able to be accommodating.

19 MS. TOVAR: Okay, great.

20 CHAIRPERSON YOUNG: Fair enough?

21 MS. TOVAR: I accept that decision.

22 CHAIRPERSON YOUNG: If you weren't so
23 good at presenting to us, we would have --

24 MS. TOVAR: I'm trying not to be offended
25 that nobody noticed we didn't submit a comment

1 letter. I've never missed a meeting. That's
2 okay, so with that, I'd like to go ahead and
3 start my verbal remarks today. Thank you so
4 much, thank you so much for rockin' and rollin'
5 with that little snafu.

6 So I wanted to focus my remarks today to
7 elaborate on a critical detail of how we quantify
8 our progress within the PCB provision. We all
9 agree that addressing contaminated properties is
10 a priority for this permit cycle, let's find the
11 areas where we know PCBs are currently being
12 contributed, and identify those properties.
13 Typically we're talking about private properties.
14 And so we are all on board with that.

15 The way the Fact Sheet is written
16 currently is it compels and supports the local
17 agency referring those contaminated properties to
18 other agencies for proper handling. And it also
19 asks that we take local actions to mitigate the
20 intermediate effects while that other activity is
21 happening, but in doing so it only affords us 50
22 percent of the credit for the reduction in PCBs
23 for that activity until some future unspecified
24 time based on other people's actions when the
25 cleanup is complete. We observe that as unfair,

1 unfair and unreflective of our contribution
2 during the permit term.

3 We also observe that some of those
4 properties already have regulatory oversight and
5 regulatory orders, including some that are
6 specific to PCBs, that were done years ago and
7 haven't yet been updated or modernized to reflect
8 the current TMDL. And we think that should be a
9 priority. It's not particularly our work, but it
10 is regulatory work and we do think that it needs
11 to happen concurrent with any local action.

12 We ask that the Water Board make that a
13 priority working with your Federal and State
14 partners, along with us, to modernize existing
15 regulatory mechanisms, to update them to reflect
16 the TMDL. And just for example, it won't be
17 numeric enough, somebody else can handle that for
18 me. We've got groundwater and soil contaminated
19 properties where the level of cleanliness that
20 was needed at the time that those were initiated,
21 Super Fund sites, was up here, like 25 parts per
22 million, billion? And now the number is closer
23 to one, and so nobody has just dialed that number
24 down at those regulatory levels for those same
25 properties. And we think that that's a gap. So

1 we ask that you prioritize that alignment effort
2 and that you remove the 50 percent cap to the
3 benefit being afforded to the local Permittee.

4 You can imagine, we support heavily the
5 comments about using Numeric Action Levels as the
6 strategy for PCB and TMDL, PCB and Mercury TMDL
7 accomplishment. We think that it gets you where
8 you need to be in terms of enforceability and
9 achievability, but gets us away from the
10 additional risk of penalties and legal risks. So
11 we think it helps everybody to do it that way.

12 Regarding trash, I just have two quick
13 points that I want to reiterate. You've heard
14 some of it here today, that the source control
15 cap be raised to property incentivize future
16 action and really reflect that not only is it the
17 right thing to do, but it's the kind of action
18 that helps not just the MS4 pathway to our local
19 creeks, but windblown, roadway blown, and direct
20 deposited materials, as well. And so that really
21 is the kind of activity that this permit should
22 be incentivizing and recognizing via larger
23 credit caps.

24 And then lastly, similar to Phil Bobel, I
25 do urge you to reject the supplemental changes

1 that were provided just this morning, regarding
2 the assessment approach for trash, it's just
3 adding cost without benefit at the cost of
4 implementation.

5 And lastly, I'll just conclude by
6 thanking the Board staff and the Board for your
7 consideration and all your hard work in
8 partnering with us on this. Thank you.

9 CHAIRPERSON YOUNG: I have a follow-up
10 question.

11 MS. TOVAR: Sure.

12 CHAIRPERSON YOUNG: This could have been
13 in your written comments, I don't know. You said
14 that you only get 50 percent credit when you
15 refer a cleanup to another agency.

16 MS. TOVAR: So we investigate it,
17 identify the site, provide the referral package
18 to the Water Board for action.

19 CHAIRPERSON YOUNG: The Water Board or
20 perhaps another agency.

21 MS. TOVAR: Or another agency.

22 CHAIRPERSON YOUNG: And your preferred
23 option is to get 100 percent credit?

24 MS. TOVAR: That's correct.

25 CHAIRPERSON YOUNG: Okay.

1 MS. TOVAR: And there might even be ways,
2 since you asked, to do that in a stepwise
3 fashion, it might be viable to do that maybe for
4 the first two years of the permit, so that you
5 really encourage us to make that a priority in
6 our implementation action. That might overwhelm
7 our partner agencies with cleanup, but it might
8 also give them the better opportunity to
9 strategize how they approach a number of
10 properties versus getting referrals every three
11 or four months.

12 VICE CHAIR MCGRATH: Can I follow that
13 up?

14 CHAIRPERSON YOUNG: Yeah, we have another
15 question.

16 VICE CHAIR MCGRATH: I had the good
17 fortune, I guess, of being in charge of cleanup
18 of PCBs at Oakland Airport when I worked as the
19 Environmental Manager at the Port of Oakland, and
20 getting the material adequately characterized and
21 off your property is somewhat more difficult than
22 one might think when you first look at that
23 problem. Are you talking about 100 percent
24 credit eventually? Or 100 percent credit right
25 away? In other words, if it takes three years --

1 I agree, once the material is gone and out of the
2 system, somebody should get credit for it, we're
3 not worried about it anymore. I guess I want to
4 make sure that it's actually cleaned up before
5 credit goes on the books.

6 MS. TOVAR: We're just recognizing that
7 these kinds of abatement orders often take
8 decades to perform the full cleanup and that
9 doesn't seem like an appropriate way to approach
10 what is attributed to the Permittees' actions.
11 So we have taken the action; it's a matter of the
12 rest of the regulatory wheels in partnership with
13 the property owner going ahead and turning to
14 completion, but that shouldn't be something that
15 numerically holds us back from demonstrating that
16 we've done what we said we would do, and what is
17 necessary for us to do in order to achieve the
18 ultimate outcome. Our role is done.

19 VICE CHAIR MCGRATH: Okay, I understand
20 your argument.

21 MS. TOVAR: Thank you.

22 CHAIRPERSON YOUNG: All right. Thank
23 you. Joe Calabrigo and then Ian Wren and George
24 Torgun, I guess.

25 MR. CALABRIGO: Good afternoon, Chair,

1 members of the Board. Joe Calabrigo, Town
2 Manager, Town of Danville, here on behalf of the
3 Contra Costa Public Managers. Rest assured, I
4 don't have any letters to read in to the record
5 to try to complicate things.

6 VICE CHAIR MCGRATH: Thank you for that.

7 MR. CALABRIGO: I would like to see how
8 much below five minutes I can go here. First of
9 all, I want to start by endorsing the
10 presentation that the representatives of BASMAA
11 made, you asked for specific feedback and
12 suggestions and recommendations. I think they
13 did a great job of summarizing that, as I believe
14 have the previous Elected Officials who at least
15 in Contra Costa County always impress me with
16 their ability to be able to speak to various
17 subjects. So I wholeheartedly support those
18 recommendations and ask you to consider
19 incorporating the topics that have been covered
20 into the new MRP.

21 I also want to commend the Water Board
22 staff because, as an Administrator, I've had the
23 opportunity to sit through roughly two and a half
24 years' worth of meetings, preparatory to today,
25 and I'll tell you that from my perspective the

1 process that's preceded MRP 2.0 is remarkably
2 different than the one that proceeded the first
3 one.

4 But I hope that your Board will continue
5 to actively listen to our testimony,
6 nevertheless. Local government really wants to
7 emphasize the fact that we are your partner in
8 this process, and specifically the implementation
9 partner. And to be blunt, we're the solution.
10 We don't perceive ourselves as the problem and we
11 think that we've demonstrated that through the
12 ways that we have implemented and carried forward
13 the requirements in the current MRP. We all
14 support clean water, every single City person who
15 is here today can tell you why their City or
16 their County is special or unique, and protecting
17 our environment is a huge part of that for
18 current and future generations. But you've also
19 heard that we need to be able to balance all of
20 the needs and services that we're responsible for
21 within our fiscal realities.

22 The top two priorities for every public
23 agency in the State of California are public
24 safety and crumbling infrastructure. We in
25 Danville spend about \$4 million a year on our

1 streets, we could be spending twice that much in
2 the Metropolitan Transportation Commission when
3 we talk about incorporating some of the changes
4 that are included in MRP 2.0, it doesn't seem to
5 be too concerned about giving its dollars to do
6 that. So we need to strike that balance between
7 needs and the ability to pay for it.

8 I think we've tried to make that point
9 with your staff as we've engaged in this process,
10 we've tried to stress the experiences, the
11 takeaways from the current MRP and how to apply
12 that experience towards maximizing the
13 effectiveness in MRP 2.0 and ensuring that we
14 have a clear path toward compliance. The
15 significant step as far as I'm concerned is the
16 inclusion of the development of Green
17 Infrastructure Plans in MRP 2.0. That's not
18 something that we had to be dragged to the table
19 kicking and screaming to include. I believe that
20 we actually advocated for it because we saw the
21 benefit, albeit requiring probably decades to be
22 able to achieve the end result, but we thought it
23 was the right long term approach because from a
24 partnership perspective that's what partners do.

25 That said, we would appreciate your

1 consideration with respect to some of the
2 suggested changes that have been presented today
3 having to do with trash, with credits for things
4 like creek cleanups, plastic bag bans, PCB
5 reductions, and so on. I'm not going to
6 reiterate all of those. But I do endorse and
7 support those wholeheartedly.

8 And lastly, you know, it's my hope that
9 this Board, the representatives from EPA,
10 Baykeeper, we all need to work together to figure
11 out what we're going to do to fund all of this
12 moving forward because it's not just local
13 government's problem. And we need you to use
14 your voices with the State Legislature, with the
15 Governor, we need to bring all of the resources
16 to bear that we can to work together to make that
17 happen. I'm excited about \$1.7 million from EPA,
18 a couple more zeros behind that number and now
19 we've got a real start toward what it's going to
20 take to be able to implement all of this. So I
21 thank you very much for your consideration this
22 afternoon and appreciate your taking it all into
23 account before you make your decision. Thank
24 you.

25 CHAIRPERSON YOUNG: All right, thank you

1 very much. Next, we have Ian Wren and then on
2 deck we'll have Tony Acosta from Union City,
3 please.

4 MR. TORGUN: Good afternoon, George
5 Torgun from San Francisco Baykeeper. We did ask
6 for additional time, I just wanted you to know
7 that at the outset, and I hope we don't have to
8 use all of it. I think our presentation will be
9 quite different from others and we have been
10 commenting on this permit, we submitted extensive
11 written comments, we testified at both the
12 Workshops. I won't repeat anything I've said in
13 those comments, but I do want to respond to some
14 of the new information that was included in the
15 October 2015 new draft and the particularly
16 rationale in the Fact Sheet, and the Response to
17 Comments.

18 So I want to speak to two issues, the
19 first one is Alternative Compliance. We have a
20 lot of concerns about this new language that's in
21 MRP 2.0. In the Fact Sheet, there was added
22 language which says that essentially the Regional
23 Board was directed to consider this by the State
24 Board Order in the L.A. MS4 case, State Board
25 Order 2015-0075. We've now looked at that order.

{ } ;

1 Here's what the Order says: "Directing the
2 Regional Boards to consider the EWMP approach to
3 receiving water limitations compliance when
4 issuing Phase 1 MS4 Permits going forward." Now
5 the WIMP, the Water Management Program, or
6 Enhanced Watershed Management Program approach,
7 we believe has not been at all developed for this
8 region and for this MS4 Permit. Our permit
9 doesn't even mention those terms, it does
10 mentioned conducting a reasonable insurance
11 analysis for Mercury and PCBs, but unlike LA,
12 gives really no guidance on what that means. We
13 agree with one of their earlier comments which
14 was said, LA is very different from the situation
15 we have here. We think it's extremely premature
16 to insert the Alternative Compliance language
17 into this permit based on what the State Board
18 said.

19 And just to give some examples, you know,
20 the State Board said if you're going to do an
21 alternative to compliance pathway, here are the
22 type of things you're going to be looking for, an
23 ambitious, rigorous, and transparent compliance
24 path. We do not have that here. We want rigor
25 and accountability and the State Board kind of

1 specified what those things mean in the State
2 Board Order. First of all, a public review and
3 comment period for the trash provisions, for
4 example, there's no way for the public to weigh
5 in on all the different trash reporting that's
6 coming in to the Regional Board for us to have
7 people to look at how things are being
8 categorized as very high, high, moderate, or low.
9 The only potential public input is on the
10 receiving water program, but even then it just
11 says interested parties may have some input, it
12 never specifies there's going to be public review
13 and comment.

14 The other requirement is, you know, an
15 REA, again has not been developed for this Region
16 and we simply think that at this point in time
17 this permit does not have any sort of WMP or
18 EWMP-like process, or reasonable insurance
19 analysis that would allow this MS4 Permit to
20 include an Alternative Compliance Pathway.

21 We also think there's no language in the
22 State Board Order that allows an Alternative
23 Compliance Pathway for discharge prohibitions,
24 which this permit includes for trash, that the
25 State Board Order was limited to do receiving

1 water limitations.

2 Not surprisingly, EPA has also said to
3 the State Board on the LA MS4 Permit that it's
4 premature and inappropriate to have this approach
5 throughout the state. LA is distinct, there's
6 simply no rationale or justification for an
7 Alternative Compliance Pathway at this point in
8 time for this permit.

9 The second point I want to talk about is
10 monitoring. We've been trying to get some
11 clarification on what type of monitoring is
12 covered in Provision C.8 and we had a meeting
13 with Regional Board staff. We're concerned that
14 the monitoring that is specified, or not
15 specified, does not include wet weather end of
16 pipe monitoring, which this is a Municipal
17 Stormwater Permit, of course we want to have
18 outfall monitoring to see what is coming out of
19 stormwater systems. I'll skip that one, we've
20 already addressed it.

21 So in the Fact Sheet there's a notation
22 that continuing end of pipe monitoring produces
23 limited data and they site this NRC Report and
24 say that EPA has endorsed this. We looked at
25 this NRC Report, we don't see anywhere where it

1 says outfall monitoring is not appropriate. What
2 it says is that the monitoring that had been done
3 to date is lacking in vigor and has been done
4 inconsistently, but it certainly says that
5 outfall monitoring is appropriate. EPA has
6 endorsed outfall monitoring in other California
7 MS4 permits, as you can see here. Certainly,
8 receiving water monitoring is appropriate, as
9 well, but without outfall monitoring, we do not
10 believe that this permit includes monitoring
11 sufficient to determine compliance with the terms
12 of the permit itself.

13 MR. KISSINGER: So let me just make sure
14 I understand what you're saying. Are you
15 suggesting that EPA would not approve this
16 permit? I mean, we had someone here from EPA a
17 moment ago who was endorsing the permit. Are you
18 suggesting that she was not speaking EPA's
19 official position, or -- I'm not quite sure I
20 understand what your point is.

21 MR. TORGUN: I don't think there's any
22 way I can tell you what EPA's official position
23 is, other than what was said here today. So I am
24 telling you what EPA has said about outfall
25 monitoring in MS4 Permits because, as you see in

1 the Fact Sheet, it seems to imply that EPA thinks
2 that outfall monitoring or end of pipe monitoring
3 is not useful, and we disagree. We think EPA has
4 very much said that it is useful, and it is well
5 established and supported by their own
6 Regulations and other California MS4 Permits. So
7 either the provisions in C.8 need to be clarified
8 because I've heard Vice Chair McGrath, you said
9 today that some end of pipe monitoring will
10 happen down the road, and in the Fact Sheet the
11 Regional Board staff also seem to say that there
12 is some of that in here, we don't see it
13 anywhere; except for Pesticides and Toxicity
14 Monitoring, we don't see end of pipe monitoring
15 at all in this permit. We think it is necessary
16 for a Stormwater Permit to have a sufficient
17 monitoring program. And I'm going to turn our
18 attention to Mr. Wren now.

19 MR. WREN: Thank you. My name is Ian
20 Wren, The San Francisco Baykeeper. And I just
21 want to kick it off with some general comments
22 regarding the C.10 provision for trash, include
23 that the provision is not consistent with the
24 recently adopted statewide trash provisions,
25 there's no objective measure of what constitutes

1 compliance, and there are calls for future
2 development of plans with little assurance the
3 interim trash load objectives will be achieved in
4 the life of this permit term.

5 The following three slides contain photos
6 taken from listed and unlisted waterways around
7 the region recently. The trash provisions
8 contained in the 2009 Permit seem to arise from
9 the listing of a number of waterways and portions
10 of the Bay with the desire to implement a
11 regional strategy to address the trash. Rather
12 than develop TMDLs for those listed waters, the
13 MRP was going to be the mechanism for addressing
14 trash associated with urban runoff, which was
15 believed to be the primary pathway of trash
16 loading.

17 We have since learned, as highlighted
18 this morning by Mr. McMurtry, that for many of
19 the most impaired waterways and segments of the
20 Bay, other sources may be of greater significance
21 than urban runoff. We are aware that
22 efficiencies of the approach developed in 2009,
23 which called for the development of plans, which
24 were later deemed unsatisfactory, and a
25 monitoring program that is neither enforceable

1 nor consistent with the goals of eliminating
2 trash discharges to the water by 2022.

3 We are concerned this approach is a bad
4 deal for everyone involved and ironically support
5 some of the testimony given by a lot of the
6 Permittees here today. Permittees with no real
7 trash problem are required to implement costly
8 and ineffective measures, and those Permittees
9 which discharge to 303(d) listed waters are not
10 being required to address other sources of trash
11 that may prove more significant than MS4 related
12 discharges.

13 This is another recent photographs of a
14 303(d) listed creek in the South Bay, which is
15 hard to discern, but it is completely clogged
16 with trash. Again, we are concerned this
17 approach will not address such conditions and
18 that many Permittees will be required to waste
19 resources on a non-issue, and others will not be
20 required to do enough where the situation is
21 truly dire.

22 It is unclear that other sources of trash
23 are a big issue for 303(d) listed waters and
24 despite resolutions by this Board to address all
25 sources of trash through the Permit, staff does

1 not feel they have the legal authority to do so.
2 And as a result, I urge this Board to direct
3 staff to address all sources of trash, pollution,
4 and 303(d) listed waters, TMDL, or other
5 mechanism.

6 Now, during the course of the last
7 permit, the state developed the trash amendment
8 and rejected the approach followed in Region 2 as
9 one deserving of a special exemption. This
10 provision is not consistent with the statewide
11 approach and will require amending of the permit
12 in the next one to two years by staff's own
13 estimation. Following passage of this amendment
14 through the Office of Administrative Law, the
15 Trash Amendments to the Ocean Plan and the Inland
16 Surface Waters, Enclosed Bays and Estuaries Plan
17 will go into effect. Among the requirements, in
18 addition to requiring full trash capture
19 equivalency in all priority land uses is for
20 receiving water monitoring plans sufficient to
21 determine compliance.

22 This Permit puts off the development of a
23 monitoring program until 2020 and although staff
24 is aware that no monitoring plan is perfect when
25 it comes to trash, the range of options are known

1 and staff should just pick a method for an
2 objective method to facilitate determination of
3 compliance with the provisions of this permit.

4 Now I'd like to turn the attention
5 towards the Green Infrastructure Planning
6 requirements of the C.3 provisions. I am
7 obviously supportive of these requirements as a
8 means of providing multi-benefit projects to
9 communities around the region, but if I view this
10 from the perspective of a Permittee with no
11 significant nexus to the PCB or Mercury TMDL,
12 there's just no legal or scientific basis for
13 them to be subjected to these requirements.

14 The provision merely assures a lot of
15 work from consultants to generate these plans and
16 the likely conclusion being implementation as
17 appropriate for some permittees where data is
18 available, and where it is possible to control
19 TMDL pollutants through green infrastructure.
20 But possibly the majority of Permittees will have
21 no justification for moving past the planning
22 stage and into implementation.

23 Also, this provision requirement assumes
24 adequate data to indicate the need for Green
25 Infrastructure planning throughout the region,

1 where in actuality, adequate monitoring has not
2 and will not be collected to justify the need for
3 such extensive planning and implementation
4 measures, regardless of whether that need is
5 actually supported by receiving water status.
6 This is in conflict with Southern California
7 Permits in the Los Angeles, Santa Ana, and San
8 Diego Regions where they require receiving water
9 monitoring and monitoring of outfalls coupled
10 with gauging stations at major outfalls to
11 determine mass loads and calibrate models.
12 Without adequate monitoring, a robust, reasonable
13 assurance analysis cannot be conducted for the
14 generation of these Green Infrastructure Plans.
15 And the Board is setting itself up for challenge
16 in implementing Green Infrastructure-related
17 requirements in the future.

18 Now, if the intent of the Green
19 Infrastructure Plans are primarily to reduce
20 PCBs, millions have been spent on PCB monitoring
21 over the last decade with very little to show for
22 it in terms of targeted cleanups, enforcement, or
23 load reductions. We know where the PCB hot spots
24 are, which are not correlated to City size and
25 population. The Board has the opportunity to use

1 this data to target areas and require appropriate
2 planning for remediation and Green
3 Infrastructure, which holds the greatest promise
4 for cost-effective retention of runoff and
5 contaminant laden sediment.

6 I encourage the Board to require Green
7 Infrastructure planning for particular Permittees
8 with known PCB and Mercury hot spots, and a
9 robust monitoring system capable of tracking
10 performance and impairment. You should then
11 require the development and implementation of
12 reasonable assurance analyses consistent with
13 guidelines established by EPA and the LA Region.

14 But consistent with State Board and EPA
15 guidance, in order to develop the Green
16 Infrastructure Plan based on robust reasonable
17 assurance analysis, you need data and
18 specifications for how to conduct an RA. The
19 current draft has no concrete minimum
20 specifications for conducting an RA. There's
21 insufficient data to calibrate or verify any
22 proposed RAs sufficient to meet the standards
23 articulated by the State Water Board and EPA, and
24 there is no requirement for monitoring for
25 sampling that would make conducting an RA

1 feasible for at least the life of this permit.

2 The Reasonable Assurance Analysis is a
3 modeling exercise and modeling requires adequate
4 data, both to populate the model and to calibrate
5 and verify that model by comparing the results to
6 real world conditions. So the confidence in any
7 model is dependent on the volume and quality of
8 available data. By lacking specificity in what
9 the monitoring program of this permit entails,
10 you cannot guarantee collection of data useful in
11 RA analysis. This is why Southern California
12 Permittees are all now required to conduct
13 Receiving Water and Outfall Monitoring. This
14 draft MS4 Permit includes no end of pipe
15 monitoring, no receiving water monitoring
16 correlated to discharges to evaluate impacts, and
17 in fact no clear requirements for wet weather
18 sampling beyond a few parameters.

19 There has been much concern expressed
20 here today associated with data collection and
21 the threat of third party lawsuits. If you
22 specify defensible procedures for RAs and
23 monitoring procedures, these issues can be
24 rectified with appropriate protections. But
25 without defined criteria, EPA and the State Board

1 have found safe harbors are not appropriate.

2 Thank you for granting us the opportunity
3 to discuss these issues. We urge you to reject
4 this permit on the grounds that it lacks any
5 guidance as to the rigor of the RA proposed,
6 while still providing a safe harbor. It does not
7 contain monitoring provisions sufficient to
8 determine compliance, and since the permit is
9 inconsistent with statewide trash amendments, the
10 Permit will have to be reopened almost
11 immediately, representing a waste of resources
12 for almost everyone involved. We encourage you
13 to delay passage of this permit until the trash
14 amendments have been finalized and RA guidance
15 from EPA and the State Board is completed. Thank
16 you again. And I do have a petition by our
17 members, 270 of our members, urging you to
18 strengthen the trash provisions so that they are
19 more transparent and enforceable. I do not feel
20 the need to read them into the record or submit
21 them into the record, but please know that they
22 exist.

23 DR. AJAMI: Can I ask you a question?

24 MR. WREN: Yes.

25 DR. AJAMI: Okay. Two questions, one is

1 that when you were talking about trash you said
2 the Permittees have to waste money on a non-issue
3 trash while they can address the more major trash
4 issues. What do you mean by non-issue trash?

5 MR. WREN: I have not visited every
6 waterway in the region, so I cannot confirm the
7 status of every one, but it is my understanding
8 that not every waterway is significantly
9 impaired. And of those impairments that do
10 exist, many of them are associated with
11 homelessness, direct dumping, and other non MS4
12 discharges. Those will not be addressed through
13 this Permit.

14 DR. AJAMI: Okay, and then the second
15 question is, you mentioned about Southern
16 California permit, is the monitoring requirement,
17 is it during the time the municipalities or
18 permittee is developing the plan? Or is it
19 beforehand? Or when does the monitoring
20 requirement sort of get into effect?

21 MR. WREN: Immediately.

22 DR. AJAMI: But then are they developing
23 the plan meanwhile like while --

24 MR. WREN: No, there is no plan for a
25 plan, for example. There is specifications

1 within the permit, you could take the Santa Ana
2 Region, for example, they require I believe all
3 Permittees to identify representative outfalls
4 and monitor those, as well as receiving water
5 monitoring during wet weather. We're not clear
6 now within the C.8 provisions whether wet weather
7 monitoring is required at all, let alone outfall
8 monitoring. It is my understanding that the only
9 specified wet weather parameters that are
10 required for monitoring are toxicity and I
11 believe pesticides. So it's very unclear that
12 we'll generate data significant enough to
13 calibrate these RA models.

14 DR. AJAMI: So they are supposed to
15 monitor, collect data, and then eventually
16 implement some sort of a solution that can be
17 Green Infrastructure?

18 MR. WREN: Absolutely, because they have
19 safe harbors in place in all of the permits in
20 Southern California, arguably more generous than
21 the ones here, they are going to use this data to
22 feed into their RA models to inform the
23 identification of appropriate Green
24 Infrastructure.

25 DR. MUMLEY: I'm sorry, I've got to

1 correct you because I'm very familiar with the LA
2 permits and you're referring to the Santa Ana
3 Permit, which doesn't have anything to do with
4 the LA Permit requirements, that have a
5 requirement that these Watershed management
6 Plans, or Enhanced Watershed Management Plans
7 must provide reasonable assurance to the end
8 point. And you referred to the monitoring
9 requirements in LA Permits. The plans required
10 by the LA Permits were due very soon within the
11 permit term such that they could not be dependent
12 on data generated during the permit. Obviously,
13 monitoring data generated during the permit may
14 be or likely would be used to improve the plans,
15 but the plans themselves had to be developed on
16 existing readily available data in order to meet
17 the deadlines imposed upon them in the plan. So
18 I just want to make sure that it's not like they
19 have these monitoring requirements that is about
20 making these reasonable assurance analysis as
21 robust as part of the plans. The plans precede
22 the monitoring. All said and done, this should
23 all come together.

24 MR. WREN: Sure, and I'm not super
25 familiar with the monitoring requirements of LA,

1 I was just looking at the Santa Ana and San Diego
2 yesterday, but, yes, Dr. Mumley is totally
3 correct, they do have to create these EWMPs and
4 WMPs and they're of varying quality, largely
5 based on the amount of data that's available, but
6 there is a requirement to I believe annually
7 update them with new data as a result of the
8 monitoring requirements contained in their MS4
9 Permits. So it's assumed that this will be an
10 iterative process, the models will improve over
11 time.

12 DR. AJAMI: Okay.

13 CHAIRPERSON YOUNG: Any other questions?

14 All right, thank you.

15 MR. WREN: Thank you.

16 CHAIRPERSON YOUNG: All right, next we'll
17 have Mr. Acosta from Union City. All right, I'm
18 trying to figure out if anybody is acting like
19 they're Mr. Acosta from Union City, and I don't
20 think so. So what we're going to do now instead
21 of hearing from Mr. Acosta is to take a very
22 short break because we've all been sitting here
23 for quite a while. So no more, I mean no more
24 than 10 minutes, and then we come back and on
25 deck will be Ms. Hawkins, Barbara Hawkins from

1 the City of San Pablo.

2 (Off the record at 4:05 p.m.)

3 (Back on the record at 4:16 p.m.)

4 CHAIRPERSON YOUNG: All right, folks, we
5 have somewhat shy of 20 more cards. We are going
6 to try to make it through all of you folks today
7 so that you all get a chance to testify today.
8 We will be reconvening tomorrow to then go
9 through the additional Board Member questions,
10 staff response, that sort of thing, but we're
11 going to try to get through all of the testimony
12 today.

13 MR. WOLFE: We noticed it for 9:00, but
14 we can make the call.

15 CHAIRPERSON YOUNG: I think we should do
16 it at 9:00, that's what we said. Okay, so we are
17 now going to hear from Barbara Hawkins, and then
18 on deck we'll have Craig Johns, please.

19 MS. HAWKINS: Thank you, Chair Young and
20 Board Members. My name is Barbara Hawkins. I'm
21 the City Engineer in Charge of Public Works for
22 the City of San Pablo. I want to thank you for
23 giving me an opportunity to express the City of
24 San Pablo's concerns with the proposed permit.
25 I'm here to give you some real examples and real

1 calculations that explain why the City believes
2 the permit should express performance criteria in
3 terms of action levels and not as regulatory
4 compliance.

5 So to start off, I'd like to express the
6 City of San Pablo's requirement as 5.6 (*Sic*)
7 grams of PCB reduction and that's based on
8 looking at the region-wide requirement, and then
9 taking the demolition project off the top, then
10 prorating the balance of three percent from the
11 Contra Costa County's allocation, so that gives
12 the City of San Pablo -- 5.16, I'm sorry.

13 So there are three ways that the City can
14 reduce PCBs, the first way that is suggested is
15 Green Infrastructure, the City of San Pablo right
16 now is looking at a Complete Streets project,
17 it's a mile long. Green Infrastructure for that
18 project will cost \$800,000, and using the Board's
19 model, we would be getting .19 grams of PCB
20 credit. So for \$800,000, one mile, there would
21 be .1 grams reduction. To make up the balance of
22 that 5.16 that's required for the City, we would
23 look at other opportunities in looking at
24 historical public projects where we've used C.3,
25 we were able to over the last five years get

1 approximately 1.8 grams of PCB reduction using
2 the model from the Board, so 1.8 plus .19 barely
3 gets us 2.0 grams reduction when we need to be
4 getting 5.16 grams of reduction.

5 Another way that the agencies have to
6 reduce their PCBs is through private C.3
7 treatments. In the City of San Pablo and
8 probably most areas, development is based on the
9 old real estate adage, "location, location,
10 location," and in San Pablo the location where
11 the developers are going and have been going is
12 not in the industrial sites that are high in
13 PCBs, but they're going in other locations. So
14 looking at the last five years where we've had
15 C.3 improvements and projecting out for the next
16 five years, the type of development that's
17 anticipated in our General Plan, we see .31 grams
18 of PCB reduction. So we've got 2.3 grams of PCB
19 reduction; again, we're supposed to be making
20 5.16.

21 The last way in which we could reduce the
22 PCBs is by site sampling. And the County
23 conducted a study where they looked at 4,500
24 parcels. Of those 4,500 parcels, they were
25 parcels that appeared through going through some

1 other ways of exploration to be high probability
2 sites, but in actually looking at those sites,
3 only 400 of them were in reality sites that had
4 not been developed or had not been cleaned up.
5 So with 4,500, only 400 of them could be looked
6 at, and out of those 400, only 53 of them were
7 testable because you can't go on private property
8 and start testing on private property. So of the
9 4,500 sites that according to the model, I
10 believe, only 53 were able to be tested because
11 they discharged into the public right of way, and
12 the County could take the test, only two of them
13 actually turned out to be hot spots, and those
14 two came up with about 10 grams of PCB reduction,
15 but because it is in the site sampling program,
16 they'd only get half that credit. So out of
17 4,500 parcels, only five grams of PCB reduction
18 credits would be allowed.

19 So again, I'm going back to what I said
20 before, I'm not sure if the model has been trued
21 and calibrated and tested, but looking at 4,500
22 parcels, coming up with only two hits and only
23 five grams, and having to meet a compliance level
24 threshold is going to be very difficult. The
25 Cities, I think, would like to say San Pablo

1 wants clean water, the City wants to meet the
2 mandates, but the City feels that they're being
3 set up for failure given the way that the permit
4 is structured and we are therefore requesting the
5 action level rather than the compliance level
6 performance requirements. Thank you.

7 CHAIRPERSON YOUNG: I think we just got
8 some specificity. Thanks very much.

9 MR. KISSINGER: That was very helpful,
10 thank you.

11 CHAIRPERSON YOUNG: All right, we'll hear
12 from Mr. Johns and then have Vaikko Allen from
13 Contech.

14 MR. JOHNS: Thank you, Madam Chair, good
15 evening again. My name is Craig Johns. I'm here
16 on behalf of the Partnership for Sound Science
17 Environmental Policy. I will do my very best and
18 should very much achieve being under five
19 minutes; if I don't, I failed.

20 I'm speaking specifically on Provision
21 C.10.B.4, this is the Trash Source Control
22 Provision. You've heard me speak before your
23 Board before at workshops and in our comment
24 letters. And the point that Mr. Wren made
25 earlier today, I wanted to reiterate and somewhat

1 expand upon. He mentioned the April adoption of
2 the statewide trash policy. I want to be clear
3 in the context of my comments, that policy is not
4 yet binding on this Board, so I am not suggesting
5 that, although I believe strongly that the
6 provision is in conflict with the statewide trash
7 policy, it is not in violation of the trash
8 policy because it's not been approved yet by OAL.
9 But as soon as it is approved by OAL, and that's
10 inevitable, this permit, if it's adopted with
11 this provision, would be in conflict with the
12 strictures of that permit.

13 It's important to note and Ian mentioned
14 it briefly, and I'm sorry he's not here to hear
15 me say I agree with him on this point, that when
16 the State Board considered the issue of credits
17 for so-called source controls related to product
18 and package bans, like ordinances, as means of
19 getting credits towards reduction obligations,
20 they rejected them out of hand. It's important
21 to note that from the staff report and the
22 Response to Comments, the State Board staff
23 responded institutional controls may be
24 established by Permittees, however, it's not
25 reasonable foreseeable that product ban ordinance

1 would qualify as reducing trash in any such
2 ordinance, is only speculative, and not a
3 reasonably foreseeable method of compliance.

4 The State Board staff in the trash policy
5 had a number of other provisions, quoting some of
6 the reports that we cited before in presentations
7 such as the San Francisco's Pre- and Post-Litter
8 Surveys relative to assessing the value of things
9 like product bans and packaging ban ordinances,
10 finding that they had no measurable, in fact, it
11 led to increase in other kinds of trash. So the
12 suggestion that any kind of a form of plastic bag
13 ban either reduces trash or reduces environmental
14 impacts associated with trash is just
15 contradicted at the record at the State Water
16 Board.

17 So we believe that it would be
18 appropriate for the Board to Codify a provision
19 allowing that kind of a credit here because it
20 does contradict the State Board's policy that was
21 adopted and is pending approval, but it's
22 certainly up to you if you wish to continue to do
23 it.

24 The thing that I guess really strikes us,
25 however, is that between the previous draft and

1 the current one, the credits that an agency could
2 gain from source control measures such as, and
3 specifically pointed out in the staff report,
4 ordinances that ban packaging in certain kinds of
5 products like Styrofoam and plastic bags, it
6 doubled from five percent to 10 percent, and we
7 can't find anything in the record that
8 demonstrates the justification for that. While
9 it would be a feel good measure and allow perhaps
10 the agencies a softer road to compliance, which
11 obviously I'm somewhat sympathetic, it is not
12 going to get to the issue of trash removal. I
13 think that your staff's very difficult and very
14 good work on this project over the last several
15 years demonstrates that until we get to full
16 trash capture, we're not going to rest trash as a
17 pollutant in our waterways.

18 So in sum, our ask is very simple: either
19 remove Section C.10.B.4 from the Draft Permit
20 entirely, and if you're not willing to do that,
21 then at least make it very clear in your comments
22 in conversation about this provision that source
23 control actions that qualify for those credits,
24 because there are a number of source control
25 actions that do, that are valuable and do lead to

1 trash reduction that we would support, but they
2 don't include ordinances that ban specific kinds
3 of products and packaging, regardless of what
4 kind of studies that they would like to rely on
5 to demonstrate that they do. It's counter to
6 what the State Board has found, it's counter to
7 what the State Board has adopted in their trash
8 policy, and we think it's appropriate for this
9 Regional Board to go along with that. Thank you
10 very much. I appreciate the opportunity. If
11 there are any questions, I'm happy to --

12 CHAIRPERSON YOUNG: I do have a question.

13 MR. JOHNS: Please.

14 CHAIRPERSON YOUNG: By the way, you made
15 it in under five minutes. That was good.

16 MR. JOHNS: Thank you.

17 CHAIRPERSON YOUNG: You had in your
18 comments, not in your verbal comments today, but
19 your written comments, I believe, a suggestion
20 that municipalities could investigate contracting
21 with their municipal trash collection agencies to
22 help with -- you had a list of things, I think it
23 was -- I don't think it was monitoring, I think
24 it was --

25 MR. JOHNS: It's mostly full trash

()
1 capture.

2 CHAIRPERSON YOUNG: Cleaning up, full
3 trash capture devices, thank you. It's a very
4 intriguing idea. Do you know of any place where
5 people have done that already? Or is it just now
6 still a good idea?

7 MR. JOHNS: Yeah, I'm not familiar with
8 any jurisdiction inside of or outside of
9 California that has explored it, of course it's
10 only going to work if you are a municipality that
11 has franchise agreements with Waste Management
12 and those types of companies, but it would be
13 very easy to amend those kinds of franchise
14 agreements to include picking up the trash that
15 comes down the storm drains, and incorporate the
16 costs, not only the capital costs of those
17 devices within that franchise agreement, but the
18 long term O&M. I think it's a wonderful question
19 for you to ask of the elected folks if they're
20 still out there, or any of the City folks that
21 are willing to address it, if they have or have
22 not, and if not, why not? Because it's the
23 perfect way to get around 218.

24 CHAIRPERSON YOUNG: That hadn't occurred
25 to me. Thank you. Appreciate it.

1 MR. JOHNS: Yeah, thank you.

2 CHAIRPERSON YOUNG: All right, we're
3 having Mr. Allen from Contech, and then Leslie
4 Estes from Oakland, please.

5 MR. ALLEN: Good afternoon, Madam Chair,
6 Members of the Board. Vaikko Allen is my name,
7 I'm with Contech, and I've taken the oath.

8 I'd like to talk about Bio treatment for
9 a few minutes if you'll indulge me for five.
10 It's been about 10 years since some pioneering
11 work was done around here on Bioretention and
12 biofiltration. In particular, they came up with
13 a specification for a five-inch per hour soils
14 that could capture the water quality volume with
15 a sizing factor of four percent. Those numbers
16 have been carried forward all the way to this
17 current permit here. Really, those numbers came
18 from research around the time which was looking
19 at sand and compost and blending it together and
20 trying to identify a long term infiltration rate
21 that could be sustained by that media.

22 I think it's important to recognize that
23 that specification is really not a performance
24 specification, it's really a narrative
25 specification that dictates what the BMP must

1 look like and how big it must be, and therefore
2 to some extent how expensive it must be.

3 In the current permit, in the last
4 permit, there really isn't another option. This
5 Bioretention soil specification is it, there is
6 not provision for alternative or innovative
7 technologies to be proposed and adopted. That's
8 really a barrier to innovation. And in other
9 areas, particularly Washington State and some
10 other areas of California, they do allow
11 alternative systems, and my company, as well as
12 others, have done a lot of research around this,
13 spending on the order of hundreds of thousands to
14 millions of dollars looking in the field and in
15 the lab that performance of these systems, and
16 there have been some systems that have come to
17 the forefront as being able to perform on par or
18 better than these conventional sand/compost
19 blends when it comes to important water quality
20 parameters like metals and nutrients and
21 bacteria.

22 So what I'm asking for is a very simple
23 change. I'm going to read it to you and then I'm
24 also going to give it to you, so I will not be
25 giving you anything that I haven't read, but I

1 did just want to save you from taking the notes.
2 So Section C.3.c.1.2.c.II, the last sentence of
3 that, I would like to --

4 MR. KISSINGER: Can you read that again,
5 please?

6 MR. ALLEN: I'd be happy to. So the last
7 sentence to read: "Permittees may collectively
8 on an all-Permittee or Countywide scale, develop
9 and adopt revisions to the soil media
10 specification and minimum surface area
11 requirements subject to the Executive Officer's
12 approval." So the thing that I added there is
13 the "minimum surface area requirements," we can
14 propose an alternative there so we're not locked
15 into the five-inch per hour, four percent site
16 area.

17 Now you've heard over and over again,
18 especially through the Elected Officials'
19 testimony, that they're having issues on sites,
20 issues with cost, and issues with space
21 limitations. There is no way with the way that
22 this permit is currently written for us to use
23 innovative technologies that may be able to do
24 the similar amount of work in terms of water
25 quality and quantity benefits in a smaller

1 footprint. All I'm asking for and all this
2 change would do would allow us to have a
3 conversation with the Executive Officer that
4 would ultimately hopefully lead to the acceptance
5 of other technologies that could provide those
6 same benefits.

7 And with that, I will pass these to you
8 and gladly entertain any questions.

9 CHAIRPERSON YOUNG: Actually, if you give
10 them to staff, they'll be more useful and on the
11 record. Were there questions? All right, thank
12 you very much.

13 Now we're ready for Lesley Estes, thank
14 you. And then -- haven't we done this before --
15 Tom Dalziel?

16 MS. ESTES: Hi. Lesley Estes from the
17 City of Oakland. And today there's a lot of
18 different things to talk about, but I'm just
19 going to try and focus on trash. It's, as you
20 know, very challenging for Oakland and we
21 genuinely really believe in the efforts and the
22 goals and the intents of this Regulation. We
23 want it as much as you do. We also want it to
24 include trash off the street and behavior change
25 and just sort of implementing it in a quality of

1 life context for the City of Oakland.

2 I've been at this a long time, 20 years
3 now coming before you, and I always say that it's
4 a struggle for us, we have to trade resources and
5 again that's true, but we genuinely put every
6 best effort forward, I think we've done a lot of
7 really great things, I think we're very creative
8 with our slim resources. But this runs a little
9 bit different. I'm looking at the MRP
10 differently than I've ever looked at it. I'm
11 looking at the trash section from a perspective
12 of how can we meet compliance given the metrics
13 that are put in this MRP. I'm not looking at it,
14 how can we meet the goal and intent of the MRP
15 anymore, I'm looking at it strictly with how do I
16 check that box that gets me compliant, and I
17 think that's kind of sad because that means we
18 truly are trading off some good programs in order
19 to check that box because of the very narrow
20 metrics. And I'm going to just talk a little bit
21 about full trash capture is an easy way to make
22 it. If you're trying to do other kinds of
23 programs such as source controls, because there's
24 a lot of limits on source controls, if you're
25 trying to do things like illegal dumping; just to

1 give you an example, the City of Oakland, we
2 picked up about 4,000 truckloads last year, one
3 stray loan, 278 times we cleaned up that street.
4 Our numbers are 400 percent above baseline, so I
5 understand that's not a good metric, but I think
6 some of the metrics we're looking at such as
7 visual assessments aren't going to get us there.
8 We did visual assessments this year, and I want
9 to tell you about our experience. In a City like
10 Oakland, it's too coarse of a measurement for us
11 to really have any kind of gain. Additionally,
12 it's very subjective. And it's very expensive.
13 We're looking at just 10 percent of the miles
14 and, in doing four assessments a year, that's
15 close to half a million dollars. And if you want
16 to increase that, that's a lot of money being
17 diverted away from other programs, and there was
18 so much inconsistency when we got the assessments
19 back with the photos, and we can't have one
20 person do it in order to obtain consistency, we
21 have to hire a lot of different people to do it.
22 So we are finding them rather useless and,
23 really, it's depending on a puff of wind during
24 that day. It's really that variable. That puff
25 of wind could be to the benefit of Oakland and it

1 could be to the not benefit of Oakland. So
2 visual assessment is not a fallback for a place
3 like the City of Oakland. And yet we're not able
4 to implement things like illegal dumping and get
5 credit for it. And I think this is a real
6 problem. I think source control is a real
7 problem. We want to expand our bans. I want to
8 grab those water bottles and ban those in
9 Oakland, but I have no incentive, I can't go to
10 Council and say, "Hey, let's spend a lot of money
11 banning water bottles in the City of Oakland
12 because they're such a harmful pollutant," when I
13 have to ask them for a half a million dollars on
14 visual assessments, so they're not going to
15 usually get us towards compliance.

16 Creek cleanups are another where we
17 really need to sort of figure out how we can do
18 better credit. We have 7,000 cleanups now. We
19 had 100 before the MRP, and it's really not
20 reflecting in our credits, and I really want to
21 try and figure out a more creative way. I wish
22 there was an easier answer, there isn't an easier
23 answer. But I do really want to make sure that
24 we have an openness in the future for finding
25 better ways of assessing it. I've spent five

1 years trying to figure out how to meet this trash
2 requirement from a metric perspective, instead of
3 from a do things on the ground perspective
4 because I'm so afraid that any activity that we
5 do we're not getting credit for. Thank you.

6 CHAIRPERSON YOUNG: Mr. Dalziel, and then
7 Beth Baldwin, please.

8 MR. DALZIEL: Madam Chair, Members of the
9 Board, my name is Tom Dalziel and I'm the Program
10 Manager for the Contra Costa Clean Water Program,
11 and I'm here on behalf of the 19 Cities and
12 towns, the County, and the Flood Control
13 District. And I'd like to say that we agree with
14 the comments made by BASMAA, Matt Fabry and
15 Khalil Abusaba, and also agree with the comments
16 made by Robert Falk on behalf of BASMAA and the
17 Santa Clara Valley Urban Runoff Pollution
18 Prevention Program. We also agree with the
19 comments by Phil Bobel with the City of Palo Alto
20 to strike the new provisions that were in the
21 Supplement that were out on the front table this
22 morning, this will significantly increase the
23 cost of compliance with the trash provisions.

24 I'd also like to say we agree strongly
25 with Melody Tovar's comments about the need to

1 incentivize source control.

2 And I'd like to spend just a little bit
3 of time talking about source control and creek
4 cleanups. I've heard two arguments from, I
5 believe, this Board about creek cleanups and why
6 they're not being incentivized any more than they
7 are, one is if it's in the creek, it's too late,
8 and I just want to remind the Board when Cities
9 go out and do these creek cleanup events and
10 engage the public, I'm not going to talk about
11 all the benefits of engaging the public, you've
12 heard all that, but these are happening
13 throughout our watershed, it's just not at the
14 bottom of a watershed, per se, this is happening
15 within every community and in several places
16 within every community. So it is beyond land,
17 but it's really not too late, it's before it
18 reaches the next City, it's before it reaches the
19 Delta, the Bay, and the Ocean. So it's not too
20 late.

21 The other point I've heard against
22 crediting creek and shoreline cleanup events
23 adequately is that it's going to take away
24 resources from Cities doing things on land, and
25 that's more appropriate, let's get it on land

1 before it ever gets to the creek. Well, a lot of
2 the trash that gets to the creek doesn't
3 necessarily come through the MS4, we're all quite
4 aware of that. Every City has its unique
5 challenges in how to get the biggest bang for the
6 buck in addressing trash. For some Cities, they
7 can get a lot of bang for the buck going out in
8 creeks and cleaning them up. The 10:1 offset, it
9 says that for every gallon you capture on land,
10 you have to capture 10 gallons in the creek.
11 That is not incentivizing what could be a very
12 important tool to community. We've asked for a
13 1:3 offset. That still, I think, provides an
14 incentive for Cities to do everything they can on
15 land. Cities are not going to be able to get to
16 70 percent by just doing creek cleanups. The
17 maximum credit is 10 percent, we'd like it to be
18 15 percent.

19 One last comment on the trash provisions.
20 Contrary to what I heard earlier, it is common
21 sense that product bans, going after persistent
22 problematic sources of trash such as plastic bags
23 and polystyrene food container materials make
24 sense. Not all trash is created equal, these are
25 trash items that are more persistent, more of an

1 impact on our environment, last longer, and it
2 makes sense to go after these things. There are
3 other things that we could go after, but the way
4 the Permit is written, I don't think you're going
5 to see any incentive to do that. Plastic
6 bottles, metallic balloons, plastic straws,
7 plastic paper cups, and things that Matt Fabry
8 mentioned. Cigarette butts, there are a lot of
9 things that we could do to really address some
10 trash that are far more important to address than
11 perhaps paper cups and other paper waste, which
12 is certainly significant, but it's not the same.

13 I think I've made my points. Thank you.

14 CHAIRPERSON YOUNG: All right, thank you
15 so much. We have Beth Baldwin followed by Leah
16 Goldberg, please.

17 MS. BALDWIN: Good afternoon, Chair Young
18 and Board Members. My name is Beth Baldwin and I
19 am staff to the Contra Costa Clean Water Program.
20 I'm here today to ask that the proposed trash
21 load reduction requirements be revised to a
22 single compliance milestone of 75 percent by July
23 1st, 2019. This is the same milestone that
24 BASMAA had also asked for.

25 This change represents only a minor

1 adjustment in the percent reduction timeline, but
2 provides more time for Permittees to budget,
3 purchase, and install trash capture devices. And
4 we need this time because it is becoming
5 increasingly clear that Permittees will only be
6 able to meet these percent reduction requirements
7 through full trash capture. This is especially
8 true given the clarifications on the frequency of
9 visual assessments which were just released this
10 morning, and the limitations on creek and
11 shoreline cleanups and reductions from source
12 controls.

13 Now, this clarification on the frequency
14 of visual assessments, it's really going to force
15 Permittees to reevaluate their long term trash
16 load reduction strategies. And it's really
17 probably in many cases going to lead them to the
18 only conclusion that, to guarantee to meet these
19 percent reduction requirements, they're going to
20 have to use full trash capture. So they need
21 time to budget for them, to purchase them, and
22 install them. And you've heard testimony this
23 morning on the cost estimates to purchase all the
24 required devices necessary to meet the percent
25 reductions.

1 But I want to also leave you with some
2 final thoughts on full trash capture. We know
3 it's not the panacea that everyone thought it
4 was. These devices are only designed to treat
5 the one-hour, one-year storm event, and in parts
6 of LA it's my understanding where there has been
7 100 percent full trash capture implemented,
8 they're still seeing trash in the creeks. We
9 know that trash capture does nothing to affect
10 behavior changes. Thank you.

11 CHAIRPERSON YOUNG: All right, thank you.
12 We have Leah Goldberg and then Ceci Sellgren,
13 please.

14 MS. GOLDBERG: Good afternoon, Madam
15 Chair and Members of the Board. My name is Leah
16 Goldberg, I'm Senior Deputy City Attorney for the
17 City of San Jose. And, yes, I took the oath.

18 The City of San Jose wants to acknowledge
19 the hard work and commendable effort of the
20 Regional Board staff in preparing and revising
21 the MS4 Permit. Through this long and involved
22 process, the City, along with other Santa Clara
23 Permittees, have participated in the process. I
24 will not reiterate our extensive written
25 comments, but instead reassert them by reference.

1 Likewise, instead of reiterating the
2 testimony that you've heard all day long from
3 BASMAA and SKVRRP, the City of San Jose expressly
4 concurs with their legal and technical comments.
5 The City of San Jose also concurs with the
6 comments by the Assembly members and their staff
7 with regard to Prop. 218 and the economic
8 constraints that we have through that proposition
9 and, of course, with the PCB load reduction
10 issues. And we concur with all of the speakers
11 that raised concerns about this permit containing
12 unfunded mandates.

13 This Permit is of great importance to the
14 health of the Bay. Because of its importance,
15 we're disheartened that two Board members chose
16 to recuse themselves when no legal conflict
17 exists. One Board member, today she mentioned
18 that recusal was to avoid the appearance of
19 impropriety and it's consistent with recusal at
20 prior meetings. The mere fact that she recused
21 herself at prior meetings doesn't preclude her
22 from participating, as long as she brings herself
23 up to speed. The regulated community deserves to
24 have all Board members' perspectives informing
25 the process.

1 The City likewise is concerned about the
2 procedural irregularity that occurred at the June
3 10th hearing. Although the published Agenda
4 identified the meeting as a Board Workshop of the
5 whole, with the Board member recusals, that left
6 the Board with less than a quorum, instead of
7 continuing the workshop until a quorum was
8 present Board members decided to continue as a
9 subcommittee of the Board. But a subcommittee
10 was not in fact noticed, it was a Board meeting
11 that was noticed. A public body cannot change
12 the nature of a meeting or take actions without
13 giving notice to the public.

14 As a reminder, public testimony is meant
15 to provide information and perspectives outside
16 of the staff report. When not in attendance,
17 Board members are deprived of this information.
18 And of course the City of San Jose is likewise
19 concerned about the Board's practice of making
20 preliminary determinations and then asking the
21 Permittees to work to change their minds. We
22 would have preferred that the Board members
23 listened to all of the testimony before making
24 even preliminary determinations, come in with an
25 open mind.

1 As Vice Mayor Herrera noted this morning,
2 the City of San Jose has legitimate technical
3 concerns; moreover, we have concerns with the
4 trash assessment frequency in the Supplemental
5 Memo and concur with the other speakers that
6 commented on that issue. Recall that we've only
7 had a few hours to review the wording of the
8 Supplemental Memo. We urge you not to include it
9 in the final Permit.

10 Our concerns about PCB effluent levels as
11 opposed to action levels was explained succinctly
12 by BASMAA and SCVURPPP. We hope that the ample
13 testimony this afternoon, coupled with the
14 comprehensive written comments you've received
15 modifying Section C.10 and C.12 in particular of
16 the Permit, have indeed changed your minds. We
17 realize it's been a long process and a long day,
18 and the City of San Jose appreciates your time
19 and attention to all of our concerns. Questions?
20 Thank you.

21 CHAIRPERSON YOUNG: Thank you. Ms.
22 Sellgren and then Andrew Wemmer, please.

23 MS. SELLGREN: Hi. My name is Ceci
24 Sellgren. I'm the Stormwater Manager for Contra
25 Costa County. I represent both unincorporated

1 Contra Costa County, as well as the Contra Costa
2 County Flood Control and Water Conservation
3 District.

4 And I kind of want to do a little bit of
5 a eulogy to the creek cleanup because I really
6 feel like if we implement the Permit as you guys
7 have proposed, that I think it's going to die a
8 slow death. And as you may be aware, Contra
9 Costa County and the Flood Control District
10 largely fund all of the Watershed Coordinators in
11 Contra Costa County. We largely fund the County-
12 wide coordination of the Coastal Cleanup through
13 the Watershed Project with whom we have a
14 contract to do a wide variety of activities, and
15 that's one of them.

16 And our Watershed Coordinators provide a
17 wide variety of watershed services in
18 Unincorporated County, and in some cases
19 throughout the Watershed if it's being funded by
20 the Flood Control District, and it's a Flood
21 Control District Watershed.

22 So one of the most significant things
23 that the Watershed Coordinators do and the other
24 nonprofit organizations that we fund through a
25 Grant program, is to conduct instream cleanups.

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1 Dozens of instream cleanups are conducted every
2 year throughout the County, and largely funded
3 through our programs. And each cleanup really
4 only happens one time per year at each site.

5 So under the new MRP, Contra Costa County
6 will only receive one-tenth credit for the litter
7 that is removed on instream cleanups, and we
8 think that that is going to be pretty deleterious
9 to the overall efforts. I mean, I think we all
10 want to achieve trash reduction, we all want to
11 get to zero trash, we really do, but this is
12 rapidly becoming a numbers game. And in this
13 numbers game with the 10:1 offset, it's just not
14 going to pencil out. And I really don't see how
15 I can spend the time and the staff effort to help
16 coordinate these things, or fund these watershed
17 coordinators to coordinate these types of events
18 if they're not going to pencil out, with being
19 diluted by a factor by 10.

20 Don't get me wrong, I really want to do
21 this, and these Watershed Coordinators provide a
22 wide variety of services, and I think it's really
23 important that, you know, yes, we're picking up
24 litter in the stream, and that litter may have
25 come through an MS4 pipe, and it may have been

1 directly deposited through wind or whatever, a
2 lot of our streams, we have major streams that
3 are immediately adjacent to freeways, and they
4 get a lot of windblown trash from trash trucks
5 that are zipping down the road and are
6 inadequately uncovered. It would be really nice
7 if the State California Highway Patrol could
8 actually enforce uncovered loads on the state
9 freeways, that would be wonderful.

10 So the other issue I want to point out is
11 that it's difficult to do creek cleanups twice in
12 the same location per year. What it really leads
13 to is volunteer burn-out when we try to do that.
14 And what happens with volunteer burn-out is you
15 start, and I've seen this with some creek groups,
16 is that your core group gets smaller and smaller,
17 you start having problems pulling people in to
18 participate, and then resentment grows and it
19 just kind of has this slow death spiral, and I've
20 seen this happen with a couple creek groups, and
21 that sort of thing.

22 Also, the other thing is that a lot of
23 folks who are involved in creek groups are coming
24 there for a specific reason, they need it for a
25 Scout badge, they need it for a volunteerism

1 requirement for high school, things of that
2 nature, but just getting them there does a couple
3 things. First of all, it's probably for many
4 kids, particularly the more disenfranchised kids,
5 it's really their first experience of nature, and
6 it may be their only experience of nature. And
7 so it has a really intangible benefit, but it's
8 really really an important benefit. And the
9 second thing is that it creates future -- by
10 using so many kids, and a lot of them do have
11 kids -- it helps perpetuate the values of the
12 environment with them.

13 So I really want to continue to do creek
14 cleanups, I really want to continue to finance
15 the various Watershed Coordinators that I have to
16 do creek cleanups and a lot of other things, but
17 it's got to play out in this numbers game, and
18 ultimately this has become a numbers game. And
19 if it's better for me to just hire a contractor
20 and go out and pick up stuff on land because
21 that's going to pay off in my numbers game, it's
22 a damn shame because really creek cleanups are
23 more than just picking up trash, and I think
24 really it's worth it to give us that 3:1 offset.
25 Thank you very much.

1 CHAIRPERSON YOUNG: All right, thank you.
2 Mr. Wemmer and then Michelle Mancuso.

3 MR. WEMMER: Good afternoon, Madam Chair,
4 Members of the Board. My name is Andrew Wemmer,
5 I'm the Environmental Compliance Supervisor with
6 the City of South San Francisco.

7 Basically I won't take up too much of
8 your time, I just wanted to say South San
9 Francisco agrees with much of the prior comments,
10 specifically the BASMAA presentation and from
11 several of the Elected Officials concerning the
12 infeasibility of meeting a load reduction
13 performance criteria for PCBs and Mercury and
14 instead request a Numeric Action Level approach.

15 I'd just like to briefly add some local
16 context from our City. We feel that the current
17 language in the Order pertaining to Mercury and
18 PCB control measures and load reductions would
19 meet a disproportioned burden on agencies like
20 ours, opening up our City to potential third
21 party lawsuits.

22 Due to South San Francisco's historical
23 heavy industrial activity, which we believe in
24 many ways has benefitted the entire Bay Area over
25 time, our service area may contain certain older

1 industrial concentrations of these pollutants,
2 specifically PCBs. Apart from their presence in
3 building demolitions, PCBs have been widely
4 disbursed decades ago through our city, placing
5 on us a significant local burden attempting to
6 identify applicable watersheds, implement control
7 measures, and reduce these pollutants over such a
8 large area.

9 Unfortunately, the additional staffing
10 and financial burden we anticipate meeting this
11 load reduction criteria comes at the same time
12 that efforts to eliminate trash are escalating,
13 causing growing concern on our part on how and
14 where to focus our limited local resources. We
15 believe the Numeric Action Level approach, in
16 lieu of the proposed load reduction criteria
17 would better position a City such as ours in the
18 goal of reducing these pollutant levels in the
19 MS4, which we definitely believe in and have been
20 working diligently towards on many levels
21 throughout South San Francisco. Thank you for
22 your consideration.

23 CHAIRPERSON YOUNG: All right, thank you.
24 On deck we would like Jack Dalawal and we'll hear
25 from Michelle -- I'm sorry, whether it's an "R"

1 or an "N."

2 MS. MANCUSO: Mancuso.

3 CHAIRPERSON YOUNG: Mancuso, thank you.

4 MS. MANCUSO: Hi. I'm Michelle Mancuso.
5 I'm a Watershed Planner with Contra Costa County.
6 I was going to talk about instream cleanups, I
7 support what Supervisor Anderson said and Phil
8 Bobel and Tom Dalziel. I will say I work with a
9 lot of creek cleanups and we spend many many
10 hours planning them, and it's really great for
11 the community and there's some communities that
12 are really coming together over them. And I
13 would really encourage you to change the
14 requirement back to one event per year, and the
15 offset from 10:1 back to 3:1, but also I'm caught
16 a little off guard by the Supplemental
17 information about trash and some of the way you
18 propose visual assessments.

19 I've spent hundreds of hours working with
20 our GIS people and with some other technicians
21 helping to figure out how to map these areas and
22 to do these visual assessments. And I feel like
23 I have a pretty good handle going into this year
24 and, you know, we're almost halfway through the
25 year, we're doing our visual assessments, but

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1 this really changes the way that we would look at
2 this. And we have -- Contra Costa County, it's a
3 very large area, it would take me an hour, hour
4 and a half to cross the County, we've got 24
5 different maps I'm looking at of mapped treatment
6 areas; within that I might be looking at street
7 sweeping, I might be looking at a section of
8 commercial areas. Within that, some parcels
9 might be green, they might be low, and I'll be
10 really happy; other ones will be moderate, other
11 ones will be high. And we are trying to balance
12 out what we look at, so when you look at these
13 random points, I'm trying to look at these maps,
14 I'm trying to say okay, I'm going to make random
15 points, and in one area I've got 15 percent
16 that's high, I've got 41 percent that's medium,
17 and in another I have 70 percent that's high, 30
18 percent that's medium, and we have all these
19 algorithms to figure out which areas these are.
20 And now this supplement is saying, okay, you need
21 to some areas once a month, some areas twice a
22 quarter, some areas once a quarter, and I mean,
23 this means that each area is a little different
24 and it's going to be very challenging to try to
25 even figure out which areas to go to, how often,

1 and then the thing about the random assessments
2 is that now I'm looking at them and I'm using
3 those percentages of my visual assessments and
4 I'm saying, "Oh, okay, well, so this is the
5 baseline is a high, but now it's changed to a
6 medium, and now I have to look at what that
7 means." So now my numbers are going to change
8 going forward because the area is a little bit
9 different based on my visual assessment.

10 So I'm also really disappointed because I
11 go to BASMAA trash meetings, I've been working on
12 this for a long time, and this is the first time,
13 the first day I'm seeing this. I didn't really
14 intend on talking about this even at this today.

15 So I'd really like you to rethink, I'm
16 very concerned about this. Already, you know,
17 it's probably going to take the equivalent of a
18 full time person to assess and do these visual
19 assessments. If I have to increase to these
20 other numbers now or just adding kind of a lot of
21 tedious work to try to figure out even what we're
22 doing and make sure that we're meeting the
23 requirements, and really what I'd like to do is
24 I'd like to look at those maps and I'd like to
25 spend more time saying, okay, I need to increase

1 street sweeping here. Okay, what does that mean?
2 Okay, maybe we can do a full trash capture, where
3 does this make the most sense, you know, to add
4 this? Are there any studies that combine the
5 automatic retractable screens in street sweeping?
6 Can I work more on enforcement of parking? Can I
7 have more discussions with our Sheriff and get
8 more enforcement? There's many many other issues
9 I'd really like to focus on other than doing
10 these visual assessments and having my staff do
11 visual assessments all the time.

12 So we're working really hard, we agreed
13 with your goals, we really want to reduce trash,
14 and we just want it to be a way that works.

15 Thank you.

16 CHAIRPERSON YOUNG: I would like to ask
17 you a question. I got a little bit lost in your
18 discussion.

19 MS. MANCUSO: Okay.

20 CHAIRPERSON YOUNG: So you say you were
21 looking at the maps and you're figuring out how
22 often you're going to go out and do visual
23 assessments, I think that's what you were saying.

24 MS. MANCUSO: Uh-huh.

25 CHAIRPERSON YOUNG: So how often were you

1 going to go out and do visual assessments? Is it
2 the same place --?

3 MS. MACUSO: Well, they're random points
4 and you go out to these random points, and the
5 permit specifies 10 percent of curb miles, and it
6 specifies once per year, and we're looking at
7 doing them two or three times a year, but it
8 depends on some of the areas. Some areas are a
9 little less predictable than others --

10 CHAIRPERSON YOUNG: So you were looking
11 at two or three times per year. That's what I
12 was trying to get.

13 MS. MANCUSO: Yes.

14 CHAIRPERSON YOUNG: Okay, thank you.

15 MS. MANCUSO: Uh-huh. Any other
16 questions?

17 CHAIRPERSON YOUNG: I don't think so.
18 Thanks. Jack Dalawal? Maybe we've lost him.
19 Okay, then we will move on to Stephen Pree and
20 then on deck will be Dan Sequeira.

21 MR. PREE: Hi. Good afternoon. And
22 thank you for giving us the opportunity to speak,
23 members of the Water Board, Water Board staff,
24 EPA, Permittees, Environmental Activists, and
25 Interested Public.

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1 My name is Stephen Pree. I'm the
2 Environmental Programs Management for the City of
3 El Cerrito and the Clean Water Program
4 Coordinator.

5 I'm bound to reiterate a lot of what's
6 already been said. I'd like to start very simply
7 with trash assessments don't remove trash. So
8 I've been focusing on compliance with the 2009
9 Municipal Regional Permit, which poses several
10 challenges, not least of which is financial.

11 Today, I would like to call your
12 attention to the value of partnering with local
13 residents and the potential effect that the
14 proposed changes in MRP 2.0 would have on these
15 partnerships. Community members in the City of
16 El Cerrito have participated in at least five on-
17 land litter removal events per year since 2012.
18 Each of these events collect a minimum of 175
19 gallons of litter, or 3,500 gallons total.

20 As a reminder, this is litter that's
21 being removed before it enters San Francisco Bay.
22 This is litter that's being removed before it
23 enters the MS4. These volunteer cleanup events
24 were previously accepted for credit toward our
25 City's trash load reduction. In 2014, our trash

1 load reduction, we took credit for 46 percent
2 with these kind of activities included. Then the
3 rules changed. Now we were unable to count the
4 volumetric measurements. I can so appreciate the
5 work, the difficult work that Water Board staff
6 has in helping and partnering with us to
7 legislate and to provide guidance in trash
8 reduction; yet at the same time I'm hard pressed
9 to explain to volunteers and to motivate
10 volunteers on how their efforts will be effective
11 in reducing trash load going into the Bay if we
12 can't measure volume.

13 So local community volunteer litter
14 removal events such as what we have increase
15 public awareness of the very pervasive nature of
16 trash litter. Volunteer events also influence
17 public opinion and may change behavior. The
18 ambitious and aggressive litter reduction goals
19 of the new MRP cannot be realized without
20 significant change in public behavior, and the
21 Cities cannot change this behavior, it must be
22 done in concerted efforts with regulatory
23 agencies on the State and regional level.

24 In El Cerrito, our City Council adopted
25 an ordinance that prohibits smoking on City

1 streets, parks, and shopping areas, and our
2 volunteers removed over 11,000 cigarette butts
3 from entering the storm drain system this last
4 Earth Day. Local product stewardship legislation
5 and product bans should be recognized for their
6 effectiveness in the new permit, with credit
7 given towards trash load reduction. I am
8 encouraging staff to reconsider the credit for
9 trash load reduction by on-land and creek
10 cleanups, back to 1:3 credit of 15 percent, and
11 to please, as the City of El Cerrito having two
12 BART stations which generate a lot of trash, to
13 be as active and transparently active with BART
14 as you are with the Cities. Thank you.

15 MR. SEQUEIRA: Good afternoon, Madam
16 Chair and Water Board Members. My name is Dan
17 Sequeira. I'm a Senior Civil Engineer with the
18 City of Pleasanton. And I took the oath earlier
19 this morning.

20 I'd like to thank the Board for all its
21 efforts in trying to increase the quality of our
22 water and our waterways, as Pleasanton is the
23 home to many lakes and creeks. I would like to
24 speak briefly about the Green Infrastructure Plan
25 and I promise to make it quite short.

1 We appreciate that the Board has extended
2 the deadline to implement the plan. And one item
3 that I would like to discuss is the infeasibility
4 of the requirement to retrofit existing roadways.
5 The public right of way of an existing roadway is
6 comprised of many facilities, sidewalk, telephone
7 poles, bus shelters, news racks, underground
8 utilities such as gas, electric, cable TV,
9 transformers, traffic signal cabinets, fire
10 hydrants, street signs, street lights, traffic
11 signals, all of these existing facilities makes
12 it very difficult to retrofit an existing roadway
13 because of space.

14 Bio swales, which we need to retrofit an
15 existing roadway, occupy a lot of space both
16 horizontally and vertically, they're about three-
17 feet deep. So if you were to walk down Broadway
18 Avenue, one City block would require a bio swale
19 that has the same floor space as a one or two-
20 bedroom apartment. So if you walk down Broadway,
21 try and picture how will we fit a bio swale of
22 that size on a City block? And every City Block
23 would have to have a bio swale of that size.

24 So in short, the City of Pleasanton is
25 respectfully requesting that the Board remove

1 their requirement to retrofit existing roadways
2 and, as an alternative, we ask the Board to fund
3 the design and construction of a handful, one,
4 two, or three retrofit projects in the region
5 that we can all learn lessons from, so that those
6 lessons can be transferred to MRP 3.0. Thank
7 you.

8 CHAIRPERSON YOUNG: All right. Thanks
9 very much. Michelle Daher, if you could come up
10 next, and then Laura Hoffmeister, please.

11 MS. DAHER: Good evening. I'm Michelle
12 Daher with the City of East Palo Alto. First,
13 regarding the idea that we could include
14 cleanouts of storm drain inlets through our
15 Municipal Franchise Hauler, I'll tell you I've
16 looked at that and it's not a feasible option for
17 those who have Recology as its service provider
18 because they don't have those kinds of equipment
19 and it's not part of our existing franchise. The
20 soonest we could look at that would be when we go
21 back out for bid in another five years. So just
22 let's start with that.

23 CHAIRPERSON YOUNG: Thank you, actually,
24 for adding that information, I appreciate it.

25 MS. DAHER: I will say that the City of

1 East Palo Alto's position is consistent with
2 those you've heard already today from the public
3 comments. But more specifically, I wanted to
4 talk about really two other items, one in
5 particular is what you've already heard a lot
6 about, is the waterway cleanups. And I suggest
7 you give us 1:1 credit because this is a
8 substantial waterway impact. I don't think that
9 it's been recognized today, but this is a huge
10 source of illegal dumping, it's a huge source of
11 homeless encampments. And we would never get
12 into the creek to remove those items were it not
13 for these mandates, and let me give you some
14 numbers because you all like numbers, I like
15 numbers too.

16 We have about 200 feet that are required
17 through the MRP for us to clean up through our
18 trash hot spot. On a given cleanup year, so one
19 full year, what we end up doing is I volunteer
20 along with about 150 other people, and we've
21 removed over the course of the last year 12,000
22 gallons of trash, and I look at volume because
23 I'm looking at plastic bags, I don't get a pound
24 number at the end of the day because we have
25 multiple jurisdictions pulling our trash out. So

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1 those 150 people and myself is all volunteer
2 commitment, that's zero cost to the City. Of
3 course, we go through with multiple agencies to
4 assess the creek in advance, and inform any folks
5 that are living in the creek that they need to
6 move, and those do cost the City some costs, but
7 it's very minimal. So I just wanted to make sure
8 that you all understand that you're getting a
9 good deal because we don't clean up 200 feet of
10 the creek, we clean up at least a mile and a half
11 of the creek. Over the course of two events, we
12 are only required to do one, and we do two, and
13 so you're getting a multitude of improvements
14 through this waterway through these cleanup
15 efforts. And I know that East Palo Alto is not
16 the only community doing it this way.

17 The second issue that I have is regarding
18 the PCB and Green Infrastructure Plan. For the
19 City of East Palo Alto, I think this is a half-
20 baked plan. Trying to get a nexus between the
21 PCB removal and exactly where we are going to put
22 in the Green Infrastructure to accommodate this,
23 as you've already heard, is a very costly and
24 unfounded at this point effort, we don't know
25 what the bang for the buck is at this point, and

1 I'm just going to take you back to the ABAG full
2 trash capture grant fund that we went with. The
3 City of Palo Alto received 40 trash capture
4 inlets, at the time we didn't know where to put
5 them in the ground, and they're not providing the
6 full benefit that they could have. This is a
7 huge cost to all the communities, although it was
8 nice that we didn't have to pay a dime for it, we
9 are paying and paying and paying with overflowing
10 inlets because we didn't realize that they were
11 going to be under a tree with lots of leaves, and
12 didn't get the maintenance protocols in right.
13 There's just all of these implications that I see
14 as going forward with a half-baked Green
15 Infrastructure Plan and a half-baked PCB Plan.

16 So I'm going to stop there because
17 everything else was already said.

18 CHAIRPERSON YOUNG: All right, thank you.
19 After Ms. Hoffmeister, we'll have Gary Grimm,
20 please.

21 MS. HOFFMEISTER: Thank you. Good
22 afternoon, or almost good evening, I guess, now.
23 I'm Laura Hoffmeister, here as the Clean Water
24 Program Manager for the City of Clayton. I just
25 want to follow up real quickly on one of the last

1 speaker's comments as to the issue about why did
2 we put trash capture devices maybe in the wrong
3 locations, and just to kind of clarify that
4 point, it was because there were these time
5 constraints in the MRP 1.0 that we had to go by
6 to try to do something to try to achieve
7 something. The Grant monies came out, we had to
8 get them in the ground by a date certain, by
9 doing certain things, so we did the best we
10 could, but if we had additional time to do it
11 right the first time, we wouldn't be in some of
12 these positions in some of the communities where
13 we didn't get them maybe all in the best place
14 because of how the trash plans were being
15 developed. We kind of had the cart before the
16 horse in some of that, so I just wanted to let
17 you know it wasn't because we just did something
18 wrong, it was just there was a big rush and we
19 needed to maybe take a step back, both the Water
20 Board staff and the communities, and do it right
21 the first times. And sometimes adding a little
22 bit of time in the permit achieves a better
23 outcome in the long run, and I think that's what
24 you're hearing about some of this today is that
25 we'd like some more time in certain areas.

1 Well, the City of Clayton certainly
2 supports all the prior Cities' comments, both the
3 Elected's, BASMAA, we have some concerns though
4 in some of the permit areas where one size does
5 not fit all. We're the smallest City in Contra
6 Costa. We have 12,000 people. We used to be a
7 City of about 400 people and 12,000 cows, now we
8 have about 12,000 people and 400 cows. Our
9 concerns really come down to how do you address
10 some of these requirements in a small City? And
11 certain things maybe have exceptions and deal
12 with a 12,000 population and fewer, you kind of
13 had some exceptions in it, and we appreciate
14 that, and in some parts of the permit it does
15 not, or it's not clear if it's intended to apply
16 there.

17 We have some concerns about the
18 monitoring, and I appreciate Dr. Young, the
19 Chair's comments where you passed those out to us
20 about trying to clarify, or trying to simplify
21 this monitoring, this monitoring in the creeks or
22 the creek corridors, as it relates downstream of
23 our trash management actions.

24 We have a concern about that because
25 currently we're not really doing that, it's going

1 to be additional staff resources to do it. I
2 have 25 full trash capture devices in and we go
3 and we monitor those, we look at the trash, we
4 slice and dice it, we put it up on Trash Tracker,
5 and we look at percentages of what we're
6 collecting in different categories. We're doing
7 a lot of that at roughly \$275 to \$640 a unit.
8 And it takes us about two or three weeks of
9 manpower to get through all 25, upload the data,
10 take the photographs, put it all in there, so
11 adding this creek visual assessment with some of
12 the prescriptive components is very overburdened.
13 I think some of what you're trying to talk about,
14 Dr. Young, is can we make it simpler? We would
15 appreciate simple. I don't know if it needs to
16 be done in certain communities, one size fits all
17 in the City of Clayton, we'd be out there showing
18 you there's no trash now, there's no trash after,
19 and we would be monitoring this, putting it all
20 into some database to report annually in our
21 report, it's a lot of time. I'd rather use that
22 time productively servicing our trash capture
23 devices to make sure they're functioning properly
24 and continue to function properly.

25 PCBs is another concern that we have.

1 We're a small City. Our agriculture was our main
2 primary component until the 1960's, '70s, when
3 development occurred, so we really don't have
4 PCBs, we feel, in our community. Where there may
5 be some projects would be the school, our little
6 elementary school has probably got some buildings
7 that were built in the '50s and '60s, but it's a
8 School District. I don't have control on the
9 School District about what improvements, when
10 they're going to do demolition; as a matter of
11 fact, they don't even tell us when they take out
12 a building and put in a new building, we find out
13 when the neighbors call us and say did we know
14 there's construction activity coming. So it's
15 very hard in some communities, so we think the
16 PCBs, as was talked about earlier, you might want
17 to focus that for areas that have industrial
18 components, heavy industrial and commercial.
19 That would be the most likely area to focus on.
20 I think some of these requirements you have, you
21 know, doing more on trash, adding in the PCBs,
22 and then the Green Infrastructure. The Green
23 Infrastructure is a big problem in the City of
24 Clayton. We are concerned because we are built
25 out, we have no widening planned of our major

1 roadways, no planning of infrastructure
2 replacement, but we still would have to do an
3 assessment, look at some general plan amendments,
4 spend a lot of staff time to create a plan for
5 the possibility in the future of 20, 30, 40 years
6 down the road, should we do something that would
7 require us to put in Green Infrastructure because
8 we're redoing the road. We don't have the staff
9 resources to undertake that kind of planning
10 effort. In the last few years, we have staff now
11 in our Planning Department, one of the planners
12 has been cut back to three days a week. We've
13 lost a maintenance staff person, and we have an
14 Accounts Payable/Receivable person that is no
15 longer five days a week, but is two and a half
16 days a week. And as far as my time goes, who
17 would be trying to spearhead this effort, I have
18 the Redevelopment solution issues and now I've
19 got a tax measure that I have to put on the
20 ballot in 2016 in our community.

21 So we ask for some flexibility and I
22 think what we would be looking for is to maybe
23 focus on the trash component, we leave the PCBs
24 and the Green Infrastructure to maybe a later
25 point in time, and we continue to make our

1 efforts and progress on trash if we can focus and
2 keep our energies in one area, rather than trying
3 to take on a lot of new areas, I think it's
4 premature at this point, we'd like to work with
5 the staff to develop that so that we're better
6 prepared for the next MRP. Thank you.

7 CHAIRPERSON YOUNG: Thank you. Mr. Grimm
8 and then Mr. Fabry again.

9 MR. GRIMM: Hello, I'm Gary Grimm and I'm
10 half brain dead, I hope you're doing better.

11 CHAIRPERSON YOUNG: Oh, not us.

12 MR. GRIMM: I'm here to provide legal
13 comments for the 17 Alameda County-wide
14 Permittees, and I agree with the comments of Leah
15 Goldberg, City of San Jose, and Bob Falk.

16 Bob Falk and I both were involved with
17 five permits back, Bob was representing the MS4's
18 and I was advising the Regional Board, and we're
19 all working towards the same objective here.

20 We appreciate the extensive efforts of
21 the staff to meet and meet and meet with us to
22 try to resolve all the issues. Unfortunately, as
23 you've heard, not all the issues have resolved,
24 especially not some of the very significant ones
25 that we're concerned about. We're strongly

1 supportive of the revisions made to the Fact
2 Sheet, which explain that Provision C.1 address
3 the State Board direction and guiding principles
4 with respect to receiving water limitations. We
5 disagree with Baykeeper, they said that this was
6 beyond what the State Board directed. We agree
7 with the staff that this Fact Sheet language is
8 very important. I think Baykeeper and Water
9 Keeper has challenged the State Board Order in
10 the Superior Court in another jurisdiction, and I
11 think their real argument is with Alternative
12 Compliance. We support the Fact Sheet.

13 I do want to mention a couple of concerns
14 we have with the Board procedures and, again,
15 we've talked about two Board members that recused
16 themselves. These are two Board members with
17 service and experience in Municipal Government
18 and they chose to recuse themselves not because
19 they had financial conflict of interest under the
20 Political Reform Act, which they don't, but to
21 avoid any appearance of bias, to avoid any
22 appearance of bias.

23 Given their experience and perspectives
24 that these two Board members could have brought
25 to the Permit adoption process we believe that it

1 would have served the public interest to have
2 them involved and we hope that in the future they
3 will participate in future MRP actions.

4 Several years ago the Board used to be
5 nine Board members, now you're seven Board
6 members, and you're down to five for this
7 consideration. It would be helpful to have those
8 two Board members, and not at all to minimize
9 your Herculean efforts to try to understand
10 what's in this permit and to issue a decision.

11 The other procedural issue I'd like to
12 raise is, when I was meeting with our Permittees
13 in preparation for this hearing, they said,
14 "Well, can we submit some more written comments?
15 We'd like to reply to some of these things, more
16 changes to the permit?" And I said no, the
17 Hearing Notice says no written comments. Well, a
18 week ago in the staff material we got an Errata
19 Sheet, well, that's the staff's prerogative, you
20 send out an Errata Sheet beforehand, and we have
21 a chance to comment. But we come in today and
22 there's another Errata Sheet out front. We
23 haven't had time to consider that, and I heard
24 what Phil Bobel said about significant additional
25 costs that that would create, and I think our

1 program has a real concern with that also. And
2 with due respect to the Chair, there's another
3 list of changes to the permit in the trash area
4 that was handed out to us today. We just haven't
5 had a chance to look at that, we don't know what
6 it is. And we think that the Board should
7 consider what's before you prior to the Errata
8 Sheet, prior to anything further being handed
9 out. If you get into those things it might
10 substantially change the permits, I think you
11 might be subject to the criticism of creating the
12 need for a new comment period under the Federal
13 Regulations. And I don't think any of us want to
14 get into that.

15 And in closing, while many of our
16 requested revisions have not been made, our
17 Permittees will work very collaboratively with
18 your staff to do all that's feasible to comply
19 with the new MRP. Thank you.

20 CHAIRPERSON YOUNG: All right, thank you.
21 We'll have Matt Fabry and then we'll find out if
22 we have anymore.

23 MR. FABRY: Good evening, Board members.
24 Again, Matt Fabry. At this time I'm representing
25 the San Mateo Countywide Program, and I did take

1 the oath. The San Mateo Countywide Program is a
2 program of the City/County Association of
3 Governments of San Mateo County, which is a Joint
4 Powers Agency of the 20 Cities and Towns plus the
5 County. And at the CCAG Board Meeting last week,
6 they adopted Resolution 1550, which I attempted
7 to provide to all of you before today, but was
8 denied, so I will summarize the content of the
9 "Therefore, Be It Resolved" section of this
10 Resolution.

11 And the real intent of this Resolution
12 was to address issues that staff has raised
13 multiple times with Permittees in that we will
14 not do things if we are not forced to do it, and
15 that we never put anything on the table in terms
16 of commitments of what we are willing to do. And
17 so CCAG resolved that they are committed to
18 supporting member agencies in meeting the letter
19 and intent of Regional Water Board requirements;
20 CCAG is proactively implementing efforts to
21 better address stormwater issues in San Mateo
22 County, including they've created a new Water
23 Committee in the last few months, with Elected
24 Officials and City Managers as members that will
25 identify opportunities for Countywide

1 collaboration on water-related issues, including
2 sea level rise, flooding, stormwater, and
3 groundwater, and evaluate whether a new
4 Countywide agency is needed to address water in
5 an integrated fashion in San Mateo County.

6 They've also allocated a portion of their
7 stormwater funding to develop a countywide
8 stormwater resource plan to enable our member
9 agencies to proactively pursue stormwater grant
10 funding under the Prop. 1 Water Bond Stormwater
11 Grant Program to implement Green Infrastructure
12 Projects during the term of this Draft Permit.
13 This was mentioned by Assembly Member Mullin's
14 staff person this morning, the State did adopt SB
15 985 last year that puts a new hurdle in our way
16 of getting at any of the voter approved Bond
17 funds, we now have to have stormwater resource
18 plans in place that are completely separate from
19 what's required in the Regional permit, and so we
20 are proactively putting money towards developing
21 one of these plans countywide for our member
22 agencies so that we can go after implementation
23 funds in the first round to do projects under
24 this permit term to satisfy your concerns about
25 us now doing things proactively in terms of Green

1 Infrastructure.

2 We've also been pursuing a potential
3 countywide stormwater funding initiative, and to
4 date efforts have included a needs analysis, a
5 funding option study, and opinion research, and
6 we've put this effort on hold pending the
7 adoption of the revised permit and development of
8 the Stormwater Resource Plans and Green
9 Infrastructure Plans. There just was not
10 political support enough to go forward and our
11 opinion research indicated that there was not
12 support for adopting rates that would close the
13 gap that we found from a funding needs
14 perspective.

15 So notwithstanding those above referenced
16 commitments, CCAG urges the Water Board to
17 prioritize the mandated programs in the Draft
18 Permit and partner with CCAG and our member
19 agencies to share the significant risks and
20 uncertainties associated with achieving the load
21 reductions for trash, Mercury and PCBs and adopt
22 a reasonable regulatory structure in that regard.

23 And I'll just mention that we are working
24 with our member agencies to review all of the
25 franchise agreements in San Mateo County to

1 identify opportunities for improvements, it's not
2 as simple as the previous commenter mentioned in
3 terms of bypassing Prop. 218, we have looked at
4 what opportunities there are to potentially shift
5 things over under Solid Waste, but that still is
6 something that goes out in terms of a protest
7 process for raising Solid Waste Rates, and that's
8 a very political issue in a lot of communities,
9 so it doesn't solve the problems.

10 I think that's all I wanted to say.

11 Thank you.

12 CHAIRPERSON YOUNG: All right, thank you.

13 It appears we do have the room after all, so we
14 can finish our last three commenters. James
15 Scanlon, followed by Jeff Brousseau, please.

16 MR. SCANLON: Good evening. Thank you
17 for your effort today, Madam Chair and Board.
18 It's been a long day for all of us, and
19 especially for you, I'm sure.

20 I'm James Scanlon, Program Manager of the
21 Alameda Countywide Clean Water Program. I took
22 the oath. And we do want to support the comments
23 of BASMAA earlier, as well. And before I start,
24 just a follow up on a couple comments previously
25 related to PCBs. When Melody was up here before

1 and talking about the 50 percent credit, I wasn't
2 sure if it was clear that the idea was we would
3 be doing work in the meantime to prevent
4 additional runoff from those sites, either us
5 doing it or causing it to be done before the site
6 is ultimately cleaned up, and that is why we
7 should get the additional credit at those sites.
8 And I didn't know if that was made clear or not.

9 And also Barbara Hawkins from San Pablo
10 was talking about the work that they went through
11 to identify PCB contaminated sites, and we had
12 done a similar thing in Alameda County, went
13 through all old industrial parcels, looked at
14 them on Google Earth, narrowed them down, did PCB
15 sampling at a number of sites, and it was a
16 similar sort of process about every time you look
17 you get about 10 percent are still on the list,
18 and after our first round of sampling my
19 understanding is very few, a couple sites with a
20 little bit of elevated PCBs, but nothing that's
21 going to get us towards our one kilogram,
22 necessarily, so that's why we do have concerns
23 about that one kilogram reduction, and the NELs
24 versus Action Levels.

25 I was just going to comment about trash

1 provisions and you've heard about these already,
2 but I'll maybe put a somewhat different spin on
3 it. The permit is really pushing people towards
4 full trash capture, but full trash capture isn't
5 going to work everywhere either because of the
6 size and design of the storm drain system, many
7 of them are old and don't really work very well,
8 or just due to various constraints. And also
9 because, as we've heard, trash enters the
10 waterways in a number of ways besides through the
11 storm drain system. So we're going to have to do
12 other things in addition to full trash capture.
13 And some of those other things are source
14 control, public outreach, and creek cleanup. I'm
15 just going to touch on the source control and
16 public outreach.

17 So for source control, we appreciate the
18 increase from five percent to 10 percent.
19 Contrary to I think what Mr. Johns said, we've
20 done a study and documented it that we've already
21 achieved 10 percent reduction through bag ban and
22 polystyrene ban. Alameda County has committed
23 \$180,000 in the program to expand the bag ban in
24 Alameda County to all retail stores, not just
25 food related stores, which is what it is now.

1 But there is a lot greater reduction that could
2 be achieved through source control activities.
3 And again, these are activities that are going to
4 stop trash from getting into the waterways
5 through other avenues, through direct dumping,
6 through windblown, through all sorts of avenues
7 other than the storm drain system. So they're
8 not captured by our reductions that we're looking
9 at through visual assessment.

10 As an aside, I was watching the movie
11 *Tapped* the other day, they're talking about
12 billions of single plastic water bottles in
13 states with a \$.05 deposit fee, and they get
14 about a 70 percent return. Michigan has a \$.10
15 deposit redemption value, they get a 97 percent
16 return. Things like that increase fees,
17 redemption value, the no smoking in public
18 places, those types of things, cigarette butts is
19 a huge source. Those types of things should be
20 incentivized. Keeping it at 10 percent doesn't
21 incentivize those programs, so again please
22 increase the source control credit. We're
23 suggesting 20 percent.

24 And then on public outreach, we spent a
25 lot of effort on public outreach. A lot of

() ;
1 folks, it's been a core part of the program since
2 we started back in 1990, a number of folks
3 involved in the program, that is one of their
4 main jobs and one of their main interests is
5 public outreach efforts. We've had significant
6 improvement in people's awareness of how their
7 activities affect the stormwater and affect the
8 environment, and we think those activities should
9 be incentivized, as well. We're suggesting a
10 five percent credit for public outreach
11 activities, of somehow valuing the public
12 outreach activities in the permit.

13 So please, put in a five percent credit
14 for public outreach. And thank you.

15 CHAIRPERSON YOUNG: All right, thank you
16 very much. All right, we have Jeff Brousseau,
17 and then last card, John Steere.

18 MR. BROUSSEAU: Good afternoon, Chair
19 Young and Board Members. My name is Jeff
20 Brousseau, I'm the Executive Director of BASMAA.
21 I did take the oath earlier today.

22 I want to thank you for the opportunity
23 to provide testimony on the Revised Tentative
24 Order. I want to thank staff, in particular, for
25 all their hard work over the last two years. I

1 think it's a testament to recognize that it took
2 us actually five years to negotiate MRP 1.0, and
3 it only took us two years to negotiate 2.0, so
4 we're making some real progress there in terms of
5 collaborating working together. Given the hour,
6 I will keep my comments brief and to the point.

7 As you've heard in the BASMAA group
8 presentation earlier and the public testimony, we
9 have three critical requests of you this
10 afternoon that I will reiterate, so my job is
11 going to be to clarify what those are.

12 The first regards Mercury and PCBs.
13 Recalling Dr. Abusaba's presentation about
14 feasibility, given that the technical feasibility
15 of NEL's, Numeric Effluent Limitations, in our
16 opinion has not been demonstrated, and given that
17 EPA, the State Water Board, and a Blue Room panel
18 of experts constituted by the State Water Board
19 all do not recommend the use of Numeric Effluent
20 Limitations when they are not feasible in
21 Municipal Permits, and given that the Blue Room
22 panel concept both Numeric Action Levels, NALs,
23 instead as a feasible alternative to NELs, and
24 given that the State Water Board has used NALs,
25 as referenced earlier, for two of its permits

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1 already, and given that EPA encourages the use of
2 clear, specific, and measurable requirements when
3 NELs are infeasible, and given that NELs would be
4 an example of such a requirement, and given that
5 I think five of you earlier today mentioned that
6 you were looking for clear metrics, again, NALs
7 are a clear metric, we request that the Regional
8 Water Board adopt one of the two recommendations
9 presented in Mr. Falk's last slide earlier today.

10 The second critical request has to do
11 with trash and the load reduction credits. We
12 find that the limitations on source control and
13 cleanup activities are unfounded and arbitrary.
14 One need look no further than the examples noted
15 by Mr. Fabry of significant percent reductions
16 already achieved through control of plastic bags
17 and from food ware, and think about it, what
18 would have happened if we had blindly assigned a
19 maximum of 10 percent reduction for copper source
20 controls, only to find out later that legislation
21 restricting the use of copper in brake pads is
22 predicted to achieve reductions of 60 percent or
23 more?

24 We urge the Board not to devalue source
25 controls and cleanup activities and to provide

1 more flexibility in requesting credit for the use
2 of these proven and powerful tools.

3 And to the comment earlier about studies
4 showing whether source reduction really has an
5 impact or not, we have many studies that we can
6 show you and I'm sure staff is aware of them,
7 City of Palo Alto, City of San Jose, Alameda
8 County showing real reductions in stormwater when
9 you put product controls in place.

10 And finally, again, on the third request
11 on trash and the load reduction target in the
12 schedule, we believe one target later in the
13 permit term, such as a 75 percent target in 2019,
14 is a much more effective and efficient driver
15 than having multiple targets. Multiple targets
16 will divide our attention and tend to foster
17 short term thinking and decision making. A
18 single target will allow us to focus, to see past
19 short term barriers, and to bring resources to
20 bear from the beginning on the highest level of
21 achievement. Thank you again for the opportunity
22 to make our comments and thank you again.

23 CHAIRPERSON YOUNG: All right, thank you.
24 Mr. Steere.

25 MR. STEERE: Madam Chair, Members of the

1 Board, my name is John Steere. I'm a Watershed
2 Planner with Contra Costa County. I guess I have
3 the dubious distinction of being the last speaker
4 today. And I'd like to step away from what I was
5 originally preparing to say by acknowledging
6 that, you know, you've been served well, I think,
7 by a great deal of unanimity in the kind of
8 testimony you've been receiving, and served well
9 in the sense that there are real patterns of
10 comments that you've been hearing, and that's the
11 good news. And I think the good news, too, is
12 that we're all on the same page, we all want to
13 fulfill water quality goals set forth.

14 What is potentially rather discouraging
15 is that, if indeed we accept the premise, too,
16 that we're all partners in this effort, we may be
17 junior partners, it would do well to really heed
18 the recommendations and the commentary that
19 you've been hearing today because otherwise your
20 partners will feel like children who have parents
21 who are not listening to them, and that's not
22 really the appropriate relationship here. And
23 indeed, if we really want to be successful and
24 there's limited resources in a relational
25 environment, you want to maximize those

1 resources. And we heard from your own staff
2 today to retain flexibility and holistic
3 qualities and, indeed, if we focus though on
4 numeric goals, which seems to be a very strong
5 focus, especially with the C.10 requirements and
6 the new ones that just arrived today in the
7 monitoring, we've already heard that it's going
8 to take away from the holistic and flexibility
9 requirements that are requisite when you have an
10 environment where you have limited resources and
11 you want to accomplish things by partnership
12 because what happens then is you create
13 frustration, people don't feel like they've been
14 heard, and then they're just simply carrying out
15 the rules to the best of their ability without
16 trying to be creative, without trying to be
17 leveraging with the public resources. And
18 personally, I also feel very strongly that
19 retaining not only the 1:3 ratio, but going, as
20 we heard from the staff from East Palo Alto, to a
21 1:1 ratio, because that is enlisting the public
22 at a time when we need the public most, for creek
23 cleanups, for helping the cities to make the best
24 of the resources they have in front of them, and
25 also when we go forward with Prop. 218 revisions,

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1 we have the public behind us. So let's not lose
2 the forest from the trees, and I see the trees
3 here as the measurements, the measurements and
4 metrics of our water quality and the forest being
5 how are we going to conduct ourselves as a team
6 of the Board and the municipalities that are
7 engaged in this effort to improve water quality
8 throughout the Bay. And I really want to exhort
9 you to listen to the testimony you've heard today
10 and let it be received and responded to in the
11 revisions that go forward because if you have a
12 satisfied group of Permittees, they'll function
13 like partners, not simply as Permittees who are
14 having to carry out requirements set by a
15 punitive Board. So I really, that was perhaps a
16 bit strong, but I really want to encourage you to
17 really receive the testimony you've heard today
18 and the patterns are there, you know, and I think
19 with minor adjustments we can all go forward
20 together. Thank you.

21 CHAIRPERSON YOUNG: All right, thank you.
22 We're going to be adjourned for today and then
23 we're going to come back tomorrow, and we're
24 going to continue the hearing tomorrow at 9:00 as
25 was noticed. Is there any other legal thing that

1 we have to do before we --?

2 VICE CHAIR MCGRATH: Do we want to do
3 anything about the structure of tomorrow?

4 CHAIRPERSON YOUNG: I don't think we have
5 to do that with all these people here. I mean, I
6 think we can -- we're good, we're adjourned.

7 (Off the record at 5:42 p.m.)

REPORTER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of November, 2015.

A handwritten signature in cursive script that reads "Juliana Link". The signature is written in black ink and is positioned above a horizontal line.

Juliana Link

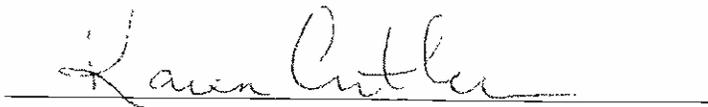
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TRANSCRIBER'S CERTIFICATE

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of November, 2015.

A handwritten signature in cursive script that reads "Karen Cutler". The signature is written in black ink and is positioned above a solid horizontal line.

Karen Cutler
Certified Transcriber
AAERT No. CET**D-723

ATTACHMENT 7

California Regional Water Quality Control Board
San Francisco Bay Region

November 19, 2015, 9:00 a.m.

Elihu M. Harris Building
First Floor Auditorium
1515 Clay Street
Oakland, CA 94612

Reported by:
Kent Odell

APPEARANCES

Board Members

Terry F. Young, Chair
James McGrath, Vice Chair
Newsha Ajami
Steve Lefkovits
William D. Kissinger

Staff

Bruce H. Wolfe, Executive Officer
Thomas Mumley, Assistant Executive Officer
Dyan Whyte, Assistant Executive Officer
Tamarin Austin, Counsel to the Board
Yuri Won, Counsel to the Board
Marnie Ajello, Counsel to the Board
Angela Tsao, Executive Assistant, Water Board Staff
Naomi Feger, Chief, Planning Division
Kevin Lunde, Section Leader, Planning Division
Barbara Baginska, Staff Geologist, Planning Division
Keith Lichten, Chief, Watershed Management Division
Dale C. Bowyer, Section Leader, Watershed
Management Division
Selina Louie, Staff Engineer, Watershed
Management Division
Sue Ma, Staff Engineer, Watershed Management Division
Richard Looker, Staff Engineer, Planning Division
Jan O'Hara, Staff Engineer, Planning Division
Christine Boschen, Section Leader, Watershed
Management Division
Elyse Heilshorn, Staff Engineer, Watershed
Management Division
Lila Tang, Chief, Wastewater Control and
Enforcement Division
Mary Boyd, Section Leader, Wastewater Control and
Enforcement Division

Tam Doduc, Member, State Water Resources Control Board
(State Water Board)

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P R O C E E D I N G S

NOVEMBER 19, 2015 9:04 A.M.

CHAIRPERSON YOUNG: All right folks, we're going to get started and resume where we left off yesterday, with Item 7, the Municipal Regional Stormwater Permit. And there is just a bit of housekeeping, as we get started. Our newly minted best proofreader in the house, Mr. Lefkovits, just noticed that the date on the Supplemental to Item 7 reads "February 18th." And we need to correct that.

MR. LICHTEN: Actually, there are a couple early copies that read February, but ninety-five percent read November. I think you got one of the misprints.

MS. TSAO: Microphone, please.

MR. LICHTEN: Ninety-five percent read November. I think you got one of the misprints.

VICE CHAIR MCGRATH: Yeah, mine does --

MR. BOWYER: It's a collector's item.

CHAIRPERSON YOUNG: A collector's item, all right. So for anyone who has a copy that reads February, it's supposed to read November. I'm sure you will not be confused by that.

MR. WOLFE: Déjà vu all over again.

1 CHAIRPERSON YOUNG: Yes, right.

2 MS. WON: So, yes, if the Board decides
3 to accept the Supplemental, then it would
4 obviously accept the November Supplemental as
5 opposed to the February Supplemental.

6 Other Business

7 Item 7. Municipal Regional Stormwater NPDES Permit -
8 Municipalities and Flood Management Agencies in Alameda
9 County, Contra Costa County, San Mateo County, Santa
10 Clara County, and the Cities of Fairfield, Suisun City,
11 and Vallejo in Solano County - Reissuance of NPDES Permit

12 CHAIRPERSON YOUNG: Very good. All
13 right, at the end of the day yesterday we had
14 closed off the public testimony and were ready to
15 go into hearing from staff on your responses to
16 some of the testimony. And I think it would be
17 useful if we could do it section by section,
18 perhaps you can present one section of your
19 responses and then we'll have Board Members ask
20 questions on that section, rather than going
21 through the entire staff report and then the
22 entire set of Board questions.

23 MR. WOLFE: Yes, rather than go through
24 each and every provision, we will start at the
25 beginning, but go through the provisions that

1 received comment and issues were raised. And
2 then if there's anything we don't bring up,
3 please do bring it up with us if you have
4 questions. So I'd like Dr. Mumley to start in.

5 DR. MUMLEY: Yes. Good morning, Board
6 Members. And I appreciate your recommendation on
7 how to go through this because my goal here is to
8 help make you be comfortable with the facts and
9 understanding, and so I do want to respond to a
10 number of the comments presented yesterday in
11 part to clarify some misunderstandings, but also
12 to make clear why our position and our
13 recommendation may be different than what you've
14 heard; some of which I may be saying is going to
15 be for the record, as well beyond just your
16 comfort level because we have to anticipate there
17 is a potential that parties may petition this
18 permit, and a number of the comments -- our
19 experience tells us a lot of comments presented
20 by commenters is for the record, as well, to
21 making their case for a potential petition, etc.
22 So I'll try to not get too dense, and that's why
23 I think the idea of going through this block by
24 block is best because of waiting until the end
25 and then overlooking some substantial stuff at

1 the beginning, or whatever.

2 So I'm going to talk through basically
3 five blocks, starting with and kind of going
4 through the order of the permit, if you will, so
5 I will start with the issue of Alternative
6 Compliance associated with Provision C.1 and the
7 relationship with the recent State Board Order,
8 followed with hopefully a brief check-in on the
9 New and Redevelopment Green Infrastructure
10 issues, and then the big three being Monitoring,
11 Trash, and then PCBs/Numeric Effluent Limits
12 versus Action Levels.

13 So starting with the first issue, for
14 background this Board through issuance of past
15 permits has provided an Alternative Path to
16 Compliance. And compliance with what? Well,
17 compliance with receiving water limitations in
18 the permit and prohibitions. So the receiving
19 water limitations in plain language state
20 "discharges shall not cause or contribute to
21 violations of applicable water quality
22 standards." So at the get go in the Stormwater
23 Program, it was understood that stormwater
24 discharges cause or contribute to violations of
25 water quality standards, so rather than put

1 Permitees in perpetual non-compliance, that we
2 created this process of an iterative approach, so
3 each permit would specify what they need to do to
4 manage their cost or contribution.

5 Through the evolution of these permits,
6 we got more and more specific with that bridge,
7 so Provision C.1 says Permittee shall demonstrate
8 compliance with the receiving water limitations
9 and prohibitions through compliance with the
10 remainder of these permit requirements, which as
11 the Permit Program matured, and mind you this is
12 the fifth permit that has been issued to the
13 Santa Clara and Alameda Permittees, it's fourth
14 for the San Mateo and Contra Costa Permittees.
15 So this is a fair amount of history behind this.

16 So we started putting in fairly specific
17 alternative compliance language going back,
18 actually starting in the very first permits we
19 had language in the Santa Clara permit regarding
20 metals and requirements that this Board asked
21 them to do to address their cost and
22 contributions to metals in the South Bay, and
23 there's a little bit of history there that I
24 might get into later. The bottom line is, we
25 have been implementing one form or another of

1 alternative compliance throughout the history of
2 this Board's Permit Program.

3 Now, the issue of receiving water
4 limitations has been controversial, to put it
5 lightly, throughout the state. But just to cut
6 to the chase, the recent Los Angeles Permit which
7 has been referred to, which was a couple years
8 ago or so, it was petitioned by essentially
9 everybody down there, the Permittees and
10 Environmental NGOs, and a major issue was the
11 receiving water limitations and that that permit
12 provided an Alternative Compliance Path for the
13 LA Permittees relative to the receiving water
14 limitation stuff.

15 The State Board took that petition up,
16 particularly on the receiving water limitations;
17 I actually was involved, was an Advisor on the
18 Advisory Team working with the State Board on
19 that, so I'm fairly familiar with the issue, the
20 point being in its Order, which is called Water
21 Quality WQ2015--75, the State Board accepted the
22 Alternative Compliance Path that the LA Permit
23 provided, with some clarifications, and in that
24 Order it was considered precedential in that it
25 didn't say all permits in the state must use the

1 Alternative Path to Compliance that the LA Order
2 has, but in that Order the State Board directed
3 the Regions to include Alternative Paths to
4 Compliance in its permits, and in doing so it
5 challenges the Regions to consider and apply a
6 set of principles in making that determination.

7 And so I wanted to call your attention to
8 that because this is kind of paramount, this is
9 the bookend for what we're doing in this permit.
10 So in the original Draft Permit, the original
11 Tentative Order, we did not recognize the State
12 Board Order because it was not issued yet, it was
13 pending. But we kind of had some initial
14 language justifying our approach. The Board
15 acted in June of last year, so in consideration
16 of comments and revisions to the Permit, we
17 explicitly recognized the State Board Order in
18 the Fact Sheet and addressed the State Board
19 Order in the Fact Sheet regarding the support of
20 our Alternative Compliance requirements in this
21 permit. So to call it to your attention, I meant
22 to tell myself what this page number was, but
23 give me a second and I'll get to it pretty quick.

24 VICE CHAIR MCGRATH: 826.

25 DR. MUMLEY: 826. Thank you. So you

1 see, starting at 825, the bottom of 825 there's
2 all this underlined text, that's essentially
3 verbatim with the State Board Order where it says
4 "what must be considered in allowing for the
5 Alternative Path to Compliance." I'll call
6 attention to two major components of that, number
7 2, is that this is a Phase 1 MS4 Permit, so it
8 should include a provision stating that for water
9 body pollutant combinations with a TMDL full
10 compliance with the requirements of the TMDL
11 constitutes compliance with the receiving water
12 limitations for that pollutant water body
13 combination.

14 All the requirements in this permit
15 associated with PCBs, Mercury, Pesticides, are a
16 direct outgrowth of those TMDLs in the
17 implementation plans for those TMDLs.

18 VICE CHAIR MCGRATH: So I think I
19 understand this. In the kind of naked reading of
20 the Order, it says essentially notwithstanding
21 that a Discharger will contribute to the
22 violation of a standard, the mechanism by which
23 they will be in compliance is implementation of
24 Best Management Practices. And in that respect
25 it creates to some degree a safe harbor if they

1 are complying in good faith with those Best
2 Management Practices. Is that correct?

3 DR. MUMLEY: Correct.

4 MS. WON: Partially correct, 99.9 percent
5 correct. BMPs as well as other actions because
6 these are water quality-based limits that you
7 ultimately have to comply with.

8 VICE CHAIR MCGRATH: Right. So the
9 decision about which of them are water quality
10 standards and which of them are best management
11 practices is a particularly critical one on that
12 basis?

13 MS. WON: I don't think so, no, because
14 at the end of the day you just have to comply
15 with those requirements in C.9, C.10, C.11, C.12,
16 relating to Trash, Mercury, PCBs, and those
17 actions are going to eventually get you to
18 compliance with water quality standards. We
19 don't really care how you get there. I mean, we
20 care, but you know, a lot of it is self-directed
21 by the Dischargers. For example, for PCBs, it's
22 a number that they have to beat, and how they get
23 there is up to them.

24 VICE CHAIR MCGRATH: So it contemplates a
25 time period by which iteratively initially no

1 regrets actions, and then perhaps more strenuous
2 actions will be pursued until such time, and as
3 long as you're on that pathway, there's a safe
4 harbor.

5 MS. WON: So we're going beyond the
6 iterative process. The iterative process was the
7 old way, which it is still being continued for
8 other pollutants. The iterative process is you
9 have a BMP and if you still have a problem in the
10 receiving waters, then you have to submit a plan
11 to improve the BMP.

12 VICE CHAIR MCGRATH: Right.

13 MS. WON: So that's the iterative
14 process, but we're going beyond that because the
15 State Board Order said that if you go beyond just
16 doing that and, you know, try to get to
17 compliance with Water Quality Standards, then you
18 get a safe harbor. So that's in effect what
19 we're doing.

20 DR. MUMLEY: Yeah, so let me --

21 VICE CHAIR MCGRATH: I think that was
22 said very clearly.

23 DR. MUMLEY: Yeah. And in our TMDLs, in
24 the Implementation Plan we call for phased
25 implementation based on an updated assessment of

1 controls and the permit would require
2 implementation of appropriate controls in an
3 appropriate manner, and if the Permittees are in
4 compliance with those controls for that permit
5 term, they're in compliance for the receiving
6 water limitations for that permit term, so as
7 long as you're in compliance with those
8 requirements; the one part I want to call
9 attention to is Factor 3 in the State Board Order
10 saying that the permit should incorporate an
11 ambitious, rigorous, and transparent Alternative
12 Compliance Path, so that's their direction --
13 ambitious, rigorous, and transparent. So that's
14 what we have to translate into how specific are
15 the requirements that may need to be held
16 accountable to in order to be granted this safe
17 harbor.

18 And the last part about this issue has to
19 do with whether -- the Baykeeper rightfully
20 stated that this State Board Order does not
21 address Alternative Compliance for the
22 prohibitions. We allow our permit that you're
23 considering, allows Alternative Compliance for a
24 prohibition, but it's applicable to trash and
25 actually directly consistent with the State Board

1 provisions that are pending approval because they
2 provide a comparable Alternative Compliance
3 approach for a statewide trash prohibition. So
4 our permit is consistent with Water Quality Order
5 2015--75 for receiving water limitations, and we
6 can say proactively we're consistent with what's
7 yet to be formally approved, statewide provisions
8 on trash. Okay? So that's the Alternative
9 Compliance story.

10 CHAIRPERSON YOUNG: All right.

11 MS. WON: I'm sorry, may I ask Tom one
12 more question? Tom, can you address Baykeeper's
13 comment about the WMP, or rather the Watershed
14 Management Plans? They were saying that this
15 permit doesn't have WMPs.

16 DR. MUMLEY: Yes. The issue there being
17 the Los Angeles Permit -- this is probably a good
18 way to put it -- the Los Angeles Permit
19 implements 33 TMDLs and it implements them with
20 direct numeric limits, and actually they are
21 effluent limits the way prescribed to say you
22 have to demonstrate discharges from these
23 watersheds for which these TMDLs apply meet your
24 waste load allocations as effluent limits. Those
25 are specified in that permit as effluent limits.

1 However, they provide Alternative Compliance, an
2 option if Permittees choose to establish
3 Watershed Management Plans or Enhanced Watershed
4 Management Plans designed with reasonable
5 assurance to attain those limits. So rather than
6 direct enforcement of limits, give us robust
7 plans within the timeline established in the
8 permit, and you are granted this Alternative
9 Compliance. So that's what the State Board
10 recognizes, that those plans, conditioned that
11 they're adequately robust, do provide a mechanism
12 to provide an Alternative Path to Compliance. So
13 that's where that terminology comes around.
14 State Board liked the idea of a Watershed-based
15 approach, we liked the idea of a Watershed-based
16 approach, and in these principles they direct the
17 Boards to consider the Watershed-based approach.
18 They don't say you have to require Watershed
19 Management Plans or Enhanced Watershed Management
20 Plans -- by the way, the difference between a
21 regular and enhanced, in an Enhanced all the
22 water up to a design storm will be retained,
23 infiltrated, it's a lot to do with capture and
24 reuse in Los Angeles for water supply through
25 groundwater infiltration, so actually a lot of

1 the Municipalities are going down that path. So
2 that's the difference with Enhanced that
3 Watershed Management Plans would allow more of
4 other types of actions, as well.

5 So the Order pretty much said, "We'd like
6 you to take that approach, but as long as you can
7 demonstrate your approach is equivalent, or if
8 not, better, or you fully consider the
9 appropriateness of a watershed-based approach,
10 then we're conforming with that Order, and that's
11 what we address on page -- the bottom of 26 going
12 through 27 is our articulation of how this permit
13 conforms to those principles, the seven
14 principles in the Order, where relevant because
15 the Order says, "Implement these principles
16 unless you can show that they're not relevant for
17 a particular water body/pollutant combination."
18 And that's what we've done, and that's what we
19 assert, that we are in compliance. This permit
20 would be in compliance with the State Board
21 Order. A lot there, but that's the gist. And
22 that's the front end of the bookend because
23 ultimately through this dialogue you'll see the
24 other bookend would be particularly the PCB
25 requirements and how they reflect this driver.

1 CHAIRPERSON YOUNG: Okay. Are there
2 follow-up questions on just this section at this
3 point?

4 DR. AJAMI: So are we right now
5 encouraging them to work together for those
6 municipalities that are within the same
7 watershed, to kind of come up with a plan
8 together? Or --

9 DR. MUMLEY: Well, yes. And we can
10 elaborate when we get to the PCB numeric limit
11 issue, but to forecast that, the way we've set
12 this up and it was envisioned by the PCB TMDL as
13 a whole, it establishes a region-wide allocation,
14 and then distributes that by County based on
15 population, and so this permit allows for all for
16 one, one for all approach, that if the aggregate
17 load reductions meet the requirements, everybody
18 is in compliance; alternatively, they can do it
19 on a County-wide level and we have a default
20 Permittee-specific approach, which is the least
21 desirable. It strongly encourages and rewards
22 the cooperative Watershed-based approach.

23 DR. AJAMI: Right.

24 DR. MUMLEY: And also why we have a
25 strong emphasis on Green Infrastructure Plans,

1 which is the next issue I want to just call
2 attention to, Green Infrastructure Plans are
3 really a pseudonym for Watershed Management Plan,
4 but we're talking about urban infrastructure
5 management on a watershed basis, right.

6 CHAIRPERSON YOUNG: Okay, other questions
7 on Section 1, specifically the Alternative
8 Compliance?

9 MS. WHYTE: If I may, real briefly, could
10 the record please reflect that we began the
11 meeting at 9:04 with a quorum at the Board, with
12 Board members Lefkovits, Young, McGrath,
13 Kissinger, and Ajami present?

14 CHAIRPERSON YOUNG: Thank you. Would you
15 like for us to take roll now, or have we done
16 that?

17 MS. WHYTE: That's sufficient.

18 CHAIRPERSON YOUNG: All right, thanks.

19 DR. MUMLEY: So the next issue, there
20 were various comments in regards to the new and
21 redevelopment requires, but for the most part
22 focusing in on the Green Infrastructure
23 requirements. Pretty much, everything we heard
24 was consistent with what has been put in written
25 comments and now we responded to. And generally

1 speaking, we feel what's called for there is
2 justified technically and a feasible, reasonable
3 approach, and consistent with State Board
4 direction, as you've heard EPA as well has strong
5 encouragement to promote Green Infrastructure.
6 So we really don't have more to offer other than
7 we feel the record stands on its own in terms of
8 the validity of the Green Infrastructure
9 requirements. There are some details relative to
10 PCBs that we could discuss perhaps better during
11 the PCB discussion.

12 One issue I will bring up, maybe this is
13 getting a little weedy, but a couple commenters
14 were concerned about the difficulty of
15 retrofitting streets. That is the reason why we
16 propose the Green Infrastructure requirements;
17 rather than to force it on a project-by-project
18 basis, it calls for communities to develop these
19 plans to be prepared for the opportunity because
20 streets aren't forever, you know, the utilities
21 and infrastructure aren't forever, so the idea is
22 to be prepared over time to take advantage of
23 every opportunity to retrofit. In the meantime,
24 this past permit required 10 pilot projects to
25 demonstrate the use of Green Streets, and

1 Permitees have done 10 plus, with varying
2 degrees of success. It's a proven approach,
3 there are things you can do to get around the
4 constraints, there are streets where constraints
5 aren't amenable to Green Infrastructure, others
6 are. And in a big way, the future, and
7 particularly the Bay Area with transportation and
8 land use planning towards transit-oriented
9 development, the concept of complete streets,
10 which was a term used, complete streets or
11 streets that are not only for automobiles,
12 they're for pedestrians, bicycles, mass transit,
13 safe path to schools, the future of streets, not
14 for water quality, but for other reasons, are
15 going to be Green. And so there's going to be
16 plenty of opportunity. So this permit does not
17 force direct retrofit, it requires "do not miss
18 an opportunity to retrofit." And that's a big
19 difference.

20 Any questions on the Green Infrastructure
21 requirements?

22 CHAIRPERSON YOUNG: Yes.

23 VICE CHAIR MCGRATH: I understand the
24 value of an infrastructure plan given some of the
25 weaknesses of what was going on with Green

1 Infrastructure in the prior permit, but I also
2 understand, having worked with Luna Leopold more
3 than a decade, and being familiar with his work,
4 that at some point density is so low that the
5 relative impact on runoff is relatively minor.
6 So with that background, we've established
7 something for municipalities and special
8 districts of dramatically varying sizes and
9 threats to water quality. Is there an easy off
10 ramp for the Green Infrastructure requirements
11 for those entities which are at very low density,
12 or where the urban core is so small that, once
13 covered by a number of things, the remaining area
14 within the municipality represents a de minimis
15 threat? In other words, should the level of
16 effort match the level of threat? And can that
17 be done at a municipality level? I mean, there
18 was plenty of testimony about 12,000 and 16,000
19 member communities.

20 DR. MUMLEY: Well, let me give you a
21 general, but I think Keith -- well, Keith, you
22 address it because let's be efficient.

23 MR. LICHTEN: All right, well Tom, I'll
24 get started and then you can jump in as needed.
25 Mr. McGrath, I think what the Green

1 Infrastructure Plans do is establish a process
2 where cities can change how they do business.
3 And so really I think we also heard some concern
4 yesterday that they weren't prescriptive enough
5 what the Cities do. But the thing that they do
6 is they first ask Cities to establish alternative
7 street standards, and so we heard, I think, from
8 Clayton and Pleasanton that, well, these are
9 their existing street cross-sections, these are
10 the existing designs, it's going to be a
11 challenge to change them. And so unfortunately
12 that's the prescription for nothing ever
13 changing, even when we see areas that are, you
14 know, it's just hard to get over that activation
15 energy.

16 You've asked the question, okay, are
17 there areas that are more or less impacting of
18 creeks and the Bay, and one of the other things
19 that's set forth here in C.3 is the idea of
20 prioritization. And so we've got a couple of
21 prioritization tools, San Mateo and San Jose have
22 already been piloting those tools with the San
23 Francisco Estuary Partnership, or at least one of
24 the tools, the *Green Planet Guide*, to think,
25 okay, well, over time where do I look first? And

1 the places that obviously they would look first
2 would be these areas with more impervious
3 surface, with greater sources of pollution.

4 In some of the previous permits, we've
5 talked about, well, where do we start to see
6 impacts on receiving waters as a function of
7 impervious surface and some of the work that
8 Booth and so on have done, and often that
9 threshold is as low as 10 percent or sometimes
10 even a little bit lower. So I think that there's
11 a lot of room where we'd want to see this work
12 done. What these are intended to do is to grease
13 the skids and I'll just throw in a couple more
14 details of the Infrastructure Planning process.

15 I want to point out that this proposal
16 really came out of the Permittees, and it doesn't
17 look exactly like -- is Jill McNeil still here?
18 It doesn't look exactly like what the Permittees
19 proposed, but it's quite similar. So it sets
20 forth a process, but you'll see that there are a
21 couple of other elements in there, for example,
22 talking with MTC about how transportation grants
23 are worded. And Tom mentioned that right now
24 we've got complete streets in there, so multi-
25 modal, but also expanding them over time to

1 include Green Streets aspects when the Cities are
2 applying for Grant funds. So there's an attempt
3 to look at funding, as well. So essentially it's
4 establishing a process that allows the Cities to
5 prioritize, given the reasonable assurance
6 analysis tools that we talked about yesterday.
7 So it's likely that they're going to do the most
8 work in the places where it makes the most sense,
9 while reducing the barriers to getting something
10 done at all.

11 CHAIRPERSON YOUNG: I wonder if I could
12 follow up on that question in a slightly
13 different vein, I guess, maybe more specific. I
14 went back earlier this morning and read all of
15 the requirements for the Work Plan for Green
16 Infrastructure. And it looked to me, looking at
17 every provision and, you know, I was trying to
18 put my, whatever, Clayton hat on, you know,
19 imagining what this would mean for a very very
20 small City. And as I read it, I thought the
21 language is adaptable so that if you had a very
22 small City with not very many streets, and in an
23 Infrastructure Renewal capacity, let's say, that
24 was fairly low, that your plan would be
25 correspondingly much briefer and less complicated

1 than in a City like San Jose or Oakland.

2 So my interpretation is that our
3 requirements really are adaptable to different
4 sizes of Cities.

5 MR. LICHTEN: The intent is that they are
6 adaptable, and I would go even a little bit
7 further to say that, while there is necessarily
8 some Permittee-specific work that would need to
9 be done for each Permittee zone plan, especially
10 we expect the smaller Cities to get together to
11 make a lot of the elements, you know, just do
12 them one time.

13 CHAIRPERSON YOUNG: Common.

14 MR. LICHTEN: Yeah.

15 VICE CHAIR MCGRATH: I like that response
16 better.

17 DR. MUMLEY: And I'd just quickly, yeah,
18 I looked at this, too, and I'll just be somewhat
19 plain language. As we know, narrative
20 requirements by design allow a lot, you know,
21 it's subject to interpretation and adaptation.
22 There's plenty of room to move as this program
23 matures, as the communities engage with us, we've
24 had a lot of dialogue, there's a lot of positive
25 dialogue, but getting down to are there different

1 approaches for different types of communities, we
2 expect that will play out as we learn. And I
3 really appreciate Keith's response, is that
4 that's the intent if we work with the
5 communities. And for those communities that have
6 built out recently, obviously the age of their
7 infrastructure comes into play, where the older
8 the infrastructure the more important this is
9 going to be adapting to climate change, sea level
10 rise, things like that are going to be factors
11 that are bigger than some of our water quality
12 drivers that will make this happen. So I feel
13 pretty comfortable that this is not going to
14 force anybody to paint themselves into a corner
15 to do things that are expensive, without value.

16 MR. WOLFE: And I'll just at that there's
17 another aspect here. Yesterday you heard about
18 the development of Stormwater Resource Plans, as
19 mandated by Senate Bill 985, and to a certain
20 degree that was in context of this being a
21 competing requirement that the local agencies
22 would have to achieve while they're trying to
23 comply with this permit. We long supported
24 stormwater reuse as a resource, or capture and
25 reuse, and we view the Green Infrastructure Plans

1 as an integral part of any stormwater resource
2 plans, they're not exactly the same, but we work
3 with the agencies to try to see how we can make
4 this more of a single document that if -- and
5 Keith brought up the funding issue which is near
6 and dear to everybody's heart -- that if State
7 Board will be requiring the Stormwater Resource
8 Plan as basically the cost of admission to apply
9 for funding under Prop. 1 or other sources, we
10 want to work with the agencies to make sure that
11 they're able to achieve that bar. And this is
12 the first step in doing that.

13 CHAIRPERSON YOUNG: So just to clarify
14 what we would be requiring in this permit is
15 completely consistent with what we think the
16 State Board would want to see in a plan like
17 that?

18 MR. WOLFE: Right. And our challenge is
19 to work, then, with the Agencies and to a certain
20 degree with the State Board to make that happen.

21 DR. AJAMI: Actually on the financing
22 topic, I made a note to myself to ask, so for the
23 Prop. 1 money, can people who want to implement,
24 or the Municipalities, or the Counties that
25 implement an infrastructure, can they -- or any

1 other alternative to their stormwater capture
2 system they already have, can they go for that
3 money? Or just because this is water quality,
4 the language does not match the problem? Like
5 what's required --?

6 MR. WOLFE: No. Under Prop. 1 there's
7 \$800 million for stormwater, and so as you heard
8 from Tam yesterday, State Board is still working
9 to develop the guidelines as to how they'll
10 release that, and they want to essentially
11 release that over a number of years. But we're
12 going to do our best to work with the agencies
13 without our reach and to bring a lot of that
14 money to the Bay Area.

15 DR. AJAMI: Right. So the idea is to
16 leverage that money to do some good while we're
17 meeting their requirements of this permit --

18 MR. WOLFE: Right, and I think --

19 DR. AJAMI: -- and you know, obviously
20 taking advantage of the money that's on the table
21 right now to enhance water supply.

22 MR. WOLFE: And we've been doing that
23 over the years. Yesterday you heard about the
24 EPA Grant of \$1.7 million, and in the past some
25 of the trash capture demonstration projects that

1 we worked with a number of the stakeholders, not
2 just the Permittees, but the Estuary Partnership,
3 and such, to try and bring that money to the Bay
4 Area, and then use it to demonstrate what can
5 work and build our Best Management Practices
6 today and help the agencies so that they can know
7 what to implement and what's going to work.

8 MR. LICHTEN: I can just add a note on
9 funding. Of course, we also had grant funding
10 under Prop. 84, and we were very pleased Union
11 City got a couple of Green Streets projects,
12 Albany, San Jose, so we've had some public work
13 already.

14 DR. MUMLEY: Yeah, well, we mentioned
15 yesterday the San Francisco Estuary Institute in
16 conjunction with San Francisco Estuary
17 Partnership and certain communities have had a
18 Prop. 84 grant building this toolbox, and now
19 there's a San Francisco Bay Improvement Fund
20 Grant from EPA to similar communities going to
21 the next step, so a part of Prop. 1 money,
22 stormwater money, can go for planning as well.
23 So there is going to be some ability for our
24 communities to compete for planning dollars to
25 build their plans, also to implement. And though

1 985 and Prop. 1 clearly has -- I would say be
2 frank -- a Southern California bias towards
3 capture and reuse because a lot of the authoring
4 of those laws came from there, the State Board to
5 our benefit is looking broadly at stormwater as a
6 resource, so it's not just water supply, it's for
7 healthy groundwater basins, healthy watersheds,
8 healthy creeks, and we've been making that case
9 and our Permittees have been making that case,
10 and my read of the guidance gives us some
11 latitude in there that's not fairly constrained,
12 it must be a project that results in water
13 supply. So we're quite hopeful. And clearly,
14 there's a strong nexus between this kind of
15 planning fitting into that. And our goal from
16 Day 1 was to make sure that these plans meet the
17 conditions of what's necessary to compete for
18 Grant dollars.

19 DR. AJAMI: So the faster we start making
20 these plans, the further ahead we are in that
21 line to go get the money, so maybe that's not a
22 bad thing, in general. I think that was sort of
23 like a point I made to myself.

24 MR. KISSINGER: So let me maybe kind of
25 take the counter argument, just to -- not because

1 I necessarily hold a counter view, I just want to
2 hear the response. So this is a stormwater
3 discharge permit we're talking about here, and
4 yesterday more than a few people, or
5 representatives of Permittees, came and said, you
6 know, "We have no money, and we're over-
7 stretched, and we're thinly staffed, and we've
8 got to make choices all the time, and the
9 requirement that we do this plan is one more
10 thing we have to do." And those are real
11 arguments, I mean, you can't dismiss them. And
12 so the question is, is this necessary? And by
13 "necessary" I guess the question isn't whether
14 it's a good thing, there's no question it's a
15 good thing, and the conversation we just had
16 certainly squares with, well, we may be able to
17 help you get money by doing this now and getting
18 ahead of the curve by doing this. But against
19 the backdrop of a water quality permit, I guess I
20 want to hear the argument that draws that nexus,
21 that says that the Green Infrastructure projects
22 that we're talking about here, that there's a tie
23 between that and what is coming out at the
24 outfall. There were people here yesterday, you
25 know, making the argument, look, that's what this

1 is all about and you're not doing the monitoring
2 at the outfall. So what's the tie? What's the
3 argument? Is there academic research that makes
4 that link that helps us make the case here?

5 DR. MUMLEY: Yeah, the short answer is
6 yes, and I'll try to come up with a not too long
7 elaboration on that. So the fundamental nexus
8 between Green Infrastructure as we've talked
9 about it and water quality is reducing the amount
10 of directly connected impervious surface area
11 because our current gray scape infrastructure
12 means everything is directly connected. What
13 falls from the sky? A lot of pollutants or
14 atmospheric deposition, or anything that comes
15 off land use goes into the storm drain, right to
16 the creeks, or straight to the Bay. Green
17 Infrastructure is about intercepting using the
18 concept the Green Infrastructure tends to use,
19 filtration, vegetation, using sort of natural
20 processes to slow the flow, infiltrate, as well
21 as using soil filtration, as well as vegetation
22 stuff. So the nexus is that if just by reducing
23 the directly impervious surface area connection
24 means you're reducing the flow, flow X
25 concentration is load, so you're going to get

1 reduction in loads. There's other benefits in
2 that in that high flows also affect the creeks
3 adversely, that's the Hydromodification issue.
4 But the main nexus is intercept the pollutants,
5 which are currently not intercepted in the
6 conventional gray infrastructure.

7 CHAIRPERSON YOUNG: Do you want to make
8 brief mention of particular pollutants that come
9 off of streets?

10 DR. MUMLEY: Well, there's ongoing
11 research, but there are still plenty of studies
12 showing the benefits of these types of control
13 measures for a variety of pollutants,
14 particularly particulate-bound pollutants because
15 a lot of what goes on is filtration; there is
16 control of other types of pollutants because
17 they'll get retained by soils or uptake by
18 vegetation, they can be managed. So there's a
19 degree of metals control. Certainly particulate-
20 bound pollutants like PCBs are going to be
21 intercepted. Board Member McGrath knows the
22 science of particles and sediment transport and
23 how to manage that, it gets complicated in terms
24 of what size particles are the pollutants on, are
25 small particles going to pass through? But

1 there's quite a bit of research that as a whole
2 you're going to see substantial reductions in a
3 variety of pollutants through these mechanisms.

4 MR. KISSINGER: I mean, I take your
5 point, I mean, plants fix metals and metals
6 adhere to soil, you know, I guess the question
7 is, is it balanced? It's not that it's
8 irrational what's going on here, far from it,
9 it's very sensible, it's good public policy, it's
10 what I like about this permit is there's a lot of
11 very creative public policy making going on here.
12 The question is should we be making it.

13 DR. MUMLEY: So one more thing because I
14 appreciate that, and that's really a foundation
15 here because we recognize water quality, it's not
16 because of financing and it's not going to make
17 or break whether Green Infrastructure happens,
18 it's for all the other reasons, and the triple
19 bottom line that there's an environmental
20 benefit, there's economic benefit, and there's
21 social benefits to Green Infrastructure that's
22 been demonstrated over and over as the way to go.
23 So for all these other reasons, it's going to
24 happen, it's going to happen because of our aging
25 infrastructure, it has to be replaced, our flood

1 management challenges, sea level rise. So water
2 quality is yet another factor and it makes sense
3 that we, rather than creating a separate path to
4 water quality, that we get on this, what I think
5 is a great -- more than a bandwagon, it's a well-
6 designed parade that it's going to take time to
7 complete, but it's the right way to go, and more
8 and more communities as you may know are buying
9 into Green Infrastructure as part of a
10 sustainable community, a healthy community, etc.
11 etc.

12 MR. BOWYER: Could I just add that
13 through Green Infrastructure Plans you're making
14 use of the time dimension because, as Tom
15 mentioned, all of this infrastructure is going to
16 get turned over, it's going to get replaced, and
17 the lowest cost to society, the most efficient
18 way to make these improvements is to integrate
19 them into this natural turnover that the
20 institutions will be investing capital in.

21 MR. LEFKOVITS: I like Green
22 Infrastructure. I live on a street with Green
23 Infrastructure in Emeryville and we've got a lot
24 of it right around my house, I get it. When I
25 look at these requirements and I think about the

1 City of Clayton, I think it's a great example. I
2 wonder, can they comply by creating a plan that
3 says 99 percent of our roads don't have room for
4 Green Infrastructure, and those that do, we don't
5 expect to improve for 15 years, and at that time,
6 we intend to use available technology to
7 implement Green Infrastructure and we upgrade? I
8 mean, is that a reasonable plan that they can
9 deliver? Or, I mean, I guess I'm wondering, I
10 don't know, I mean, is it truly context-specific?
11 Are there places in the jurisdiction that are so
12 rural they wouldn't have a need for green
13 infrastructure? And the follow-up to my question
14 is, you know, when we talk about a plan, most of
15 the work I've ever done on planning includes a
16 budget, and so I just wonder how we factor that
17 in if someone says, "Well, you know, here are all
18 the things that we'd like to do, but our budget
19 capacity for this over the next five years is
20 zero," is that a legitimate plan? I'm just
21 curious what you expect to be in the scope of a
22 plan.

23 DR. MUMLEY: Well, my view, and correct
24 me if I'm wrong, Keith, is that, and I think
25 Board Member Young pointed out that there's a

1 significant amount of adaptability in what would
2 constitute an acceptable plan that accounts for
3 community characteristics, its watershed setting,
4 and the need for and timing of green
5 infrastructure. So the short answer is, yes,
6 it's possible that a community can make a case
7 for its entire jurisdiction or part of the
8 jurisdiction that its plan is a many-year plan.
9 I mean, Emeryville is a good example.
10 Emeryville, as you know living there, has gone
11 through substantial redevelopment. They
12 essentially, without having it being an explicit
13 plan, they're nominally on a 100-year cycle
14 within a 100 years -- we're already I don't know
15 how many years into that because when the new
16 redevelopment happen, all parts of Emeryville
17 will have been redeveloped, and what it's doing
18 as it redevelops, it's incorporating green
19 infrastructure. So it makes sense there because
20 they have cause to do it now. For Clayton,
21 obviously, it would not from a water quality
22 perspective, it would not be a high priority to
23 force action now. It gets back to give us a case
24 that you will not miss an opportunity, you know,
25 if development in Clayton were to change in the

1 future, we'd say it's a given that new
2 development incorporates green infrastructure.
3 This is all about when and how existing
4 development should be retrofitted, and that's
5 where it gets expensive and you get logistical
6 constraints, etc. so we're saying through this
7 plan to figure out what works for you and our
8 hope is that we get plans that are going to be
9 reasonably easy to approve, and we're going to
10 have to have, if you will, a sliding scale of
11 sorts that is founded on what makes sense, in
12 what type of settings, and what doesn't make
13 sense in other types of settings. So I'm pretty
14 confident that we are not going to -- these
15 requirements won't force somebody to do something
16 that doesn't make sense, that doesn't have value.
17 I mean, I can't say that generally, but I mean in
18 practice that's how we intend to work with the
19 communities and assist them with the development
20 of their guidance. And if these issues come up
21 and if we find that -- I'll also say that if we
22 find that these requirements get translated into
23 unintended consequences, that's where there's
24 this reopener in here, gives cause to say, "Wait,
25 that was not the intent, we have new information

1 that wasn't available when the requirements were
2 established." It gives cause to change to avoid
3 somebody getting into an unintended consequence
4 and being in violation of a permit requirement
5 that's not directly relevant to the situation.
6 So I'm very comfortable that we'll work this out
7 and certainly we'll have the ability to, as
8 necessary, improve upon these requirements in
9 five years.

10 MR. KISSINGER: Where is the reopener
11 provision that you mentioned?

12 DR. MUMLEY: I think it's a good one for
13 you to reflect on because I'm going to call
14 attention to it in the future, as well, in our -
15 C.18.

16 MR. KISSINGER: Which is towards the
17 back.

18 DR. MUMLEY: It's on page 153 of the
19 running page numbers, it says C.18, Modifications
20 to this Order. So C.18.a., "To address
21 significant changed conditions identified in the
22 Technical or Annual Reports required by the Water
23 Board or through other means or communication
24 that were unknown at the time of the issuance of
25 this Order." It's a fairly broad reopener, but

1 the intention there is unintended consequences,
2 new information, etc. So that's where there's,
3 if you will, a safe harbor.

4 DR. AJAMI: I have a question. So it can
5 be a City of Clayton or any other City. I mean,
6 it's not just about roads and, you know, other
7 surfaces, also it's all about like you want to
8 build a house, you want to make sure people or
9 redevelopers use pervious surfaces like for the
10 driveways, right? Isn't that the idea? So I
11 can't imagine, and I might be totally wrong, but
12 I can't imagine no city will ever do more
13 construction, not necessarily on your roads, but
14 you know, new buildings, new housing, new this,
15 new that. So that can be part of the plan, you
16 know, that for the new development you need to
17 make sure you think about this. And at the end
18 of the day it's all about thinking what you want
19 to do in the future, rather than what's going to
20 happen next year. And I wonder, you know, it's
21 sort of like, I don't know, it makes me wonder
22 why we are wasting so much time arguing over
23 being more creative in our thinking. And
24 eventually when you have a plan, you think about
25 how to come up with some sort of a budget, and it

1 doesn't need to be tomorrow. I mean, when you
2 are going through redevelopment or, you know,
3 housing development, a lot of that money comes
4 from developers. All you have to do is tell
5 them, "If you are building this, you need to put
6 this." You know, that's what San Francisco is
7 constantly doing, telling them do this, do that,
8 and whoever wants to redevelop or the developers
9 who are coming to build housing or any other
10 residential or industrial or commercial, they're
11 willing to do a lot of different things just
12 because they're going to make money off of it.
13 So I wonder like maybe the question is how we can
14 cost share with the community to have a more
15 thoughtful way of building into the future.

16 DR. MUMLEY: Well, that's philosophically
17 right on point, and clearly what we're hoping for
18 and expect, that the outgrowth of development of
19 these Green Infrastructure Plans will be public-
20 private partnerships. One direct benefit --
21 there's a couple benefits I want to just finish
22 with on this one, one you called to mind is that
23 the previous permit and permits before the
24 previous permit specified Permittees must require
25 treatment measures on what we refer to as

1 regulated projects, projects that create or
2 replace general 10,000 square feet of impervious
3 surface and there's other situations. The Permit
4 allows an alternative to that by using Regional
5 facilities, off-site alternative compliance; to
6 date it's been not touched because no one has
7 developed a plan that said, "Well, in this
8 drainage area, here is how we would want to
9 redevelop," and so when development comes along,
10 they can buy into that plan versus being forced
11 to have to work within the constraints of that
12 property. And so that's where I think a lot of
13 the public-private partnerships are playing out
14 because the private sector will often gladly
15 invest in something with certainty that it meets
16 its requirements and at the same time it gets the
17 economic benefit of its development. So that's
18 clearly an expectation that comes out of this.

19 But before I lose track, I want to make
20 sure my attorney wanted me to say for the record
21 that the overriding driver for this permit is
22 that the permit shall require controls to reduce
23 pollutants to the maximum extent practicable.
24 And we consider every time we go through a
25 reissuance, we do an update, a consideration of

1 what are such controls, and we find that Green
2 Infrastructure constitutes a system of controls
3 to reduce pollutants to the maximum extent
4 practicable, and so as we've laid it out here,
5 we're laying out a process, a programmatic
6 approach to implement Green Infrastructure,
7 rather than being proscriptive in terms of which
8 controls you must implement, whatever, but we're
9 within that Federal driver of this makes sense
10 and therefore should be a part of the permit
11 requirement.

12 VICE CHAIR MCGRATH: We've gone a little
13 bit further than just questions of the staff, but
14 I want to respond and react to Commissioner
15 Kissinger's point with one of the real concerns.
16 This has to cover a lot of communities and some
17 communities have adequate flood control
18 facilities for the coming 20 or 30 years, and the
19 term of this is five years, but many don't. In
20 fact, much of the infrastructure is badly
21 deteriorated at the end of its useful life, and
22 based on sea level rise and mistakes made in
23 sediment delivery and maintenance costs, is not
24 working to near the same degree. That will have
25 to be done, and it has to be done in a rational

1 manner. And part of what this is about is
2 bending the stovepipes of the flood control
3 facilities where all the flood control engineers
4 I talk to know they need to do stuff, and the
5 water quality so that it is doing both, and to me
6 a Green Infrastructure Plan is exactly what that
7 should do.

8 DR. MUMLEY: I'll add one more thought, I
9 mean, for the Permittees' sake, clearly we're all
10 aware of financial constraints, we're also aware
11 of the political constraints associated with
12 funding. Turning around, in the absence of
13 having these plans, it's difficult to get the
14 public to buy in. The public tends to be more
15 supportive when it knows what it's paying for.
16 And so that's sort of the chicken and egg thing.
17 I was sad to see, and you may recall in the
18 recent election in San Anselmo, the voters turned
19 down a Green Infrastructure project which was to
20 modify an existing part to allow it to be a flood
21 facility during wet weather, and it didn't sell.
22 I would speculate that if San Anselmo had a Green
23 Infrastructure Plan showing how this fits into
24 the big picture, and how cost-effective that
25 would be compared to other alternatives, the

1 public may have a different take on it, but it is
2 a reflection of, even with the best intentions,
3 the communities are constrained by the political
4 will of its citizens to do things, but we have to
5 assume that without the absence of these plans,
6 we have limited hope that we will be able to make
7 these things happen. And we know the communities
8 have huge -- they have flood management deficit,
9 they have a lot of maintenance deficit of their
10 current storm drain system and the road systems,
11 so our water quality concerns are clearly
12 competing with numerous public works concerns
13 and, again, why taking the Green Infrastructure
14 approach is the way to best balance all those
15 competing demands for infrastructure.

16 MR. KISSINGER: Well, I guess all I would
17 say, and I agree with all of that, I feel very
18 torn about I guess should we stay sometimes in
19 our stovepipe or not? And I guess the question
20 is, I want to think carefully with my words
21 because I know they might show up on some brief
22 somewhere, but this is in my mind a re-
23 manifestation of the issue that we dealt with
24 with the homeless encampments on Coyote Creek.
25 And when did we become a homeless agency? When

1 did we become a flood control agency? And you
2 said it well, Dr. Mumley, when you talked about
3 water quality concerns impact on other issues,
4 and the question is, and I don't have an answer,
5 I don't think any of us do, other than I think it
6 makes sense to be forward leaning sometimes and
7 less forward leaning other times, by balancing
8 the various concerns, when should we step outside
9 of what was at the outset of the water quality
10 Board's creations with Porter-Cologne, a very
11 narrow place in the world? The world is very
12 interrelated and you can't narrowly live in your
13 stovepipe all the time. So anyway, that's the
14 question and, again, I completely agree with the
15 policy goals and I can see the linkage between
16 that and water quality objectives here, so I'm
17 not saying it's bad, but it is the lens through
18 which I'm looking at all of the things in this
19 permit and whether we should be forward leaning
20 or not.

21 DR. MUMLEY: There are three direct water
22 quality drivers that gave us cause, where this
23 came out of, one being in our consideration of
24 updating the new and redevelopment requirements.
25 We had the 10,000 square foot threshold and 5,000

1 for certain types. We talked to the Permittees
2 about lowering it down to 5,000 square feet.
3 Other permits in the state go down to 5,000
4 square feet, so it's essential pushback for the
5 Municipalities for water quality purposes, right,
6 when new and redevelopment of a smaller scale
7 happens there is a water quality benefit of
8 incorporating treatment on that. We said in lieu
9 of lowering that threshold, they'll agree to
10 Infrastructure Plans, that nexus.

11 You heard yesterday, and we explained in
12 the previous permit we gave Municipalities a pass
13 on applying the redevelopment requirements for
14 replacement of existing streets, recognizing the
15 constraints for that permit term, in lieu of
16 mandatory pollutant load reduction associated
17 with streets, that they would commit to the Green
18 Street Pilot Projects. We did Green Street Pilot
19 Projects, we demonstrated Green Streets work, we
20 started their dialogue, and I said, "Well, that
21 was a one permit term pass, now we have to talk
22 about what we are going to do with street
23 retrofit and the pollutants associated with
24 street runoff." And that was really the main
25 driver that began this dialogue about Green

1 Infrastructure.

2 Lastly, there's a nexus with using Green
3 Infrastructure as a means of reducing loads of
4 pollutants of concern, specifically in this
5 permit, Mercury and PCBs. So there's a direct
6 water quality nexus, but we're saying, but ride
7 the coattails of your interest in doing this
8 anyway and you'll get the water quality benefits.
9 So there is a direct association with water
10 quality, again, with the knowledge that the main
11 drivers for Green Infrastructure are bigger than
12 water quality, we're not the main driver, we're a
13 driver.

14 DR. AJAMI: Can I ask a question?

15 CHAIRPERSON YOUNG: Yes.

16 DR. AJAMI: A few people yesterday
17 mentioned that they're concerned that, because
18 they didn't have -- there are not many Green
19 Infrastructure Plans out there to guide them
20 through building such a plan for their City, or
21 Municipality, or County. Is there any way -- I
22 guess I want to see what your thoughts are on
23 those comments.

24 DR. MUMLEY: Well, I'd just quickly, I
25 mean, there are plenty of existing and growing

1 examples, San Francisco on its own initiative has
2 a very robust Green Infrastructure Program,
3 guidance that it developed itself, but that it's
4 harvested guidance from around the country.
5 These Grant projects we referred to, that's what
6 it's all about, is harvesting what's already
7 known about Green Infrastructure and water
8 quality benefit, and we've created this platform
9 with technical assistance from the San Francisco
10 Estuary Institute, and logistical assistance from
11 ABAG and the San Francisco Estuary Partnership,
12 working with communities. And so we have a
13 growing number of communities that are already
14 doing it and want to do more.

15 DR. AJAMI: So we can provide them such a
16 --

17 DR. MUMLEY: And then this guy has a
18 direct --

19 MR. LICHTEN: I was just going to
20 reflect, I mean, as we said these aren't exactly
21 EWMPs or WMPs, but those are reflective of the
22 kinds of things that sort of could form an
23 outline for what we see as Green Infrastructure
24 Plans, and we recognize that nationwide, you
25 know, stormwater is not the only driver for water

1 quality, we also see combined sewer overflows,
2 and there's no shortage of cities from
3 Philadelphia's Green City Clean Waters Program to
4 New York City, Milwaukee, we could go on, even
5 small towns in Iowa, that are working on this
6 kind of thing. So I think there's no shortage of
7 outlines for what a Green Infrastructure Plan
8 could be.

9 DR. AJAMI: Which we hopefully can guide
10 people to, sort of go and look and use those kind
11 of plans.

12 DR. MUMLEY: And a key component of the
13 San Francisco Bay Improvement Fund Grant Project
14 is a sustained forum, work groups or committee
15 work group for Municipalities, we're a part of
16 that, so we're not hurting for opportunity to
17 interact and gather information, and provide
18 direction.

19 CHAIRPERSON YOUNG: All right, we can
20 circle back to any subject at any time, but my
21 sense is that we've done a lot of questioning and
22 answering, and a lot of staff reporting, so maybe
23 we should move on to the next section and, as I
24 said, we can circle back at any time.

25 DR. MUMLEY: All right, the next section

1 is Monitoring. So I'm going to do a couple
2 things in my statements regarding monitoring,
3 it's important that we provide a little bit of
4 history, I'll keep it very brief, and then
5 provide a quick overview of our requirements and
6 make the case why they are comprehensive and,
7 most importantly, why they comply with Federal
8 Regulations that specifically state permits shall
9 require monitoring to demonstrate compliance with
10 permit conditions. Our permit monitoring
11 requirements do that.

12 And a big driver behind monitoring is
13 monitoring is about generating information to
14 inform decisions, and that's why the relationship
15 to compliance is like what information do I need
16 to make a compliance determination.

17 So I want to say we have stated in the
18 record, and I think I'm going to give you a brief
19 recap of that, our monitoring requirements in
20 this permit are an outgrowth of many many years
21 of experience working with the Permittees,
22 starting with this Board, amendment to this Basin
23 Plan in 1986 was when we started, this Board
24 started its formal Urban Runoff Program. In
25 those Amendments it challenged the Santa Clara

1 Valley Municipalities, and Alameda Municipalities
2 to do two things, one is to submit a report on
3 loads of pollutants of concern to the Bay from
4 those communities and to establish Management
5 Plans to manage those pollutants of concern.

6 So I had the challenge and fortune of
7 coming on board in this arena in the spring of
8 1988, so that's where my experience started, and
9 the first thing I did was work with the Santa
10 Clara Permittees on the development and
11 deployment of its Monitoring Program where they
12 did monitoring throughout that watershed to come
13 up with load estimates, load measurements, and
14 estimates from that watershed. The main focus
15 was metals at the time, but other pollutants were
16 incorporated in that. That was a multi-million
17 dollar effort and right behind it was the Alameda
18 Program. So we started our monitoring, I
19 believe, in the wet season, '88-'89. And then
20 ergo we ended up issuing our first permit in this
21 Board in 1990 to the Santa Clara Valley
22 communities, it built off that existing
23 experience, and asked for more than just this
24 sort of loading monitoring. We started getting
25 into source identification, figuring out where

1 are these pollutants coming from, particularly
2 copper was of particular concern and through that
3 requirement, by the way, it wasn't through, if
4 you will, the end of pipe monitoring, the outfall
5 monitoring, it was through monitoring and desktop
6 analysis of what are the sources of these things
7 that determined that a significant source of
8 copper in runoff in the Santa Clara Valley was
9 associated with brake pads. So that is sort of
10 an illustration from early on, and the permit in
11 1990 had a requirement for doing those studies
12 that determined it was the brake pads. So just
13 trying to illustrate how we've been adapting
14 using monitoring and information gathering to
15 inform decision making.

16 And I wrote a letter in the mid-'90s
17 after reviewing Annual Reports, I think in 1994,
18 I can't remember exactly what year, and it was
19 called the Moratorium Letter, so I wrote a letter
20 to the Permittees after reviewing the Annual
21 Reports and seeing that we were spending at that
22 point about a half million dollars a year on
23 continued load monitoring, and at this time we've
24 expanded from Santa Clara; in addition to Santa
25 Clara and Alameda we were now doing monitoring in

1 Contra Costa and I believe beginning in San
2 Mateo, but we were spending on the order of half
3 a million dollars a year on load monitoring, and
4 I made the observation that we were monitoring,
5 but we were not generating information, that we
6 already knew, yeah, the loads are there, and we
7 have to focus on what can we do about that. So I
8 wrote a letter that said we would allow you to
9 cease doing the loads monitoring and put your
10 resources in a more comprehensive monitoring
11 strategy that said let's make sure we understand
12 the status of our creek conditions, we focus more
13 attention on source identification, and more and
14 very importantly the effectiveness of control
15 actions. But we didn't say, "Don't ever do load
16 monitoring again," but put in the context of
17 informing our information.

18 So again, as I already mentioned, this is
19 essentially the fifth generation permit, so the
20 monitoring requirements in this permit are an
21 outgrowth of the experience gained from all those
22 years and that we are looking at getting optimum
23 benefit from our monitoring dollars to inform
24 what should we do, where, when and how, and how
25 effective is what we are doing in balancing with

1 the recognition that monitoring costs -- there
2 are costs. And I've said this for years that we
3 want to avoid bad data, we want to avoid
4 monitoring that doesn't generate information
5 because those are dollars that can't be spent on
6 something valuable.

7 So that's sort of a general overview that
8 I feel we've established a pretty solid
9 foundation for these monitoring requirements. So
10 now I want to just draw attention to you briefly
11 to what we require in here because it's a complex
12 section to comprehend all this monitoring. And I
13 was asked a question by an interested party,
14 well, there's a status monitoring where the
15 permit requires monitoring during dry weather.
16 What does that have to do with stormwater runoff?
17 Well, it has a lot to do with it because the
18 conditions of the creek depend on what goes on
19 throughout the year, so the integrity of the
20 creek during dry weather illustrates a lot about
21 what effect, particularly if there's been an
22 adverse effect, of stormwater.

23 So this permit requires evaluation of the
24 chemical, physical and biological integrity of
25 the creeks that receive runoff, and so there is

1 valuable information associated with creek
2 conditions that translate to are we managing our
3 creeks in a healthy fashion relative to
4 stormwater discharge. In many of our creeks, the
5 only source of water is urban runoff, so there's
6 a direct water quality nexus.

7 And an outgrowth of that creek status
8 monitoring, there's another section which is a
9 pretty major section that calls for what we call
10 Stressor Source Identification Projects, so if
11 the creek status monitoring identifies anything
12 of concern, then the Permittees are required to
13 pick from a menu of stressor and source
14 identification projects to follow up on what's
15 causing the problem, what's the source, show it
16 directly, and what can we do about it. So that's
17 Monitoring to Inform. So those are special study
18 monitoring projects.

19 And then on top of all that, and this is
20 really where the meat of the monitoring comes
21 into play, has to do with the pollutants of
22 concern monitoring. It starts on page 86, and I
23 really would like you to bear with me with this,
24 but I'm going to give you a snapshot of what this
25 is all about. So if you look on page 87, you'll

1 see that we drive, and this mostly was reflected
2 in the last permit, but we've expanded upon it,
3 but you see the five drivers for pollutants of
4 concern monitoring: source identification,
5 contributions to Bay impairment, management
6 action effectiveness, key obviously, loads and
7 status, and trends. And then on the table on
8 page 88 shows the left-hand column, Monitoring
9 Type, relates to each of 1-5, those questions,
10 and the type of information in abbreviated
11 fashion associated with addressing those
12 questions, those drivers, and the types of
13 monitoring methods associated with it, it's
14 fairly comprehensive.

15 The next page, 89, shows you the suite of
16 required parameters that must be accounted for in
17 those monitoring methods dealing with PCBs,
18 Mercury, and Copper. Pesticides and Toxicity are
19 not struck out because they're not required.
20 Remember, we told you we moved them all to a
21 separate section. And then we have emerging
22 contaminants in there. We always want to look
23 ahead at what is appearing in there. And I want
24 to really emphasize the design of this monitoring
25 program, again, it's been a collaborative effort

1 with Permittees, with technical experts external
2 to the Bay Area because we very much have relied
3 on the Regional Monitoring Programs, sources,
4 pathways and loadings, program elements, and
5 specifically tributary loading strategy, which an
6 outgrowth of that is to help develop the design
7 of this monitoring program. And so there is
8 actually a partnership between what the
9 municipalities are doing for permit compliance
10 with some direct assistance by the Regional
11 Monitoring Program to do some of that monitoring.
12 But the Regional Monitoring Program is where
13 we're taking a step beyond just a compliance
14 monitoring, we're looking at more, better
15 information. But regardless of where you draw
16 the line between compliance monitoring and
17 advancing information monitoring, the integrity
18 of it is being vetted through an ongoing
19 technical work group that includes external
20 advisors, national advisors with expertise in
21 monitoring.

22 And I want to emphasize that the
23 pollutants of concern monitoring encompasses
24 multiple types of monitoring, but I know there
25 was a concern expressed by the Baykeeper that

1 there's no wet weather monitoring; well, there is
2 a substantial amount of wet weather monitoring,
3 and it could include the concept of outfall
4 monitoring. I can say one specific bullet that's
5 really pretty much a catchall is the third bullet
6 under 1, Collection Analysis of Pollutants of
7 Concern --

8 VICE CHAIR MCGRATH: What page?

9 DR. MUMLEY: Excuse me, page 88, Table
10 8.3 under Monitoring Type 1.

11 MR. WOLFE: Actually 8.1, it was 8.3.

12 DR. MUMLEY: Oh, 8.1, that's right.

13 Yeah, all these bullets represent different types
14 of monitoring and it's the aggregate benefit of
15 all these, but within this, the third bullet
16 down, Collection and analysis of pollutants of
17 concern is stormwater runoff, or imbedded
18 sediments on source area properties. Well, that
19 source area properties actually could end up
20 being an outfall, it could be at the site, I
21 mean, where we're looking is, where is the most
22 strategic and cost-effective way to get
23 information? And what's in runoff? We've done a
24 lot of work, especially with the San Francisco
25 Estuary Institute on associating PCBs with

1 particles, and that's why we're looking at PCBs
2 in embedded particles in the creeks, in the storm
3 drain, or on land, as a good surrogate for
4 finding the sources and the transport of PCBs.
5 Embeddedness, there's a lot of surveillance
6 monitoring during wet weather, going into the
7 watersheds and collecting samples at various
8 locations, more grab sampling throughout the
9 watershed versus a stationed monitoring system at
10 an outfall that would collect what's in that
11 outfall. But the bottom line is it's a
12 combination of lots of monitoring that in the
13 aggregate provide optimum information to inform
14 the permit. There is this last bullet, or next
15 to last bullet under 4, you know, both under type
16 4, that bullet, Methods described for monitoring
17 type 1 in combination with quantitative modeling
18 associated with quantifying pollutants of concern
19 loads from MS4s or small tributaries to the Bay.
20 That gets into what's the load coming out of the
21 various outfalls. And so in order to do the
22 modeling requires what we've monitored in the
23 past in terms of bottom of the watershed, or
24 outfall type monitoring, in combination with the
25 potpourri of monitoring tools called for in this

1 permit to be able to do updated load estimates,
2 but more importantly in this permit term, we kind
3 of know the loads well enough that we want to
4 focus attention on actions and use monitoring to
5 inform the locations of those actions and begin
6 evaluating the effectiveness of those actions.
7 But I'll just state, until there's substantial
8 action, we're not going to see a change in loads
9 in the outfalls, so we continue to monitor the
10 outfalls, we're just going to say, yes, they're
11 still there, yes, they're still there. What we
12 want is to put resources towards the actions and
13 then we're going to start seeing changes in the
14 outfalls.

15 So outfall monitoring is part of the
16 toolbox and it's just when and where and for what
17 reason that it comes into play. And if you want,
18 I could explain the differences between why the
19 LA Permit has what it has versus what we have.
20 The simplest answer is that was the third permit
21 ever issued, we're talking about fifth generation
22 permit. Their first permit didn't even include
23 monitoring to my recall, it was a token permit to
24 avoid the consequences of the emerging Regs, the
25 second permit did have monitoring in it, but it

1 was long expired, so this permit that got issued
2 has a lot to do with catching up versus what we
3 have been doing on an ongoing basis.

4 CHAIRPERSON YOUNG: Let's see if there
5 are some questions.

6 VICE CHAIR MCGRATH: I do have a
7 question. I have a brief comment first. I was
8 at the Port of Oakland doing end of pipe
9 monitoring and looking at the data, and I can
10 vouch for what Tom said, you would look at it and
11 say, "What in the world does this tell us?" And
12 you know, there's stuff in there, so I remember
13 those stages. But I want to make sure that we
14 have on the record a question that I think Tom
15 has answered very briefly, but was very important
16 to me, and I asked the staff before this, so I
17 wanted this all to be transparent.

18 And it goes to Bill's question and
19 Newsha's question of what's being done out there.
20 The question that I had for staff is, if we're
21 going to ask Governments to spend a substantial
22 chunk of money, we want to know that what we're
23 recommending is working, so we want to have some
24 "how effective are these devices?" So what I
25 heard Tom say, and I want him to say yes rather

1 than nod, is that this is the discussion that I
2 had with my staff before I came in here as part
3 of trying to understand this and in doing the
4 work that I have to do, these aspects,
5 specifically to monitor management action
6 effectiveness can look at the Green
7 Infrastructure that's been put in in Berkeley,
8 that is the trash monitoring, and it can give us
9 guidance to this next stage, and to put that back
10 in the context, we had the last generation of
11 permit that said we're going to give you kind of
12 a pass, as Tom's words were earlier, and we're
13 going to go with a number of pilot projects, and
14 then we're going to look at which of those pilot
15 projects are the most successful and we're going
16 to begin to scale those up and monitoring is a
17 key piece of it. Did I summarize that correctly?

18 DR. MUMLEY: Unconditionally, yes.

19 VICE CHAIR MCGRATH: I think it's
20 important to get that on the record for purpose,
21 it certainly made me more comfortable about the
22 scaling up process.

23 MR. KISSINGER: And just a quick
24 question. How different is this monitoring
25 program from the predecessor permit?

1 DR. MUMLEY: I'm trying to say not a lot,
2 it just is smart adaptation. I sat down with the
3 team a couple years ago and we started looking at
4 we knew we were going to have dialogue with
5 Permittees and others on the scope of monitoring
6 and know that monitoring costs money, so we said
7 we want to make sure that our monitoring has
8 value. So we're going to review what we've
9 already required and say what value have we
10 gotten out of it, what would be the consequence
11 if we didn't continue that monitoring? So we
12 looked for opportunities to reduce costs, but we
13 also said if we're going to require something
14 new, let's make sure there's value to it. So
15 generally speaking, there's a lot of continuity
16 of what we had before, but there is -- it's
17 improved. Let me give Richard a chance, he has a
18 lot to do with this and Jan, by the way, too.
19 This team is great in terms of the hands on
20 knowledge.

21 MR. LOOKER: I think --

22 CHAIRPERSON YOUNG: You may need to
23 introduce yourself.

24 MR. LOOKER: Okay. I'm Richard Looker,
25 I'm with the Water Board staff. I think one of

1 the ways, there's a couple ways in which the
2 monitoring requirements, especially for
3 pollutants of concern, have evolved. And I think
4 if you look at the last incarnation of the MRP,
5 there was -- at that point we put a lot of
6 emphasis on establishing fixed stations, and
7 trying to gather the information that we could
8 from them. In the course of doing that kind of
9 monitoring, we realized that that might not be
10 the best approach to answer all of the Management
11 questions that we even put forward in that
12 permit, that are probably more explicitly
13 articulated here in this permit. So now we've
14 moved more toward a focus on starting with what
15 questions we have and what kind of information we
16 want to get, and then thinking about the best way
17 of kind of having a flexible approach to allocate
18 the monitoring effort that's going to be
19 allocated during the permit term to get all of
20 that information.

21 So it's more flexible and it relies more
22 upon like an opportunistic, you know, when
23 there's a storm we have a list of watersheds that
24 we know are important in terms of enhancing our
25 understanding for being able to establish the

1 loads of pollutants. And we know where they are,
2 so the monitoring team can respond, "Okay, we can
3 get those two during this storm, and now we can
4 sort of check off that box in terms of we've got
5 the information about that kind of watershed and
6 that kind of land use." And so we have more of a
7 plan of like where we're going in terms of we
8 want to fill out a suite of information for a
9 variety of land uses and a variety of areas, and
10 we build up that information over time, so I
11 think we're adapting as we do the monitoring and
12 learning like, what's a smarter way to do it? So
13 we've tried to capture, you know, this snapshot
14 in time what we think is the best way to go. The
15 other thing that we realize because of climate
16 variability, you have to have sort of a provision
17 for being able to take advantage of the effort
18 that you can bring to bear, you know, with
19 respect to what Mother Nature gives you. So we
20 had a lot of years this year where there were
21 limited opportunities to collect data during
22 storm events. So that is one of the motivations
23 for providing the flexible approach that you see
24 articulated in the Pollutants of Concern
25 Monitoring, is that there's always something that

1 you could do that would add the information, it
2 could be collecting sediments that have
3 collected, even if it's not during a storm event.

4 So I think, you know, a longwinded way of
5 saying I think that we're much more focused on
6 starting with the sediment management questions,
7 and then thinking about the kind of monitoring
8 you would do to serve those questions, rather
9 than let's just go out at these fixed stations
10 and monitor, let's think about information. The
11 second thing is the flexibility to take into
12 consideration that, you know, you have to adapt
13 to what climate gives you in any given year.

14 CHAIRPERSON YOUNG: One follow-up
15 question. I think you've described very well the
16 fine tuning process that went into these
17 requirements. I didn't hear any mention
18 yesterday, and you might want to put it on the
19 record, whether or not you anticipate this being
20 more expensive than what we had required before,
21 or less, I mean, I'm talking about big jumps.
22 Did we make a big change in what we expect of the
23 Permittees on this?

24 MR. LOOKER: No, I would say kind of like
25 the parlance of Washington, it's probably like

1 cost neutral. If you looked at the numbers of
2 samples that are totaled up in that table -- it's
3 8.2 now -- that represents an approximate level
4 of effort in terms of all things together as what
5 was accomplished during MRP 1.0.

6 MR. WOLFE: Put another way, there have
7 been reductions in monitoring and there have been
8 changes, but as "Revenue Neutral" in Response to
9 Comments, as Tom noted, we made the pesticides
10 and toxicity drop out of the POC monitoring and
11 sit on its own, and in a separate, less expensive
12 fashion. So I think there have been reductions
13 commensurate with changes as this has evolved
14 over the years.

15 DR. MUMLEY: Yeah, we also expected
16 particularly the pesticide monitoring that this
17 permit requires to dovetail with and be adapted
18 and coordinated with a growing statewide effort
19 that I'm involved in that we're looking to have a
20 statewide platform for urban pesticides that
21 recognize that we have common issues throughout
22 the state so we don't have to have all these
23 unique monitoring efforts, we can get economy of
24 scale benefit of having a statewide coordinated
25 effort. So we've kind of tried some leadership

1 in that.

2 Bear with me, I want to make two more
3 points for the record on monitoring, and then we
4 can move on, because a couple points made by the
5 Baykeeper I feel necessary to respond to for the
6 record. One, Baykeeper said there must be
7 outfall monitoring to demonstrate compliance, but
8 without stating why. Compliance with what? And
9 our response is that there's no basis of reason
10 particularly at this time for outfall monitoring
11 to demonstrate compliance, except in the context
12 as it's a recognized component of the toolbox to
13 inform loads, to then be part of our
14 understanding of sources, and evaluating
15 effectiveness of actions to reduce loads, so we
16 haven't accounted for, so I cannot other than
17 saying the comment is so general, I don't see
18 where we are missing anything with our monitoring
19 requirements relative to demonstrative
20 compliance.

21 The other point made by the Baykeeper is
22 that this permit requires reasonable assurance
23 analysis to ensure that Green Infrastructure
24 Plans will meet PCBs and load reductions, but
25 there's no associated monitoring, and I would

1 argue the opposite. We cannot do reasonable
2 source analysis without the wealth of information
3 that we've developed to date on the presence and
4 sources and effectiveness of controls of various
5 measures for Mercury and PCB load reduction and
6 the monitoring requirements in this permit are
7 all about advancing our knowledge of location,
8 presence, transport, pathways, and effectiveness
9 controls necessary to do the robust reasonable
10 source analysis. So there is plenty of
11 monitoring required in this permit to inform the
12 reasonable assurance analysis modeling because,
13 in general sense, models are only as good as the
14 information available to support them.

15 VICE CHAIR MCGRATH: Tom, I want to follow
16 that up because I found that a fairly persuasive
17 line of commentary from the Baykeeper. But I'm
18 also familiar that through the time, we've taken
19 monitoring from an end of the pipe context to a
20 sources, pathways, loadings, and trends analysis,
21 which is something that Los Angeles does not
22 have. And if I can summarize what I think you
23 said, that provides adequate background
24 information for reasonable assurance analysis
25 without any additional end of the pipe

1 monitoring.

2 DR. MUMLEY: At this time. And I think
3 other than recognizing over time we will use end
4 of pipe monitoring as a part to verify the
5 effectiveness --

6 VICE CHAIR MCGRATH: Verify efficacy and
7 other issues, and that's in there as a
8 discretionary item.

9 DR. MUMLEY: But in and of itself, it's
10 not going to drive the specifics of that. And
11 mind you, again, I will call attention to our
12 good fortune that we have our partnership we're a
13 part of, the Regional Monitoring Program and San
14 Francisco Estuary Institute, and this is an
15 institute above and beyond R&P, developing these
16 tools, doing and providing currently monitoring
17 and modeling support for various reasons, but
18 specifically for this grant project, two grant
19 projects it's working on, the Institute is
20 developing model predictions with using our
21 monitoring information to make the demonstration
22 that a Green Infrastructure Plan will provide
23 this level of reduction with this degree of
24 assurance from a technical perspective, you know,
25 there's other aspects obviously that come into

1 play in terms of what's the assurance that those
2 things would get implemented and the social
3 science aspect of things. But our models are not
4 just going to be paper exercises, they're going
5 to be well founded with current knowledge and
6 advancement of knowledge that we're going to gain
7 from the monitoring in this permit.

8 MR. LEFKOVITS: I've just got a quick
9 question. I think it's really interesting to see
10 the dual usefulness of the pesticide information
11 in another area. Are there any other overlapping
12 areas, whether air pollution or any other
13 regulatory areas of information that we're
14 collecting in the Monitoring Program that could
15 be used elsewhere, or helps inform municipalities
16 in other aspects of what they'll look at them?
17 It doesn't look like any of this are airborne
18 pollutants that I know of, but --?

19 DR. MUMLEY: Let's see if I can keep this
20 simple. I don't want to get off on this track,
21 but there is some association with air related to
22 PCBs and even Mercury because of the major source
23 of Mercury in urban runoff is global atmospheric
24 deposition. We can pretty much point the finger
25 to coal burning in China, who obviously don't

1 have much direct control over that, but locally
2 there is EPA air regulations that affect Portland
3 cement plants, we have one major plant, the
4 Lehigh Plant in the hills of Cupertino, and the
5 air requirements that are being imposed on that
6 plant is going to result in the Air District has
7 said perhaps an 85 percent reduction in Mercury
8 emissions from that plant. And our Mercury
9 concerns didn't drive that, but we get the
10 benefit of that. And emerging contaminants, we
11 directly intend to use emerging contaminant
12 information beyond informing DPR regulations, but
13 this is going to become more of a statewide focus
14 working with Department of Toxic Substance
15 Controls, and its Safe Consumer Product
16 Regulations to, if we identify pollutants of
17 concern, we can go into their machine in terms of
18 what can be done about preventing those
19 pollutants from being at levels that cause water
20 quality concerns, etc. etc. regarding our
21 emerging contaminants strategy to use this type
22 of monitoring to draw attention to pollutants of
23 concern and where we can address them through
24 other regulatory authorities to control those
25 sources.

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MR. LEFKOVITS: Thank you.

MR. WOLFE: And just one point on that, it was actually the work that was done through the Regional Monitoring Program that resulted in the state banning certain flame retardants in products, and pesticides likewise. And so there is a lot of cross media opportunity that this monitoring can assist with.

DR. MUMLEY: Okay?

CHAIRPERSON YOUNG: Okay.

DR. MUMLEY: Next issue. Just for the record, there's two issues left, Trash and then PCBs Numeric Limits. First, trash. So this should be straightforward from my side.

CHAIRPERSON YOUNG: Hold on a second. Would you like to take a break now or take a break later? Yeah, sorry to interrupt, let's just take a five-minute break, let everybody stretch their legs, and then we'll come right back.

DR. MUMLEY: Okay.

(Break at 10:35 a.m.)

(Reconvene at 10:45 a.m.)

CHAIRPERSON YOUNG: Okay, we're getting started and we will resume with, I believe, Trash

1 was the next thing on the agenda for the -- not
2 the formal agenda -- on the list of things for
3 the staff.

4 DR. MUMLEY: So concerning testimony on
5 the trash provision, again, mostly in Response to
6 Comments versus the record in this case. The
7 first issue would just recognize that BASMAA and
8 Permittees have offered an alternative of a 75
9 percent reduction by 2019. We're just
10 acknowledging that we don't have a rebuttal to
11 that, you tell us what you want.

12 So moving on --

13 CHAIRPERSON YOUNG: We will.

14 DR. MUMLEY: Yeah, I figured. So one
15 major issue, and this is not a new one, it was
16 articulated loudly and clearly at the trash
17 related workshop in July regarding the value
18 allowed for source control, and we all recognize
19 the value of source control importance, blah,
20 blah, blah, and in response to that, both in
21 terms of comments presented by Permittees, as
22 well as we thought we heard from the Board,
23 interest in improving value, we increased the
24 Revised Tentative Order, doubled the maximum
25 value from five to 10 percent. So I have to

1 acknowledge for the record that Permittees who
2 ask that it be in their comments that it increase
3 from five to 10 percent, have now come and said,
4 "Well, now we want you to increase it from 10 to
5 20 percent," or 15, whatever. So I just want to
6 make it clear, we did respond to comments and
7 actually made recommendations to increase the
8 value, so that's part one. Let me finish because
9 I only have one more point about this.

10 The other part that keeps being missed,
11 in my view, is that this maximum value, up to a
12 maximum value, is off the top, it's like up to 10
13 percent of, if you will, whatever the load is, so
14 say if you can get that with some degree of
15 assessment. And that's off the top. In addition
16 to, then, your efforts to manage trash and
17 demonstrate load reductions associated with those
18 efforts in your trash management areas. So what
19 we have to be cautious about, if you front load
20 the value of source control, then we'd have to
21 sort of offset that in terms of how you get
22 credit through your on land observations relative
23 to your management actions in your drainage
24 areas. You've got to minimize the double-
25 dipping, if you will. So another way to spin it

1 around is there's nothing in this permit that
2 stands in the way of Municipalities putting all
3 their effort towards source control as the way to
4 solve the problem, it just doesn't say upfront if
5 they solve the problem with source control,
6 wonderful. So again, it already allows them more
7 -- there's incentive and reward for source
8 control if it works. It's just that we're not
9 padding the benefit upfront, it's the addition to
10 the maximum allowed in the Revised Tentative
11 Order, you recognize through demonstrating the
12 benefit of additional source controls by
13 observing reduced trash generation in your
14 watersheds, regardless of whatever the type of
15 trash it is. So we rarely support source control
16 moving beyond the focus on plastic bags,
17 Styrofoam, foam products, to cigarette butts or
18 whatever, so we clearly have no question about
19 the value, it's just about how to account for it
20 in a regulatory fashion, and we would state that
21 there's lots of room to move in terms of both
22 incentive and reward for that in the current
23 Revised Tentative Order.

24 CHAIRPERSON YOUNG: All right. Questions
25 on the Source Reduction?

1 VICE CHAIR MCGRATH: I have two. The
2 first is I remember that I think Clean Water
3 Action provided substantial testimony about the
4 sources, so the first question I have is, how
5 rigorous a documentation you need to do to get
6 the 10 percent? I mean, I heard people say 30
7 percent, and they had this kind of slick little
8 only if we're getting one gallon per 10 gallon
9 credit, and they want three gallon per 10 gallon.
10 So I heard 30 percent, actually. In fact, we've
11 doubled it. And the question is first
12 documentation; and second, one of the other
13 examples that was given was further source
14 control and the example that was specifically
15 given was deposits on things like plastic
16 bottles. Other things suggested, I remember, by
17 Clean Water Action were changes in take-out
18 restaurants and take-out coffee places that go
19 after specifically cups and things like that.
20 What I think I heard you say is that, with
21 sufficient documentation there is room to get
22 credit beyond 10 percent if it's supported by
23 substantial evidence. Is that correct?

24 DR. MUMLEY: Yes. In the context that
25 you're showing the value in trash load reduction

1 --

2 CHAIRPERSON YOUNG: It shows up on the
3 street.

4 DR. MUMLEY: Yeah.

5 CHAIRPERSON YOUNG: If the greater than
6 10 percent shows up on the street.

7 DR. MUMLEY: Dale, you want to address
8 the current degree of assessment of the
9 effectiveness -

10 MR. BOWYER: Not as a pure credit, per
11 se, but as impact on the TMAs that would show up
12 in your visual assessment.

13 DR. MUMLEY: Trash Management Area.

14 MR. BOWYER: In the actual TMAs. In
15 other words, source control has impact, we all
16 agree it has impact. We're giving this premium,
17 this 10 percent credit, as Tom said, off the top,
18 but we capped it there.

19 VICE CHAIR MCGRATH: With relatively
20 little documentation. Is that correct?

21 MR. BOWYER: We want to see that they are
22 implementing it. Basically what they're showing
23 is that their source control measures are similar
24 enough to the communities where we have the
25 documentation that established those percentages

1 in the first place. So they need to show that
2 they're similar enough to those.

3 CHAIRPERSON YOUNG: Let's be clear that
4 what it says on page C.10.5, page 108, sorry, I
5 have a slightly different version because I
6 didn't want to waste paper. Okay, it says
7 "Permittees must provide substantive and credible
8 evidence that these actions reduce trash by the
9 claimed value."

10 MR. WOLFE: And then I think it's
11 significant where we say a Permittee may
12 reference studies in other jurisdictions.

13 CHAIRPERSON YOUNG: In other
14 jurisdictions.

15 MR. WOLFE: If it provides evidence the
16 implementation --

17 CHAIRPERSON YOUNG: It's not enough, for
18 example, to just say, "Here, I have a bag ban on
19 the books." They have to say, "Well, and it's
20 similar enough to someone else that we anticipate
21 that this is going to be the percentage
22 reduction. And I am making a point of this
23 because I recall that Mr. Johns from PCEP said
24 that he could not find justification for the 10
25 percent in the record. And I think what we're

1 saying is the credit is up to 10 percent, but
2 what you do has to be consistent with either
3 supported by your own substantial evidence, or
4 consistent with what somebody else did, that they
5 supported with substantial evidence, and then you
6 get that percentage of credit, which may or may
7 not be 10 percent, it may be less than 10
8 percent. Did I get that right? Thank you.

9 Now, just to make absolutely clear that
10 you guys understood each other, the off the top
11 credit for source control is capped at 10
12 percent, but if they do source control actions
13 that presumably will reduce the amount of trash
14 that shows up in the streets, they're getting
15 credit for the reduction in trash in the streets
16 with the rest of the permit.

17 MR. WOLFE: And that's why we say it's
18 potentially a double-dip. I mean, our ultimate
19 goal here is to reach the zero trash goal, but in
20 this permit we're saying towards your
21 intermediate steps, you're getting right off the
22 top, as long as you verify it, 10 percent. And
23 then you can show what you're able to determine
24 in the trash management areas.

25 CHAIRPERSON YOUNG: So the other issue

1 that came up with respect to Source Control was
2 that a lot of Cities said, "Well, we've already
3 done the bag bans and we've already done
4 Styrofoam bans, and now we want to do other
5 things, and we want credit for all of these other
6 things." And that just sort of doesn't work
7 because pretty soon we've given so many credits
8 off the top that it's going to be very very
9 difficult in the long run when those credits go
10 away for people to actually meet the later
11 requirements of the permit.

12 MR. WOLFE: That's our concern.

13 CHAIRPERSON YOUNG: So we don't want to
14 discourage in any way doing other kinds of source
15 reduction, but I think we can't just keep going
16 on and on and on, otherwise we would be giving
17 100 percent credit and we'd still have trash on
18 the streets and where would we be?

19 MR. WOLFE: Well, this is consistent with
20 the message that I've been giving at the last 15
21 or 20 City Council Meetings that I've gone to, to
22 support or discuss a product ban, and said that
23 this is one of many actions you need to consider
24 as you work towards meeting the zero trash goal,
25 but it's not -- we're pleased your evaluating

1 where it fits into your program, but don't view
2 it as the be all end all, it's one in sort of a
3 portfolio of actions you're going to need to take
4 to ultimately reach that zero trash goal.

5 MR. KISSINGER: So let me just
6 contextualize it first and then I have a series
7 of questions. So we've been talking about source
8 control, 10 percent up from five that makes
9 sense. Then there's the additional creek and
10 shoreline cleanup --

11 DR. MUMLEY: That's the next issue. If
12 you can hold on, I'll speak to that once we're
13 done with the Source Control discussion.

14 MR. KISSINGER: Okay.

15 CHAIRPERSON YOUNG: Okay, just on source
16 control.

17 DR. AJAMI: What is our baseline, I
18 guess, then? So do we start -- do we start
19 saying, okay, right now you are in this status?
20 And then from here on, that's how we're going to
21 calculate how you decrease trash? So I guess I'm
22 trying to get back to your point of, if they have
23 already done a few things, and they have already
24 decreased their trash load, you know, the source.
25 Do we start the time from the time they started

1 these efforts? Or do we start the time now?

2 Does that make sense?

3 DR. MUMLEY: Yeah, and I think the
4 simple, hopefully the simple answer is, we will
5 recognize any source control effort that has been
6 at least going back to 2009, and actually I see
7 no reason to constrain any of these efforts
8 because their value, it's all about attending to
9 our concern with trash that was generated, the
10 basis for the requirements in the last permit.
11 So anything associated with reduction of trash, I
12 believe we're recognizing.

13 MR. BOWYER: The City of Berkeley had a
14 Styrofoam ban in place in the '70s, and we've
15 accepted that because we saw no reason to
16 penalize them for being so far ahead at the time.

17 DR. MUMLEY: So again, just one more shot
18 at this. I really do appreciate that many of the
19 communities are being very progressive in this
20 territory, and we will be shoulder to shoulder
21 with them. Bruce, as you just said, he is on
22 call to show up to City Council Meetings. Well,
23 there are a lot of resources associated with
24 taking on these efforts, political resources,
25 etc. So wear it shoulder to shoulder, but I

1 would offer to the municipalities is, you
2 generate evidence through your observations, your
3 assessments, that you have particular problematic
4 types of trash, we now have a foundation for
5 saying, so if I'm going to take an action to
6 control that source, we can value that in terms
7 of recognized load reductions in the trash
8 management areas because their actions directly
9 relate to observations of the prevalence of a
10 particular type of trash, and therefore the
11 action to control the source should directly
12 relate towards reductions in that part of the
13 trash load, so again it's --

14 CHAIRPERSON YOUNG: So they are getting
15 credit for it, it's just not -- they're getting
16 credit for the discharge reductions as a part of
17 the larger permit.

18 DR. MUMLEY: You get the actual value of
19 it versus sort of the upfront sort of number.

20 CHAIRPERSON YOUNG: Yeah.

21 VICE CHAIR MCGRATH: Can I follow that
22 up? And I love the word "contextualize it." So
23 let's say the City of Oakland has a trash
24 separator and they collected information that
25 says 10 percent of their trash that they collect

1 in that is cups from take-out coffee places. And
2 they put together a program that moves them
3 substantially towards people bringing their own
4 cups or recycling their cups, or something that
5 works. They have the potential to get credit for
6 that; it doesn't have to be just observation on
7 the street. And I recognize that this is
8 material that's already being captured, but to
9 the degree that you can prevent it from getting
10 into the trash separator in the first place, the
11 things are going to work better and be lower
12 maintenance. So is there still potential for
13 further credits if they put together a robust
14 program that's related to the trash problem that
15 they have specifically?

16 CHAIRPERSON YOUNG: Only up to the 10
17 percent cap -- correct me if I'm wrong -- as what
18 we're calling an upfront credit. They are going
19 to get credit for it if it works because there
20 won't be a whole bunch of cups on the street, so
21 when they go out and do the observations, they'll
22 have 10 percent less trash. So they're getting
23 credit for it, it's just not --

24 VICE CHAIR MCGRATH: If it works.

25 CHAIRPERSON YOUNG: If it works, it's

1 just not in Part 4.

2 DR. MUMLEY: So Board Member Young
3 answered the question the way I was going to do
4 it, if they can show that -- because full trash
5 capture systems are a good way to figure out what
6 is the quantity and type of trash associated with
7 a particular drainage area, and if they can show
8 that that is representative of drainages, you
9 know in other trash management areas, trash
10 generation areas and that 10 percent of the trash
11 are these cups, and then they take action to
12 control the source of those cups, they should
13 through some verification observation show the
14 direct benefit in those landscapes in their
15 jurisdictions through that part of the permit
16 requirement versus the upfront.

17 CHAIRPERSON YOUNG: Okay, since that was
18 so simple, let's move on to the offsets, unless
19 you --

20 MR. BOWYER: I was going to say there is
21 even another way written into the provision which
22 allows them to come forth with substantial
23 information that frees them from doing the visual
24 assessment if they can demonstrate that the
25 actions that led to a particular result are taken

1 in a particular way, and then they bring that
2 whole data set to the Executive Officer. In
3 other words, we have written in a opportunity for
4 them to make other kinds of substantial showings,
5 documentation that is maybe more efficient than
6 visual assessment and they can then get value in
7 particular TMAs where they can show these actions
8 are taking place in a particularly documented
9 way.

10 CHAIRPERSON YOUNG: And that is in the
11 Section entitled Visual Assessment, which is Part
12 B, on my version it's 107, it's Item 4, it's the
13 one that the Chair is on record really not
14 liking, but it's in there anyway.

15 VICE CHAIR MCGRATH: No editorial
16 comments allowed.

17 CHAIRPERSON YOUNG: Other Offsets. No,
18 that was on record at the workshop, it's all
19 kosher.

20 DR. MUMLEY: Okay, moving on?

21 CHAIRPERSON YOUNG: Yes.

22 DR. MUMLEY: Okay, so there's two other
23 areas of the permit, only one got attention
24 during the hearing yesterday to my knowledge,
25 maybe I'm overlooking something, it's offset

1 value for cleanup, as well as offset value of
2 direct discharge control through a more
3 comprehensive program. Most, if not all of the
4 testimony was regarding creek cleanups, not on
5 the direct discharge program. But just to
6 clarify for the record, in both cases we received
7 testimony on both those conditions in July,
8 wanting more value for those offset options, and
9 we got those comments in writing, as well, and in
10 Response to Comments we have revised the
11 Tentative Order increasing the offset value in
12 both cases. And so somebody tell me, off the top
13 of my head, I might want to say the number wrong,
14 so creek cleanups, we increase the value of creek
15 cleanups from five to 10, and then direct
16 discharge controls from 10 to 15. So now, again,
17 I have to say the parties that asked, well, maybe
18 it varies, but we gave an increase to creek
19 cleanup and some parties say, well, great, now we
20 want more. That's kind of obvious, what I'm
21 saying here. And our position is we stand by
22 what's in the record because, again, we value
23 these creek cleanups, but they are not solving --
24 partially they have an impact on solving the
25 problem, but the reason why we've presented the

1 cap on the offset is that if we're not solving
2 the problem, we increase value to these cleanups
3 and we'll have continuous diminishing returns.
4 And there is also this challenge, and it's not a
5 simple thing to grasp, but as Keith pointed out
6 in his presentation there's multiple reasons why
7 we say it should be a 10:1 offset because it
8 starts with an apples and oranges, we're talking
9 about I'm cleaning up this much trash volume, so
10 a static volume, and I'm going to compare that to
11 a rate of discharge volume per year. So how do I
12 show that that volume is an ongoing load
13 reduction? And by the way, and then we're
14 comparing that volume to a baseline volume, which
15 we know has gross uncertainties associated with
16 it, This may not be the right way to explain it,
17 but Leslie Estes from Oakland yesterday spoke to
18 their on land cleanups, which is a different
19 issue. On land cleanups are valued and if
20 they're effective, they get the direct benefits.
21 It's not a volume-based benefit, it's they've
22 prevented trash from getting in the system, they
23 can claim the equivalent of full trash capture if
24 they do effective recurring cleanup on land. So
25 actually the two percenters from El Cerrito

1 misrepresented their on land cleanups being
2 constrained by the same thing, and I would say,
3 no, the on land cleanups are valued as to what
4 value they have, and they are not bound by this
5 10:1 factor because we don't value them by
6 volume, we value them by effectiveness. If the
7 cleanups keep trash out of the storm drain system
8 in a given area, then they've managed trash
9 generation from that area, they get to claim the
10 load reduction associated with that management.

11 But back to the creek cleanups, back to
12 Leslie, she was saying their on-land cleanups
13 constituted like 400 times the baseline load
14 estimate for Oakland. That just points out that
15 we know that those baseline estimates have order
16 of magnitude differences, and so communities that
17 have challenges like Oakland, we know they're
18 gross under-estimations. Perhaps in the cleaner
19 cities they might be more representative, but
20 generally speaking where you have a lot of trash
21 buildup in the creeks, it's areas where you have
22 a lot of trash generation, and where likely the
23 load estimates are low. So comparing static to
24 a rate, and that the basis of the rate volume is
25 very uncertain, the 10:1 we believe is a

1 reasonable accommodation to give value to those
2 community cleanups.

3 MR. KISSINGER: Since you're talking
4 about the 10:1 figure, can you explain, I mean, I
5 think I understand your point, but I guess what
6 was interesting and obviously wasn't just
7 coincidental, was the chorus, the repetitive
8 chorus of everyone coming up with sort of the
9 bloody shirt that everyone waved. Give us 3:1,
10 you know, give us 15 percent, and we'll be happy.
11 I'm not sure that that's right, but... But I
12 guess I think I understand your point, which is
13 if you're just doing two cleanups a year versus a
14 regular ongoing program where you're cleaning up,
15 or capturing, it's different and therefore that's
16 the reason for the ratio. But tell me the harm
17 or the downside to conceding this point, to
18 getting the 3:1. Tell me to the extent you can
19 the concrete erosion of the effectiveness of this
20 policy, particularly against the backdrop of
21 compelling arguments made of other benefits that
22 come from this; in the same way that the Green
23 Infrastructure project has other benefits, the
24 community engagement is a benefit that I,
25 speaking for myself, I think is real and engaging

1 the community to do things for their community.

2 So tell me why doing this would be a problem.

3 DR. MUMLEY: The main problem is it
4 results in an artificial value of reduction of
5 trash load, right? They're intercepting trash
6 that has been discharged, some of which caught up
7 in the creek banks and maybe it won't get
8 discharged because it's there, so there is
9 certainly a direct degree of benefit. But the
10 fact is it's still not keeping the trash from
11 getting to that creek in the first place, other
12 than to the extent that the public involved in
13 those efforts presumably are the type of people
14 who actually aren't creating the trash. I don't
15 want to say this in an overly negative fashion,
16 but, yes, there are hundreds of volunteers in
17 communities, but there are tens of thousands and
18 hundreds of thousands of people who are not
19 volunteering, who are the sources of it. So to
20 the extent that those volunteers are affecting
21 their neighbors and their communities, great, but
22 it's unfortunately a small percentage of the
23 problem. So the bottom line is, if you add that
24 three times value basically, you know, three and
25 a third times value, it translates to that

1 percent less effort to directly control sources
2 of trash in terms of demonstrating compliance
3 with the load reduction requirements. So it
4 basically delays the inevitable because the more
5 value you would provide for cleanups during this
6 permit term, the higher the bar will be next
7 permit term to get to zero discharge because
8 those cleanups are not -- much of those cleanups
9 are not reducing the discharge, they're just
10 removing the consequence of the discharge.

11 MR. KISSINGER: But the thing that I find
12 so compelling about having the program, not
13 necessarily 3:1 versus 10:1, the thing that's so
14 compelling about it is when you put it up against
15 the fiscal constraints that the communities are
16 facing and, you know, they don't want to raise
17 their taxes when they put it to the voters, but
18 they're running up against the reality that if
19 they don't have the ability to put it to their
20 voters, they're coming to a place where they
21 don't have a means to achieve compliance. And
22 maybe I'm naïve on this score, but by engaging
23 the community as an alternative, who is to say
24 that the activists that you've now created for
25 picking up litter are doing it not just the twice

1 a year when they're in the creek bed, but when
2 they're walking around their community and
3 picking stuff up and telling the guy that they
4 see that dropped something, "Hey, pick that up,
5 we're going to have to pay for that."

6 DR. MUMLEY: Well, yeah, you're right on
7 and I know plenty of people in the audience
8 behind me are saying, yeah, because I know that,
9 I do that, I pick up bags of stuff all the time,
10 there are people who go on their walks and that's
11 what they do. It's a growing number of people
12 doing that and that's why I appreciate what
13 you're saying, isn't this part of instigating a
14 movement, you know, feeding, catalyzing the need
15 for this cultural change that we not become a
16 trashing society? Absolutely. But you did say
17 something fundamentally correct: why are the
18 communities pushing hard for this? The cost of
19 compliance. There are costs associated with
20 these volunteer cleanups because they still have
21 to have some dedicated staff. You hear sometimes
22 that the municipal employees are volunteering
23 their time, sometimes they're doing it on the
24 dollar, but, you know, it's a relatively cheap
25 way to collect trash compared to having to do it

1 with municipal employees, or to take on these
2 other actions to reduce trash, so it's certainly
3 cost-benefit.

4 So here's what I would suggest, too.
5 We're saying you get this credit, this value
6 relative to compliance, and if you can't come
7 into compliance through the other means, "Oh, we
8 didn't get there, but we've done more cleanups,"
9 and we consider that in our review with the 40
10 percent load reduction that there were some
11 pretty high values being claimed by communities
12 for this additional cleanup, and we kind of
13 factored it in in saying, well, you're in
14 noncompliance, but you've mitigated. So it's
15 that sort of information that we can use in terms
16 of enforcement discretion, so it's a matter of do
17 you allow in advance that you're going to get
18 this value? Or will you consider this in
19 determining the appropriate response to
20 noncompliance for the load reduction? And we've
21 created a bar now of 10 percent upfront, and if
22 you don't meet your load reduction requirement,
23 but you say, "But look, we've done a lot more
24 cleanup, it would value it much more than what
25 you allowed us to claim," would we weigh that?

1 We would weigh that, obviously, in consideration
2 of an appropriate enforcement response on at
3 least a short term basis, again, there's the long
4 term consequence of putting a high allowance for
5 creek cleanup that doesn't solve the problem.

6 CHAIRPERSON YOUNG: Okay, so this
7 discussion has focused on the idea that the creek
8 cleanups are mitigation after the fact, they
9 don't solve the problem, and with all of the
10 advantages of creek cleanups one of the
11 disadvantages is that you have to keep going out
12 and cleaning up and cleaning up because you
13 haven't solved the problem. So that's one line
14 of discussion. I'd like to ask a question about
15 another line of discussion, though, on this item
16 which is that I looked over the last permit and
17 we had nothing in that permit that said,
18 explicitly said that we were going to credit
19 anything for creek cleanups. So both permits
20 have the same requirement for hot spot cleanups
21 in one section, this is a totally different
22 thing. And in our last permit, we didn't
23 explicitly say we were going to give any credit
24 at all, so this is a new element saying we will
25 explicitly give a 10:1 credit, you know, whether

1 or not 10:1 is the right number, but I mean in
2 some ways this is a new thing. And it was
3 curious to me that so many people got up
4 yesterday and said this is going to clean all the
5 creek cleanups because, to me, it provides an
6 incentive where we didn't have an incentive
7 before explicitly in our permit. So would you
8 care to comment on that part? Or did I just
9 comment?

10 MR. WOLFE: Well, that is correct. And I
11 actually do recall at the trash workshops we had
12 last December that this issue was brought up and
13 a lot of parties said we want to get credit for
14 this and have this be part of the permit because
15 it is important to move forward. And you were
16 one who said, yes, I agree, I'd like to see it
17 somewhere in the permit, so it's somewhere in the
18 permit, but it's not necessarily -- we sort of
19 view it almost as something that may be outside
20 the trash requirements per se because it really
21 is mitigation of a discharge, rather than
22 prevention of the discharge.

23 MR. KISSINGER: But I don't understand
24 that point, to be honest with you. I mean, when
25 we talk about the trash catchers in the system,

1 that's the same thing, the discharge has already
2 happened if that's what you want to say. I mean,
3 how is that any different than picking up
4 something that's about to go into a creek with
5 something that's about to go into the storm
6 discharge system? How is that any different?

7 CHAIRPERSON YOUNG: The trash capture
8 devices are meant to be placed before the trash
9 actually gets into the receiving waters, and what
10 we're talking about is cleanups along the banks
11 of the receiving waters, so that's --

12 MR. KISSINGER: I mean, arguably maybe
13 some were in the waters and some were about to go
14 in the waters, anyway, I don't see that point.

15 VICE CHAIR MCGRATH: I'd like to offer a
16 clarification. I think it's appropriate to do
17 this and I think it's appropriate to have an
18 amount. There is one distinction, I mean, I
19 spent the better part of a day in the creeks in
20 San Jose looking at what goes on, and the
21 homeless problem is a terrible problem for the
22 Cities, all the Cities, particularly San Jose,
23 Oakland, and Berkeley. And I'm fairly close to
24 it. The advantage of what can be done in some
25 circumstances like in Coyote is that if there is

1 trash not in the stream, but in the overflow
2 area, and you do remove it before it floods,
3 you've kept it out. So I can buy at this time
4 with documentation the idea that there really is
5 a prevention and a credit for it. And I'm not
6 averse to down the road any municipal government
7 who begins to look at the homeless problem and
8 the trash problem and begin to bend their
9 programs to try to accomplish both coming in and
10 saying, "We think we have a measure to say we're
11 actually keeping it out of the system in this way
12 and that way and the other way," and asking for
13 more. I think we've got the flexibility to do
14 that in other aspects of this, but I think there
15 needs to be a rigorous showing and I don't know
16 that it's possible, I mean, it is heartbreaking
17 to deal with the homeless problem and be working
18 in the City to try to do that, at every level
19 it's very difficult for everybody.

20 DR. MUMLEY: So you brought up a point
21 that I was going to suggest, similar to what I
22 stated regarding ability to get more value for
23 source control if you demonstrate the value of it
24 in reducing loading of trash from your trash
25 generation and your trash management areas. And

1 you're saying a similar thing, that if a
2 Permittee can show that its cleanup actions have
3 prevented trash on land in the vicinity of the
4 creeks, were being captured before they get in
5 the creeks, that's different than taking trash
6 out of the creeks that have been discharged. And
7 so there's a nuance there and perhaps you're
8 saying that the door is cracked, that it's part
9 of its overall program if they can show that it's
10 keeping discharge of trash out of the creek
11 through its cleanups, that could be argued to be
12 evidence of effectiveness of trash management
13 action, but it has to again be done -- that would
14 constitute a need for sort of a robust assessment
15 to demonstrate that indeed that's a recurring
16 benefit relative to ongoing load reduction. It
17 would require more than just the bare bones
18 volunteer cleanup perhaps one time a year to make
19 that case. But there is a possibility and a
20 stretch of what it will take.

21 DR. AJAMI: Can I add something? I would
22 actually see a lot more value if we would create
23 some sort of like a half day, two hour program
24 that can be shown at schools to the children,
25 then that would change the behavior from sort of

1 top down, rather than just, you know, going to
2 the creek. I mean, I very much value cleaning up
3 the creeks, and I think that's like a really
4 selfless and hard effort putting together these
5 creek cleanups and getting the volunteers to
6 come, but I think we need to have a top down
7 approach, as well, to make sure that you're sort
8 of hitting all the sides. So I agree, I think if
9 you provide a lot of credit for the creek
10 cleanup, then you take the incentive from putting
11 more effort into changing the behavior for a
12 broader society.

13 CHAIRPERSON YOUNG: So there's one more
14 thing that I want to make sure I'm thinking of
15 correctly in terms of the context of this. In
16 theory, everyone is in compliance out there and
17 they've already reduced trash by 40 percent until
18 2014, let's just pause it at that hypothetical
19 for the moment. And then we're asking for a 70
20 percent reduction by 2017. Meanwhile, we're
21 giving credits and offsets for a total of up to
22 35 percent of the total reduction, and that's
23 very generous in terms of, I mean, one can
24 imagine that Cities could go out and do almost
25 nothing else but take advantage of these offsets

1 and source controls, and therefore really not
2 make any progress on the rest of the trash
3 problem and still get pretty darn close to their
4 70 percent. So I'm thinking that, you know,
5 there is a sweet spot, there's the Goldilocks
6 spot that we need to hit with all this, but I did
7 want to put it in the context of what I'd see as
8 a generous cumulative total for all these things,
9 even given the 1:10 multiplier or divider.

10 MR. KISSINGER: Except -- except -- the
11 rubber meets the road when we get to the zero
12 percent, and if they've been living on the crush
13 of those offsets, and we in fact are saying zero
14 percent, they do it at their peril. So my
15 reaction is, again, anyway we can talk more about
16 it, but that's informing. But let me ask another
17 question. I don't know if we're dealing with it
18 later, but what about the Supplemental and the
19 language with regard to the monitoring --

20 DR. MUMLEY: I thought I'd address that
21 directly.

22 MR. KISSINGER: Okay, great.

23 CHAIRPERSON YOUNG: Was there anything
24 more on the offsets and credits? Okay.

25 DR. MUMLEY: And then one more statement

1 for the record regarding this offset thing. We
2 recognize just as you do, as you just mentioned,
3 Board Member Young, that municipalities do have
4 the option of pursuing additional offsets for the
5 Direct Discharge Control Program versus the
6 cleanup, albeit it comes at greater cost. It's a
7 more burdensome option, that's why it's less
8 desirable for the communities than sustaining the
9 mostly volunteer-based cleanups, but it is an
10 option, costs more.

11 So before we go, I'm going to directly
12 address the supplemental, both the supplemental
13 the staff produced, and the view of the
14 Supplemental that Board Member Young produced.

15 Before that briefly I just want for the
16 record to speak to the statewide trash amendments
17 because the Baykeeper made in its testimony
18 yesterday, said that, well, what we're doing is
19 not consistent with the Trash Amendments, and I
20 want to speak to the record. To the extent that
21 this permit is not, is subject to review and
22 amendment because, by the way, the statewide
23 provisions are not currently effective, they've
24 been adopted by the State Board, but they have
25 yet to make it through legal approval ultimately

1 by the office of Administrative Law. Upon its
2 effective date, then this Board and the other
3 Regional Boards have 18 months to put its current
4 Permittees on notice that they need to take
5 action in order for the Board to amend the
6 permits to be consistent with those provisions.
7 I personally worked hard to make sure that those
8 provisions were going to call for actions
9 consistent with what we expected to be
10 recommending and this Board approving, and I was
11 confident when the provisions were adopted by the
12 State Board, and I am confident today that we
13 indeed are. But if there's any question about
14 that, that's subject to a process of review and,
15 as necessary, amendment. But I'm forecasting
16 that we're going to be able to make the case that
17 we can go through every element of the trash
18 provisions and assert that what we have here is
19 equivalent, if not better, and I think the latter
20 is very important that there's numerous aspects
21 of what we're doing here that we feel are better
22 than the approach that the State Board
23 established statewide, with cause because we
24 have, building on the experience of our
25 communities and their knowledge about trash in

1 our waterways. But we are well on a pace to
2 comply with and beyond those provisions. And I
3 could go into specifics, but I don't think it's
4 necessary for the record because, as necessary,
5 we will have to do that if there's a challenge to
6 the consistency of these requirements that you
7 adopt later. I'm hoping that, I'm pretty
8 confident, that we won't have to do an Amendment,
9 we'll just have to at that point put something in
10 the record that demonstrates that we are
11 equivalent. We may or may not have to have a
12 Board hearing to do that. And that could be a
13 couple years down the road because it's 18 months
14 after, which has yet to be done and we don't know
15 the legal fate of what --

16 MR. KISSINGER: About the time of the
17 expiration of this permit.

18 MR. MUMLEY: So that's on the Amendment.
19 So the last two things, well, three, one thing is
20 more of, I'll call it, a positive thing, is that
21 we know that there are other sources of trash
22 associated with the Permittee's jurisdiction that
23 they don't have direct control over, and that's
24 the transit facilities, schools, etc., and so we
25 are committed and Caltrans has permit

1 requirements specific to this region to reduce
2 trash from its systems, we're working with them,
3 we're pushing them, we're on the verge of pushing
4 them harder. But meanwhile they have engaged
5 with the municipalities because they have some
6 mechanism to provide monies to the municipalities
7 to help offset their own trash load reduction
8 requirements, etc. So there's things happening
9 there. We have had only initial discussions, but
10 I'm ready to start pushing staff to increase our
11 dialogue with BART and the other major
12 transportation systems because we know that those
13 are high trash generation areas, and we have to
14 do that in concert with the communities that
15 house those transit centers because trash doesn't
16 know whether it's on BART property, or on the
17 streets leading to that, so we recognize we have
18 an obligation and other non-MRP Permittees have
19 an obligation, and we're committed to make that
20 happen.

21 And schools is an issue. Schools are
22 currently not explicitly designated for coverage
23 under this model for a General Permit, they may
24 be designated. There's a process for which the
25 Regions can designate, so there's an open

1 invitation to Permittees to give us evidence that
2 a School District school system is a significant
3 source of trash, we would entertain making a
4 designation, or otherwise perhaps the threat of a
5 designation could get a lot done.

6 VICE CHAIR MCGRATH: You've seen me
7 coming. I think we have to do something about
8 schools and those that know me well know that
9 they never get the knife in the back, they always
10 get it in the front, and they always know exactly
11 what they have to do to not get the knife. From
12 the staff's perspective --

13 MR. WOLFE: I think I'll write that down.

14 VICE CHAIR MCGRATH: -- I think we need
15 to directly address the schools with making it
16 clear to them that there's an easy way or a hard
17 way, and from the perspective of the Executive
18 Officer, you're willing to spend some time over
19 the next year going through either on a pilot
20 basis with support from your Board to begin to
21 talk to the Superintendents of each County and
22 figure out how best we could do this on a
23 compliance basis without necessarily designating
24 them, but we're going to pursue this path. I
25 will help.

1 MR. WOLFE: That's a priority, that's one
2 of these evolutions that we need to be working
3 with the communities on.

4 VICE CHAIR MCGRATH: That's on my to-do
5 list.

6 MR. BOWYER: We actually have already
7 done this in the past primarily working through
8 the Permittee Cities when they come to us and say
9 we have an issue with this particular School
10 District. We can talk to the School District and
11 say, "Please be a good neighbor, work with your
12 Permittee City. We have the option of
13 prioritizing you for Phase 2 designation." You
14 know, that sort of thing.

15 CHAIRPERSON YOUNG: You're just not as
16 scary as Jim.

17 VICE CHAIR MCGRATH: Perhaps not as
18 direct.

19 MR. WOLFE: I guess it depends on which
20 side the knife is going in.

21 VICE CHAIR MCGRATH: No, no, we have to
22 do something about schools, and if they're
23 willing to do it, that's great.

24 DR. AJAMI: Sorry, this was a brand new
25 thing for me, that the Cities cannot necessarily

1 coordinate things with the School Districts. So
2 is this the same --

3 MR. WOLFE: You probably see it with
4 Stanford and Palo Alto.

5 DR. AJAMI: That's true. I guess I was
6 not looking at Stanford as a School District, but
7 you're right.

8 MR. KISSINGER: Stanford has no problem
9 coordinating.

10 DR. AJAMI: Stanford --

11 MR. WOLFE: Or maybe U.C. and Berkeley.

12 DR. AJAMI: Different species. But how
13 do generally, like beyond water quality, how do
14 generally the School Districts and Cities
15 coordinate on other public related issues?

16 MR. WOLFE: I think you're hearing a moan
17 because it's problematic. And this has actually
18 come up historically in our permitting through
19 the new and redevelopment, recognizing that
20 essentially we're pushing the Cities, even on
21 their own facilities, to implement these
22 measures, but that doesn't necessarily apply to
23 the schools unless they fit in all the other size
24 requirements. So it isn't a one-size-fits-all.
25 Yes, it's a common sense that, "Oh, if we deal

1 with the Cities and Counties, we're effecting all
2 local government agencies." But, no, we're not.
3 And that's what the Phase 2, the small municipal
4 stormwater permit does call out the ability.
5 Most of the colleges and universities are named,
6 but then it doesn't name the one through 12
7 School Districts, but allows us to name those on
8 a case-by-case basis.

9 DR. AJAMI: Thank you.

10 CHAIRPERSON YOUNG: So prior to moving on
11 to the Supplemental -- or let me ask you, are you
12 going to circle back to the issue that -- hmmm,
13 who was it -- somebody raised, I think it was
14 Baykeeper, about the fact that, or they allege
15 that the sites that we have listed as our 303(d)
16 sites are not getting cleaned up and that we
17 should therefore do a trash TMDL instead of, or
18 in addition to what we're doing here? And let me
19 just ask my question --

20 MR. WOLFE: Well, that's sort of a
21 comment off topic because we're really
22 considering the permit. We anticipate through
23 this permit, and this is the second version of
24 the Region-wide Permit, that we will address the
25 bulk of the trash. It's been very clear during

1 this first Permit term that issues such as
2 homelessness, which we really didn't talk about
3 in the 2009 vintage, and the direct dumping and
4 all, it's becoming much clearer what is sort of
5 generated through the storm drain system, what is
6 not. We at some point, by pushing the Cities to
7 address those direct discharges through some of
8 our work on homeless issues, we can avoid the
9 need to do TMDL. We always have that ability,
10 but we're optimistic, our whole intent actually,
11 or one of the intents of the Region-wide Permit,
12 was to use that as the vehicle to address the
13 trash from stormwater systems without actually
14 having to do the TMDL.

15 CHAIRPERSON YOUNG: So if I may restate
16 what you just said, what we are doing here does
17 not in any way preclude us from deciding that we
18 want to do a TMDL later on.

19 MR. WOLFE: Correct.

20 CHAIRPERSON YOUNG: What we're doing here
21 is a big part of solving the problem that a TMDL
22 would try to solve, and the other actions that we
23 have committed to as a Board with respect to
24 direct discharge and schools and sending Jim out
25 and everything else, may well make it so that we

1 have solved the problem using other mechanisms.

2 MR. WOLFE: Right. We want to be able to
3 demonstrate using our existing regulatory
4 controls such as this permit, the small MS4
5 permit, even for instance the 13 2P7 letters
6 we've written to some of the Cities, that those
7 are the regulatory controls we've been able to
8 use to achieve water quality standards for trash,
9 without having to go through the whole load
10 allocation and multiple steps of doing a TMDL.
11 But that said, we still reserve the ability to
12 take on that as a TMDL project at some point.

13 CHAIRPERSON YOUNG: Thank you. I wanted
14 that on the record. I appreciate it.

15 DR. MUMLEY: Yeah, I could elaborate, but
16 I don't think at this time, we don't need it for
17 now.

18 Okay, so the last two issues on Trash is
19 I want to walk through the Supplemental that we
20 presented and then I will give staff reaction to
21 what Board Member Young handed out yesterday. So
22 what I -- what we put forward -- I keep using the
23 word "I" since I wrote it with Dale's assistance
24 here, it has to do with we put what we considered
25 clarification into the Fact Sheets supporting the

1 Trash Provision associated with visual
2 assessments of outcomes of other trash management
3 actions. It refers to the requirement on page
4 107 of the Permit that requires these visual
5 assessments to verify the effectiveness of non-
6 full trash capture actions, and then that
7 requirement establishes a number of criteria that
8 must be met or exceeded to conduct the visual on
9 land assessment method, and note that it, as
10 stated, it's not specific arguably for good, or
11 not so good, in terms of what is the frequency of
12 observation that's necessary to adequately
13 determine or verify the effectiveness of the
14 action? There is a narrative that makes it
15 really clear that the assessments must be
16 sufficient to determine or verify effectiveness
17 of actions or combination of actions. And so
18 with some specificity, well, you've got to at
19 least do 10 percent of the street area, and some
20 specificity regarding if you're going to try to
21 verify if a particular action is effective, doing
22 observations between those actions is one way to
23 show how effective it is, but we don't speak to
24 how often does that happen. So can I just do one
25 and be done with it?

1 So we went through and said, well, let's
2 put forward perspective for the Board the
3 foundation of what its expectations are. Now
4 mind you, what's in the Fact Sheet is not
5 directly enforceable, it's a statement of
6 expectation, a statement of the basis of the
7 requirement, it allows alternatives to what's
8 specified here could be implemented, and it's
9 written in a way that says, "You make the case
10 that your assessment method works." You know,
11 "If you need some assistance, here is thinking
12 about what factors you have to consider and the
13 concept of, well, if I'm trying to show high
14 trash generation area has been reduced to low, it
15 seems kind of obvious generally speaking,
16 depending on the lay of the land and the source
17 of the trash, you would have to give more
18 attention to that than I'm trying to demonstrate
19 actions that reduce what is already a less
20 intensive generation of trash to lower it, maybe
21 even in some cases it's the opposite in order to
22 do it." So this is, if you will, guidance. But
23 I'm going to say this carefully, but I was struck
24 by the reaction by the Municipalities that, "Oh,
25 my gosh, this is going to triple the cost." What

1 that demonstrated was an intention to do sort of
2 essentially one time assessments because they're
3 looking at -- because we're suggesting, you know,
4 I think Mr. Bobel from Palo Alto, one of our more
5 progressive leaders in communities in this,
6 saying, "Well, this is going to triple our
7 costs." And I'm going, "What is it that this is
8 going to require you to do with what you have...?"
9 Palo Altoans know his systems quite well, why
10 does this translate to triple the cost? If your
11 assessments at one-third this cost are effective,
12 that's all you have to do. But it's translating,
13 I'm hearing the pushback from the Permittees is
14 that this is directing them to do more than they
15 thought they had to do because they were
16 intending to do a very minimal level of
17 assessment, and we're going to be challenged with
18 a likely scenario that the assessments weren't
19 sufficient to demonstrate compliance, and so no
20 surprises is the foundation for this. To be
21 clear, if you submit assessment reports that's
22 bare bones, you better be able to justify
23 alternatively through the Fact Sheet language
24 giving some direction of expectation. But again,
25 that's really the nutshell is that it's not a

1 substantial change, it's a clarification because
2 the narrative is pretty powerful in and of
3 itself, you have to do a visual assessment
4 sufficient to determine the effectiveness of your
5 actions. And these numbers here are a guide, but
6 not mandatory, therefore they are not an added
7 requirement. And that's my presentation, my
8 reaction to the concern about this, and we would
9 consider it a non-substantial change to the
10 Tentative Order because it's really clarifying a
11 narrative requirement in a semi-quantitative
12 manner.

13 CHAIRPERSON YOUNG: Thank you for that
14 explanation. Just another thing maybe to get
15 onto the record, because I know it helps when
16 people understand that there's a long history to
17 this explanation that you're providing in the
18 Supplemental, and I did look back at my notes
19 from previous workshops, and even things that I
20 said in the wrap-up to previous workshops, and as
21 recently as the July 2015 workshop that we had on
22 this package, I did specifically mention that we
23 needed to tie down the frequency of the visual
24 assessments. And I would have thought it would
25 be nice to have in the permit, but having the

1 expectation in the Fact Sheet, as you say, I
2 think helps us avoid just spending a year letting
3 minimally, well, letting the minimum happen,
4 having the Annual Reports come in, and then
5 having you come back and say, "That doesn't meet
6 our standard." So right now we're putting out
7 the standard.

8 I also notice that, I mean, I'm hoping
9 people turned the page over because the last
10 sentence to what you're proposing to add to the
11 Fact Sheet says "lower frequencies than those
12 illustrated above may also be acceptable with
13 justification."

14 DR. MUMLEY: That's my point.

15 CHAIRPERSON YOUNG: Just eyes. Is there
16 anything else that people feel like they want to
17 have on the record on this one?

18 DR. MUMLEY: And just to be clear, the
19 remaining Supplemental points are pretty direct
20 clarification issues. So that's that issue.

21 Then the last, but certainly not least,
22 on trash is I like to give you our perspective,
23 staff's perspective on the language changes
24 recommended by Board Member Young, and the
25 punchline is we consider these pretty good

1 clarifications, not substantial changes, and for
2 the greater good. But let me explain that. So
3 bear in mind that this is an issue of concern
4 raised during the hearing on the trash provisions
5 and in written comments and concerns about
6 monitoring, what are they used for, and what was
7 in the Tentative Order was too vague. So in
8 reaction to that, we crafted this revision and I
9 think what Board Member Young is pointing out,
10 "Well, your revision just leaves a bit to be
11 desired because it implies that there's no
12 monitoring, and it's just developing protocols
13 and methods, and just ultimately we get a program
14 near the end, and then as you stated in your
15 remarks on this, you look at what we wrote in
16 terms of what must be in this stepwise approach.
17 Develop a program and the elements that must be
18 in that plan to develop the program, or really
19 elements of a monitoring program." So the
20 suggestion by Board Member Young to replace, to
21 add the words "develop, replace, or add the
22 proposed receiving water monitoring program" in
23 lieu of "develop and test, tools and protocols."
24 Developing a test, tools and protocols are a
25 component of developing the program, so that's

1 just, I think, a very straightforward
2 clarification.

3 At the top, I think, is a change worth
4 noting is that where it says, "Permittees shall
5 conduct receiving water monitoring," that was
6 brought back from the Tentative Order because we
7 had crossed that out in the Revised Tentative
8 Order and just said Permittees shall develop
9 receiving water monitoring tools and protocols."
10 That's just to emphasize that there is a degree
11 of monitoring that's expected to be conducted
12 during this permit term as part of the
13 development of the program, and it was somewhere
14 between implicit and explicit in the revisions
15 where it would say "develop and test." Well,
16 "test" is a statement, well, to test you have to
17 do something about monitoring in represented
18 locations to associate --

19 CHAIRPERSON YOUNG: The test.

20 DR. MUMLEY: -- the test, in fact the
21 value of these tools, etc. So that is really
22 just a clarification of saying "test" means
23 monitor. Right? And I don't know, where else in
24 here needs to be attended to? Just clarifying
25 that the sites, I mean the testing was implicit

1 because we talked about describe the tools and
2 protocols, describe the discharge receiving water
3 scenarios that we want the tools and protocols to
4 be tested against, and ask what other factors you
5 need to consider in the spatial and temporal
6 representation of your tools and protocols and
7 the testing of them. So all we have here now is
8 an additional statement that your program, your
9 plan to develop the program should identify the
10 sites that you're going to test, and the
11 representativeness of those. So that was
12 implicit, that was going to be part of the
13 complying with the requirement as stated. And
14 then just further statement that the testing
15 should begin in water year 2017-'18. And that
16 statement is logical in that it followed the
17 submittal of the proposed plan to develop the
18 program, which would come by July. It was
19 implicit that you would begin testing that
20 forthcoming winter.

21 Now the degree of monitoring can get
22 folded into the plan, you know, like how quickly
23 and how broadly things can be done. I call
24 attention to the Fact Sheet where we explain our
25 intent is to develop -- not necessarily develop

1 new tools, but develop new tools as part of the
2 box that can be graded, but our intention is to
3 utilize the most cost-effective, simplest tools
4 possible. And that we know that there are some
5 straightforward tools that are currently out
6 there, then we would make a slight adaptation,
7 they may be all we need to do, and they would
8 surrogates for more complicated monitoring,
9 notwithstanding that there will be need for some
10 attention to more complicated monitoring at some
11 point in time, presumably some of that would be
12 accounted for in this program. But we have to
13 emphasize in the Fact Sheet, you know, which you
14 would be emphasizing by adopting, we're looking
15 for simple tools, cost-effective, and that
16 monitoring would begin.

17 And then I guess the other issue I see
18 here is we had proposed that there would be a
19 benefit to doing this work through a third party
20 in terms of assuring its integrity, etc.,
21 avoiding any time challenges of the integrity of
22 the scope, or whatever by a third party that we
23 allowed more time at the end, and Chair Young has
24 added incentive up front that if you do this
25 through a third party recognized by the Executive

1 Officer, you have more time upfront, as well, and
2 a year benefit in terms of beginning the
3 monitoring. So that's essentially an add-on,
4 it's an option, it's not mandatory, so if you go
5 down that path you get a benefit.

6 The other requirement, your other changes
7 are really just kind of a clarification that this
8 is about developing a monitoring program and that
9 development of tools and protocols are part of
10 developing the monitoring program, so the
11 monitoring program should be the noun, not the
12 tools and protocols, where we made the
13 replacement. So I would state that this is not a
14 substantial change to what's been put out there
15 in that, given the time that this was presented,
16 yesterday morning, I mean, it's not a lot of
17 change, that you gave Permittees the opportunity
18 to weigh in on it, they chose not to during the
19 meeting, but they chose to react to other parts
20 of the Supplemental during the meeting as an
21 indication that there was some time to review and
22 consider things. Bottom line is these are in
23 staff's view non-substantial changes, they are
24 clarifications.

25 MS. WON: If I may, speaking of changes,

1 we heard complaints yesterday about how there
2 have been too many changes since the October
3 Revised Tentative Order, and I wanted to, you
4 know, state the obvious that changes are
5 anticipated or expected when adopting permits.
6 The question is whether the change is a logical
7 outgrowth of the initial draft and if it's not,
8 then it requires re-noticing, and here the change
9 that Dr. Young proposes, in my mind, it's going
10 back to the initial proposal of requiring
11 receiving water monitoring, but integrating it
12 with the monitoring protocols that the Permittees
13 wanted, so it's very much within the logical
14 outgrowth rule.

15 CHAIRPERSON YOUNG: And I'm not sure
16 whether this is necessary or not, but I will
17 state for the record that this was discussed,
18 this particular section and the need for
19 specificity was discussed in August 2015 at the
20 workshop. I also brought it up on January 12,
21 2015 at the workshop before that, and the
22 workshop before that, December 10, 2014. So
23 there has been a long discussion and fleshing out
24 on the record of basically what's in here.

25 DR. MUMLEY: That's all we have to say on

1 trash, so if you have any questions of us, we can
2 --

3 MR. WOLFE: Checking in, we're still
4 going to be talking about PCBs and then any
5 further discussion. I'm starting to hear a
6 little growl from Jim's stomach and just want to
7 see whether we want to go ahead and order
8 lunches, or whether you're optimistic you can --

9 VICE CHAIR MCGRATH: Let's go another
10 half hour.

11 MR. WOLFE: Okay.

12 VICE CHAIR MCGRATH: I have a power bar.
13 Nobody will get hurt.

14 DR. MUMLEY: Okay, I'll move on then to
15 this last issue which has to do with the PCB
16 requirements, although as we've stated they're
17 parallel requirements in Mercury, but PCBs are
18 really the poster pollutant driving this concern
19 with the enforceable, the Action Levels versus
20 the concept that they be changed to Numeric
21 Action Levels. So I will speak to two aspects,
22 two lines of response I'm going to give you.
23 First, I am going to rebut statements made by
24 BASMAA specifically by their counsel, Bob Falk,
25 on the issue, but then I will explain hopefully

1 to your benefit why we feel that our approach is
2 the right way to go, why the Numeric Limits are
3 preferable to the Action Levels and, as
4 necessary, explain the basis of it and why we
5 think it will work.

6 So first of all, I'm going to start with
7 a negative because I have to state for the record
8 that Bob Falk stated an untruth in his testimony,
9 he specifically said in reaction to the Response
10 to Comments where he in his comments on behalf of
11 the Santa Clara Valley Program said we'd like
12 clarification that these, what we called Load
13 Reduction Performance Criteria, are Action
14 Levels, not Numeric Limits. And in reaction we
15 said, no, to clarify they are Numeric Limits
16 intended to be enforceable. So he stated on the
17 record that, "Oh, this is the first time these
18 Numeric performance criteria were characterized
19 as Numeric Effluent Limits without additional
20 opportunity for public comment." Well, perhaps
21 Mr. Falk wasn't in the many many many many
22 meetings that we were clear, clear as can be that
23 the intention is that these numbers were directly
24 enforceable. And there are parties in the
25 audience who were at those meetings, and I'm

1 going to give them the benefit, many of them said
2 for the record they support the comments by
3 BASMAA, I don't think it was intended to say we
4 also support the statement because they were in
5 plenty of meetings with us where we were really
6 clear that these numbers were intended to be
7 enforceable limits. So I don't want to imply
8 that those parties that said we endorsed the
9 BASMAA comments were party to that, but this all
10 started back -- we started the dialogue with
11 focused let's see if we can come up with a metric
12 approach, and I'll explain in more detail why the
13 Action Level approach didn't work out, because we
14 provided plenty of opportunity for that, but we
15 were really clear in advance of, and then in what
16 we call the Administrative Draft, that these were
17 Numeric Limits, we are really clear in the
18 ongoing dialogue with the Permittees in several
19 meetings that we -- we had a heated discussion
20 over this because of this issue. And it's
21 crystal clear. So I won't overstate that, I just
22 wanted to make sure.

23 I also want to state that Mr. Falk
24 misrepresented -- we challenged him in written
25 comments on this and I'm going to say it for the

1 record because he brought it up again, saying
2 that the State Board does not embrace Numeric
3 Limits, and the Blue Ribbon Panel doesn't support
4 Effluent Limits, and the State Board through its
5 General Permits hasn't used Action Levels versus
6 Numeric Limits -- misrepresentation, grossly.
7 Because Action Levels mean lots of different
8 things, you know, in the context of the General
9 Permits for Construction, make some sense that in
10 order to create an Effluent Limit that says you
11 are going to be held in compliance based on the
12 quality of turbidity or suspended sediment in
13 your discharge that you're measuring, you have to
14 have a good basis of the degree of control over
15 that to have that be a directly enforced Effluent
16 Limit in that context. The Action Level is if
17 you find levels above a number, then you're
18 presumed dirty, you have to take more action.
19 But it's all in response to an actual Effluent
20 Limit, similarly difficult to come up with, with
21 prescriptive, if you will, end of pipe stormwater
22 effluent limits for industrial discharges, you
23 have to have a good record about what are the
24 levels that are attainable with what
25 technologies, etc., is not easy. The Action

1 Levels are more like we know this is dirty, it
2 means that you have to take more action to bring
3 that down. And through development of that use
4 of Action Levels, you're building evidence over
5 time to actually substantiate a possible Effluent
6 Limit in the future. But that's using Action
7 Levels in terms of forcing reduction of loads
8 from a direct metric.

9 And in the context of the expert panel
10. that was referred to, which was by the way 10
11 years ago, the report was published in 2006, so
12 it was reflective of understanding pretty much
13 2005, 10 years ago, saying they were thinking
14 about end of pipe effluent limits and didn't
15 think they were feasible versus Action Levels.
16 They were not thinking in the context of Effluent
17 Limits as we are presenting them in this permit,
18 which are an enforceable numeric, not necessarily
19 applied at end of pipe, it's a performance
20 measure that will be enforced.

21 EPA's guidance on implementing TMDL, we
22 saw locations for stormwater and NPDES Permits,
23 it is specifically because stormwater water
24 quality-based effluent limitations should be
25 numeric and feasible and, otherwise, talk to you

1 about objective, measurable, enforceable elements
2 associated with those such as numeric benchmarks
3 or protocols. So what we have established, this
4 number that is being called an Effluent Limit, it
5 is a limitation, but is a load reduction that is
6 based on demonstration of actions that would
7 result in that load reduction, it's not a direct
8 measurement of load compared to an effluent
9 limit.

10 So for the record, I believe there was a
11 misrepresentation that the expert panel and the
12 State Board does not endorse effluent limits. It
13 did endorse use of effluent limits in a context
14 totally different than how we are using them in
15 this permit.

16 So how are we using them in this permit?
17 I will start with the fact that in the spring of
18 2013, so we're talking two and a half years ago,
19 and I personally was involved in all of this
20 dialogue, we said we're implementing -- remember
21 back to the bookend, the beginning, the
22 alternative path to compliance, two key elements,
23 one is implementing TMDL waste of allocations, if
24 you're implementing TMDL waste of allocations,
25 you should be allowed the alternate path to

1 compliance, and the alternate path to compliance
2 should be robust, accountable, etc., rigorous. I
3 assert what we have does both. In particularly
4 our PCBs TMDL implementation then calls for
5 phased implementation in Permit 2 of
6 implementation, which we're in now, says "focused
7 implementation," not "full implementation." You
8 don't have to meet the wasted allocation until a
9 time in the future. At this point, the focused
10 implementation in this permit should be based on
11 an updated assessment of controls to reduce PCBs
12 to the maximum extent practicable. What we
13 present in this number is based on an updated
14 assessment of controls to reduce PCBs to the
15 maximum extent practical, and I'll come back to
16 that in a second.

17 On this context of it all, we started the
18 dialogue two and a half years ago and I put in
19 simple terms, "Let's keep it simple, let's work
20 in the framework of X percent reduction in Y
21 watersheds for a total of Z load reduction." I
22 started with a Numerical formula. Obviously the
23 first question was particularly "What is Z?"
24 And, "What is Y?" And our dialogue was all
25 about, well, let's work this out. What do we

1 know? What don't we know? The last permit term,
2 Permittees were required to do pilot studies in
3 five watersheds to evaluate various types of
4 corrosives, and there was a lot of knowledge in
5 those five watersheds, so we started with our
6 dialogue, "Okay, we have five watersheds, what
7 are the things now we've learned that we can do
8 in those watersheds? And what is the presumed
9 benefit?" To this day, we asked for a
10 presentation by the Municipalities as to what
11 could they do in those watersheds as part of the
12 Y, and then we said, "What additional
13 watersheds?" because we know that there are
14 watersheds draining in areas with higher levels
15 of PCBs for various reasons, so based on our
16 monitoring to date, and perhaps some additional
17 monitoring, what additional watersheds do we have
18 where we could do things? And then what could we
19 do and to what value?

20 So our dialogue was recurring about let's
21 figure out based on what we know what we can do,
22 and we had a bifurcated perspective, actions in
23 areas where we know we have elevated levels of
24 PCBs and then PCBs that were ubiquitous to the
25 urban landscape, otherwise the historical use

1 would become actions in more moderately
2 contaminated drainages. By the way, the latter
3 begot the concept of long term Green
4 Infrastructure to be the way to address those
5 large-scale changes in moderate watersheds within
6 the old industrial or other PCB contaminated
7 areas, more focused actions like identifying
8 contaminated properties, we have this referral to
9 us looking at whether in conjunction with that is
10 there substantial buildup of contaminated
11 sediment in the system. There is a variety of
12 tools available. But again, throughout the
13 dialogue we are all for actions, tell us what you
14 can do so we can account for that in the permit.
15 We never got a commitment of specific actions,
16 for the most part the dialogue was in reaction to
17 what we are having to drive. So all said and
18 done, we had to make the call. And by the way, I
19 started the dialogue with Z, what's Z? So what's
20 the reference? Let's say "5," 5 kilograms per
21 year, which is a quarter of the load. So let's
22 see, can we get to 5? And we never made
23 quantitative progress in our discussion about
24 actions that could add up with value. We know
25 there's a lot of uncertainties, we know there's a

1 lot of challenge. Dr. Abusaba points some of
2 those out that, yeah, there are challenges and
3 it's going to take because of low concentrations
4 and the magnitude of the problem, it ain't going
5 to be easy, but there are things that can be done
6 that add up.

7 So in that context we ended up harvesting
8 available knowledge in our review of what are the
9 controls to reduce PCBs to the maximum extent
10 practicable. So we looked at information the
11 Permittees have generated plus what we got
12 through contract grant work through the Estuary
13 Institute, who has done a synthesis of knowledge
14 on PCBs and controllability, there's a number of
15 sources of information that allowed us to come up
16 with what we called "Z being 3 kilograms" by the
17 end of the permit term, so I'm going to simplify
18 a bit, but the permit actually has three numeric
19 limits, it has a half a kilogram by midterm,
20 that's July 1 of 2018, they have to demonstrate
21 actions to have reduced PCBs by a half kilogram
22 per year, and by the end of the permit take
23 actions to have reduced PCBs by three kilograms
24 per year. And then within the latter, 120 grams,
25 so .12 kilograms from Green Infrastructure.

1 Those are the three metrics.

2 We added one more metric in reaction to
3 concerns with we need a path to compliance. By
4 the way, those numbers weren't out of thin air,
5 we built them on our review of what we think
6 could happen. So what do we think could happen?
7 We've heard about referral of contaminated
8 properties, there's Green Infrastructure, their
9 own analysis of the benefit of Green
10 Infrastructure benefit during the current permit,
11 and this was just opportunistic Green
12 Infrastructure associated with new redevelopment,
13 was the basis of that 120 grams per year, and
14 that was from a time of down time in development
15 compared to now. There's all that we understand,
16 there's no things can change tomorrow, but that's
17 the basis, it's a reasonable basis for expecting
18 that much reduction in Green Infrastructure. We
19 did guesstimates estimates, you know, we have to
20 guess based on available knowledge, we're using -
21 -- I like to say we're using the scientific
22 method, applying the scientific method to
23 decision making, gathering information, making
24 decision hypothesis of what's possible, so we
25 asserted that the three kilograms was possible

1 through a combination of actions, including a
2 building demolition program, demolishing
3 buildings with PCBs in them, of certain types of
4 buildings. And a reaction to concerns about that
5 and the difficulty of that program, we've done
6 two things, one is that we fed the record with
7 the basis of why there is cause of concern for
8 PCBs in buildings of a certain nature, you know,
9 just articulate, and for buildings of a certain
10 type starting in the '50s, is it, through the
11 late '70s, an average of 5 kilograms per
12 building, and an accumulative total of at least
13 10,000 kilograms in buildings in the Bay Area.
14 Put that in context, 10,000 kilograms relative to
15 a 20 kilograms per year discharge. So we did an
16 estimate of like, well, how much of that mass
17 might get into the storm drain system and what
18 could be controlled through a building demolition
19 program, and that was served in a relatively
20 generous fashion, we said we could see on average
21 two kilograms a year reduction from a program.
22 And so you'll note that in the permit we actually
23 put that value, that if they develop and
24 implement such a program, two kilograms
25 automatically are awarded, so it's value, doesn't

1 matter how many buildings are demolished, there
2 was a concern raised by at least one or more
3 commenters, "We don't have control over the pace
4 of building demolition." That two is average, so
5 we know in some years there's going to be less,
6 in other years more, but if you have a program we
7 are pretty confident that program will be
8 effective. And we have been working with the
9 Permittees, with Waste Management people, etc.,
10 and it's become I'm quite confident that this is
11 a very doable program building on existing
12 construction demolition programs. And the big
13 Buildings are already being attended to. We've
14 had testimony at a workshop from these people who
15 do this demolition work, and they said, "We are
16 doing this already. Doing it region-wide will
17 take some work, but it's quite doable." So
18 that's two of the three, so now we're down to the
19 half by midterm and then another half by the end,
20 so one kilogram per year. Based on information,
21 we feel if we use the 120 grams from Green
22 Infrastructure and an expectation of contaminated
23 property is on the order, I think, of 700 grams
24 that adds up to about .8 just identifying
25 contaminated property and doing Green

1 Infrastructure, .8 plus out of the 1.0. So that
2 1.0 is lots of other things that could be done.
3 So hopefully I'm giving you a basis.

4 Now, one thing I like, especially Board
5 Member McGrath, you challenged commenters
6 yesterday, "Give me something to react to, don't
7 just tell me what you don't want, give me some
8 evidence." And so Barbara Hawkins from San Pablo
9 did that. Well, you just have to clarify,
10 however, I'm going to change the representation
11 of the numbers that she presented because she was
12 presenting numbers to say they've done analysis
13 of what they can do in San Pablo and determine
14 that, with referrals, identifying contaminated
15 properties and referrals, and doing comparable
16 Green Infrastructure relative to what they did
17 this permit term, the best they could do is about
18 two kilograms a year -- excuse me, two grams, I
19 keep -- two grams, but said "our default city
20 specific requirement at the end of the permit
21 term would be five grams per year." So their
22 population-based calculation from the three would
23 meet three kilograms per year, their part of that
24 would be five grams. But account for the
25 Building Demolition Program, which is two-thirds

1 -- two-thirds of three was to Building Demolition
2 Programs, so if we take one-third of five --

3 UNIDENTIFIED SPEAKER FROM AUDIENCE:
4 [Indiscernible]

5 CHAIRPERSON YOUNG: This is --

6 DR. MUMLEY: Just to point, it's five or
7 six, the point is what I understood and what we
8 understood is that their load reduction would be
9 about five grams, in which they could account for
10 two grams through referrals of contaminated
11 property and Green Infrastructure on their own,
12 and that would exceed their fraction of the one
13 kilogram per year. So I have to repeat that
14 again? So we look at five being less than two
15 grams, and they potentially get more than two
16 grams with those things, so it's just an
17 illustration that our numbers aren't pie in the
18 sky, they reflect a foundation of attainability.
19 So that's Part 1, that these numbers we have in
20 the record, we've put forward the basis of these
21 numbers, specifically included the two kilogram
22 per year reduction for the buildings in the
23 permit, and then in the Fact Sheet illustrate the
24 values that could be gained through
25 identification of contaminated property and

1 referring it, and other type of things. So
2 there's a path to compliance illustrated.

3 On top of that, they are actually
4 required to take those Fact Sheet findings and
5 put them into play in the form of a program
6 report that states "this is the load reduction
7 assessment program that we're going to use to
8 meet the load reduction requirements." So they
9 have the opportunity to take what's in the Fact
10 Sheet, ground truth it, improve upon it in that
11 2016 Annual Report submittal that says "this is
12 the path to compliance that we've proposed and
13 building on what we've included in the Fact
14 Sheet, which we will provide a path to compliance
15 subject to ground trothing." They can update
16 that path each year, it's not a one-time thing,
17 as they get new information they can improve upon
18 it, so that's part of it, that the Permittees do
19 have a control over the path to compliance. Two,
20 if we point out that major reopener, if it is
21 determined that there's information that we
22 weren't aware of today, new evidence that,
23 indeed, as articulated, "Oh, we don't think we
24 can get there," if they can show evidence that
25 the foundation for these numbers are in error,

1 that's cause for the Board to take an action to
2 preclude an unintended consequence that they'd be
3 in noncompliance with these requirements, even
4 though they've done things in accordance with
5 this prescribed methodology. And then, three,
6 the other factor -- and we're going to work with
7 them on this, no surprises, as Permittees have
8 asked for and we've agreed that we would sustain
9 a forum with representation of our staff and
10 Management and their staff and Management to make
11 sure we're working together on this so we don't
12 have the surprises that, say, happened with the
13 trash approach. We're all going to be clear as
14 this goes along.

15 And worst case scenario, again, effluent
16 limits versus Action Levels, effluent limits of
17 concern is enforceability, enforcement. And it's
18 alleged that, well, even if the Board uses this
19 enforcement discretion, there's third party risk.
20 I would assert that this would never be an easy
21 task for a third party to enforce, especially, as
22 long as we're involved and recognizing, again,
23 the basis of the load reduction expectations and
24 the gradual improvement of them, if we find the
25 expectations are wrong, we would amend the permit

1 so there wouldn't be an enforcement consequence.
2 Bottom line is, I told this to the Permittees, we
3 would be first in line to defend you against a
4 third party lawsuit that would have no water
5 quality benefit.

6 Now I'm going to turn it around and
7 explain why not Action Levels. There's a couple
8 reasons, but I'll try to keep it simple, one is
9 we do not want to penalize the good actors, the
10 good actors say, "We're going to act anyway, so
11 why do you have to put these enforcement numbers
12 on it?" And I go, we know and trust you,
13 however, not all Permittees are created equal,
14 and it's evident in the degree of testimony and
15 statements in testimony that it's just human
16 nature, people are going to look at what's the
17 least I have to do to comply. And if there's no
18 consequence, if the concept of this Action Level
19 is, "If I don't comply, then I just have to
20 commit to actions," well, meanwhile they're
21 saying, "We don't know that there's any actions
22 that we can do." But we're saying there are
23 actions you can do, so it's unclear what would
24 get done if all you had -- if you had action
25 levels, I would assert the good actors will act,

1 but other won't, and then we would have a
2 challenge to take appropriate enforcement action
3 on the others. There are tools in our toolbox to
4 force action, but they are complicated and costly
5 for us. For us, the idea is, "Here is the
6 number, we think it's attainable, we're going to
7 work with you towards attainment, and, again,
8 multiple mechanisms to adjust as necessary why
9 the action level works."

10 And going back to one more thing, and I'm
11 going to finish with this point because I think
12 you have questions, I'm sure. Another statement,
13 it's not a rebuttal, I guess it's a response to
14 the suggestion in Bob Falk's presentation that,
15 well, a simple fix would be to just add language
16 that says, "A Permittee shall be considered in
17 compliance with the Numeric Performance criteria
18 if it is fully implementing all required
19 actions." Well, the permit doesn't require
20 actions, the permit says, "Meet these numbers
21 through actions that you self-determine." Again,
22 I'll go back to it over and over, saying "tell us
23 what actions you can commit to do, and we will
24 recognize them in the permit." We don't have
25 those actions, other than the permit stating that

1 you have an action required to do a building
2 demolition program, and you have a stipulated or
3 somewhere of the two kilograms a year, and you
4 have a Green Infrastructure action. And
5 everything else is to be determined, so this
6 would be referring to required actions that are
7 not in the permit. And one last point is that
8 we've asked in our dialogue, which is why I'm
9 going to again say that the statement that it was
10 not understood that these numbers were Numeric
11 Limits, is false, because over and over we've
12 been talking about, well, we'd rather have an
13 Action-based program. And we've over and over
14 said, "Okay, what are the actions that you're
15 willing to commit to do that we could recognize
16 and build the permit requirements around them?"
17 We don't have those actions for the record in
18 order to build the permit around them, ergo the
19 approach we present in this permit essentially is
20 in our minds the preferred path because it
21 creates a challenge, albeit there will be some
22 cost, but we think we've considered that these
23 are attainable with reasonable efforts, will not
24 be attainable without new efforts, and there will
25 be new costs with it, but they're a reasonable

1 step in the context of focused implementation to
2 make progress towards solving a problem which
3 means people cannot eat fish collected from the
4 Bay, contaminated by PCBs. And I'll end with
5 that, we want to make fish eatable.

6 VICE CHAIR MCGRATH: Tom, I want to
7 follow this up with let's continue to use San
8 Pablo as an example because I want to make sure
9 that I understand it.

10 So let's say that San Pablo agrees to
11 establish a building inspection program that's
12 satisfactory. And let's say that beyond that,
13 they also have a program that uses available
14 resources and a reasonable level of effort to
15 identify contaminated properties and submit them
16 for remediation, and they also identify, you
17 know, just picking something out of the air, two
18 acres of Green Infrastructure which is feasible.
19 And they have had dis-allocated to them a two
20 gram further reduction from Green Infrastructure,
21 and it turns out that all that is feasible in
22 terms of Green Infrastructure would be one gram.
23 And they take all reasonable steps to implement
24 all three elements of those programs. From your
25 perspective, would they be in compliance?

1 DR. MUMLEY: The short answer is yes. I
2 mean, I would have to say it's a combination of
3 factors, one is that -- because we know that
4 there's uncertainty with the basis of our
5 numbers, and so they've taken actions consistent
6 with the basis of the numbers and they came up
7 short, my exercise of enforcement discretion
8 would say they fell short of the number, but in
9 the spirit of it they're in compliance, so then
10 there is this liability because the numbers don't
11 add up, in which case we can't say
12 unconditionally they're in compliance, it would
13 be done through a narrative dialogue that we
14 could recognize in the record the adequacy of
15 their actions relative to the intent of the
16 permit, and that has a degree of shield against
17 further enforcement. I mean, clearly, I would
18 expect this Board, as it always has, uses its
19 enforcement discretion, that our enforcement
20 toolbox is full spectrum of soft to hard --

21 VICE CHAIR MCGRATH: Let me stop you
22 there. So I assume, I mean, this is extremely
23 important to my reasoning, I assume that there's
24 going to be a discussion and debate as to whether
25 two acres or three acres, or one acre of Green

1 Infrastructure is in fact feasible, and material
2 interests behind that. But ultimately if you and
3 the City of San Pablo agree that this two acres
4 is all that's feasible, and notwithstanding that
5 they're not going to achieve that, but they're
6 not going to achieve greater reductions, but they
7 are going to implement that, there would be a
8 record that would indicate that they had taken
9 reasonable steps?

10 DR. MUMLEY: Agreed. And I think San
11 Pablo is a good example, I'm not picking on them,
12 because as we all know that they're an
13 economically challenged community, but they are a
14 community that is engaged, they community and its
15 staff are actively pursuing actions, and so --

16 VICE CHAIR MCGRATH: They have a very
17 talented City Engineer.

18 DR. MUMLEY: -- I would put them in the
19 good student part of the classroom, and it's our
20 job to keep -- we will help and assist them, and
21 we don't want to penalize them for not being able
22 to afford the best books, you know, so clearly --
23 but I'll also remind you that the City-specific
24 consequences only come to bear if the good of the
25 whole is not realized, so there is this

1 encouragement to look more globally, that there
2 are sources beyond just -- this is only the
3 default, we're going back to the default, and we
4 have to be aware of the default consequences.

5 VICE CHAIR MCGRATH: Right.

6 DR. MUMLEY: I think --

7 VICE CHAIR MCGRATH: I'll tip my hand, I
8 mean, I want the implementation of feasible Green
9 Infrastructure with expected results to be
10 enforceable; beyond that, achieving PCB
11 reductions is going to be really hard, and I
12 don't want to expose them to liabilities much
13 beyond the implementation of reasonable Green
14 Infrastructure.

15 CHAIRPERSON YOUNG: And their programs.

16 VICE CHAIR MCGRATH: The rest of the
17 program, obviously.

18 DR. AJAMI: I guess I just want to
19 emphasize the same point you were just trying to
20 make. What you are saying is there is
21 uncertainty in these numbers, we realize even
22 though these are Numeric Levels we are providing
23 in here, there is a chance that we may go below
24 or above, you know, there's always uncertainty in
25 these exact numbers. But we recognize that and

1 we are flexible in the sense that you are doing
2 everything, you are willing to look into it and
3 see how -- right? No? Actually, you want to say
4 something?

5 MS. WON: Well, if you want. So if the
6 Permittee doesn't meet the three kilogram number,
7 then it is in noncompliance. Whether we take
8 enforcement action is a different issue, and Tom
9 is saying we wouldn't take enforcement action.

10 DR. AJAMI: That's what I meant, yeah.

11 MS. WON: Okay.

12 DR. AJAMI: That's exactly what I meant.
13 So case by case, we'll look into all their
14 actions and all the efforts they put into
15 complying, and if they are not meeting those
16 targets, we'll try to figure out why and how, and
17 what are the next steps.

18 CHAIRPERSON YOUNG: May I ask a question
19 that was brought up repeatedly, three or four
20 times from small jurisdictions, got up and said,
21 "We used to be orchards or, you know, an
22 agricultural community, we just recently got
23 built out, we don't have any PCBs, but we got an
24 allocation." Would you like to respond to that
25 on the record and let us know what your thoughts

1 are about that?

2 DR. MUMLEY: Yes, best to use frank
3 language, I mean, it's an unintended consequence
4 that the implementation of the TMDL results in
5 imposing unrealistic requirements on communities
6 that are not a source of PCBs. Again, that's why
7 we ended up looking at loading as a whole to the
8 Bay, and then because we were at the time pushed
9 by EPA to have to have allocations to each permit
10 that existed, we ended up having to have a County
11 basis to it, so we end up with County-based
12 allocations in the absence of any other way of
13 doing it, we just used population as a surrogate
14 for PCBs, which is arguably not the best because
15 there are certainly the older communities, dense
16 communities, and have that nexus that the newer
17 communities don't. But what we're getting into
18 is a problem, the consequence of going down to
19 the community level that we didn't account for in
20 the TMDL, you know, which only prescribes the
21 County basis. What we have in this permit,
22 especially in the revised permit, is an explicit
23 opportunity for the Permittees to present an
24 alternative partitioning of the County-based
25 allocations to its individual communities that

1 would account for that. I mean, the challenge
2 however being like take Contra Costa County, the
3 East County versus West County, new versus old,
4 you know, depending on the community considerable
5 differences in economic viability, and so you get
6 into lots of factors that complicate things. But
7 already, already the Contra Costa Program as well
8 as the other County-based programs do certain
9 actions on a shared basis with pooled resources
10 versus actions they do on a community-specific
11 basis. So it's clearly not our intent that you
12 would expect actions in Clayton, we kind of use
13 Clayton as the lowest population community,
14 relatively new community, to have be much of a
15 source of PCBs, other than what's captured from
16 atmospheric deposition on its hardscape, but
17 since its hardscape is relatively small compared
18 to the bigger communities, translates into small
19 fraction.

20 So we recognize that, but we again expect
21 the actions that we have accounted for in
22 developing those numbers, are doable without
23 having to go to requiring communities that don't
24 have PCBs to take action. So the complicated
25 response is there are a couple mechanisms for

1 that to be accounted for, you can change the
2 allocation scheme, or otherwise the all for one,
3 one for all will play out and we're fairly
4 confident that there's more low hanging fruit to
5 pick than we've looked for to date, albeit if
6 it's not available, we have, as I said, two
7 immediate responses to that by changing the
8 foundation of the assessment methodology and plus
9 a demonstration that the evidence that we used to
10 base those numbers has been trumped by new
11 information, those numbers can be changed. So
12 there's multiple outlets if we trade an
13 unintended consequence.

14 CHAIRPERSON YOUNG: Are there --

15 MR. LEFKOVITS: Can we go back to I guess
16 it was Mr. McGrath's question about San Pablo as
17 a good actor, and I was just listening to -- I'm
18 having a hard time parsing the answer if they try
19 and don't meet their goals, but they've done
20 everything that was not required, but stipulated,
21 what the differences between that answer and the
22 language that Falk proposed, minus that one word
23 "required?"

24 MS. TSAO: Microphone, please.

25 MR. LEFKOVITS: My question is, what's

1 the difference between the answer to the San
2 Pablo example and the Falk language if you change
3 the word "required" in the Falk language to
4 "stipulated actions" rather than "required
5 actions?" I mean, it sounded very similar to me.

6 DR. MUMLEY: Well, let's see if I can
7 give you the simple response. The required
8 actions are stipulated actions, actually they are
9 required. The permit requires Green
10 Infrastructure actions for PCB load reduction.
11 It requires a building demolition program. But
12 the rest, all other actions are to be determined.
13 So all we could refer to in terms of this
14 statement would be those two required elements.
15 It would still be the Green Infrastructure
16 requirements and the Building Demolition
17 requirements that they would only be held
18 accountable for.

19 MR. LEFKOVITS: Well, help me out. We've
20 got a set of satisfactory actions in the San
21 Pablo example, I'm not saying it right, but in
22 the example they didn't meet their numeric
23 target, but they did everything else right and
24 they're good people doing the right thing.

25 MR. BOWYER: In the hypothetical, San

1 Pablo built the Green Infrastructure, they did
2 the difficult Green Infrastructure construction.
3 If it's an action level, there's no consequence
4 if they don't build that green infrastructure.
5 There's only the requirement that they try harder
6 next time. So it comes to base motivation, I
7 think.

8 MR. LEFKOVITS: I'm a little confused,
9 but if you say that having the Building
10 Demolition Program and the Green Infrastructure
11 is a requirement.

12 DR. MUMLEY: For any particular
13 community, the Building Demolition Program is two
14 thirds of their share of the requirement under
15 the current scheme, so that's a given. That's
16 actually already expressed in the permit. This
17 statement has no value relative to the Building
18 Demolition Program because the Building
19 Demolition Program, the permit already says if
20 you have a Building Demolition Program, you get
21 two kilograms, you have to comply, and you have
22 to have a program. And so then it gets into what
23 else are they required to do, you know, what
24 other actions are required? And the only other
25 quasi-required actions, although we're not

1 specific about exactly how to do it, is that you
2 have to take Green Infrastructure actions
3 efficient to add up to your share of the .12
4 kilogram per year total at the end of the permit
5 term. So that gets into, well, how far do I have
6 to go to demonstrate that I've implemented that
7 requirement? And what if I fell short? The
8 assumption is that that requirement can be met
9 based on just no additional actions beyond the
10 benefits recognized during the current permit
11 term through new and redevelopment. So if it's
12 possible that new and redevelopment doesn't
13 generate the same level of default,
14 opportunistic, Green Infrastructure, PCB load
15 reduction, then they would be liable for the
16 difference. And that means, you know, have they
17 tried to do anything? Are there other
18 opportunities beyond the mandatory new and
19 redevelopment requirements for Green
20 Infrastructure that they may have been able to
21 realize? And we're asserting that there are
22 possibilities of making up the difference beyond
23 just bearing the fruits of doing nothing but get
24 the benefits of their new and redevelopment
25 program.

1 So this all adds up to, other than
2 getting the benefit of the new and redevelopment
3 program that they already have, and the benefits
4 of a Building Demolition Program, there has to be
5 some drive for the other actions, and we're
6 asserting the limitation that we've paraded is
7 founded on what we believe are doable actions
8 founded on a Numeric Assessment Structure, then
9 if they implement actions in accordance with that
10 Numeric Assessment Structure, they are in
11 compliance because either it prevails or we
12 demonstrate that the Numeric-based Action
13 Structure was wrong due to improper information,
14 in which case the permit could be amended to take
15 away the enforceability of that number or modify
16 it to reflect better information.

17 CHAIRPERSON YOUNG: Okay, Jim.

18 VICE CHAIR MCGRATH: With the indulgence
19 of the Chair, I think we're close enough to a
20 consensus on this that it makes sense to support
21 what I think summarized. But then I think it may
22 be highly desirable for us to talk with our
23 attorneys for a little bit about the precision of
24 the questions of compliance. But I'm not
25 particularly wedded to the idea of compliance as

1 long as there's no penalty. If they've taken all
2 reasonable steps in this stage, and we have
3 effectively protected them from third party
4 lawsuits, they may have to do something in the
5 next term. Again, if it's reasonable and
6 feasible, and many of us are going to be working
7 to try to increase the feasibility of those
8 measures, as well as learn from our mistakes. So
9 I think we've captured a sense that there are
10 some reasonable activities that should be taken
11 without undue exposure, and exactly how we craft
12 that may be something we want to talk about with
13 our attorneys. Does that -- do you think I
14 captured your -

15 MR. LEFKOVITS: Yeah, I mean, I think you
16 hit it on the head.

17 VICE CHAIR MCGRATH: I don't want any
18 stupid lawsuits.

19 MR. LEFKOVITS: Right, that's where I'm
20 going, I'm just trying to figure out, is this a
21 neat way to encapsulate that additional activity
22 level of making additional effort in some kind of
23 phrase that is meaningful. I mean, rather than
24 leaving it to the discretion of the staff, you
25 know, as one more thing they have to do, is there

1 some way to send a signal about what it is?

2 MR. KISSINGER: And we haven't really
3 talked about it, but another path to compliance
4 is seeking out hot spots and remediating it, but
5 that's really costly and that's really hard work,
6 and the question that hangs in my mind is, is
7 that one of the reasonable steps that staff will
8 expect Permittees, or at least Permittees that
9 are in areas that have historical industrial
10 usages to do? It's shifting responsibilities in
11 some ways.

12 MR. WOLFE: Well, we do and we have
13 before. We encourage the Permittees to refer
14 sites and they constantly remind us that they
15 don't have the authority to compel cleanup, so we
16 say refer those sites to us for our oversight;
17 during some cases they may be Super Fund sites,
18 and you'll get a credit for the amount that would
19 be removed.

20 MR. KISSINGER: And just to revisit --

21 CHAIRPERSON YOUNG: Can I just ask him to
22 expand on that because that was one of the
23 comments we heard yesterday, was why only 50
24 percent of what -- I'm not sure 50 percent of
25 what it is, but maybe that needs to be -- I know

1 it's in the permit, but I don't remember.

2 MR. WOLFE: Right. A formula has been
3 put together about how to account for that and
4 we're actually in our mind giving the Permittees
5 a good deal of saying, of that amount just for
6 the fact that you refer, we'll give you 50
7 percent right up front. We don't feel it's
8 appropriate to give all of it right up front
9 because the work hasn't been done.

10 MR. KISSINGER: So what is the amount?

11 MR. WOLFE: Well, the formula
12 determinative of how much would be expected to be
13 removed from the environment from that cleanup.

14 MR. KISSINGER: So after it's been
15 characterized? I mean, how do you know how much
16 is there?

17 DR. MUMLEY: This is very important and
18 I'll hold back on a suggestion for your
19 consideration until Richard explains things.

20 MR. LOOKER: Okay, so in the Fact Sheet
21 we wanted to come up with a way to account for
22 the load reduction impact of a variety of control
23 measures that are conceivable, so running from
24 Green Infrastructure to other types of treatment
25 controls, and also including cleaning up the hot

1 property, hot spot. And so for all of these
2 measures, we tried to come up with a simple
3 approach that basically reflects on what is the
4 yield of PCBs from these various kinds of areas.
5 So if you put in a type of treatment control in
6 an old industrial area, you get more of a benefit
7 than if it was in an old urban area that has
8 generally less PCB contamination. These factors
9 are specified in the Fact Sheet and they are
10 based upon a statistical analysis of actual
11 monitoring data that allows us to compute a yield
12 from these areas. So there was something similar
13 done for, you know, admittedly limited data that
14 we have available where we have monitoring
15 associated downstream of a contaminated area, and
16 that was the Eddy Street property. And so we
17 were able to, well a consultant through a
18 statistical analysis was able to associate what
19 must have been the PCB yield from that
20 contaminated area such that you would see the
21 loads that you saw downstream of that. So using
22 that information, we established what would be
23 the yearly yields of PCB mass from a contaminated
24 site. So therefore, we would apply that to any
25 contaminated properties or sites that would be

1 referred to us by the Permittees. And so in the
2 Fact Sheet we stated that when we get the
3 referral -- so the other thing to keep in mind is
4 when you have a contaminated site, the evidence
5 for it is that the curb is leaking PCBs
6 downstream that continues to go into the MS4s,
7 continues to go into the Bay. So the offer is,
8 once we get the referral, and you demonstrate
9 that you're dealing with this so-called halo
10 effect of the PCBs that have been migrating from
11 this site, if you deal with those effectively,
12 you will get credit for 50 percent of the
13 calculated benefit of dealing with that property
14 that's factors in the Fact Sheet, multiplied
15 times the area of the property. You get 50
16 percent of that at the time of the referral, but
17 we're reserving the additional 50 percent of the
18 credit for the cleanup, subject to the completion
19 of the cleanup because, you know, it hasn't
20 happened yet, we want to motivate them to do what
21 they can in terms of making the referral, but we
22 give 50 percent of the credit, you know, subject
23 to dealing with that migration offsite in the
24 near term.

25 CHAIRPERSON YOUNG: Okay, just a little

1 procedural check here. What I'm going to suggest
2 that we do is have any other questions and
3 answers that we want to wrap this up right now;
4 then the Board is going to ask to go into a
5 closed session for deliberations that was noticed
6 as Item 11 on our agenda, and we'll try to eat
7 lunch while we do that, and then we would come
8 back --

9 MR. WOLFE: So then we would need to
10 order lunch.

11 CHAIRPERSON YOUNG: -- which means we
12 need to order lunch or do something else, anyway,
13 somehow we will get food into people's stomachs,
14 we will have a closed session, and then we will
15 come back into open session and continue with
16 this item.

17 MS. WON: And just to be --

18 CHAIRPERSON YOUNG: And she's going to
19 say what we're really going to do.

20 MS. WON: No, no, I just want to be
21 really clear for the record that the Board is
22 authorized to go into closed session to
23 deliberate on the evidence received in an
24 adjudicatory proceeding such as this one, and
25 Legal can be there to assist you on that

1 deliberation.

2 CHAIRPERSON YOUNG: And that's what we
3 want, thank you. So are there other questions
4 that you want to address to staff before we go
5 into that closed session?

6 MR. KISSINGER: I guess I'm still not
7 entirely clear what the shortcomings are of
8 characterizing these Numeric Action Levels as
9 distinguished from Numeric Effluent Levels, or
10 Limits. I understand one is enforceable as a
11 number, I'm not sure I understand that calling it
12 a Numeric Action Level doesn't allow you to
13 enforce actions being taken, or not being taken.
14 So help me to understand that. I still haven't
15 quite gotten it clear in my head.

16 DR. MUMLEY: Where I'm having difficulty
17 is the concept of the Action Level doesn't work
18 very well in what we're presenting here because
19 we're saying here is the number founded on
20 potential actions, and then if it's only an
21 action level, an action level without a statement
22 of consequence doesn't have much value. So the
23 simple thought is that, well, an action level, if
24 I don't meet that level, then I have to take
25 action. But why haven't I met, so have I taken

1 all feasible actions and I haven't met the level?
2 How am I going to come up with better actions?
3 It's really -- what I'm struggling with
4 explaining to you is it's a kick the can number
5 if it's an action level. If I don't meet it,
6 there's no direct consequence other than I have
7 to commit to try to get it, which in this case
8 would be in the future permit, because the only
9 backstop that this permit would require is a plan
10 to attain that number that wasn't attained and
11 this permit would note the only consequence would
12 have to do with the adequacy of that plan.

13 MS. WON: It's very much like the
14 iterative process that the State Board says you
15 have to do more of in order to get this
16 Alternative Path to compliance with the receiving
17 water limitations. I do have concerns that if we
18 don't have like rigorous numbers such as this
19 permit, that we may not be meeting the State
20 Board's precedential order in allowing an
21 Alternative Path to Compliance.

22 MR. KISSINGER: Well, let me come at it a
23 different way. What I've heard in this
24 discussion is the recognition that the
25 possibility of Permittees being in violation is

1 real. That was one of the opening comment that
2 was made by -- I've forgotten her name, the
3 Assemblywoman. And I was a little skeptical when
4 I heard it, but what this conversation has
5 revealed to me is we don't know, that's the best
6 case scenario, we don't know. You're optimistic
7 that there's plenty of PCB material available,
8 that could be harvested, if you will, through the
9 demolition of projects through putting in Green
10 Infrastructure, having inspection programs,
11 you're confident that that will cover it. But I
12 think you've been very candid in recognizing
13 there's an equal possibility, depending, and it's
14 very variable from area to area, that there will
15 be Permittees that just won't be able, even if
16 they've taken all the steps that are contemplated
17 here, and I think the Board's posture is just,
18 trust us, we'll be reasonable. And that was the
19 first question I asked, or the first comment I
20 made when we had discussions yesterday: what's
21 the problem? But I guess I understand from the
22 other side the discomfort of a program that is so
23 difficult to get your arms around when you run
24 the numbers and find that you're still coming
25 short, and you're relying on a prosecutorial

1 discretion to not be prosecuted, even if you're
2 acting in good faith. So anyway, that's why I
3 guess there's this impulse to come back to
4 something that's an Action Level, I understand
5 why it's not a nice fit for here.

6 MR. WOLFE: Well, I would say it's more
7 than just the enforcement discretion. We've
8 pointed out the reopener clauses and that we
9 fully do want to work with the Permittees on
10 this. If we find that it's clear this is not the
11 way to do it, we're fine opening up the permit to
12 change that. I mean, we agree, we don't want to
13 serve up inappropriate suits. But from the
14 perspective of having enforcement discretion, the
15 ability to reopen the permit, and to a certain
16 degree feel that the way it's written now, it
17 really is a challenge for a third party to
18 enforce against it, that we've addressed that.

19 CHAIRPERSON YOUNG: Let me talk and then
20 I'll give you a turn. Just to reiterate some
21 things I think I heard and I won't get the legal
22 language right, but right now the PCB discharges
23 from the community as a whole is not meeting the
24 requirements of our TMDL that we have set for the
25 TMDL, I mean, you're going to have to restate

1 this for me, but right now they're already sort
2 of not complying with the Water Quality Standard,
3 they're part of a community that is not complying
4 with the Water Quality Standard. So in order to
5 have a pathway forward, we are taking advantage
6 of this Alternative Compliance Mechanism that, as
7 Yuri points out, which requires us to do things
8 that are really kind of specific, and the
9 argument that I think I just heard is that the
10 action levels are arguably not specific enough,
11 whereas something that would be an effluent limit
12 would be specific enough. And then the question
13 comes up, is it achievable? You know, is it
14 practical? And I think what the staff is arguing
15 is that they have done the research to show that
16 Area-wide, they think it's practical, and they
17 have a lot of evidence to show that. The
18 question that was coming up yesterday over and
19 over was, well, when you parse it down to each
20 individual community, is it still practical? And
21 for that we had the discussion about, you know,
22 what the alternatives are to just targeting one
23 specific community with one specific number. So
24 I'm not trying to argue one way or the other, I'm
25 just trying to make sure I'm understanding the

1 whole lay of the land here. And I'm sorry I
2 interrupted you.

3 MR. LOOKER: That's fine, you're the -- I
4 just wanted to reflect on the discussion and it
5 is true that we have to regulate in the face of
6 some uncertainty, so there is uncertainty about
7 the efficacy of control measures and how much is
8 going to be achieved, but I think then the
9 question comes down to what is the best stance to
10 take in terms of getting the balance right in
11 terms of preserving your discretion, but also
12 motivating actions to take place. And so I think
13 our position is preserving the Numeric Effluent
14 Limitation as the best balance of those factors.
15 So we want to find a way, and you still have
16 discretion about enforcement, you can respond to
17 a case that can be made about whether all
18 opportunities have been exhausted, but there's
19 more that can be done in the Municipalities'
20 jurisdictions than just dealing with the building
21 demolition, and also harvesting the benefits that
22 would take place anyway because of redevelopment
23 under c.3. So in order to motivate that
24 additional thinking about, you know, what is in
25 the storm drains already? What other kinds of

1 contaminated sites are there that we can both
2 refer to the Water Board, and what's under our
3 jurisdiction, we feel that having the effluent
4 limitation that kind of drives and really
5 motivates the hard thinking is the best way to
6 ensure that those things actually take place.
7 Now you still have the discretion down the road
8 to evaluate claims that are made about whether
9 there has been an exhaustion of those kinds of
10 opportunities, but from the get go, I know that
11 you have reservations about the consequences of
12 that, but the consequence of abandoning the
13 effluent limitation is the possibility of
14 sabotaging or, you know, creating a lack of
15 appropriate motivation to explore all of the
16 possibilities.

17 The other thing I want to reflect on is
18 something Tom talked about earlier in terms of
19 the history. We would have preferred a different
20 approach in terms of crafting the provisions of
21 this permit where we had a set of concrete
22 actions in specific places, and what was going to
23 happen when, and what would be the benefit of
24 those that we could endorse and build permit
25 provisions around, but we didn't get it. And so

1 that causes us to have some skepticism about, you
2 know, kind of as a whole, like are all the
3 Permittees on board really exhausting all of the
4 control measures that are available to them in
5 using the information that we have in place about
6 what to do? So that's another reason we feel
7 it's important to preserve the motivation to make
8 sure that those things happen because we've been
9 asking for that plan, and we haven't been getting
10 it, so we feel that it's better to have the
11 ability to coerce that, if you will, and then
12 reflect on the suitability and thoroughness of
13 the plan down the road. So that's kind of what I
14 wanted to say.

15 CHAIRPERSON YOUNG: Okay. Are there
16 other questions prior to going into closed
17 session and ordering lunch, other than the
18 comments from Dr. Mumley here?

19 DR. MUMLEY: I'll leave you with two
20 points for your consideration and one is
21 particularly keen to the discussion with legal
22 counsel. And I want to make sure you understand
23 that it's more probable, much more probable, that
24 if we change this number to action levels, that
25 it would get contested and rejected by the State

1 Board, in which case Permittees would be directly
2 vulnerable to lawsuits for enforcement of the
3 receiving water limitations, then the possibility
4 that down the road there would be a third party
5 lawsuit. I think that possibility down the road
6 is so remote, but compared to if you don't have
7 this robust, enforceable requirement in here,
8 it's highly likely you would get rejected, in
9 which case the Permittees would have immediate
10 vulnerability. That's, so you can talk about
11 that in terms of the process with the attorney.

12 The other thing and I'm going to kick
13 myself on Richard's behalf --

14 VICE CHAIR MCGRATH: You should let him
15 do it.

16 DR. MUMLEY: No, no, because he might
17 kick me harder than I kick myself. I am saying
18 this cautiously, but sort of given our analysis
19 of the attainability, we feel these numbers are
20 attainable with 50 percent credit for the
21 referred properties. If you want to have more
22 give, I would prefer you to keep the enforceable
23 limit and give more credit to that because that
24 easily puts it over the top if they get full
25 credit. Now, that can be done easily --

1 MR. WOLFE: Assume we get the referrals.

2 DR. MUMLEY: Assume we get the referrals,
3 and that's actually available to them even, I can
4 articulate, remember, this 50 percent rule is in
5 the Fact Sheet, it's the foundation for the
6 methodology. They can build upon that and
7 propose addition to that, it's subject to
8 Executive Officer approval, so you could either
9 ask for a higher number be put into the Fact
10 Sheet, or state that you would advise the
11 Executive Officer to be willing to accept a
12 higher number with justification. If I'm going
13 to offer a compromise --

14 VICE CHAIR MCGRATH: Tom, you just
15 negotiated with yourself.

16 DR. MUMLEY: I know. But while I have
17 your attention, I'd rather do it now than later,
18 so you still have the -- it's your call.

19 CHAIRPERSON YOUNG: Tamarin, you were
20 trying to interject?

21 MS. AUSTIN: Right. So just pointing out
22 that numeric effluent limitations are permissible
23 and the basis of the bar, if you will, is that
24 adequate information exists to derive such
25 limitations. And if I could just get staff to

1 confirm that they have adequate information to
2 derive these limitations and they're very
3 comfortable with those figures, the figures are
4 conservative.

5 MR. LOOKER: Yes, I do. I confirm that.

6 CHAIRPERSON YOUNG: Okay, we are going to
7 move into closed deliberative session now. Thank
8 you.

9 DR. MUMLEY: Can you give us a ballpark
10 number, a time?

11 CHAIRPERSON YOUNG: Since people are
12 going to be talking and eating lunch --

13 MR. KISSINGER: It's either 1:45 or 2:00.

14 CHAIRPERSON YOUNG: Yeah, either 1:45 or
15 2:00. Let's be optimistic and say, I mean, we'll
16 shoot for 1:45, I don't think you're going to
17 miss a whole lot if you don't come back until
18 2:00, but we'll say 1:45.

19 (Commence Closed Session at 1:00 p.m.)

20 (Reconvene at 2:47 p.m.)

21 CHAIRPERSON YOUNG: All right, we are now
22 going to reconvene to open session to continue
23 our discussion of Item 7, the Municipal Regional
24 Stormwater Permit. Is there anything else that
25 we need to say formally to --?

1 MS. WON: I'll just be clear that, so the
2 Board convened in closed session pursuant to Item
3 11, which authorizes the Board to convene in
4 closed session to deliberate on evidence in an
5 adjudicatory hearing, and that the Board is now
6 out of closed session and is going back to Item
7 7. And Mr. Falk, I forget who he represents, he
8 objects to the fact that a closed session took
9 place, apparently, and so I'm just saying that
10 for the record.

11 CHAIRPERSON YOUNG: All right, thank you.
12 So we will continue. And we will continue our
13 deliberations on a variety of aspects of the
14 Permit. When we had our discussion earlier, the
15 staff had basically covered all of the contents
16 of the permit, and we had done that in our
17 discussions. So we're not going to go back and
18 talk about things in order, necessarily, we're
19 just going to provide our views on the record.

20 So is there anyone who would like to
21 start?

22 VICE CHAIR MCGRATH: Why don't I start
23 with the Green Infrastructure and it has aspects
24 in both the requirements in its own section, and
25 then its implementation has implications in the

1 PCBs, and has implications also for the testimony
2 that we received about the differences between
3 ANLs and ELs.

4 First of all, you know, I've been working
5 on Green Infrastructure for probably close to 35,
6 40 years, and the reasoning and the rationale and
7 the validity of the models that indicate its
8 benefits just get better and better. One of the
9 lines of reasoning that was I think very
10 important was the fact that there is in this
11 region a relatively high threshold for when Green
12 Infrastructure is applied to individual projects,
13 10,000 square feet, and one of the
14 recommendations and one of the items that was
15 considered was reducing that.

16 I think my sense, and I'll speak for
17 myself, but I think I captured the general sense
18 of the Board, was that a more rational plan as
19 indicated for Green Infrastructure is far more
20 important, it is beneficial for the water quality
21 benefits that we expect out of Pesticides,
22 Mercury, Trash, and PCBs, and that it is a more
23 rational basis than planning building-by-
24 building. Certainly, there are a number of
25 buildings that have gone forward in the booming

1 market in the last five years with no Green
2 Infrastructure provisions, with no trash control
3 provisions, and so mechanisms that make an
4 improvement on that make imminent sense.

5 It is also our intention and our desire
6 to work with the legislative process to try to
7 provide some funding for implementation of Green
8 Infrastructure, I've already started that work,
9 I've talked to many people in the public sector
10 about what we can do to deal with climate change,
11 aging infrastructure, and the water quality
12 desires that we want to have of less trash and
13 cleaner water. And Green Infrastructure is the
14 fundamental plan.

15 Now with respect to PCBs, I think
16 certainly I have enough experience in permitting
17 and construction to know that it is routine to
18 add a requirement like inspection for PCBs, it's
19 done for lead paint, it's done for Title 24 for
20 energy savings, it's done for epoxy, it's done
21 for seismic retrofits. I've gone through and
22 done all of those things. It is not a major
23 expense for local government and it is entirely
24 reasonable. Further, I think the identification
25 of existing hot spots and the reference of those

1 is also a reasonable requirement.

2 And then we come to the question of
3 implementation of Green Infrastructure. I think
4 staff has made it clear that their intent is to
5 try to align on a timing sense the Green
6 Infrastructure requirements of this permit, both
7 with respect to C.3 and with respect to C.12 and
8 the implementation of those on a reasonable basis
9 as they're feasible. It also is a mechanism to
10 try to secure priority and funding for
11 Proposition 1.

12 As we parse the discussion of the
13 difference between NALs and NELs, it appears to
14 us that if our desire is to make sure that
15 progress towards implementation of Green
16 Infrastructure that is feasible is secured, and
17 is enforceable, we must use the NEL approach
18 rather than the NAL approach, and it is our
19 intention to make sure that reasonable efforts at
20 building inspection, reasonable efforts at
21 reference of contaminated sites, and reasonable
22 efforts at Green Infrastructure implementation
23 are secured, and that they are enforceable.
24 Beyond that, it is not our desire, and would be
25 our lowest priority for enforcement to say,

1 "Well, gee, we didn't get quite the benefits out
2 of the Green Infrastructure that we hoped for."
3 We anticipate dealing with that with the next
4 stage of the permit and with the ongoing effort
5 to implement Green Infrastructure over a longer
6 period of time, rather than enforcement.

7 That may not make everyone feel
8 completely secure, but I think it's an indication
9 that we want enforceability to appoint, but we
10 also want to make clear that our intention is not
11 to punish people who have implemented and pursued
12 Green Infrastructure in a way -- we expect to see
13 lots of debates over what is or is not feasible,
14 and they may or may not come to the Board, that's
15 all healthy discussion. Did I capture that
16 right, Bill?

17 MR. KISSINGER: Yeah.

18 VICE CHAIR MCGRATH: So with those two
19 clarifications for our rationale, those would
20 remain unchanged and we would support them for
21 that reason.

22 MR. KISSINGER: So we had a very full
23 discussion of the evidence that we heard
24 yesterday, as well as what we heard this morning,
25 and I have to say this was a hard one, there's a

1 lot of moving pieces, it's complicated, I wish I
2 had another month to study all the materials here
3 and consider it, but obviously I think everyone
4 will be relieved to put this to bed.

5 I want to thank everyone for spending the
6 time with us yesterday, it was very helpful.

7 Let me start where you concluded with
8 PCBs. This is really a hard one. In the end, I
9 was persuaded that we need limits, numerical
10 limits, but I recognize that there's a lack of
11 precision given the alternate means that are
12 being proposed in this permit to achieve those
13 performance standards. And I, to quote a partner
14 that I worked with for many years, "We can't let
15 perfection be the enemy of the good here." I
16 think that, and I'm quite confident based on
17 conversations that I've had with Mr. Wolfe, that
18 not only will this not be the highest priority of
19 enforcement by this Board, but to the extent that
20 Permittees are acting in good faith, they're
21 working to achieve the performance standards by
22 taking the steps that are in the permit, I am
23 quite confident that there will not be any
24 enforcement proceedings -- and I'm looking over
25 towards Mr. Wolfe meaningfully right now --

1 VICE CHAIR MCGRATH: He's smiling.

2 MR. KISSINGER: -- he's smiling.

3 MR. WOLFE: You realize I retire next
4 week -- no.

5 MR. KISSINGER: That's what I think the
6 Permittees are worried about. But I can say that
7 this Board will make sure that those enforcement
8 proceedings don't happen because what we want
9 here is good faith conduct, but we don't know
10 how to get there without having numerical
11 standards, and so it's with that in mind that
12 we've ultimately done what we've done -- or what
13 we will do, I guess.

14 I want to also start, then, with my
15 feeling at the outset of yesterday of a high
16 degree of skepticism of some of the arguments
17 that were being made about how difficult,
18 impossible, it would be for the Permittees to
19 achieve the things that are set forth in this
20 permit, and I've thought very hard about it, and
21 I spent a lot of time going over your comments
22 last night and the responses, and I listened very
23 hard to what staff had to say. I think that I
24 come back to a comment that many of you said,
25 which was that we should be looking to you as our

1 partners, and we agree with that. On each of the
2 topics that are covered, or the controversial
3 topics, anyway, what I saw was a way to look at
4 the cup as half full, or half empty, and that in
5 listening to staff today, and frankly knowing
6 staff, my view is that this is a half full glass,
7 not a half empty glass, which is what I heard
8 yesterday.

9 I'll start with Green Infrastructure.
10 There are perfectly compelling arguments about
11 how rights of way on roads can't be changed,
12 there's a lot of other utilities, it's not easily
13 done to do some of the things that are associated
14 with Green Infrastructure. On the other hand,
15 there should be and there will be redevelopment
16 opportunities, there may be more in some places,
17 maybe less in other places, but all that's really
18 required here is to come up with a plan, and
19 maybe there are some burdens associated with
20 doing that, but I'm also again quite confident
21 that all of you are going to be doing the same
22 thing, you can pool resources to pull together a
23 template, that this Board or this staff is going
24 to work with you to make sure that this is not an
25 overwhelming burden, so that what you have in

1 place is the opportunity in the plans to be able
2 to do this if opportunities present themselves.
3 And I think that's not too great a burden.

4 On Trash, I was frankly quite persuaded
5 that we want to create an incentive for the creek
6 cleanups to continue, it's fair to say that the
7 creek cleanups and their existence has occurred
8 before there was credit being given to do it, so
9 I'm not sure that whether it's a 10:1 or a 3:1
10 crediting that it makes a big difference, but we
11 heard you, I heard you, and that's something that
12 undoubtedly we're going to have more to talk
13 about in this session.

14 I think there again, we have to work
15 together and I expect this Board will work with
16 you.

17 And I guess I want to finish with a last
18 observation, which is I guess to acknowledge the
19 fact that this is a very long and complicated
20 permit, and all of you have participated in
21 putting it together, it's built upon an existing
22 permit, so I guess it's not all new, but it
23 represents a tremendous amount of work which
24 frankly I think is a very nice piece of work,
25 even if it has its controversial pieces, and the

1 fact that there are as few issues as there are is
2 a testament to the hard work that all of you have
3 done in making this happen, so I want to thank
4 you all for putting your head down and dealing
5 with very complicated issues and, in the end,
6 having -- not to diminish your importance -- a
7 relatively few number of issues that you really
8 had good cause to fight about. So I want to
9 thank you all.

10 DR. AJAMI: So this personally has been
11 my longest Board Meeting since I joined the
12 Board; however, this issue is not a new issue to
13 me just because in the past two years that I've
14 been here, we have had two workshops on this
15 topic, and this sort of shows how important it is
16 for us as a Board to hear the public, to hear
17 everyone's concerns, and to work with the public.

18 So I want you to realize that, and I
19 think I speak for myself, but I think it's true
20 for all of us at the Board, that we very much
21 want to be your partner, we want to work with
22 you, we want our staff to work with you, and
23 that's why it has taken two years since we have
24 reached here, after all the meetings and
25 workshops and, you know, back and forth, a lot of

1 time and energy has gone into this permit and
2 obviously I'm very grateful for your
3 participation, for the fact that people have been
4 so eager to raise their concerns and be at the
5 table and be part of the conversation, and again
6 I think Bill said it well, that the fact that
7 there are just a handful of items that everybody
8 sort of disagrees on, shows that it's a testament
9 to this sort of collaborative effort that has
10 been put forward. So that's definitely a very
11 important thing to me, personally. And
12 obviously, so this final product sort of
13 hopefully is going to meet our water quality
14 goals and obviously there's always doubts in like
15 how fast we can reach where we want to go and how
16 happy everybody is going to be to get to that
17 final point, but it's called compromise and I
18 think we all sort of have done this a little bit,
19 and from our end and your end.

20 So I again, I don't want to reiterate
21 everything that Bill and Jim said, but I am also
22 very much, you know, after the long discussion we
23 had, I also believe the Numerical Limits, the
24 NELs, are definitely where we want to be.
25 Hopefully, again, as Jim said, it's not our goal

1 to -- our goal is to work with you to reach those
2 goals, our objective is to work with the
3 Permittees to reach those goals. So we have
4 these Numerical Limits, staff will work with you,
5 we'll be here to hopefully collectively we can
6 reach those goals.

7 For Green Infrastructure, again, I think
8 I understand this is not a perfect permit, we are
9 going to try our best to see what is the most
10 innovative way to reach our water quality goals.
11 I want to urge you to think about this as looking
12 into the future, rather than using 40 years ago
13 solutions to fix today's problems. So you know,
14 I know Green Infrastructure, while Jim says he
15 has been working on it for 30 years, there's
16 still not a to-go solution, not everybody is
17 constantly implementing them, but the reality is
18 we have to move forward, we have to be creative,
19 we have to use innovative solutions to solve our
20 problems, and this is definitely a path forward.
21 And while it's hard, while it's somehow unknown
22 we think collectively we can work together to
23 reach these goals in forward-looking way, and we
24 are going to leave for our children something
25 that they can hopefully by then use and pass on

1 to the next generation. So that's on the Green
2 Infrastructure. I also hope that you all look
3 into all these universities that we have in this
4 area and try to maybe collaborate with some of
5 them to come up with alternative ways of data
6 collection, alternative ways of measuring,
7 assessing what's happening in your communities.
8 You know, I know this is a little off the permit
9 topic, but when everybody was talking about
10 assessing trash in their streets, I was
11 constantly thinking, you're doing citizen
12 engagement in developing countries to collect
13 data on water quality issues. Why can't we do
14 the same thing with our citizens in our
15 communities? Everybody has cell phones, come up
16 with an app that people can report can back to
17 you, then you don't need to send 30 people to go
18 collect data, or assess the street cleanups. So,
19 you know, be creative. I know it's not a usual
20 path that you take, but I think you should
21 definitely try to be more creative and partner
22 with the research institutions that are around
23 here to see if you can come up with some of those
24 solutions.

25 So with that, and then I also want to

1 acknowledge I understand someone who works on
2 these financing issues constantly, I understand
3 how hard it is, but again I urge you to look
4 forward, you know, if the Energy sector was
5 thinking the way we think right now, there would
6 be no solar panels on everyone's roofs. You
7 know, 10 years ago, everybody was saying they're
8 so expensive, no one wants to put them on their
9 roofs, what's the point?. Now a lot of people in
10 the Bay Area actually have those on their roofs,
11 and they're proud of them, and they're using them
12 to save money. So if there is just, you know,
13 one lesson that we can learn from that sector, is
14 that being forward thinking can definitely help
15 us to get out of our comfort zone and maybe think
16 out of the box and get somewhere that we are not
17 right now not there. So partnering with your
18 customers, cost sharing, public-private
19 partnerships, there are many different ways you
20 can come up and we are here to help you,
21 honestly, I think there are so many different
22 examples and paths and models that can be used,
23 and I urge you to look outside of your normal
24 setting and try to find alternative ways of
25 funding these solutions, and I think Jim is

1 right, I think there's a big movement right now
2 in Sacramento to try to overcome 218, believe me,
3 I hear about 218 daily, not just on this issue,
4 on water supply issues that all these water
5 agencies have, and the fact that 218 -- but there
6 are so many water agencies in California that
7 don't have that problem, and the reason they
8 don't have that problem and they have been
9 overcoming 218 is because they work with their
10 customers, they constantly communicate their
11 challenges, and they don't deal with lawsuits to
12 that, you know, Southern California is a great
13 example of that, they constantly raise the rates,
14 the water rates, and they're not being sued.
15 LADWP, San Diego, and all these other water
16 agencies, I know they're larger, some of them are
17 larger than the size of the Municipalities you
18 are representing, but still I think there are so
19 many other models out there that you can look
20 into and see if there's a way you can move
21 forward without necessarily straining your
22 current resources. With that, I think I'll let...

23 CHAIRPERSON YOUNG: Do you want to make
24 comments?

25 MR. LEFKOVITS: I have a couple of short

1 comments to make. Reading the permit and
2 listening to the discussion over the last two
3 days reminds me of a story that I guess I can
4 share now. When I was appointed, one of my
5 scientist friends said to the other, "Why was
6 Steve appointed to the Board? He's not a
7 scientist." And the other one said, "That's
8 okay, they have a spot for a dumb guy." And she
9 meant this like, no, like a regular guy, you
10 know? It's a true story.

11 And so I guess bringing the regular guy
12 perspective, bringing the small business guy
13 perspective to the Board, I really empathize a
14 lot with everyone who has read the permit and
15 thought about how they would comply, thought
16 about the difficulties of making sense of all
17 this, and allocating scarce resources to try to
18 do the right thing. And I think that that sense
19 is shared by everyone on the Board, and it kind
20 of surprises me how much empathy there is and how
21 much people take into account both the factual
22 and logical, as well as the emotional content
23 that everyone who commented brought to the table.
24 And I'm really grateful for that and really glad
25 to be a part of a group that is so nuanced.

1 And the only thing I'd like to say is
2 just that I think we are really getting into some
3 very very difficult work that everyone here has
4 signed up for, and I'm very heartened that
5 everyone here shares the same goals, we're like
6 people in a family, you know, fighting about some
7 aspect of family business. And everyone wants to
8 get to the same place and I think that's a really
9 good thing because, if you think about it, in a
10 lot of parts of the country, people wouldn't
11 start the remarks saying, "I share the goals."
12 And that's a really important thing that I think
13 we should take a certain amount of pride in.

14 And just to echo what Dr. Ajami said, you
15 know, as we think about the future, I think more
16 and more we're going to have to be innovative
17 about finding ways to get to our goals, whether
18 it's finding the resources or ideas, people,
19 technology, outside of our governmental world,
20 it's an increasing realization that I have that,
21 you know, we're trying to do very complex, very
22 hard, very long term things with small budgets,
23 and doing things the way we used to. And I have
24 so much respect for the people who have been in
25 this field for a long time, and I think, you

1 know, coming to it fresh without any background,
2 I think, you know, "Jeez, you know, I wonder if
3 along the way we're missing simpler ways to get
4 things done, or share information, or make life
5 easier for ourselves." And so it's been an
6 interesting process. And I'll stop there and I
7 just want to thank everyone for participating.

8 CHAIRPERSON YOUNG: Okay, thank you. I
9 join in and reiterate what all of my colleagues
10 have said about wanting to work as partners in
11 this endeavor. This is an enormous undertaking,
12 it's a really thick permit, which reflects that,
13 and it's also very important to water quality. I
14 mean, we know that the impacts of the fact that
15 all of us are living in the Bay Area are having
16 on water quality are extremely significant and
17 that's why we're here. So, you know, we're all
18 in this together.

19 I wanted to reiterate basically a couple
20 of things that I think I said earlier in this
21 hearing and I know I said earlier in other
22 workshops. First of all, about addressing PCBs,
23 we know that sort of measure for measure getting
24 at the PCBs problem is more expensive than a lot
25 of the other things that we're trying to do, and

1 a lot of other elements of this permit. And I
2 had indicated, and I think many of my colleagues
3 did in prior workshops, that as we look through
4 the permit and prioritize what we want you folks
5 to be working on, we were willing to give a
6 little on the PCBs elements and more so than on
7 some of the others. And the draft that we are
8 all responding to, that we held this hearing on
9 today, reflected that, it reflected many many
10 changes that had been made in the PCBs section to
11 try to make it easier for everybody to be
12 successful at the end of the day. That was good
13 from my perspective.

14 I'm still sensitive to the concerns of
15 the smaller cities about some of the PCBs
16 requirements. I was swayed by the staff
17 explanations of how the Regional and County level
18 programs could be utilized in sort of a group way
19 to address these concerns, and I think they made
20 a very reasonable case. So I'm willing to go
21 with what we have. But we're going to watch how
22 this develops, you know, as time goes on. And I
23 would like to reiterate to staff that I know they
24 have offered and I would really like them to do
25 this, you know, to keep on top of what's going on

1 with the small cities and do whatever they can to
2 help make this whole group compliance effort
3 successful. I know that was the plan anyway, but
4 I kind of wanted to put it out on the record so
5 you all know that we're trying to be sensitive to
6 your concerns.

7 I agree with Mr. McGrath's and Mr.
8 Kissinger's perspective on both adopting the PCBs
9 requirements and on our enforcement posture,
10 should enforcement become necessary at some
11 point, hopefully it won't.

12 With respect to Trash, I am comfortable
13 with all of the Trash provisions. We heard a lot
14 yesterday about the concerns about the 10:1 ratio
15 of calculating an offset for creek cleanups, and
16 many of you requested having a 3:1 ratio for
17 crediting the cleanups instead. I think staff
18 made a very good case for the 10:1 ratio and why
19 they have put that out, and I'll sort of just
20 remind everybody about the history, that the last
21 permit had no crediting at all for creek
22 cleanups. The first proposal that came out, that
23 we all saw and that you folks commented on,
24 allowed a five percent cap for the offset; this
25 latest -- and you folks said that you wanted a

1 higher cap -- this latest round has a 10 percent
2 cap. At the same time, I think those of you
3 Dischargers who commented on this particular
4 issue also brought up some very important reasons
5 why you wanted to have the 3:1 ratio. One of the
6 concerns that I have, and it came out in the
7 discussion earlier, about going to a 3:1 ratio is
8 the concern about what might happen as we
9 progress towards the 2022 date down the road,
10 that we know that these offsets might disappear,
11 as in the staff report, in the next permit. So
12 we don't want to go down a road that makes it
13 really difficult to have steady progress towards
14 compliance with all of the dates that are in the
15 series of permits that are coming out, both the
16 2017, 2019, and 2022. So putting all that
17 together, what we would like to ask the staff to
18 do is to create language for us that we can
19 consider now, that would make a change in the
20 permit that would provide for a 3:1 ratio for
21 creek cleanups to be credited towards the 10
22 percent cap for the 2017 compliance date, and a
23 10:1 ratio for crediting creek cleanups to get to
24 the 10 percent cap for the 2019 compliance date.
25 Did I state that right?

1 VICE CHAIR MCGRATH: Yes, very
2 accurately.

3 MR. WOLFE: And I assume that also
4 includes the 3:1 for the 60 percent reduction by
5 2016.

6 CHAIRPERSON YOUNG: That's correct.
7 Thank you. In order for the staff to come up
8 with that language that we can vote on, we have
9 to give them a little time to do that --

10 VICE CHAIR MCGRATH: It's done.

11 CHAIRPERSON YOUNG: It's done? It's
12 already done? Well -

13 MR. WOLFE: It needs to be vetted.

14 MR. BOWYER: Could I ask for one
15 clarification?

16 CHAIRPERSON YOUNG: Yes. Dale wanted to
17 ask for a clarification.

18 MR. BOWYER: This does not apply to the
19 direct discharge 15 percent --

20 CHAIRPERSON YOUNG: Correct. Creek
21 cleanups only.

22 MR. BOWYER: Okay.

23 CHAIRPERSON YOUNG: I have something else
24 to say, I mean, you know, you guys think that
25 we've already hit the end, but the movie is still

1 running here. I did want to say something about
2 reporting. We didn't hear from a lot of you
3 yesterday about your concerns about the volume of
4 reporting that is involved in this permit, but I
5 know from a lot of previous comments at previous
6 hearings that you have been concerned, and I
7 assume that you still will be. We are concerned
8 about the volume of reporting, as well. At this
9 time, we're not proposing to make any changes in
10 the language of what we are adopting, but we want
11 to direct the staff, since they're the only ones
12 here we can direct, but we'd love to direct you
13 guys, too, to start thinking about ways that we
14 can make this whole reporting exercise more
15 efficient, so that we can transmit the
16 information that needs to be transmitted, but
17 either by creating electronic templates, or
18 whatever you guys can come up with, we are really
19 willing to work with you to make that part of
20 compliance with this permit as streamlined as we
21 possibly can. So I'd like to encourage everybody
22 to help us work through that as time goes on.
23 That was the end. Yes.

24 VICE CHAIR MCGRATH: I forgot to say one
25 thing. Obviously, I forgot to thank the public

1 for their interest and their keeping our focus.
2 But I want to make one clarification on the Green
3 Infrastructure. Our support for it is with the
4 understanding and the knowledge, I mean, I ride a
5 bicycle around a lot of the Bay Area, in the
6 hills, all around, I know that there are areas
7 that are very low intensity development and,
8 frankly, with the work that I've been doing and
9 done with Luna Leopold over the years, represent
10 relatively little risk. So my vote is contingent
11 upon the understanding that I've had from the
12 staff that there will be an easy exit to Green
13 Infrastructure for those areas where there's
14 relatively little risk, and where they don't need
15 to pursue in the short term significant
16 improvements in their plumbing system for sea
17 level rise, and aging infrastructure.

18 We are trying to structure a permit here
19 for many many permit entities of different sizes,
20 and we want to make sure that it is clear and
21 consistent, but we also want to make sure that
22 you understand it is not applied with equal vigor
23 to Municipalities, regardless of the risk that's
24 involved, and I want to make that clear and on
25 the record.

CHAIRPERSON YOUNG: Okay, so with that,
we are going to allow the staff some time to
bring that language to us, so we can all read it
and have it written down, rather than just
stated. While you folks are doing that, should
we go ahead and do the Minutes and the Board
Reports that we didn't do yesterday? Or would
you prefer for us to take a break? Okay, we are
going to take a break and whenever they say we
can reconvene, we'll reconvene.

MS. AUSTIN: And Chair Young, if I can
just put a clarification on the record, that I
tipped Dr. Mumley off as to what changes might
need to be made, and he was making those after
the Closed Session, he was not part of Closed
Session, and that decision, the deliberation
occurred only in Closed Session.

CHAIRPERSON YOUNG: I saw him open his
notebook. I mean, I saw him open his computer.
Okay, we're going to take a break, let staff put
that together, and we'll come yell in the halls
when we're ready to come back.

(Break at 3:25 p.m.)

(Reconvene at 3:50 p.m.)

CHAIRPERSON YOUNG: All right, we're

1 going to reconvene to walk through the language
2 that staff has put together based on our request.

3 DR. MUMLEY: Okay, so just to start out,
4 what I've done is made the change, this is the
5 provision, the C.10 provision where I added the
6 3:1 and I'll walk you through this. So this is
7 we're proposing a change to Provision C.10.E.,
8 Optional Trash Load Reduction - Offset
9 Opportunities. I. Additional Creek and
10 Shoreline Cleanup. And the second paragraph that
11 starts, "The Permittee may claim a load reduction
12 offset of one percent for each total of trash
13 volume removed from additional cleanups that
14 is...," and we're inserting, "...three and a third
15 percent for the 2016 performance guideline and
16 2017 mandatory trash load reduction deadline,
17 and...," and then the existing language, "ten
18 percent," but we're adding, "for the 2019
19 mandatory trash load reduction deadline," and
20 then the remainder stays the same, "...or the
21 Permittees' 2009 trash load volume estimates..."
22 So this is just a narrative that explains this
23 formula, so the formula has to do with you want
24 more offset with the 3:1 than you get with the
25 10:1. And so what we have pointed out here is

1 now the offset factor is equal to $7.5 \times .033$ -
2 excuse me, I'm referring to the explanation of
3 the factors in the formula that follows the
4 narrative explaining the allowed offset. And so
5 the specific revision that we're making is for
6 the offset factor, which is 0F. Zero F equals
7 offset factor equal to 7.5×0.033 for the 2016
8 Performance Guideline and 2017 Mandatory Trash
9 Load Reduction Deadline, where 7.5 is the
10 conversion from acres to gallons based on trash
11 generation rates, and 0.033 is the 3:1 offset
12 ratio, or 7.5×0.1 , which was the previous one
13 there, with the addition now for the 2019
14 Mandatory Trash Load Reduction Deadline, which
15 was already there, where 7.5 is the conversion
16 from acres to gallons based on trash generation
17 rates and 0.1 is the 10:1 offset ratio.

18 MR. WOLFE: We need to remove that extra
19 zero you put in there. So it's 7.5×0.33 .

20 MR. BOWYER: 0.033 means you get to one
21 percent with less --

22 VICE CHAIR MCGRATH: 0.033 is accurately
23 3.3 percent; do we have a difference between that
24 and the second number a little further in the
25 line, which is 7.5×0.01 ? That's 10 percent.

1 DR. MUMLEY: So let me explain. The
2 Permittee gets to claim an offset of one percent
3 for any volume equal to this formula, so the
4 smaller the number, the more the offset. So
5 that's why it's a third of what was previously
6 there. Because you're comparing amount of trash
7 to a smaller percentage of a larger amount of
8 trash is what you get, one percent credit for
9 each --

10 VICE CHAIR MCGRATH: Thank you, I get it.

11 DR. MUMLEY: Now you get it?

12 VICE CHAIR MCGRATH: Yes.

13 DR. MUMLEY: That's what took us a while,
14 to make sure we ground truthed that. Now I'll do
15 the same thing -- so that's the provision. Now
16 here's the Fact Sheet which for C.10.E I.
17 Additional Creek and Shoreline Cleanup. So in
18 the third paragraph of the Fact Sheet that
19 starts, "One way to recognize the value of these
20 additional cleanups and to account for the short
21 term benefit (volume of cleanup compared to
22 ongoing trash load discharges)...is to use an
23 offset ratio of..." and now we are inserting 3:1
24 for the 2016 Performance Guideline in the 2017
25 Mandatory Trash Load Reduction Deadline, and...,"

1 and then the existing 10:1, and then add "for the
2 2019 Mandatory Trash Load Reduction Deadline,
3 when comparing additional cleanup volumes with
4 the remainder of," and then the text remains the
5 same. The formula remains the same and, again,
6 as with the provision, we revised the definition
7 of the offset factor. And so we're saying OF
8 equals the Offset Factor equal to $(7.5 \times 0.033$
9 for the 2016 Performance Guideline and 2017
10 Mandatory Trash Load Reduction Deadline, where
11 7.5 is the conversion from acres to gallons based
12 on trash generation rates and 0.33 is the 3:1
13 offset ratio, or the existing parenthetical, 7.5
14 $\times 0.1)$, and that this comma doesn't belong there,
15 so it's actually struck out, so imagine it's not
16 there, "...for the 2019 Mandatory Trash Load
17 Reduction Deadline," and where the rest remains
18 the same, where 7.5 is the conversion from acres
19 to gallons based on the trash generation rate,
20 and 0.1 is the 10:1 offset ratio.

21 MR. LICHTEN: Can you read the last
22 sentence of the paragraph before the formula?

23 DR. MUMLEY: Oh, this part? Oh, I messed
24 up? I also failed to note that the last sentence
25 in the paragraph that started one way to

1 recognize the value of these additional cleanups,
2 the last sentence starts with, "The following
3 formula generates a Permittee-specific Trash Load
4 per Volume Amount, and based on its 2009
5 categorical trash generation rates and a...," and
6 we insert "...3:1 or," before "10:1 offset ratios."
7 So it's just noting that you can use a 3:1 or
8 10:1, which may be used to offset one percent of
9 a required percent load reduction value. So it's
10 just recognizing that you can use the formula
11 with either a 3:1 or 10:1 offset ratio, and I
12 already explained we modified the offset ratio
13 description that provides that. Good enough for
14 the record, counsel?

15 MS. WON: On the last sentence where you
16 say 3:1 or 10:1 offset ratio, can you say "as
17 provided above" so that the correct ratio is used
18 in the formula? Do you think that's necessary?
19 I think that's necessary.

20 DR. MUMLEY: Well, it's the formula
21 specifies it down here. So we could put it in
22 there for completeness, but this is the Fact
23 Sheet and the Fact Sheet is really clear down
24 here that the 3:1 applies to 2016 and 2017, and
25 10:1 applies to 2019. I -- what do you think?

1 MS. WON: It's fine.

2 DR. MUMLEY: Yeah. I mean, it's pretty
3 clear what is intended, the record is clear on
4 what's intended, and the permit is clear. So...
5 You want this number to be as small as possible.
6 The smaller this number, the more offsets you
7 get, so you want the multiplier to be small. But
8 that would be, well, I'm not going to explain
9 what you asked for because it's off point.

10 VICE CHAIR MCGRATH: The smaller the
11 multiplier, the quicker you accumulate points
12 towards gold stars and offsets.

13 CHAIRPERSON YOUNG: Thank you. Unless I
14 see contravening body language, I think we are
15 ready for a motion from the Board.

16 VICE CHAIR MCGRATH: Staff recommendation
17 first?

18 CHAIRPERSON YOUNG: After we have our
19 staff recommendation, of course. Yeah, let him
20 label all this stuff.

21 MR. WOLFE: Okay, try to tie this
22 altogether and make a few comments. Big picture,
23 first, I'm pleased that we had so many
24 stakeholders testifying, especially with the
25 opportunity to have so many Elected's and have

1 them become informed about stormwater runoff
2 controls and water quality protection. So I
3 think that's a good thing. Further, as you've
4 noted, a number of the stakeholders pointed out
5 that we've had agreement on most aspects of the
6 Tentative Order, and that development of the
7 Permit took quite less time than the first
8 Regional Permit.

9 So I think it's worth noting, as the
10 Board has, that we have had a significant
11 stakeholder process, not only about developing
12 this permit, but for the 25 or so years of the
13 Stormwater Programs. My involvement with the
14 Stormwater Programs only goes back to 1994, so
15 besides Tom, I do see a number of people in the
16 audience who have been working on it longer than
17 me, and I think that's important because that
18 lengthy involvement provides us the opportunity
19 to build on experiences from the local agencies
20 to use the Permittee generated plans and reports
21 in the iterative matter we've discussed.

22 So what you have before you now is
23 essentially a culmination of all the work the
24 stakeholders have done over these past 25 years.
25 There's really little new from a topical

1 perspective, in fact, the requirements on PCBs,
2 Mercury, Trash, New and Redevelopment date at
3 least to the initial Regional Permit. But it's
4 really how do we put this altogether and
5 incorporate the message because each of these,
6 Tom has mentioned a number of times, that this is
7 the fifth iteration of the permit for at least
8 Santa Clara and Alameda County, and it seems
9 every time we do have a permit reissuance, we do
10 hear about the challenges that the local agencies
11 are strained for resources, and we get it. And I
12 think we've worked to minimize costs, provide
13 flexibility in the permit, and to ensure what
14 we're requiring is necessary for water quality
15 protection and for compliance with the Clean
16 Water Act.

17 One comment I didn't hear too often was
18 acknowledgment of the reductions in requirements
19 that we have done, and we have done quite a
20 number. I think we have been very open to
21 recognizing where, for instance, data collection
22 is no longer useful or where requirements are
23 inefficient or ineffective, that we've made
24 changes in response to that. So when I hear
25 comments such as we need to phase in these

1 requirements, or we need more flexibility, or we
2 need more time, I sort of roll my eyes because
3 we've heard that over the past 25 years, and I
4 think we've included that consistently throughout
5 our permitting cycle.

6 But on the other hand, we need to balance
7 that with the ambitious, rigorous, and
8 transparent approach called for by the State
9 Board. So we know we'll continue to work with
10 the stakeholders on implementing this permit. We
11 want to make sure we're ensuring what we're
12 requiring is necessary for water quality
13 protection. And if we aren't achieving that, we
14 won't hesitate to reopen the permit to get it.

15 I do want to note that we heard frequent
16 mention of unfunded mandates in a variety of
17 contexts. From my perspective, there is nothing
18 in the Revised Tentative Order that is not a
19 requirement to the Federal Clean Water Act, thus
20 in our mind, while I know some of the Permittees
21 disagree, there's no state unfunded mandate here.
22 Further, this is the vehicle for the local
23 agencies to comply with their Clean Water Act
24 responsibilities.

25 So in sum, before you is the tool that

1 helps Cities and Counties protect and restore the
2 Bay and comply with the Clean Water Act. So I
3 recommend adoption of the Revised Tentative Order
4 with the changes to what you received to include,
5 1) the changes we just went through that are on
6 the screen, 2) the Supplemental that the staff
7 handed out yesterday morning, 3) the Supplemental
8 that Terry Young produced. And I'll also note
9 that on page 130, we will fix the paragraph
10 numbering which currently says 2, 3, 4, and we'll
11 change it to the correct 1, 2, 3. Sometimes WORD
12 has a mind of its own.

13 So with that, I recommend -- oh, and on
14 page 154 at the very end, the date that I will
15 certify as this being adopted is November 19th
16 rather than November 18th -- 2015, we're still in
17 that, right?

18 So with that, I recommend the adoption of
19 the Revised Tentative Order with those changes.

20 VICE CHAIR MCGRATH: I would move the
21 staff recommendation, recognizing that it has the
22 three amendments that were spoken of, so everyone
23 is clear, and those have been incorporated into
24 the staff recommendation.

25 DR. AJAMI: I will second that.

1 CHAIRPERSON YOUNG: All right, is there
2 additional discussion at this time? I would like
3 to just say one more thing, well, to thank the
4 staff for working so hard on this package, and
5 there's a lot of data, a lot of detail, a lot of
6 work that went into this on all of your part, and
7 the fact that where we are today is due to that.
8 So thank you very much.

9 VICE CHAIR MCGRATH: Ditto.

10 CHAIRPERSON YOUNG: Yeah, I mean, I wish
11 I could be more flowery because I really mean it.
12 All right, let's have a roll call vote, please.

13 MS. TSAO: Board Member Lefkovits - Aye;
14 Board Member Ajami - Aye; Board Member Kissinger
15 - Aye; Vice Chair McGrath - Aye; Chair Young -
16 Aye.

17 CHAIRPERSON YOUNG: All right, we have
18 adopted it. So ordered, thank you. Yes?

19 DR. MUMLEY: This is Tom. I'd just like
20 to thank you for your action. Speaking to the
21 Permittees who are here and I want to reassert
22 our staff commitment to work with them on these
23 issues, so that we are shoulder to shoulder, as
24 much as possible, no surprises, and so I want to
25 make sure we do what I said we would do to assist

1 them and make sure there's no unintended
2 consequences.

3 CHAIRPERSON YOUNG: All right, thank you.
4 I am going to recommend that we carry over the
5 Minutes to the December Meeting and the Board
6 Member reports to the December Meeting. I know,
7 you can't wait, and then call this meeting
8 adjourned. Thank you.

9 (Off the record at 4:11 p.m.)

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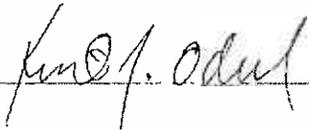
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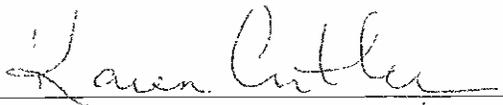
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